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

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

RESPONDENT:
State of Karnataka & Ors.Etc.Etc.

DATE OF JUDGMENT: 25/11/2002

BENCH:
Syed Shah Mohammed Quadri.

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,D.No.1741, 295 and 764 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 of 1981, 2443-46 of 1981, 4020, 290, 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, Civil Appeal Nos.7647, 7648, 7687, 7696, 7694, 7656, 7658, 7686, 7663-64, 7650-51, 7661, 7666, 7669, 7668, 7660, 7671, 7677-7684, 7652-54, 7673, 7689, 7691, 7692 of 2002 [@ SLP (C) Nos.9950 and 9951 of 1979, 11526 and 863 of 1980, 12408 of 1985, 8844 of 1986, 12320 of 1987, 14437, 18061-62 of 1993, 904-05 and 11620 of 1994, 23421 of 1995, 4372 of 1996, 10360 and 10664 of 1997, 1216, 9779-9786, 6472-6474 and 9793 of 1998, 5101, 4480 and 4486 of 2002], T.C.(Civil) No.26 of 1990, T.P.(Civil) Nos.1013-14 of 1993.

SYED SHAH MOHAMMED QUADRI,J.

On October 31, 2002, while recording my answers to the eleven questions referred to the Bench of eleven learned Judges of this Court, I noted in a separate judgment, concurring with the majority except in regard to answers to question Nos.5(b), 8, 10 and 11, that I would give my reasons later for agreeing on those aspects with the opinion of our learned sister Ruma Pal,J. and dissenting with the majority opinion as well as the opinion of learned brother Variava,J., with whom learned brother Bhan,J. agreed. Here follow the reasons.

The difference of opinion mainly relates to the true interpretation of clause (2) of Article 29 and clauses (1) and (2) of Article 30 of the Constitution and their

interaction.

Article 30 is a much discussed provision in Courts. It has been the subject matter of consideration by various High Courts as well as by this Court. I have already quoted clauses (1) and (2) of Article 30 and clause (1) of Article 29 in the said judgment. To appreciate various rival contentions, first I shall examine the extent of the right conferred by clauses (1) and (2) of Article 30. It is a common ground that all minorities, whether based on religion or language, are bestowed the right to establish and to administer educational institutions of their choice in clause (1) of Article 30. The following aspects of the right conferred therein on the minorities need to be noticed: (1) to establish educational institutions; (2) which are of their choice and (3) to administer them.

The choice of educational institutions may vary from religious instruction to temporal education or a combination of both. Having regard to the width of Entry 25 of the Concurrent List*, the choice of educational institutions may be understood to include places for imparting education of their choice and at all levels - primary, secondary, university, vocational and technical, medical, etc.

The expression 'of their choice' includes not only the choice of the institution to be established and administered by the minorities, like institution for elementary, primary, secondary, university, vocational and technical

and medical education, but also the choice of the students who have to be imparted education in such institutions. [See : The State of Bombay vs. Bombay Education Society and Ors. (1955 (1) SCR 568); In Re: The Kerala Education Bill, 1957, (1959 SCR 995); D.A.V.College, Jullunder etc., vs. The State of Punjab and Ors. (AIR 1971 SC 1737) and The Ahmedabad St. Xaviers College Society & Anr. etc. vs. State of Gujarat & Anr. (1975 (1) SCR 173).

The expression 'to establish' means to set up on permanent basis. The expression 'to administer' means to manage or to attend to the running of the affairs. A lucid connotation of this expression was given by Ray, CJ., in St.Xavier's case (supra) as under :

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

In none of the subsequent decisions of this Court, this exposition was departed from.

The Kerala Education Bill (supra) is the first important case in which the right of the minorities (based on religion or language) under Article 29 and Article 30 of the Constitution was exhaustively considered by this Court

in its advisory opinion given in a reference under Article 143 of the Constitution. After explaining the content of the fundamental right to establish and administer educational institution of their choice contained in clause (1) of Article 30, it was observed, inter alia, that it could not obviously include the right "to mal-administer." This qualification is implicit in Article 30(1) and cannot be treated as a limitation on the right conferred thereunder. There is virtual unanimity about the import of Article 30. Conferment of the right to establish and administer educational institutions would become an empty formality unless education imparted in such institutions yields fruitful results by enabling the students/trainees of such institutions to join the mainstream and to settle in life whether by pursuing higher studies or seeking employment or otherwise. In the system prevalent in almost all countries, the State or universities prescribe syllabi in different courses, conduct examinations for awarding certificates and degrees which enable the students/trainees to pursue higher education or secure employment or practise any profession or carry on any occupation or business. The State or its agencies run the educational institutions which impart instructions or training. The State also recognises educational institutions run by private management for imparting education or training in accordance with the prescribed syllabus. It is only the recognised institutions that can send up their students to appear in the examinations conducted for that purpose as per the prescribed syllabus; the only exception in regard to recognition of the institutions being distance education which for sometime past has been gaining ground. Though, no specific fundamental right for obtaining recognition is conferred in the Constitution, it cannot, however, be disputed that recognition of private educational institutions, including minority educational institutions, is an essential concomitant of the right under Articles 19(1)(g), 26(a) and 30(1) of the Constitution. Further, it is widely accepted that a lot of educational institutions (whether of non-minorities or of minorities) will not be able to impart instructions without financial aid of the State. For this purpose, each State in discharging its constitutional obligation under Articles 45 and 46, subject to its economic capacity, formulated policy for grant of aid to educational institutions and framed regulations.
The directive contained in clause (2) of Article 30 is that 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 or language. It is a non-discriminatory clause. The right conferred under this clause on a minority educational institution is that if a State chooses to grant aid to the educational institutions, it should not be discriminated against on the ground of being under the management of a minority. However, the aid, if any, has to be granted to the minority educational institutions without infringing their constitutional right. It is not in issue that for the purpose of ensuring proper utilisation of aid, the State has power to make regulations which may include audit of accounts of recipient institutions and other allied matters. Nonetheless, if in complying with the regulations of grant-in-aid, the minority educational institutions are required to shed their character as such institutions in any of the matters which directly fall under their administration, the State would be violating both clauses (1) and (2) of Article 30 of the

Constitution.
In regard to the minorities seeking recognition and/or aid it was observed in The Kerala Education Bill (supra) that the minorities cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. In such matters, "the State can insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided". (Emphasis supplied) Thus, it is clear that regulations postulated for granting recognition or aid ought to be with regard to excellence of education and efficiency of administration, viz., to make certain healthy surroundings for the institutions, existence of competent teachers possessing requisite qualifications and maintaining fair standard of teaching. Such regulations are not restrictions on the right but merely deal with the aspects of proper administration of an educational institution, to ensure excellence of education and to avert mal-administration in minority educational institutions and will, therefore, be permissible. This is on the principle that when the Constitution confers a right, any regulation framed by the State in that behalf should be to facilitate exercise of that right and not to frustrate it.
Justice Mathew in St. Xavier's case (supra) (at page 266) observed :
"It sounds paradoxical that a right which the Constitution makers wanted to be absolute can be subjected to regulations which need only satisfy the nebulous and elastic test of State necessity. The very purpose of incorporating this right in Part III of the Constitution in absolute terms in marked contrast with the other fundamental rights was to withdraw it from the reach of the majority. To subject the right today to regulations dictated by the protean concept of State necessity as conceived by the majority would be to subvert the very purpose for which the right was given."

The sine qua non of a good and efficient administration is that it is fair and transparent. Therefore, it will be in the fitness of things and in the interest of good administration of the minority educational institutions (whether aided or unaided) to frame their own regulations in regard to admission of students to various courses taught in their institutions, notify fees to be charged and concession provided for poor students, like granting total and/or half exemption from payment of fees scholarships, etc., service conditions of teachers and non-teaching staff and other allied matters. This will inspire confidence in both the State and its agencies as well as the public and the student community. The most damaging allegation against non-government educational institutions is charging of capitation fee which has become the talk of the town throughout the length and breadth of the country. So much so that the term 'capitation fee' has become synonymous with crime. The concept of capitation has its origin in taxation; earlier there used to be capitation tax per person. Educational institutions, it is stated, oblige guardians/students to pay, in addition to the notified fees, varying amounts depending upon the courses in which

admission is sought; such amounts are nothing but per capita collection for admission to a given course in an educational institution and can properly be termed as capitation fee. This is reprehensible and cannot be tolerated. Now, in view of the majority judgement different institutions may notify different fee for the same course and the same institution may notify different fees structure for different courses. If the evil of collection of capitation fee is done away with by the private educational institutions (both non-minority and minority) much of the controversy about intervention by the State and complaints by citizens could be avoided. Collection of capitation fee being the worst part of mal-administration can properly be the subject-matter of regulatory control of a State. Receiving donations by an educational institution, unconnected with admission of students, could not obviously be treated as an equivalent of collection of capitation fee.

Before proceeding further, it will not be out of place to mention here that there is a perceptible shift in the stand of the Union of India as could be discerned from the written submission filed by the then learned Attorney-General on behalf of the Union of India when these cases were heard earlier by another Bench and the contentions now urged by the learned Solicitor General appearing for the Union of India. He opened his arguments by conceding, inter alia, that in regard to important constitutional questions stare decisis principle would apply; that the following propositions laid down in The Kerala Education Bill's case and St.Xavier's case (supra) do not require re-consideration, that: (i) Article 29(1) does not govern Article 30(1) textually, historically and conceptually; (ii) minority institutions need not confine admission of students to their members; (iii) in the process of grant of aid, minority educational institutions cannot be denuded of their minority character; and (iv) the extent of regulatory measures implicit in Article 30(1) and the tests relating thereto have been correctly laid down. He, however, contended that the right conferred under Article 25 in regard to freedom of conscience and freely to profess, practice and propagate religion, is certainly a greater right; so also the right conferred under Article 26 to manage religious affairs; when these rights are subject to the limitation contained therein, surely the rights under Articles 29 and 30 would also be subject to the same limitations. According to him, presence or absence of the limitations specified in Articles 25 and 26 would make no difference when the question of exercise of those rights arises. It was further urged that in regard to Article 25 which deals with core right when the secular activities associated with it could be regulated and restricted, the right to establish an educational institution to impart secular education, being in itself a secular activity, should also be amenable to the same regulatory power of the State and that the limitations contained in Articles 25 and 26 could be read in Article 30(1) of the Constitution. These contentions appear to be attractive but, on a careful scrutiny, they are found to lack any substance. The framers of the Constitution, who have subjected the fundamental rights under Articles 25 and 26 to limitations contained therein, chose not to subject Article 30(1) to any such limitation. In incorporating the right of the minorities, whether based on religion or language, to establish and administer educational institutions 'of their choice' which obviously postulates secular education, they were not unmindful of the fact that the right which was

conferred under Article 30 was also in respect of a secular aspect. It would be erroneous to assume that in placing limitations on certain fundamental rights and omitting to do so on certain others, if as contended by the learned Solicitor General they are inconsequential, they carried on the exercise in futility. Such an assumption cannot be made in respect of any legislation, much less can it be assumed in regard to the Constituent Assembly. These contentions are, therefore, untenable as being opposed to the well-settled principles of interpretation of a Constitution. So also, the contention that though the Constitution itself has not subjected the right under Article 30 to the regulatory control of the State or to other limitations as in Articles 19, 25 and 26, the State's regulatory power and other limitations incorporated in the aforementioned articles should be read in Article 30 of the Constitution or that incorporating limitations in Articles 19, 25, 26 and not incorporating them in Article 30 is of no significance, cannot but be rejected. It needs no emphasis to bring home the point that when the Constitution itself has designedly not imposed or permitted imposition of any limitation or restriction by the State on a fundamental right under Article 30, neither the Court by process of interpretation nor legislation much less an executive regulation can be permitted to cut down the width of the constitutional right termed as a fundamental right. The following observation of Das, CJI., in The Kerala Education Bill (supra), will be apposite here,

"It is not for this Court to question the wisdom of the supreme law of the land. We the people of India have given unto ourselves the Constitution which is not for any particular community or section but for all. Its provisions are intended to protect all, minority as well as the majority communities. There can be no manner of doubt that our Constitution has guaranteed certain cherished rights of the minorities concerning their language, culture and religion. These concessions must have been made to them for good and valid reasons."

The legislative power of a State or Union is subject to the fundamental rights and the legislature cannot indirectly take away or abridge fundamental rights which it could not do directly for granting either recognition or aid. It is in that context this Court also observed,

"So long as the Constitution stands as it is and is not altered, it is, we conceive, the duty of this Court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own."

Having extracted sub-clause (g) of clause (1) and clause (6) of Article 19, Article 26 and Article 30, I had pointed out that a comparison of these provisions would show, whereas the rights conferred in Article 19(1)(g) and Article 26(a) were made subject to the discipline of Articles 19(6) and 26 respectively, that no such limitations were to be found in Article 30 of the Constitution and held, no such limitation could be read in Article 30(1) by any process of interpretation, therefore, in that the right conferred under the last mentioned provision would be absolute. If I may say so, it has been so treated rightly in a catena of decisions of this Court. This fact is evident from a plain reading of those provisions and admits

of no debate. Indeed, the same fact is presented with difference in phraseology by this Court in many judgments. Even the majority judgment in these cases observed as follows:

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

There is, however, divergence of opinion in the dicta of a few judgments of this Court on some facets of the right conferred by the Constitution under clause (1) of Article 30 of the Constitution. The difference relates not merely to terminology - whether to call it an absolute right subject to reasonable regulation to achieve excellence and prevent mal-administration or not to name as an absolute right because it can be subject to regulation - but extends to the scope and the nature of the regulatory control by the State.

The contention urged by the Union of India also raises the issue of subjecting the minority educational institutions to regulatory control of the State by regulations.

I have expressed the opinion that the right conferred under Article 30(1) is absolute as no such limitations as are placed on rights conferred under Articles 19, 25 and 26, are to be found in Article 30(1); this is, however, not to deny the power to the State to frame regulations in the interest of minority educational institutions with regard to excellence of standard of education and check mal-administration.

Another important case in which the question of interpretation of Article 30 came up for consideration before this Court is Rev.Sidhajbhai Sabhai and Ors. vs. State of Bombay and Anr. (1963 (3) SCR 837). In that case the complaint of the petitioners, representing an aided institution imparting education in teachers training, in a petition under Article 32 of the Constitution, before a Constitution Bench of six learned Judges, was against the order of the Government of Maharashtra requiring the institution to reserve 80 per cent of the seats available in it on the pain of losing the aid and recognition for non-compliance with the directive. The right of the minority institution that was affected was to admit the students of their choice. Justice Shah (as he then was) speaking for the Court held,

"Unlike Article 19, the fundamental freedom under clause (1) of Article 30, is absolute in terms; it is not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in Article 19 may be subjected to. All minorities, linguistic or religious have by Article 30(1) an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would to that extent be void."

Neither in that case nor in any of the cases before us

did the minority educational institutions pitch their claim so high as was commented upon by the learned Solicitor General and reflected in the majority judgment. He, on his own, formulated hypothetical contentions as if they were urged by minority institutions, too unrealistic to be sustained, and shot them down one by one. It was never the case of minority educational institutions that they were above the law of the land; no one contended that the building regulations or municipal laws or other laws of the land, civil or criminal, would not apply to them. Veritably what all was contended before the said Constitution Bench, was summed up thus: the absolute term in which Article 30(1) is enunciated, would not deprive the State, especially when it pays grant and affords recognition to it as an educational institution, to impose reasonable regulations but such regulations can only be in the interest of the institution to make it an effective educational institution so as to secure excellence of the training imparted therein and that they could not be in the interest of outsiders.(emphasis supplied) This submission in Rev.Sidhajbhai's case (supra) found favour from the Court and it was held (at page nos.856-857),

"The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be but a "teasing illusion", a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test - the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

(Emphasis supplied)

To make the right under Article 30 real and effective, the regulatory measures have to be consistent with that right. Regulations could be aimed at excellence of education and efficient administration of such institutions as that would be in the interest of the educational institutions of the minorities. Any regulation which is not in the interest of the minority educational institutions but is in the interest of an outside agency would whittle down

the right of the minority to administer the institution and would be violative of Article 30 of the Constitution. In my respectful view the true test to judge the validity of any regulations imposed by the State for granting recognition and/or aid is the dual test laid down in Rev.Sidhajbhai's case (supra), viz., (i) the regulations must be reasonable; and (ii) it must be regulative of the educational character of the institution and conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it. To the same effect are the following observations of Mathew,J. in St. Xavier's case (at page 267):

"In every case, when the reasonableness of a regulation comes up for consideration before the Court, the question to be asked and answered is whether the regulation is calculated to subserve or will in effect subserve the purpose of recognition or affiliation namely, the excellence of the institution as a vehicle for general secular education of the minority community and to other persons who resort to it. The question whether a regulation is in the general interest of the public has no relevance, if it does not advance the excellence of the institution as a vehicle for general secular education as, ex-hypothesi the only permissible regulations are those which secure the effectiveness of the purpose of the facility, namely, the excellence of the educational institutions in respect of their educational standards."

(Emphasis supplied)

The right under Article 30, submitted the learned Solicitor General, could not be placed so high as to be above the 'public interest' and the 'national interest'. A scathing criticism was made on the use of the said expressions to contend that the right could not be above the law of the land. A few learned counsel also expressed their concern for employing those expressions in regard to the right of the minorities.

At the outset, I may mention that it will not be correct to ask whether the constitutional right is above the law. The proper question to ask would be whether a law could be above the Constitution so as to contravene a fundamental right. The answer, in my view, cannot but be in the negative.

To appreciate the contention and concern, it will be necessary to unravel the connotation of those expressions. They are not technical words, so they have to be understood like any other ordinary English words. The expression 'public interest' means: of concern or advantage to people as a whole; the meanings of that expression are given in the Law Lexicon, 2nd Edn., Reprint 2000 at p.1557 as follows :

"Public interest means those interest which concern the public at large.

Matter of public interest 'does not mean that which is interesting as gratifying curiosity or love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected' (per Campbell,CJ., R. v. Bedfordshire, 4E and B, 541, 542).

The expression 'public interest' is not capable of precise definition and has not a rigid meaning and is elastic and takes its colours from the statute in which it occurs, the concept varying with the time and state for society and its needs. Thus what is 'public interest' today may not be so considered a decade later. State of Bihar vs.Kameshwar Singh (AIR 1952 SC 252)(Companies Act (1 of 1956), Sec.397)

That which concerns welfare and rights of the community or a class thereof (S.124, Indian Evidence Act and Art.302, Constitution.)

The words 'public interest' in S.47 mean interest of the public which uses the stage carriage and not the public in general. Mohammad Raihan vs. State of Uttar Pradesh, AIR 1956 All.594, 595.[Motor Vehicles Act, 1939,S.47]

A subject, in which the public or a section of the public is interested, becomes one of public interest. Kuttisankaran Nair vs. Kumaran Nair, AIR 1965 Ker 161,165.[Penal Code (1860), S.499,Exceptionl]".

The expression "interest of the nation" means something which concerns or is of advantage to the nation. 'Public interest' is a very wide expression, so also the national interest; their correct meaning has to be ascertained in the context in which they are used. They cover matters of little significance as well as matters of moment. These expressions will have to be distinguished from 'public safety', 'national security' and 'national integrity' which are paramount and are undoubtedly matters of public/national interest. But every public/national interest does not fall within the realm of public safety, national security and national integrity. For example, a legislation conceived to give effect to the policy of nationalisation of primary/elementary schools imparting education upto level Xth by any State or the Union of India may convincingly be in public interest but it would not be consistent with Article 30 as it is annihilative of the interest of the minorities. In the same way, the policy of requiring 'Hindi' to be the medium of instruction throughout the country, may conceivably be in the national interest but not in the interest of linguistic minority institutions as it would destroy their character of being minority institutions. Such examples can be multiplied. If the expressions employed by Shah,J. in Sidhajbhai's case (supra) are properly understood in the context in which they are employed, there can be no legitimate apprehension and consequential grievance against them. No reasonable person, in my view, can interpret them as authorising the minority educational institutions to resort to activities which would be detrimental or subversive of public safety or national security or national integrity. Such exaggerated and out of proportion contentions urged to challenge the correctness of test laid down by Shah,J. in Sidhajbhai's case (supra) cannot but be rejected as being wholly misconceived and devoid of merit.

In this connection, it would be useful to quote the following comment of a great expert on Constitutional Law -

H.M.Seervai*:
"The reference to the absolute terms of Article 30(1) was not meant to negative all regulation of the right, but to indicate the nature of the regulations which were permissible. Our discussion of Article 19 has shown that restrictions which can be imposed in the public interest on the rights conferred by Article 19(1) may not only restrict the enjoyment of those rights but may totally prohibit the exercise of those rights. The absolute language of Article 30(1) precludes restrictions of such a character being imposed on the right conferred by Article 30(1). But, as stated earlier, rights conferred even in absolute terms have to be exercised in an organized society governed by law, and this involves regulation of rights which do not hinder, but help, the effective exercise of those rights. It follows from this, that Shah,J. was right when he held that regulations which can be imposed on minority institutions must be conceived in the interest of those institutions and not in the interest of the public or the nation as a whole."

For all these reasons, I am, with great respect, unable to subscribe to the view in the majority judgment, "any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the

majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the government from framing regulations in that behalf".
There can be no demur to the dicta that government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion but to say that the right under Article 30 is not so absolute as to be above the law, would, in my respectful view, amount to conferring supremacy to the ordinary law over the provisions of the Constitution which would be contrary to Article 13 of the Constitution, as the laws whether existing or made in exercise of power conferred by the Constitution have to be consistent with the provisions of the Constitution and Part III which includes Article 30 and not vice versa.
While the law declared by the Constitution Bench of this Court in Rev.Sidhajbhai's case (supra) was holding the field for about 12 years, it appears that in the case of St.Xavier's (supra) the attention of this Court was invited to the
opinion expressed by Dr. Justice P.B. Gajendragadkar, former Chief Justice of this Court, to the effect that the decisions of the Supreme Court on the interpretation of Articles 29 and 30 required reconsideration. Taking note of the comment of the learned former Chief Justice, the said case was referred to the Constitution Bench of nine learned Judges. After exhaustive discussion of historical background, provisions of the Constitution and surveying various judgments of the High Courts and this Court, the majority followed the law declared in Rev.Sidhajbhai's case (supra). In that case, Xavier's College and the College Society challenged the

validity of certain sections particularly Section 33A(1)(a) (providing for selection of Governing Body, etc), Sections 40,41, 51(A)(1) & (2) and 52(A) of the Gujarat University (Amendment) Act, 1972, principally on the ground that they violated the petitioners' rights under Article 30. It was held, inter alia, that Section 33A(1)(a) did not apply to minority institutions and that Sections 40, 41, 51(A)(1) & (2) and 52A were violative of Article 30(1). The Court also held that the grant, recognition or affiliation of an educational institution which was protected by Article 30(1) could not be made dependent on the religious and linguistic minorities accepting conditions which would involve the surrender by such minorities of the rights conferred on them under Article 30(1). Among the decisions referred to and approved in that case is the decision in D.A.V.College case (supra) wherein it was held that the directive for the exclusive use of the Punjabi language in the Gurmukhi script as the medium for instruction in all colleges of the University directly infringed the petitioners' right to conserve their script and administer their institutions. The Court approved the judgment in State of Kerala v. Very Rev Mother Provincial Etc. (1971 (1) SCR 734). In that case, the necessity and importance of regulatory measures for affiliation intended towards securing uniformity, efficiency and excellence was explained. In Rev. Father W. Proost & Ors. v. State of Bihar & Ors. (1969 (2) SCR 73) Section 48-A of the Bihar State University Act, 1960 was struck down for completely removing the autonomy of Xavier's College (a different college) which was protected under Article 30, holding that the scope of Article 30 could not be restricted with reference to Article 29. The case of Rt.Rev. Bishop S.K.Patro & Ors. v. State of Bihar & Ors. (1970 (1) SCR 172) was also referred to with approval. The decision in the case of Bishop S.K. Patro (supra) was that the State of Bihar could not require a minority school to constitute a managing committee for the school in accordance with the Government's wishes.

In All Saints High School, Hyderabad etc.etc. v Govt of Andhra Pradesh & Ors.etc. [1980 (2) SCR 924], this Court struck down the regulation providing that no teacher would be dismissed, removed or reduced in rank, or terminated otherwise except with the prior approval of the competent authority under the Andhra Pradesh Private Education (Control) Act, 1975 as being violative of Article 30(1). It was held that the regulation conferred an unqualified power upon the competent authority and the appellate authority to enable the views of the management being substituted by the views of the appellate authority. Chandrachud, CJ. observed, in his judgment, that the law was settled in St.Xavier's case (supra) and Lilly Kurian vs. Sr.Lewina [1979 (1) SCR 820], and that they had merely to apply the law laid down in the said cases to the facts of that case.

The above discussion leads to the conclusion that the limitations incorporated in Articles 19, 25 and 26 cannot be read into Article 30. What Article 30 predicates is institutional autonomy on the educational institutions established and administered in exercise of the right conferred thereunder, which cannot be interfered with by the State except to the extent of framing reasonable regulations in the interest of excellence of education and to prevent mal-administration.

I shall now advert to clause (2) of Article 29, which may be quoted here:

"29. Protection of interests of minorities.-

(1) xxx xxx xxx
(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."

The mandate contained in this clause is 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. It is obvious that the mandate does not apply to a private educational institution which is not receiving aid out of State funds. Article 29(2) confers an individual right on every citizen to seek admission into any educational institution maintained by the State or receiving aid out of State funds. It embodies the principle of equality in a truncated form and, therefore, a citizen can be denied admission by an educational institution whether maintained by the State or receiving aid out of State funds on ground other than the prohibited grounds - religion, race, caste, language or any one of them. Thus, a citizen can be denied admission on the ground that all the seats in the institution are already filled; the antecedents of the citizen seeking admission in the institution are not good, or his presence in the educational institution will not be conducive to proper administration of the institution; his merit as disclosed in the qualifying examination or in an examination conducted by such educational institution, or merit as ascertained on the basis of interview conducted by such educational institution, falls short of minimum fixed by such a institution and the like. The word 'only' suggests that if it is found that the denial of admission by any educational institutions maintained by the State or receiving aid out of State funds is not merely on any of the prohibited grounds but also on some additional grounds, not being irrelevant or fanciful, the mandate of clause (2) of Article 29 is not violated.

In Bombay Education Society's case (supra), a Constitution Bench of this Court applying the test formulated by Lord Thankerton in the case of Punjab Province Vs. Daulat Singh (1946 LR 73 I.A. 59) held,

"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."

It follows that the denial of admission by an institution directly based only on one of the forbidden grounds specified in Article 29(2) is impermissible.

This clause is a qualified extension of the principle enshrined in Articles 14 and 15(1) of the Constitution. It affords a limited protection to citizens against discrimination on the enumerated grounds of religion, race, caste, language or any one of them. The right to equality contained in Article 14 and not to be discriminated against

in Article 15(1) is general and is available only against the State. The limited right conferred on the student community under clause (2) of Article 29 is available not only against the educational institutions maintained by the State but also against the private educational institutions receiving aid out of State funds. In contra-distinction to Article 14, which is an all pervading general provision and Article 15(1), clause (2) of Article 29 has a limited scope. The opening words of this clause show that the directive contained therein is expressed in the negative and is addressed to 'any educational institution'. That expression is general in nature and in its ordinary meaning embraces all educational institutions. The educational institutions can be conveniently classified into:- State maintained institutions, private aided institutions and private unaided institutions; unaided minority institutions and aided minority institutions. The expression 'any educational institution' is a genus of which an aided minority educational institution is a species. Having regard to the provisions of clauses (1) and (2) of Article 30, the classification has nexus with the object sought to be achieved by clause (2) of Article 29.

The pertinent question that remains to be considered is the interaction of clause (2) of Article 29 and Article 30 of the Constitution in regard to minority educational institutions established and administered thereunder and receiving aid from a State.

Before proceeding to consider the interaction of clause (2) of Article 29 and clauses (1) and (2) of Article 30 of the Constitution, it will be well to bear in mind the following principle:

"The correct way to interpret an Article is to go by its plain language and lay bare the meaning it conveys. It would no doubt be useful to refer to the historical and political background which supports the interpretation given by the court and in that context the debates of the constitutional assembly would be the best record of understanding all those aspects. A host of considerations might have prompted the people of India through members of constituent assembly to adopt, enact and to give to themselves the Constitution. We are really concerned with what they have adopted, enacted and given to themselves in these documents. We cannot and we should not cause scar on it which would take years for the coming generations to remove from its face."

[Emphasis supplied]

Education plays a cardinal role in transforming a society into a civilised nation. It accelerates the progress of the country in every sphere of national activity. No section of the citizens can be ignored or left behind because it would hamper the progress of the country as a whole. It is the duty of the State to do all it could to educate every section of citizens who need a helping hand in marching ahead along with others.

I shall now examine the case put forth on behalf of aided minority educational institutions that clause (2) of Article 29 does not apply to institutions established under Article 30(1) of the Constitution so as to deprive them of their choice to admit students of their community for whose benefit the institutions exist. Minority educational institutions receiving aid from the State can no longer be

regarded as 'other authorities' within the meaning of 'State' in Article 12 of the Constitution in view of the judgment of the Constitution Bench of seven learned Judges in Pradeep Kumar Biswas & Ors. vs. Indian Institute of Chemical Biology & Ors. [2002 (5) SCC 111]. They form a special class of educational institutions because they have the protection of Article 30(1) under which they are established and administered by minorities, whether based on religion or language. Clause (2) of Article 30 is also a pointer to the fact that the institutions falling under clause (1) of Article 30 form a separate class. I have noticed above that the mandate of clause (2) of Article 29 is addressed to all educational institutions maintained by the State or receiving aid out of State funds. It is, therefore, a general mandate applicable to all the categories of institutions. It has been settled by a long line of decisions of this Court with which I am in respectful agreement that granting of aid to such institutions cannot be such as to denude them of their character as minority institutions. Even after receiving aid, they remain minority educational institutions in all their attributes.

The right conferred on the student community under Article 29(2) is a truncated right though it is available to each student and against all the institutions maintained by the State or receiving aid from the State funds. Nevertheless, the right under Article 30(1) is a special right conferred on minorities, whether based on religion or language, to establish and to administer educational institutions of their choice and with that goes the special right of the minority students to seek admission in such institutions. Article 29(2) even if regarded as a special right in regard to the student community is of general application in regard to all the institutions maintained by the State or receiving aid from the State funds when compared to special right conferred on minorities under Article 30. A provision may be special in one aspect and general in other aspect.

In The Life Insurance Corporation of India vs. D.J.Bahadur & Ors. [AIR 1980 SC 2181], Krishna Iyer,J. speaking for a three-Judge Bench observed :

"For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity not absolutes - so too in life."

This was approved by a Constitution Bench of this Court in Ashoka Marketing Ltd. & Anr. vs. Punjab National Bank [AIR 1991 SC 855].

In the light of the above discussion on the principle of generalia specialibus non derogant, I have no hesitation in concluding that the general right of the students under Article 29(2) of the Constitution available in respect of all educational institutions in general does not prevail over the special right conferred on the minority educational institutions established and administered under Article 30(1) and receiving aid by virtue of Article 30(2) of the Constitution.

The minority educational institutions established and administered under Article 30(1) for the benefit of the students of their community have the right to admit the students of their choice of their community and without prejudice to the right of the minority students to admit students of the non-minority. They have a right to claim

aid under clause (2) of Article 30, if the State decides to grant aid to other educational institutions in the State. The grant of aid by the State cannot alter the character of a minority institution, including its choice of the students. Unlike Article 337, there is nothing in clause (2) of Article 30 to suggest that grant of aid will result in making a percentage of seats available for non-minority students or be subject to Article 29(2). From the point of view of the minority students who seek admission in the minority educational institutions, it hardly makes a difference whether the institution is an aided institution or an unaided institution. In the case of a rich minority not getting aid under clause (2) of Article 30 for the minority educational institution established and administered under clause (1) of Article 30, the right of the minority students seeking admission therein cannot be different from the right of poor minority students seeking admission in educational institutions established and administered by poor minorities which are aided. On the institutions deciding to take aid from the State, the right of minority students to seek admission in such institutions cannot be affected.

It follows that the concomitant special right of students who belong to minority community which established the institution and is administering it under Article 30(1), to seek admission in such an institution has precedence over the general right of non-minority students under Article 29(2). So having regard to the right of the minority educational institutions to admit the students of their choice as well as the right of the students of the minority community to seek admission in such institutions, it is difficult to comprehend that merely on the ground that the institution is receiving aid out of State funds, their rights can be set at naught with reference to Article 29(2). Therefore, it appears to me that on grant of aid by the State, Article 29(2) does not control Article 30(1).

Even the historical background in which clause (2) of Article 29 came to be inserted would support this interpretation.

The pre-cursor of Article 29(2) was clause 18(2), which read as under:

"18(2). No minority whether based on religion, community or language shall be discriminated against in regard to the admission into state educational institutions."

This clause was intended to ensure that minority students are not discriminated against in regard to admission into State educational institutions on the ground that the minorities are conferred special right to establish and administer educational institutions of their choice. To enlarge this right, an amendment was suggested by Smt.Purnima Banerji proposing that after the words 'State educational institutions' the words 'State aided' be inserted so that they could avail of the same right against State aided educational institutions as well. But the proposed amendment to that clause moved by her was initially not accepted and the clause, quoted above, was adopted. It later became Article 23(2), which read thus:

"23(2).Cultural and Educational Rights -

(1) xxx xxx xxx

(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) xxx xxx xxx "

When this Article was debated again, an amendment was suggested that for the words 'no minority' the words 'no citizen' be substituted. At that point, Shri Thakur Das Bhargava moved an amendment and the following clause was 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 or religion, race, caste, language or any of them."

This was ultimately adopted and that clause became clause (2) of Article 29. From this background, it is clear that the benefit which was intended only for minorities - not to be denied admission into any educational institution maintained by the State - was extended in two aspects; the first is that 'all the citizens' were brought in the class of beneficiaries and the second is that in addition to the institutions maintained by the State, 'the institutions receiving aid out of the State funds' were also included. In my view, the intention in extending the scope of clause (2) of Article 29 could never have been to deprive the minorities of the benefit which they were otherwise having under clauses (1) and (2) of Article 30. A clause which was intended mainly to further protect the minorities could not be so construed as to stultify their right conferred under Article 30 of the Constitution.

Admission of the Constituent Assembly debates for purposes of interpretation of the provisions of the Constitution is of doubtful authority. I do not propose to delve into the question of admissibility of the debates of the Constituent Assembly for interpreting a constitutional provision. Suffice it to mention that in view of the speeches of the Law Lords in the case of Black-Clawson vs. Papierwerke AG [1975 AC 591] and of the Privy Council in Administrator-General of Bengal vs. Prem Nath Mullick [1895 (22) I.A. 107] and of this Court in A.K.Gopalan vs. State of Madras [AIR 1950 SC 27 (para 112] and Trav-Cochin vs. Bombay Company Ltd. [AIR 1952 SC 366], I am of the view that admissibility of speeches made in the Constituent Assembly for interpreting provisions of the Constitution is not permissible. The decisions of this Court in His Holiness Kesavananda Bharati Sripadagalavaru vs. State of Kerala [1973 (4) SCC 225]; R.S.Nayak vs. A.R.Antulay [AIR 1984 SC 684]; Indra Sawhney etc.etc. vs. Union of India & Ors.etc.etc. [AIR 1993 SC 477]; K.S.Paripoornan vs. State of Kerala [AIR 1995 SC 1012] and P.V.Narasimha Rao vs. State (CBI/SPE) [AIR 1998 SC 2120] do not alter that position nor do they lay down a different proposition. The preponderance of opinion appears to me not to rely on the debates in the Constituent Assembly or the Parliament to interpret a constitutional provision although they may be relevant for other purposes.

It would be interesting to notice the following observations of Lord Wilberforce in Black-Clawson's case (supra) in this context :

"It would be degradation of that process if Courts were to be a reflecting mirror of what the interpreting agency would say."

A glaring example of a debate leading astray is the contention urged that the cultural and educational rights

sanctified in Articles 29 and 30 were intended to be only temporary. Unlike Article 334 in regard to reservation of seats and special representation, there is nothing in the Constitution itself to support such an impish and novel contention. Lest we forget, we should remind ourselves that compromises were made, pledges and assurances were held out to build a strong united sovereign secular nation. In the rhetoric of the age the spirit in which constitutional provisions were formulated cannot be lost sight of and interpretation divorced from the words employed, cannot be resorted to, to undo what our founding fathers did to enact and give to ourselves this great Constitution. Such contentions do little service to the letter or spirit of the Constitution in preserving the delicate balance. For these reasons, I am of the view that interpretation of constitutional provision cannot be founded on the speeches made in the Constituent Assembly because as Lord Reid in Black Clawson's case (supra) observes :
"We are seeking not what Parliament meant but the true meaning of what Parliament said."

Insofar as historical matters are concerned, it is an accepted position that they are admissible for the purpose of interpretation of a constitutional provision and to that extent, I referred to that aspect.
In any event, there is nothing specific in the debates to suggest that Article 29(2) was intended to cut down the rights conferred under clauses (1) and (2) of Article 30 of the Constitution.

The next aspect which needs to be looked into is, whether the interpretation put by me is in consonance with the principles of equality and secularism which are the basic features of our Constitution.
The principle of equality has two facets; (i) equality in law and (ii) equality in fact. Just a provision for equality in law would be of no consequence unless the provision also take care to bring about equality in fact. Securing equality of status and of opportunity is a constitutional mandate enshrined in Article 14 of the Constitution which directs that the State shall not deny to any person equality before the law or equal protection of the law within the territory of India. Article 14 prohibits unequal treatment or discrimination against any person within the territory of India by State. The great objective of equality before law, guaranteed under Article 14 of the Constitution, cannot be achieved if unequals are treated alike as that would only result in inequality. The founding fathers of the Constitution were alive to the ground realities and the existing inequalities in various sections of the society for historical or other reasons and provided for protective discrimination in the Constitution with regard to women, children, socially and educationally backward classes of citizen, scheduled castes and scheduled tribes by enabling the State to make special provision for them by way of reservation as is evident from clauses (3) and (4) of Article 15 and clauses (4) and (4A) of Article 16 of the Constitution. The apprehensions of religious minorities and their demand for separate electorates, were settled by providing freedom of conscience and free profession, practice and propagation of religion for all the citizens under Articles 25, 26 and 28 which take care of their religious rights of minorities equally; by special provisions their right to conserve a distinct language, script or culture is guaranteed as a fundamental right in Article 29; further, all minorities, whether based on

religion or language, are conferred an additional fundamental right to establish and administer educational institution of their choice as enshrined in Article 30 of the Constitution. The right under Article 30(1) is regarded so sacrosanct by the Parliament in its constituent capacity that when by operation of the law of the land - Land Acquisition Act - compensation awarded for acquisition of a minority educational institution was to result in restricting or abrogating the right guaranteed under clause (1) of Article 30, it by the Constitution (Forty Fourth (Amendment) Act) inserted clause (1-A) in Article 30. It provides that the Parliament in the case of a Central legislation or a State legislature in the case of State legislation shall make a specific law to ensure that the amount payable to the minority educational institutions for the acquisition of their property will not be such as will in any manner impair their functioning. A Constitution Bench of this Court in interpreting clause (1-A) of Article 30 in Society of St.Joseph's College vs. Union of India & Ors. [2002 (1) SCC 273] observed thus :

"Plainly, Parliament in its constituent capacity apprehended that minority educational institutions could be compelled to close down or curtail their activities by the expedient of acquiring their property and paying them inadequate amounts in exchange. To obviate the violation of the right conferred by Article 30 in this manner, Parliament introduced the safeguard provision in the Constitution, first in Article 31 and then in Article 30."

The problems of minority rights are not peculiar to India which is a multi-religious, multi-linguistic and multi-cultural nation. Recognition of rights of minorities, their preservation by skilful tackling of the problems became evident in Europe after the First World War. It will be useful to refer to the opinion of the Permanent Court of International Justice (for short, 'International Court') in regard to minority schools in Albania (known as 'the Albanian' case) which would illustrate how equality in fact is an essential requisite to achieve equality in law and for that purpose preferential treatment of minority is inherent. At the time of Albania's accession to the League of Nations, it signed a declaration which, inter alia, protected the rights of minorities to establish educational institutions. It appears that by the amendment of the Albanian Constitution, a provision was made for compulsory primary education for all the Albanian nationals in State schools as a result of which all private schools whether run by the majority or minority were to be closed. On a complaint by the minority of Albanian nationals, the case was referred to the International Court. The Albanian Government took the plea that the abolition of private schools was a measure of general application to both majority as well as minority schools and as such there was no violation of minority rights. This plea was rejected and it was observed that the object of the declaration was,

"first to ensure that nationals belonging to racial religious or linguistic minorities shall be placed in every respect on a footing of perfect equality with the other nationals of the State and the second to ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics."

It was held that these two requirements were indeed closely overlapping for, there would be no true equality between a majority and a minority, if the latter were deprived of its own institutions and was consequently compelled to renounce that which constitutes the very essence of its being a minority. It was also observed that equality in law precludes discrimination of any kind whereas equality in fact may involve the necessity of differential treatment in order to attain a result which establishes an equilibrium between different situations.(emphasis supplied) The abolition of institutions which alone would satisfy the special requirements of the minority and their replacement by Government institutions would destroy the equality of treatment for, its effect would be to deprive the minority of the institutions, appropriate to its needs, whereas the majority would continue to have them supplied in the institutions created by the State. It is this principle that is given effect to in guaranteeing minority rights under Article 30(1) which is nothing but a differential treatment for proper application of the principle of equality enshrined in Article 14 of the Constitution and this cannot be lost sight of when dealing with Article 29(2).

The principle decided in Albanian case was followed by Reddy,J., Khanna,J. and Mathew,J. in St.Xavier's case (supra).

We have nothing in common in application of principle of equality embodied in Article 14 to various social groups including minorities under our Constitution and the process of affirmative action which is an offshoot of the 14th Amendment to the Constitution of the United States of America. The 14th Amendment to the American Constitution does not make any allowance for the deprived classes of the society unlike the approach adopted by the Indian Constitution to equality and secularism, which is loaded with favourable discrimination clauses. Even so, in the case of Regents of the University of California vs. Bakke [438 US 265 (1978)], Justice Powell suggested some measures which would be consistent with the equality clause, viz., extra remedial training and education for minorities (however expensive), aggressive recruitment of minorities and even the consideration of an applicant's minority status as an 'equitable plus factor' in conjunction with his other merits. In that case, adoption of quota system for the minority groups in that country was rejected which is in tune with City of Richmond vs. J.A. Croson Co. [488 U.S. 469]. Another example of preferential treatment to attain equality in fact is to be found in United Steelworkers vs. Weber [443, U.S.193 (1979)]. In that case, the court upheld the double standards in grading minorities as justified by legislative history and intent.

The Canadian Constitution, by Section 23, specifically provides for minority language educational rights.

We find no substance in the contention that granting aid to minority educational institutions under Article 30, which cater to the needs of the minorities, will infringe the principle of secularism. There can be no doubt that secularism is a basic feature of our Constitution. It needs to be noted that the State aid, if any, is not to the religious institutions of the minorities or for imparting religious instructions to them though our Constitution is not lacking in providing grants to such religious institutions in India. The State aid, if any, may be given to educational institutions established and administered by

minorities based on religion or language. Those who advocate this contention ignore the fact that India is a multi-religious, multi-cultural and multi-linguistic nation and the Constitution guarantees preservation of their peculiarities. Both before as well as after the re-organisation of States, each State was and is now having various linguistic minorities. Linguistic minorities have become more vulnerable after the re-organisation of States on the basis of language. If, in a State, aid is given to the institutions of linguistic minority, the State is nonetheless helping the citizens of India in coming up in life and joining the mainstream. No national interest or public interest will be served by denying the aid to linguistic minority institutions for not throwing it open to the students of linguistic majority. On reciprocal basis, each State would be prone to adopt the same attitude with reference to linguistic minority groups and would either deny aid or insist that the institutes be thrown open to the linguistic majority of the State which, to say the least, would frustrate the very purpose of the protection of the linguistic minority right. Further, if each State adopts this view of not giving aid to the minority institutions or insisting that they be thrown open for the majority groups, it would only encourage bitter feeling among the various groups in the States and that would only hamper assimilating of linguistic majority and linguistic minority which will weaken the process of national integration rather than strengthen it. By and large, the same logic would apply to religious minority institutions as different religious communities are in majority in different States though a few only. Having pondered over this aspect, I have unhesitatingly come to the conclusion that by serving their own linguistic minorities and throwing their institution open to the majority groups only on fulfillment of the need of minorities in a State, is not in violation of the scheme of Article 29(2) and Article 30 of the Constitution. I am, therefore, convinced that by not applying Article 29(2) of the Constitution to minority educational institutions based on religion or language, the principle of equality or secularism will not in any way be violated.

The first case in which the ground of challenge was based on Article 29(2), is The State of Madras vs. Srimathi Champakam Dorairajan etc. (1951 SCR 525), which is popularly known as 'the Communal G.O.' case. In that case, for the purpose of admission of students to the engineering and medical colleges, maintained by the State, a unit of 14 seats was fixed in which specified number of seats were allocated among various groups on the basis of religion and caste. The challenge to the G.O. was upheld by the High Court. On appeal to this Court a Constitution Bench of seven learned Judges of this Court took the view that the Communal G.O. constituted a violation of fundamental right guaranteed to the citizens of India by Article 29(2) of the Constitution and was void. As on that date, clause (4) of Article 16 enabled the State to make a provision for the reservation of appointments or posts in favour of any backward class of citizens which was not adequately represented in services under the State but no such provision was made in regard to seats in educational institutions maintained by the State. There was no such provision in regard to admission into educational institution in Article 15(1) of the Constitution which prohibited discrimination on grounds of religion, race, caste, sex, place of birth or any of them. Be that as it may, it was not a case where right of the students belonging

to minorities to seek admission in an educational institution established under Article 30(1) of the Constitution vis-a-vis the claim of non-minorities under Article 29(2) was considered.

The next case in which Article 29 came up for consideration of this Court is the Bombay Education Society (supra). There, the respondent-society was running an Anglo-Indian school which was recognised and aided by the State. The medium of instruction in the school was English. The State of Bombay issued a circular to the effect that thereafter only children of Anglo-Indians or of non-Asiatic descent could secure admission in the schools administered by the respondent society. Both the Society as well as the students who were precluded from seeking admission in the school, by the impugned order, challenged the said order in a writ petition under Article 226 before the High Court at Bombay. Against the judgment of the High Court quashing the impugned circular and allowing the writ petition, the State came up in appeal before this Court. It was held by the Constitution Bench of five learned Judges of this Court that in view of the fundamental right guaranteed to a minority, like the Anglo-Indian community, under Article 29(1) to conserve its own language, script or culture and the right to establish and administer educational institutions of its own choice under Article 30(1), there is implicit therein the right to impart instruction in its own institutions to the children of its own community in its own language and that the State by its police power cannot determine the medium of instruction in opposition to such fundamental right and, therefore, the government order was violative of Articles 29(2) and 30(1) of the Constitution. The question with which we are faced now was not addressed in that case. It is true that while rendering its advisory opinion in The Kerala Education Bill (supra), on question No.2, this Court considered the scope of Articles 29 and 30 and observed, inter alia, that the right under Article 30(1) however, was subject to clause (2) of Article 29 which provided that no citizen should be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds of religion, race, caste, language or any one of them. It must also be pointed out that in that case speaking for six of the learned Judges, Das, CJ. laid down,

"To say that an institution which receives aid on account of its being a minority educational institution must not refuse to admit any member of any other community only on the grounds there mentioned (Article 29(2)) and then to say that as soon as such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that minority institutions will not, as minority institutions, be entitled to any aid. The real import of Article 29(2) and Article 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it."

[Emphasis supplied]

In that case, the Court was answering the plea that in an institution under Article 30(1), if a non-minority student is admitted, it will lose its character as a minority institution. This case also did not deal with the question whether denial of admission to a non-minority student by an aided minority educational institution

protected under Article 30(1) in order to provide admission in a course of study to a minority student would be in violation of Article 29(2) of the Constitution.

The only case in which the right of non-minority students to secure admission in a minority educational institution under Article 29(2) came up for consideration of this Court is St.Stephen's College vs. University of Delhi [1992 (1) SCC 558]. The case revolved around the validity of St. Stephen's college's admission policy to interview candidates for admission into the college, in addition to marks obtained by them in the qualifying examination, in order to assess the merit of students. The Delhi University provided that merit for the purpose of admission was to be assessed solely on the basis of the marks obtained by candidates in the qualifying examination. It was contended by counsel for non-minority students that denial of admission to a non-minority student by an institution under Article 30 was violative of Article 29(2). St.Stephen's College was receiving State aid. The Court, by majority, held that the admission policy of the college was not arbitrary or violative of any fundamental right and that the right to admit students of their choice is an essential part of the right to administer under Article 30(1); that such an institutional preference (as practiced by Stephens) for minority candidates would not be violative of Article 29(2); that although Article 29 and Article 30 are distinct and separate, they do overlap and competing interests under Article 29(2) and Article 30 must be balanced in order to harmoniously construe both articles and give effect to both of them. It was held that although minorities were entitled to accord preference in favour of, or reserve seats for candidates belonging to their own community, yet preferential admission of candidates could be only upto 50% of the annual admissions to their institution in order to maintain the minority character of their institution. With respect to the other 50% seats, admission should be open to all the students based on merit, and in that no preferential admission by the institution was permissible.

The right conferred under Article 29(2) is an individual right. The difficulty is arising because it is sought to be converted into a collective right of non-minority students vis-a-vis minority educational institutions so as to take away a slice of the seats available in such institutions. In an institution established and administered under Article 30(1), the need of minority students is foremost as it is for their benefit that the institution exists. The grant of aid to the institution is to fulfil its objective and not to deviate from the object and barter the right of the minority students. It is only when the need of the minority students is over that in regard to the remaining seats that the institution can admit students of non-minority. In each year in a given course the same number of minority students may not apply. The minority educational institutions can admit non-minority students of their choice in the left over seats in each year as Article 29(2) does not override Article 30(1). If the need of the minority is to be given its due, the question of determining the need cannot be left to the State. Article 30 is intended to protect the minority educational institutions from interference of the State so they cannot be thrown at the mercy of the State. The State cannot be conferred with the power to determine the need of each minority institution in the country which will be both unrealistic and impracticable apart from abridging the

right under Article 30(1). It is for this and the other reasons mentioned above, in my respectful view, fixing a percentage for intake of minority students in minority educational institutions would impinge upon the right under Article 30 as it would amount to cutting down that right. The best way to ensure compliance with Article 29(2) as well as Article 30(1) is to consider individual cases where denial of admission of a non-minority student by a minority educational institution is alleged to be in violation of Article 29(2) and provide appropriate relief.

Another contention that is pressed is when Article 28 applies to institutions established and administered under Article 30(1), why Article 29(2) should not also be applicable?

Article 28 reads as follows :

"28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions - (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires the religious instruction shall be imparted in such institution.

(3) 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."

A perusal of the said Article makes it clear that the mandate of clause (1) thereof is that in any educational institution wholly maintained out of State funds, no religious instruction shall be provided. It obviously applies to State educational institutions and not to private educational institutions including minority educational institutions under Article 30. Clause (2) of Article 28 which is in the nature of a proviso to clause (1), excludes application of clause (1) to an educational institution established under any endowment or trust requiring imparting of religious instructions therein, and is administered by the State. Sub-clause (3) gives liberty to a person attending any educational institution recognised by the State or receiving aid out of State funds not to be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto. It may be noticed that imparting of religious instruction or conducting of religious worship in an educational institution which is recognised by the State or which is receiving aid of the State funds is not prohibited. It is only the individual freedom of conscience of those who attend such an institution that is protected. In contra-distinction to the mandate in respect of an institution which is wholly maintained out of the State funds, postulated under clause (1), the injunction contained in clause (3) is that an educational institution recognised by

the State or receiving aid out of the State funds cannot oblige any person attending the educational institution to take part in any religious instruction or to attend any religious worship being imparted therein. Obviously, the right conferred under any provision of the Constitution including Article 30 does not either expressly or by necessary implication empower any educational institution including a minority educational institution to compel anybody to have instructions in the educational institution established and administered thereunder much less religious instructions or to attend any religious worship. Article 28 forms part of the group of articles placed under the caption 'Right to freedom of Religion' and not part of 'Cultural and Educational Rights'. But that apart, clause (3) of Article 28 is a personal right. It is a species of the principle of freedom of religion enshrined in Article 25. Article 28(3) stands in the same position to Article 25(1) as Article 29(2) to Article 15(1). The premise of the contention, therefore, appears to be inappropriate and the logic inapplicable to substantiate that Article 29(2) overrides Article 30(1) of the Constitution.

I found no support from the decisions of this Court in The Dargah Committee, Ajmer & Anr. vs. Syed Hussain Ali & Ors. [1962 (1) SCR 383] and Tilkayat Shri Govindlalji Maharaj vs. The State of Rajasthan & Ors. [1964 (1) SCR 561] for the contention that just as Article 26 was held to be subject to Article 25, so also Article 30 should be read subject to Article 29(2).

For all these reasons, in my view, to create inroads into the constitutional protection granted to minority educational institutions by forcing students of dominant groups of the choice of the State or agency of the State for admission in such institutions in preference to the choice of minority educational institutions will amount to a clear violation of the right specifically guaranteed under Article 30(1) of the Constitution and will turn the fundamental right into a promise of unreality which will be impermissible. Right of minorities to admit students of non-minority of their choice in their educational institutions set up under Article 30 is one thing but thrusting students of non-minority on minority educational institutions, whatever may be the percentage, irrespective of and prejudicial to the need of the minority in such institution, is entirely another. It is the former and not the latter course of action will be in conformity with the scheme of clause (2) of Article 29 and clauses (1) and (2) of Article 30 of the Constitution.