

**RIGHTS OF RELIGIOUS AND
LINGUISTIC MINORITY
EDUCATIONAL INSTITUTIONS
UNDER ARTICLE 30 (1) OF THE
CONSTITUTION OF INDIA**

BY

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PREFACE



It gives us an immense pleasure to submit this special Note on the “Rights of Religious and Linguistic Minority Educational Institutions under Article 30 (1) of the Constitution of India”. India is one of the most religiously and ethnically diverse nations in the world. Hence, one of the major challenge for the framers of the Constitution was to provide a constitutional arrangement for the protection of minorities against discrimination and to safeguard their characteristics which have divided them apart from the rest. Under Part III of the Indian Constitution, Articles 12-35 deal with Fundamental Rights. Among all of them, the most significant provision is given in Article 30 (1) which provides the right to religious and linguistic minority to establish and administer educational institutions of their choice.

An attempt has been made to sum up the various laws and case laws governing the rights of minority educational institutions established and administered by them through this Note.

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ABOUT THE SOCIETY

The Maharashtra Cosmopolitan Education Society (M.C.E.S.), Pune was established in the year 1948 by Late Mr. Abdul Kadir Khan and others, with an object to provide education to the economically, educationally and socially weaker sections of the society. It is an Educational Society registered under the Society's Registration Act of 1860 and also a Public Trust registered under the Bombay Public Trust Act, 1950.

The M.C.E. Society, Pune is one of the oldest educational organizations of Pune and has done pioneering work in the field of education under the dynamic & innovative leadership of President of the Society Hon'ble Dr. P. A. Inamdar. Within a span of 15 years, the M.C.E. Society from a humble beginning of four schools has been transformed into an excellent educational complex of higher, medical, technical and professional academic institutions in the field of Arts, Science, Commerce, Computer Science, Law, Education, Pharmacy, Management Sciences, Architecture, Dental Sciences, Hospitality Studies & Information Technology, etc.

PART - I

MINORITY RIGHTS UNDER

INTERNATIONAL HUMAN RIGHTS LAW

Introduction

India is a grand synthesis of cultures, religions and languages of the people belonging to different castes and communities and has upheld its unity & cohesiveness despite foreign invasions, and the Mughal and British rule.

National unity and integrity have been maintained even though sharp economic and social inequalities have obstructed the emergence of equalitarian social relations. It is this synthesis which has made India a unique mosaic of cultures. India is, in fact, a panorama of its own type without a parallel in other countries. Foreign invasions, immigration from other parts of the world and the existence of diverse languages, cultures and religions have made India's culture tolerant, on the one hand, and a unique continuing and living culture with its specificity and historicity on the other.

Hinduism, Jainism, Buddhism, Islam, Sikhism, Christianity, Parsi's & Judaism are the major religions. Besides various constitutionally recognized different languages they speak, there are several hundred dialects. There is diversity not only in regard to racial compositions, religious and linguistic distinctions but also in patterns of living, life styles, occupational pursuits, inheritance and succession of their religious laws and practices and rites related to birth, marriage, death etc. The distinctive feature of India in its unity and diversity is its social ethos.

Minority protection, as an integral part of human rights, is now generally recognised to fall within the scope of international cooperation. Promotion and protection of universal human rights,

including minority protection, is a prime example where international cooperation is required. The recognition and protection of minority rights under the international law began with the League of Nations through the adoption of several “minority treaties”. When the United Nations was set up in 1945 to replace the League of Nations, it, too, gradually developed a number of norms, procedures and mechanisms concerned with minorities.

United Nations Human Rights Conventions / Treaties:

General United Nations human rights treaties also provide important standards for the protection of the rights of persons belonging to minorities. It should be recalled that the rights guaranteed in all United Nations Human Rights conventions apply equally to members of minority groups. There are various human rights treaties that have established committees to follow the implementation of their work:

- i. ICCPR - International Covenant on Civil and Political Rights (Human Rights Committee).
- ii. ICESCR – International Covenant on Economic, Social and Cultural Rights (Committee on Economic, Social and Cultural Rights).
- iii. ICERD - International Convention on the Elimination of All Forms of Racial Discrimination (Committee on the Elimination of Racial Discrimination).
- iv. CRC - Convention on the Rights of the Child (Committee on the Rights of the Child).
- v. CAT - Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or punishment (Committee against Torture).
- vi. CEDAW - Convention on the Elimination of All Forms of

Discrimination Against Women (Committee on the Elimination of Discrimination Against Women).

- vii. ICRMW - International Convention on the Protection of the Rights of All Migrant Workers and their families (Committee on Migrant Workers).
- viii. CRPD - Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (Committee on the Rights of Persons with Disabilities).

International Covenant on Civil and Political Rights (ICCPR): *[Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49]:*

Article 27 of ICCPR is the most widely accepted legally binding provision on minorities and provides the basis and inspiration for the UN Declaration on Minorities. **Article 27 reads :**

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. (Article 27)”

Convention on the Rights of the Child (CRC) *[Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49]:*

Article 30 of CRC provides a similar standard for minority children:

“In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child

belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language. (Article 30)"

Given the wide ratification of the ICCPR and the CRC, every State in the world has a legally-binding obligation to protect minority rights based on its voluntary commitments under international law. India has lead this resolution and has signed it.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Adopted by General Assembly resolution 47/135 of 18 December 1992):

The General Assembly, (i) inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious and linguistic minorities, (ii) considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live, (iii) emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States, (iv) recognizing the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities, (v) considering that the United Nations has an important role to play regarding the protection of minorities, proclaims this Declaration on the Rights of Persons Belonging to

National or Ethnic, Religious and Linguistic Minorities, as follows:

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. **[Article 1(1)]**
2. States shall adopt appropriate legislative and other measures to achieve those ends. **[Article 1(2)]**
3. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. **[Article 2(1)]**
4. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. **[Article 2(2)]**
5. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation. **[Article 2(3)]**
6. Persons belonging to minorities have the right to establish and maintain their own associations. **[Article 2(4)]**
7. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties. **[Article 2(5)]**
8. Persons belonging to minorities may exercise their rights,

including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination. *[Article 3(1)]*

9. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration. *[Article 3(2)]*

10. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law. *[Article 4(1)]*

11. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards. *[Article 4(2)]*

12. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. *[Article 4(3)]*

13. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole. *[Article 4(4)]*

14. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country. *[Article 4(5)]*

15. National policies and programmes shall be planned and

implemented with due regard for the legitimate interests of persons belonging to minorities. *[Article 5(1)]*

16. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities. *[Article 5(2)]*

17. States should cooperate on questions relating to persons belonging to minorities, *inter alia*, exchanging information and experiences, in order to promote mutual understanding and confidence. *[Article 6]*

18. States should cooperate in order to promote respect for the rights set forth in the present Declaration. *[Article 7]*

19. Nothing in the present Declaration shall prevent the fulfillment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfill in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties. *[Article 8(1)]*

20. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms. *[Article 8(2)]*

21. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not *prima facie* be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights. *[Article 8(3)]*

22. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States. *[Article 8(4)]*

23. The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence. *[Article 9]*

Therefore, the International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights/minority rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights/minority rights. The obligation to protect requires States to protect individuals and groups against human rights/minority rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights. Through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. India is signatory to the above Treaties and Conventions.

PART-II

RIGHTS OF RELIGIOUS AND LINGUISTIC MINORITY EDUCATIONAL INSTITUTIONS UNDER ARTICLE 30 (1) AND THE DECISIONS OF HON'BLE SUPREME COURT OF INDIA & VARIOUS HIGH COURTS

2.1 PART III of the Constitution of India deals with the Fundamental Rights of the Citizens of India. In this Part, Article 12 to 35 are included. Our Constitution classifies the Fundamental Rights under six groups as follows:

- i. Right to Equality (Article 14-18)
- ii. Right to Freedom (Article 19-22)
- iii. Right against Exploitation (Article 23-24)
- iv. Right to Freedom of Religion (Article 25-28)
- v. Cultural and Educational Rights (Article 29-30)
- vi. Right to Constitutional Remedies (Article 32-35).

Article 29 & 30 deals with the Cultural and Educational Rights. We are concerned with rights guaranteed under Article 30 (1) which reads as follows:

**“ALL MINORITIES, WHETHER BASED ON RELIGION
OR LANGUAGE, SHALL HAVE THE RIGHT TO
ESTABLISH AND ADMINISTER EDUCATIONAL
INSTITUTIONS OF THEIR CHOICE.”**

From the above wording, it is seen that the right under Article 30 (1) is ABSOLUTE in nature i.e. without any restrictions. In respect of other Fundamental Rights certain limitations such as power of the Parliament to prescribe reasonable restrictions have been laid down. However, such restrictions have not been laid down in respect of the provision of Article 30 (1). Further, this Right is guaranteed only to the Religious & Linguistic Minorities

and not to any other sections of the Citizens of India. This was held by the Hon'ble Supreme Court of India in *Ahmedabad ST. Xaviers College Society and Another v. State of Gujarat and Another, (1974)1 SCC 717* in Para 7.

NOW, LET US ANALYZE EACH WORD IN THIS ARTICLE 30(1):

2.2 “MINORITY”:

The term 'Minority' is not defined in the Constitution. Literally, it means a non-dominant group. It is a relative term and is referred to, to represent the smaller of two numbers, sections or groups (*T. M. A. Pai Foundation v. State of Karnataka, AIR 2003 SC 355*).

It should be noted that each Indian is Minority in India either Religious or Linguistic, except in State or States where they are in Majority. On the basis of various decisions of Hon'ble Supreme Court of India & the scheme of the Constitution, it can be judged that- the minority, whether religious or linguistic is determined only by reference to the demographic of a State and not by taking into consideration the population of the country as a whole. A community might be in majority in a State, but it might be a minority in other States of India.

Hence, the object of the above provisions is to ensure a sense of security and confidence to religious and linguistic minorities, and provide an opportunity to develop their cultural and educational rights.' It is to be noted that Minorities are to be decided with reference to State & not with reference to India as a whole.

Accordingly, the Central Government has notified initially five religious communities, viz., *Muslims, Christians, Sikhs, Buddhists* and *Zoroastrians (Parsis)* as minority communities.

Further, **Jains** were also notified as another religious minority community vide Notification dated 27th January, 2014.

2.3 “WHETHER BASED ON RELIGION”:

“Whether based on Religion” means Religious Minorities. In India Muslims, Christians, Sikhs, Parsis, Buddhists and Jains are less than 50 % and hence are Religious Minorities. However, Sikhs in Punjab, Muslims in Jammu & Kashmir, Christians in Manipur and Buddhists in Sikkim are not Religious Minorities. In Punjab, Jammu & Kashmir, Manipur and Sikkim, our Hindu brethren are religious minorities and are entitled to claim Rights under Article 30 (1). This was held by the Hon'ble Supreme Court of India in ***re Kerala Education Bill, 1959 SCR 995 in Para 21.***

2.4 “WHETHER BASED ON LANGUAGE”:

“Whether based on language” means those communities who are less than 50 % of the population of the particular State and have their mother tongue other than the State Official Language. This was held by the Hon'ble Supreme Court of India in ***re Kerala Education Bill, 1959, SCR 995 in Para 21 and D. A. V. College v. State of Punjab, (1971) 2 SCC 269 in Para 9 & 10.*** Example: In the State of Maharashtra, the Official Language is Marathi and hence those who speak any language other than Marathi being their mother tongue and also the population of their community having less than 50 % are Linguistic Minorities in the State of Maharashtra, i.e. Urdu, English, Punjabi, Gujarati, Sindhi, Kannada, Malyalam, Telegu, Bengali, Rajasthani, etc. speaking citizens are all Linguistic Minorities in the State of Maharashtra. Marathi speaking (Mother Tongue) Citizens outside the State of Maharashtra are Linguistic Minorities and are entitled to claim the same rights under Article 30 (1) in other States.

As far as Muslims, Sikhs, Christians, Parsis, Buddhists and Jains

are concerned, they are Religious Minorities all over India. However, Muslims in Jammu & Kashmir, Sikhs in Punjab, Christians in Nagaland and Buddhists in Sikkim are not Religious Minorities in the above respective States.

Two Fundamental Rights have been guaranteed by Article 30 (1) to the above mentioned Religious and Linguistic Minorities i.e. (i) the **right to establish** educational institutions, and (ii) the **right to administer** educational institutions.

2.5 RIGHT TO ESTABLISH EDUCATIONAL INSTITUTIONS:

Now, let us understand what is the meaning of the word **“Establish”**. To establish means to bring into existence or to start or to open new Educational Institutions and to establish Educational Institutions of their choice means Religious & Linguistic Minorities have the Fundamental Right to establish any Educational Institution i.e. Primary School, Secondary School, Higher Secondary School, Technical, Medical, or any Professional Educational Institution. This was held by the Hon'ble Supreme Court of India in *S. Azeez Basha v. Union of India, AIR 1968 SC 662 in Para 21 & 25*.

Now, let us see **whether the right to establish pertains only to Religious Educational Institutions, i.e. Madrasa Education, or such type of Educational Institution where only Religious Education is imparted**. The reply is an emphatic **No**. The rights guaranteed under Article 30 (1) are wide enough to cover Secular Education also, i.e. all type of Educational Institutions can be started i.e. Primary Schools, High Schools, Colleges, etc. by the Religious and Linguistic Minorities. This was held by the Hon'ble Supreme Court of India in *Ahmedabad ST. Xaviers College Society and Another v. State of Gujarat and Another, (1974)1 SCC 717 in Para 8*.

The Right to Establish Educational Institutions includes:

a. Right to Establish New Colleges/Schools:

In *Maharashtra Cosmopolitan Education Society & Others v. The State of Maharashtra & Others*, WP/4337/1993, Hon'ble Bombay High Court issued directions to the Government of Maharashtra stating that the Government has to take into consideration the M. C. E. Society's Fundamental Right provided under Article 30 (1) of the Constitution of India i.e. Rights of the Minorities to establish and administer educational institutions of their own choice irrespective of policy decision of the government in respect of granting permission to start new Law Colleges/ New D. Ed. Colleges.

b. Right to Seek Recognition or Affiliation:

The right to establish educational institutions of their choice would be without any meaning if affiliation was denied. In *Re Kerala Education Bill*, AIR 1958 SC 956, Hon'ble Supreme Court of India held that a meaningful or a real exercise of the right under Article 30(1) must therefore mean the right to establish effective educational institutions which may subserve the real needs of the minorities.

NOW, WE WILL EXAMINE VERY IMPORTANT ASPECTS PERTAINING TO 'RIGHT TO ESTABLISH':

a. Whether prior permission of the Government is required for religious & linguistic minorities to establish (start or open) New Educational Institution (Primary School, High School, College)?

The reply is No. While starting new Primary, Secondary Schools, or Higher Secondary or Senior Colleges, PRIOR PERMISSION FROM THE GOVERNMENT IS NOT REQUIRED. This was held by the Hon'ble Patna High Court in *Rahmania Primary Teachers Training College, etc. v.*

State of Bihar and Another, AIR 1992 Pat 1 in Para 26.

b. Whether Subsequent Permission is required for religious & linguistic minorities from the Government after establishment of minority educational institution? If YES, then what are the conditions required to be fulfilled by the said Institution in such case?

The reply is Yes. For getting recognition to the Certificate or Degree Course, the Permission from the Government is required but not the prior permission. Therefore, the permission can be obtained after starting the school or college, provided the following conditions are fulfilled by the Institution.

The conditions required to be fulfilled by the Institution are:

As far as accommodation is concerned, providing of furniture & fixtures of the required size is necessary. Teaching & Non-teaching staff should be appointed strictly according to the qualifications, age limit, etc. prescribed by the Government. Salary to the staff both teaching & non-teaching should be paid as per the scales prescribed by the Government. The norms of the Government have to be followed in respect of the Library & Laboratories for the Institution. Only those students are to be admitted who are eligible in respect of their qualifications, qualifying marks, age, etc. for the concerned course. The syllabus laid down by affiliating body viz. School Boards, Secondary & Higher Secondary Boards, University, etc. should be strictly followed. Similarly, the examination system and the marking scheme should be strictly followed as laid down by these bodies. Adequate provision for playground, sanitary blocks, clean drinking water facilities, etc. should be provided. The minority educational institutions are bound to follow the above mentioned conditions.

Permission/Recognition must be obtained from the Government

by making an application in a prescribed form along with requisite fee or application processing charges to the Competent Authority within the stipulated time limit. Once these requirements are fulfilled by the minority Educational Institution, then the Government is bound to recognize the Institution & University is bound to affiliate it. This was held by the Hon'ble Supreme Court of India in *Ahmedabad ST. Xaviers College Society and Another v. State of Gujarat and Another, (1974)1 SCC 717* in Para 18 and also by the Hon'ble Patna High Court in *Rahmania Primary Teachers Training College, etc. v. State of Bihar and Another, AIR 1992 Pat 1* in Para 21 & 41.

The above conditions are meant to maintain the excellence and the standard of education. Please also note that, if the educational institution receives Grant-in-aid from the Government, then Government has supervisory control in respect of expenditure incurred by the institution from the said grant.

Therefore, the Government/University of All India Technical Education or All India Council for Medical Education or University Grants Commission and other such bodies have the right to prescribe regulations in respect of keeping excellence in educational standards in the Educational Institutions established by the Minorities.

However, except regulations concerning excellence in education, no other regulations can be prescribed by the Government or University or any other Board or Authority.

c. Whether any policy of the Government in respect of not giving permission to the particular type of New Educational Institution is binding on Minority Educational Institution, i.e. State Government taking policy decision not to give permission to start new D.Ed. or

B.Ed. or Law or Medical Colleges in a particular year?

The reply is No.

Such policy decisions of the Government are not binding on the Minority Educational Institution. The Fundamental Rights guaranteed by the Constitution of India cannot be taken away by the State Government by taking any policy decision. This was held by the Hon'ble Telangana High Court in *Andhra Kesari Education Society, Ongole v. Govt. of A. P. & Others*, AIR 1984 AP 251, in Para 14 & 15 and in the *Society of St. Ann's Mehdipatnam, Hyderabad, etc. v. The Secretary to Government, Education Department, Hyderabad & Others* SCC OnLine AP 335, in Para 84 & 86.

d. Whether Government can reject an application for permission of a Minority Educational Institution to establish (start/open) a New School or College on the ground that such Educational Institution is not needed in that particular locality?

The reply is No. Whether particular type of Educational Institution is needed in a particular area or locality or not is to be decided by the Minorities themselves and NOT by Government or the University or any other Authority. This was held by the Hon'ble Telangana High Court in *Andhra Kesari Education Society, Ongole v. Govt. of A. P. & Others*, AIR 1984 AP 251, in Para 14 & 15 and in the *Society of St Ann's Mehdipatnam, Hyderabad, etc. v. The Secretary to Government, Education Department, Hyderabad & Others* SCC OnLine AP 335, in Para 84 & 86.

e. Whether by admitting more than 50% students or by appointing more than 50% teaching & non-teaching staff or whether by giving education in other language than the Concerned Minority, the Minority Educational Institute loses its Minority Status?

The reply is No. By doing all the above acts, the concerned Minority Institution does not lose its minority character or rights guaranteed under Article 30(1) of the Constitution of India. **Example:** If any Muslim Religious Minority Educational Institution starts a Marathi or English Medium School, still it is a Minority Educational Institute and it is also entitled to absolute protection under Article 30 (1). Similarly, by admitting more than 50% students in its school from communities other than Christian, the Christian Educational Institutions does not lose its Christian Minority Educational Institutional character. The same is the case in respect of appointing of Teaching/Non-teaching staff i.e. if the percentage of such staff exceeds 50%, yet the minority character of the institution is maintained.

f. Let us also examine the Composition of Trust Managing the Minority Educational Institutions:

It should be understood clearly that more than 50% trustees of the Trust should belong to the minority community. If the Trust having percentage of the trustees belonging to their communities less than 50% of the total members of trustees, then the said institution loses its minority status. In a secular state, the induction of members from other communities or the majority communities in the Trust but below 50% of the total members of trustees would certainly be a welcome step, as it would encourage secular outlooks & impart true secular character to the institutions.

g. Let us also examine as to whether an educational institution established by the majority community, if handed over to the minority community for administration becomes a Minority Educational Institution.

The reply is YES, provided the entire assets & management is handed over to the minority community by the majority

community. This was held by the Hon'ble Gujarat High Court in *Firdaus Amrut Higher Secondary School, Ahmedabad v. M. M. Dave*, AIR 1992 Guj 179 in Para 17, 18 & 19.

h. Let us also verify, if there is no provision made in the Trust Deed (i) for giving education to the Boys and girls of a particular minority community. (ii) Or for giving Education through the minority language. (iii) Or for not providing for appointment of Trustees alone from the Minority Community, then whether the concerned Trust loses its Minority character?

The reply is NO.

By not providing in the Trust Deed particular medium of instruction, or for admitting students from the particular community or not providing for Trustees to be appointed in future from a particular community, the concerned trust does NOT lose its minority character. **For Example:** If the Christian Minority Institution admits more than 50% students in their schools other than their community and appoint teaching staff from other communities, still they do not lose minority character of their institution.

i. Whether the Name of the Trust must reflect Minority character?

The reply is again NO. Even if a simple name like the Maharashtra Cosmopolitan Education Society or such other name is given to the Trust, it still remains a Minority Educational Institution.

j. Whether a Letter from the Government/Directors of Education or the University Authorities recognizing the Institution as a Minority Institution is a required First?

For clarity, it is advisable to obtain such letter of recognition of minority character of the Educational Institution from the Government or Directors of Competent Authorities such as

AICTE, NCTE, etc or from the University Authorities to avoid administrative complications.

In short, the institution has to prove its Minority Character, but need not wait for the letter.

k. We have to see now what are the prerequisites to show or prove that a particular Trust which runs a School or a College is a Minority Educational Institution?

The only thing is required to be proved is - WHO are/were the Founder Trustees of that Trust? If all the trustees of that Trust were or are from that particular Religious or Linguistic Minority Community, then the particular Trust which runs a School/College will be considered as Minority Educational Institution. **Bombay High Court Division Bench Decision DT.17-12-1992 in Appeal No. 268/1988 Original Side and *St. Stephen's College v. University of Delhi, (1992) 1 SCC 558* in Para 129, 131 & 133.**

However, it is advisable to mention the names of the Founder Trustees & the Present Trustees to prove the religious / linguistic minority to which they belong /belonged. Similarly, the logo, monogram, motto, medium of institution should reflect the identity of the minority community. It would be desirable to have a competent Head/Asst. Head of the School/Institution from the minority community.

I. What are the Documents required to be submitted / attached by the Educational Institution with the Application for Minority Status Certificate (MSC)?

The Applicant/Educational Institution must submit/attach the following documents for registration of the Educational Institution as Minority Institution:

- (i) NOC/ Copy of application for NOC and proof of its delivery to Competent Authority in case of deemed NOC,

- (ii) Affidavit (As per the format available on URL i.e. (<http://ncmei.gov.in/WriteReadData/LINKS/affidavit%20format0a5fd4b-1eda-4515-9bfc-f591560c59b5.pdf>)),
- (iii) Society/Trust are required to submit or attach
 - (a) Copy of registration certificate,
 - (b) Copy of MOA / Trust Deed,
 - (c) Copy of amended MOA / Trust Deed (if any).
- (iii) In case of institution run by individual from minority community, in that case
 - (a) Permission letter of the concerned government,
 - (b) Identity Proof,
 - (c) Residence Proof,
 - (d) ITR for last 3 Years (if applicable),
 - (e) Documentary Evidence (title or possession) of the Institution.
- (iv) NITI Aayog Unique ID in case of registered Society/Trust,
- (v) MOA of Society/Trust Deed and Amended MOA of Society/Trust Deed if any, (vi) List of founding members/trustees and present members/trustees,
- (vii) Copy of Affiliation/ Recognition letter issued by affiliating Board/University/UGC,
- (viii) In case of professional institutions, recognition certificate by the regulatory body (Copy of Affiliation/ Recognition letter should clearly indicate the Validity period of Affiliation/ Recognition).

The Applicant must submit five sets of the application along with relevant document mentioned above. Incomplete Applications will not be entertained.

All the above actions are covered by the words “**To Establish Educational Institutions** of their choice” under Article 30 (1) of the Constitution of India.

NOW, LET US SEE WHAT IS THE MEANING AND SCOPE OF THE PROVISIONS OF OTHER PART OF THE ARTICLE 30(1) I.E. “RIGHT TO ADMINISTER”:

2.6 RIGHT TO ADMINISTER EDUCATIONAL INSTITUTIONS:

First of all, we must note that the right of administration can be exercised by the Minority Educational Institutions only if the Educational Institution is established by the Minority Community concerned and not otherwise. The provision in respect of Right to Administer the Educational Institution by the Religious & Linguistic Minorities means the right to effectively manage and conduct the affairs of the institution. This was held by the Hon'ble Supreme Court of India in *Ahmedabad ST. Xaviers College Society and Another v. State of Gujarat and Another*, (1974)1 SCC 717 in Para 74.

The Right to administer has been given to the minority, so that it **can administer the institution as it thinks fit, and in accordance with its ideas of how the interest of the community in general, and institution in particular, will be served best.**

The right to administer an educational institution includes the following rights:

- a. Right to conduct and manage the affairs of the institution through a committee or body of persons.
- b. Right to appoint the Teaching and Non-teaching Staff.
- c. Right to take disciplinary action against the Staff.
- d. Right to select the students for admission in the School or in the Colleges.
- e. Right to adopt a rational fee structure.
- f. Right to use its properties and assets for the benefit of the institution.

a. Right to conduct and manage the affairs of the institution

through a committee or body of persons:

Hon'ble Supreme Court of India in *Sk. Mohd. Rafique v. Managing Committee, Contai Rahamania High Madrasah and Others*, (2020)6 SCC 689 held that the right to administer an institution primarily consists of **four principal aspects**. First, the right to choose its managing or governing body. Secondly, the right to choose its teachers having compatibility with their ideals, aims and aspirations. Third, is the right not to be compelled to refuse admission to the students. Fourthly, the right to use its properties and assets for the benefit of its institution. **(Para 14)**

Now, let us verify as to **whether the Government/ University or any other Authority can interfere in the process of selection or appointment of the Members of the Managing Committee or Office-bearers of the Trust?** The reply is **No**. The Government or the University or any other Competent Authority cannot lay down any condition whereby the religious/linguistic minority institutions has to accept any nominee from the Government/ University or any other Authority on the Managing Committee of the Governing Body. This was held by the Hon'ble Supreme Court of India in *D. A. V. College, etc. v. State of Punjab and Others*, AIR 1971 SC 1737 in **Para 34**.

Let us also verify, whether the Provisions of the Right of Children to Free and Compulsory Education Act, 2009 are applicable to the Religious & Linguistic Minority Educational Institutions?

The Reply is **No**. Hon'ble Supreme Court of India held in the *Society for Un-aided Private Schools of Rajasthan v. Union of India and Another*, (2012)6 SCC 1, that the Right of Children to Free and Compulsory Education Act, 2009, in particular Section 12(1)(c) and Section 18(3) infringes the

fundamental freedom guaranteed to the unaided minority schools under Article 30 (1), and, consequently, the said 2009 Act shall not apply to such Schools. (**Para 65**) Article 21-A casts an obligation on the State to provide free and compulsory education to children of the age of 6 to 14 years and not on unaided non-minority and minority educational institutions [**Para 311(1)**]. Further, in the *Pramati Educational and Cultural Trust (Registered) and Others v. Union of India and Others*, AIR 2014 SC 2114, Hon'ble Supreme Court of India held that, the Right of Children to (Free and Compulsory) Education Act, 2009 is not ultra vires to Article 19(1)(g), but so far as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra-vires the Constitution. (**Para 56**)

b. Right to appoint the Teaching & Non-Teaching Staff:

The selection and appointment of the head of the institutions, is regarded as pre-eminently a function of administration.

In *Secretary Malankara Syrain Catholic College v. T. Jose*, AIR 2007 SCW 13, Hon'ble Supreme Court of India held that, the rights to appoint Teaching Staff (Teachers/Lecturers Head Masters / Principals) and non-teaching staff is a part of fundamental right of the Minority Educational Institutions under Article 30(1) of the Constitution of India and the imposing of any trammel thereon by the State Govt. or any other regulatory authority (except to the extent of prescribing the requisite qualifications and experience) will be considered as violation of right guaranteed under Article 30(1) of the Constitution. In *P. A. Inamdar v. State of Maharashtra* 2005(6) SCC 537, the Hon'ble Supreme Court of India held that the Right of Minority Educational Institutions relating to the recruitment of staff cannot be regulated by the State or any other regulatory authority.

In another landmark Case i.e. ***Mr. P. A. Inamdar & Others v. The Secretary, University Grants Commission*** (2012), a Petition was filed by Dr. P. A. Inamdar before the National Commission for Minority Educational Institutions, New Delhi, wherein U.G.C. Regulations dated 30th June, 2011 for the constitution of Selection Committees mentioned in the U.G.C. Regulations, 2010 were challenged stating that the Government, U.G.C. or University cannot interfere in the procedure of appointment of Teaching and Non-teaching Staff by the Minority Educational Institutions, whether aided or unaided except prescribing qualifications, age, experience, etc. Hon'ble Justice Mr. M.S.S Siddiqui, Chairman of the Commission held that, the action of the respondent University of Pune in declining to grant approval of the selection and appointment of the teaching staff of the Petitioner Institutions i.e. Institutions of Azam Campus is violative of the educational rights of the minorities enshrined under Article 30 (1) of the Constitution of India.

Now, let us examine the issue of the appointment of the Head or Asst. Head or Supervisor in the School or College:

What right the Management of the Religious and Linguistic Minority have in respect of selection and appointment of teaching and non-teaching staff?

The Management has a right to appoint a person of their choice on these posts provided the incumbent so appointed possess the requisite qualifications and experience. The rule of appointing senior most person is not applicable to the Minority Educational Institution. The Minority Institutions are free to constitute their own Selection Committee for selecting Teaching and Non-teaching Staff including Head, Asst. Head or Supervisor. It is not binding on the minority institutions to have the Representations of the Government, Education

Department, Social Welfare Department or the University on its Selection Committee.

However, the Selection Committee constituted by the Minority Educational Institution should select only such staff which fulfills all the conditions prescribed by the Government / Competent Authority in respect of educational qualifications, experience, age, etc. This was held by the Hon'ble Supreme Court of India in *Ahmedabad St. Xaviers College Society and Another v. State of Gujarat and Another, (1974)1 SCC 717*, in Para 18, 30 & 103.

Now, let us further verify as to **whether the provisions of the appointing 50% of the Teaching and Non-teaching Staff in the Educational Institutional from Reserve Quota is Applicable or Not?**

This provision is **NOT** applicable to the Minority Educational Institutions. In The State of Maharashtra, clear orders have been issued by the Government to the Education Officers of all the Districts and to all the University Authorities for not applying this rule while approving the appointment of the staff of the Minority Educational Institutions. This was held by the Hon'ble Bombay High Court in *Hyderabad (Sind) National College Board and Another v. the University of Bombay and Others, AIR 1993 Bom 229*, in Para 7, 8 & 9.

c. Right to take disciplinary action against the staff-

A significant facet of the administration of the educational institutions in the maintenance of the discipline among the member of its staff. In *Lily Kurian v. St Levoine, (1979) 2 SCC 124*, it was stated by the Hon'ble Supreme Court of India that, it is the right of the minority educational institutions to take disciplinary actions against the staff, subject to the State Regulations. But the State regulations would be permissible

only to the extent that the minority's right to administer may be better exercised for the benefit of the institutions, otherwise the minority's right to administer would be impaired.

Hence, once the staff is selected and appointed by the Management, the Management has to follow the norms/ rules of the Departmental Inquiry, etc. for removing such Staff.

Provisions of prior or post facto approval of the Education Department or the University Authorities for the reduction in the rank, stoppage of pay to the staff are **NOT** applicable to the Minority Educational Institutions. This was held by the Hon'ble Supreme Court of India in *Ahmedabad ST. Xaviers College Society and Another v. State of Gujarat and Another*, (1974)1 SCC 717, in Para 90, 92 105 & 107.

Is it to be further noted that if an employee is to be suspended pending the departmental enquiry against him and if the Rules provide for prior approval of the Education Department, in that case, the Minority Educational Institution is bound to obtain prior permission of the Education Department. This was held by the Hon'ble Supreme Court of India in *Frank Anthony Public School Employees Association v. Union of India & Others*, (1986)4 SCC 707, in Para 5, 16 & 19.

d. Right to select students for admission:

Selection of students to the educational institutions is also an aspect of administration. In *St Stephen's College v. University of Delhi*, AIR 1954 SC 1, Hon'ble Supreme Court has observed that, the right to select students is indeed an important facet of administration. However, it is not free from regulations. But the regulations must be reasonable and should be conducive to the welfare of the minority institutions or for the betterment of those who resort to it.

In *T. M. A. Pai Foundation and Others v. State of Karnataka & Others*, AIR 2003 SC 355, The Hon'ble Supreme Court of India has declared that, the admissions of students to unaided minority institutions could not be regulated at all by a State or University so long as the admission was on a transparent basis and the merit was adequately taken care of. Further, it has been held that, an aided minority educational institution would be entitled to have the right of admissions of students belonging to the minority group. However, they would be required to admit a reasonable extent of non-minority students, so that the rights under Art. 30(1) are substantially maintained while the citizen's right under Art. 29 (1) are not infringed.

In *P. A. Inamdar & Others v. State of Maharashtra & Others* (AIR 2005), one of the Issue was-**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?**

It was held by Hon'ble Supreme Court of India that the admission of students to unaided minority educational institutions namely schools and undergraduate colleges, where the scope for merit-based selection is practically nil, cannot be regulated by the State or University concerned, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards. Court further held that, the reservation in private educational institutions, whether it belongs to majority or minority people, is violative of Article 19 (1) (g) and Article 30 (1) of the Constitution of India. Professional educational institutions should be treated differently. Further, the **93rd Constitutional Amendment, 2005 which added Clause (5) in Article 15** became imminent only because of this case. **Clause 5 of Article 15 provides that**

“Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.”

As in this case, the Court held that “neither the policy of reservation can be enforced by the state nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institutions. The employment of expressions 'right to establish and administer' and 'educational institution of their choice' in Article 30 (1) of the Constitution of India gives the right with very wide amplitude.

Now, let us analyse the provisions of the admission of students. As regards admitting students' to the various courses such as Medical, Para-Medical, Engineering in the Minority Educational Institution are concerned, the Management has full right to admit 50% of the students of their choice amongst the candidates belonging to their community, and the remaining 50% intake of the students to the Minority Institution will be decided by the Government. This procedure is laid down by the Hon'ble Supreme Court of India in the case of ***Unni Krishnan v. State of Karnataka, AIR 1993 SC.***

In subsequent orders on various Writ Petitions filed by the Minority Educational Institutions, the Hon'ble Supreme Court of India has granted by way of an Interim Relief to the

Minority Educational Institutions an authority to admit 50% of students belonging to their community. These admissions have to be made on the basis of merit amongst the students belonging to the Minority Community. However, the choice of taking entrance examination before the admission is left to the Minority Management.

However, the correct legal position is that if an Institution does not receive Grant-in-aid from the Government, then 100% students belonging to that particular Minority Community can be admitted by the Institution. However, till date this happens through either the Hon'ble Supreme Court of India or High Court Orders that the Management of Minority Educational Institution whether aided or unaided can admit 50 % students belonging to their Community in Medical, Engineering and all other Colleges safely.

Now, let us examine as to **whether the rights of admission can be claimed by both the Religious & Linguistic Minority Institution, if it is receiving grant-in-aid from the State or Central Government?** The reply is **Yes.**

Establishing New Colleges, Schools, appointment of Principal, Vice-Principal, Head Master, Asst. Head Master, Teaching and Non-Teaching Staff, not appointing reserve quota seats in teaching and non-teaching staff, admission of Students in Educational Institutions, etc. as guaranteed by Article 30 (1) of the Constitution of India can be claimed by the Religious and Linguistic Minority Educational Institution, even if the Institution is receiving grant-in-aid from the appropriate Government.

e. Right to adopt a rational fee structure:

In *Unni Krishnan v. State of A. P.*, (1993) 1 SCC 645, the Hon'ble Supreme Court of India framed a scheme relating to

the grant of admission and fixing of the fee. “To check the commercialization of education, a scheme of “free” and “payment” seats was evolved on the assumption that the economic capacity of the first 50 percent of admitted students would be greater than the remaining 50 percent. But this decision was overruled in the case of ***T. M. A. Pai Foundation v. State of Karnataka, AIR 2003 SC 355*** by the Hon'ble Supreme Court of India. As regards the unaided professional institutions; the court has allowed the management to adopt a rational fee structure. They are allowed to collect fees and charges they find appropriate, the only caveat being that they should not appear to be charging capitation fee for profiteering.

The matter relating to the fixation of fee is a part of the administration of an educational institution. However, it would impose a heavy onus on such an institution to justify the levy of a fee with mathematical precession.

In ***Modern School v. Union of India, 2004 (5) SCALE 170***, the Hon'ble Supreme Court of India reiterated that, in the matter of determination of the fee structure, the unaided educational institutions, exercised a great autonomy as they, like any other citizen carrying on an occupation, were entitled to a reasonable surplus for development of education and expansion of the institution. However, to bring in transparency, accountability, expenditure management and utilization of savings for capital expenditure/investment, as also to prevent commercialization of education, the Court gave directions in this respect.

f. Right to use its properties and assets for the benefit of the institution:

In ***Yunus Ali Sha v. Mohamed Abdul Kalam and Others***,

(1999)3 SCC 676, Hon'ble Supreme Court of India held that, in view of Article 30(1) of the Constitution, the Directorate has no control over the actual management of the School including hiring or termination of services of teachers. This is entirely within the control of the Managing Committee of the minority institution. **(Para 6)**

2.7 OF THEIR CHOICE:

The scope of the words “of their choice” in the said Article is so wide that under this right Religious and Linguistic Minorities can also establish a University. This was held by the Hon'ble Supreme Court of India in *S. Azees Basha v. Union of India, AIR 1968 SC 662, in Para 21 & 25.*

Que : Which type of Educational Institution the Religious and Linguistic Minorities can establish?

Ans : The Educational Institutions “**OF THEIR CHOICE**”.

a. Right to have a choice of the medium of instructions:

In *D. A. V. College, Bhatinda, etc. v. State of Punjab and Others, AIR 1971 SC 1731*, the Hon'ble Supreme Court of India ruled that, the right guaranteed by Article 30(1) to minorities to administer educational institutions includes the right to have the choice of the medium of instruction in a language other than their mother tongue.

Now, let us verify **whether the Educational Institutions established by the Minorities have to impart an education only through the respective medium i.e. Muslims in Urdu, Christians in English, Sikhs in Gurumuki, Sindhis in Sindhi and Gujarati in Gujarati medium?**

The reply is No. Religious and Linguistic Minorities can start Educational Institution in ANY MEDIUM i.e. Muslims can start Schools, Colleges in Marathi or English or in any other medium by which they feel that the future generation can be better equipped to face challenges of the world along with

their brothers from other communities. The same is applicable to other Minorities also. This was held by the Hon'ble Supreme Court of India in *Ahmedabad ST. Xaviers College Society and Another v. State of Gujarat and Another, (1974)1 SCC 717*, in **Para 86 & 97**.

As already explained, Article 30 (1) is a Fundamental Right provision. This Right cannot be taken away by the Government EVEN AFTER ENACTING AN ACT IN THE PARLIAMENT OR IN THE STATE LEGISLATIVE ASSEMBLY. From this, it would be clear that the right which cannot be taken away by passing a law, cannot be taken away by the Cabinet's policy decision or the Minister or Secretary's administrative orders. No policy decisions of any kind from any Authority can TAKE AWAY THE FUNDAMENTAL RIGHT GUARANTEED BY THE CONSTITUTION OF INDIA UNDER ARTICLE 30(1).

Please note that no provision of the Constitution concerning Fundamental Rights of the Citizens and the Religious & Linguistic Minorities can be amended in the Parliament except in the case where any such proposed amendment receives the consent of 75% members of the Parliament i.e. 3/4th majority of votes of the members of the Parliament.

However, the Hon'ble Supreme Court of India has always struck down amendments to the Fundamental Rights guaranteed under Article 30 (1) of the Constitution of India on the ground that the entire structure of the Constitution will change.

Therefore, the rights provided to the linguistic and religious minorities under Article 30 (1) of the Constitution of India are protected by a prohibition contained in Article 13 of the Constitution which declares that any law, in breach of the fundamental rights would be void to the extent of such violation.

It is well-settled that Article 30 (1) cannot be read in a narrow and pedantic sense and being a fundamental right, it should be given its widest amplitude. The width of Article 30(1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein.

The National Commission for Minority Educational Institutions (NCMEI) Act, 2004 has been enacted to safeguard the educational rights of the minorities enshrined in Article 30 (1) of the Constitution.

National Commission for Minority Educational Institutions (NCMEI):

i. Establishment :

The National Commission for Minority Educational Institutions was set up in 2004.

ii. Powers and Functions :

The Commission is a quasi judicial body and has been endowed with the powers of a Civil Court for the purpose of discharging its functions under the Act. Powers of the Commission includes deciding all questions relating to the status of any institution as a Minority Educational Institution (MEI). It also serves as an appellate authority in respect of disputes pertaining to minority status. Educational institutions aggrieved by the order of refusal to grant minority status certificate by the competent authority, can appeal to the Commission against such orders. The Commission also has the power to cancel the minority status of an educational institution on grounds laid down in the Act. The Commission also has powers to call for information while enquiring into the complaints of violation or deprivation of the educational rights of the minorities. Where an enquiry establishes violation or deprivation of educational rights of the minorities, the

Commission may recommend to the concerned Government or authority to initiate disciplinary proceedings or such other action against the concerned person or persons as it may deem fit.

As per the judgment of Hon'ble Supreme Court of India, in the matter of *Sisters of St. Joseph of Cluny v. The State of West Bengal and Ors.*, (2018) 6 SCC 772, this Commission has both original as well as appellate jurisdiction. Parliamentary paramountcy has been provided for by Articles 246 and 254 of the Constitution. In view of the mandate of these Articles of the Constitution, the National Commission for Minority Educational Institutions Act, 2004, being a Central law shall prevail over the State law. The State Government cannot add, alter or amend any provision of the Act by issuing executive instructions. No court (except the Supreme Court and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) shall entertain any suit, application or other proceedings in respect of any order made by the Commission.

iii. Link for the Decisions/ Judgments of NCMEI :

The landmark decisions/judgments of the National Commission for Minority Educational Institutions (NCMEI) are available on its official website at URL i.e. <http://ncmei.gov.in/index.aspx?langid=1>.

iv. Address & Contact Details of the NCMEI for more Information:

POSTAL ADDRESS:

The Secretary,

National Commission for Minority Educational Institutions, Gate No.4, 1st Floor, Jeevan Tara Building, 5 Sansad Marg, Patel Chowk, New Delhi – 110 001.

Phone : 011-23367759, **Fax :** 011-23343766,

Helpline No.: 011-23343782, **Website :** <http://ncmei.gov.in>, **Email :** helpdesk.ncmei@gov.in

PART - III

LIST OF CASES DECIDED BY HON'BLE SUPREME COURT /HIGH COURTS/ NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS (NCMEI) ON RIGHTS OF MINORITY EDUCATIONAL INSTITUTIONS IN INDIA

Article 30(1) of the Constitution of India is a Fundamental Right. It provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Sr. No.	Name of the Case	Citation	Decision in Brief	Court
1.	State of Bombay v. Bombay Education Society and Others (Before Mehr Chand Mahajan, C.J. and Sudhi Ranjan Das, Ghulam Hasan, N. H. Bhagwati and B. Jagannadhadas, JJ.)	AIR 1954 SC 561	A Minority like the Anglo-Indian Community, which is based, inter alia, on religion and language, has the fundamental right to conserve its language, script and culture under Article 29 (1) and has the right to establish and administer educational institutions of their choice under Article 30 (1), surely then there must be implicit in such fundamental right, the right to impart instruction in their own institutions to the children of their own community in their own language. (Para 17) (Source: http://www.scconline.com)	Hon'ble Supreme Court of India

2.	<p>Re Kerala Education Bill Case (Before Sudhi Ranjan Das, C.J. and N. H. Bhagwati, T. L. Venkatarama Aiyar, B. P. Sinha, Syed Jaffer Imam, S. K. Das and J.L. Kapur, JJ.)</p>	AIR 1958 SC 956	<p>'Minority' must be determined by reference to the entire population of the state for the purpose of Articles 29 and 30 of the Constitution of India. (Para 21) (Source: http://www.sconline.com)</p>	Hon'ble Supreme Court of India
3.	<p>Rev. Sidhrajbhai Sabhai and Others v. State of Gujarat and Another (Before B.P. Sinha, C.J. and S.J. Imam, K. Subba Rao, K.N. Wanchoo, J.C. Shah and N. Rajagopala Ayyangar, JJ.)</p>	AIR 1963 SC 540	<p>The Rules for Primary Training Colleges, and Recognition of Private Training Institutions, in so far as they relate to reservation of seats there in under Orders of Govt., and directions given pursuant thereto regarding reservation of 80 % of seats and threat to withhold grant-in aid and recognition of the College, infringe the fundamental freedom guaranteed to the Petitioner under Article 30 (1) of the Constitution of India. (Para 16) (Source : http://www.sconline.com)</p>	Hon'ble Supreme Court of India
4.	<p>S. Azeez Basha and Another v. Union of India (Before K. N. Wanchoo, R. S. Bachawat, V. Ramaswami (I), G. K. Mitter and K. S. Hegde, JJ.)</p>	AIR 1968 SC 662	<p>The Minority Institution/ University established by the Central Legislature of the Parliament cannot be considered as University established by the Minority community and therefore not entitled to claim benefits of Article 30. (Para 26) (Source: http://www.sconline.com)</p>	Hon'ble Supreme Court of India

5.	Right Rev. Bishop S. K. Patro v. State of Bihar and Others (Before M. Hidayatullah, C. J. and J. C. Shah, V. Ramaswami (I), G. K. Mitter and A.N. Grover, JJ)	(1969)1 SCC 863	Minority competent to claim protection of Article 30 (1) and on that account the privilege of establishing and maintaining educational institutions of its choice must be a minority of a person's residing in India. It does not confer upon foreigner not resident in India the right to set up educational institutions of their choice. Persons setting up educational institutions must be resident in India and they must form a well defined religious or linguistic minority. (Para 17) (Source : http://www.scconline.com)	Hon'ble Supreme Court of India
6.	D. A. V. College, Bhatinda, etc. v. State of Punjab and Others (Before S. M. Sikri, C.J. and G.K. Mitter, K.S. Hegde, A.N. Grover, P. Jaganmohan Reddy, JJ.)	AIR 1971 SC 1731	The right of minorities to establish and administer educational institutions of their choice would include the right to have a choice of the medium of instruction also which would be the result of reading Article 30 (1) and Article 29 (1) of the Constitution of India. (Para 9) (Source : http://www.scconline.com)	Hon'ble Supreme Court of India
7.	Ahmedabad St. Xavier's College Society and Another v. State of Gujarat and Another (Before A. N. Ray, C.J. and P.	AIR 1974 SC 1389	A law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as	Hon'ble Supreme Court of India

	Jaganmohan Reddy, D.G. Palekar, H.R. Khanna, K.K. Mathew, M.H. Beg, S.N. Dwivedi, Y.V. Chandrachud, A. Alagiriswami, JJ.)		being violative of Article 30(1). It is of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities plainly be not denied such right of selection and appointment without infringing Article 30 (1). (Para 103) (Source : http://www.scconline.com)	
8.	Lily Kurian v. Sr. Lewina and Others (Before Y .V. Chandrched, C. J. and R. S. Sarkaria, N. L. Untwalia, A.D. Koshal and A.P. Sen, JJ.)	AIR 1979 SC 52	The State may “regulate” the exercise of the right to administration of minority educational institutions, but it has no power to impose any “restrictions” which is destructive of the right itself. The right to choose the Principal is perhaps the most important facets of the right to administer a College. (Para 25) (Source : http://www.scconline.com)	Hon'ble Supreme Court of India

9.	<p>S. P. Mittal v. Union of India and Others (Before Y. V. Chandrachud, C.J. and P.N. Bhagwati, O Chinnappa Reddy, V. Balkrishna Eradi and R. B. Mishra, JJ.)</p>	AIR 1983 SC 1	<p>In order to claim the benefit of Article 30(1), the community must show that: (a) it is religious or linguistic minority, (b) the institution was established by it. Without satisfying these two conditions it cannot claim the guaranteed rights to administer it. (Para 137) (Source : http://www.scconline.com)</p>	Hon'ble Supreme Court of India
10.	<p>Managing Board, M.T.M., Bihar Ranchi and Others v. State of Bihar and Others (Before S. Murtaza Fazal Ali, A. Varadarajan and Sabyasachi Mukharji, JJ.)</p>	(1984)4 SCC 500	<p>It is permissible for State or the University, as the case may be, to lay down reasonable conditions for maintaining the standard of education but in grab of doing so, refusal to grant affiliation cannot be made a ruse or pretext for destroying the individuality and personality of the said institution. If this is done, then apart from being wholly arbitrary and unreasonable it would amount to clear infraction of the provisions of Article 30 because what cannot be done directly is done indirectly. (Para 7) (Source : http://www.scconline.com)</p>	Hon'ble Supreme Court of India

11.	<p>Frank Anthony Public School Employees' Association v Union of India and Others (Before O. Chinnappa Reddy and G. L. Oza, JJ.)</p>	1987 AIR 311	<p>The State can prescribe regulations to ensure the excellence of the institution. Prescription of standards for educational institutions does not militate against the right of minority to administer the institutions. (Para 11) The condition of employment of teachers was a regulatory measure conducive to uniformity, efficiency and excellence in educational courses and did not violate the fundamental right of the minority institutions under Article 30 of the Constitution of India. (Para 15) (Source : http://www.scconline.com)</p>	Hon'ble Supreme Court of India
12.	<p>St. Stephen's College v. University of Delhi (Before M. H. Kania, K. Jagannatha Shetty, N. M. Kasliwal, M. Fathima Beevi and Yogeshwar Dayal, JJ.)</p>	AIR 1992 SC 1630	<p>In view of the importance which the Constitution attaches to protective measures to minorities under Article 30 (1), minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course to conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community the area which the institution is intended to serve. But in</p>	Hon'ble Supreme Court of India

			<p>no case such intake shall exceed 50 percent of the annual admission.</p> <p>(Para 102)</p> <p>(Source : http://www.scconline.com)</p>	
13.	Unni Krishnan, J. P. and Others v. State of A.P. and Others (Before L. M. Sharma, C.J. and S. Ratnavel Pandian, S. Mohan, B. P. Jeevan Reddy, and S. P. Bharucha, JJ.)	AIR 1992 SC 1630	<p>Where aid is not granted to private educational institutions and merely recognition or affiliation is granted, it may not be insisted that the private educational institution shall charge only that fee as is charged for similar courses in governmental institutions. The private educational institutions have to and are entitled to charge a higher fee, not exceeding the ceiling fixed in that behalf.</p> <p>(Para 226)</p> <p>(Source : http://www.scconline.com)</p>	Hon'ble Supreme Court of India
14.	The Maharashtra Cosmopolitan Education Society & Others v. The State of Maharashtra & Others	WP/4337/1993	<p>Hon'ble Bombay High Court issued directions to the Government of Maharashtra stating that the Government has to take into consideration the M. C. E. Society's Fundamental Right provided under Article 30(1) of the Constitution of India i.e. Rights of the Minorities to establish and administer educational institutions of their own choice irrespective of policy decision of the government in respect of</p>	Hon'ble Bombay High Court

			granting permission to start new Law Colleges/ New D. Ed. Colleges. Accordingly, the Government of Maharashtra granted permission to the M.C.E. Society, Pune to start new Law College from the Academic Year 1993-94 and issued directions to the University of Pune to take appropriate steps in this regard.	
15.	State of Bihar and Others v. Syed Asad Raza and Others (Before K. Ramaswamy and G.B. Pattanaik, JJ.)	AIR 1997 SC 2425	Under Clause 2 of Article 30, the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground it is under the management of a minority, whether based on religion or language. (Para 5) (Source : http://www.scconline.com)	Hon'ble Supreme Court of India
16.	Yunus Ali Sha v. Mohamed Abdul Kalam and Others (Before Sujata V. Manohar and R.C. Lahoti, JJ.)	(1999)3 SCC 676	In view of Article 30(1) of the Constitution, the Directorate has no control over the actual management of the School including hiring or termination of services of teachers. This is entirely within the control of the Managing Committee of the minority institution. (Para 6) (Source : http://www.scconline.com)	Hon'ble Supreme Court of India

17.	<p>Manager, St. Thomas U.P. School, Kerala v. Commissioner and Secy. to General Education Deptt. & Others (Before S. Rajendra Babu and Ruma Pal, JJ.)</p>	AIR 2002 SC 756	Even a single philanthropic individual from the concerned minority community can establish a minority institution with his own means. (Para 7) (Source : http://www.scconline.com)	Hon'ble Supreme Court of India
18.	<p>T.M.A. Pai Foundation and Others v. State of Karnataka & Others (Before B. N. Kirpal, C. J. and G. B. Pattanaik, V. N. Khare, S. Rajendra Babu, S. S. M. Quadri, Ruma Pal, S. N. Variava, K. G. Balkrishnan, P. Venkatarama Reddy, Ashok Bhan and Arijit Pasayat, JJ.)</p>	AIR 2003 SC 355	An aided minority educational institution would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further, the citizens' rights under Article 29 (2) are not infringed. (Para 162) (Source : http://www.scconline.com)	Hon'ble Supreme Court of India
19.	<p>Islamic Academy of Education and Another v. State of Karnataka and Others (Before V. N. Khare, C. J. and S. N. Variava, K. G. Balkrishnan, Arijit Pasayat and S. B. Sinha, JJ.)</p>	AIR 2003 SC 3724	The Hon'ble Supreme Court has directed to the respective State Governments to appoint a permanent Committee which will ensure that the tests conducted by the association of Colleges regarding fee structure is fair and transparent. For each State, a separate Committee shall be formed. The Committee	Hon'ble Supreme Court of India

			shall be headed by a Retired Judge of the High Court. The Judge is to be nominated by the Chief Justice of that State. (Para 19) (Source : http://www.scconline.com)	
20.	Brahmo Samaj Education Society and Others v. State of West Bengal and Others (Before S. Rajendra Babu, C.J. and G. P. Mathur, J.)	2004(6) SCC 224	The State can very well provide the basic qualification for teachers. The right to administer includes the right to appoint teachers of their choice among the NET/ SLET qualified candidates. (Para 7) (Source : http://www.scconline.com)	Hon'ble Supreme Court of India
21.	P. A. Inamdar and Others v. State of Maharashtra and Others (Before Ruma Pal and Arun Kumar, JJ.)	(2004) 8 SCC 139	Different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college(s) shall be separately fixed on the basis of their need by the respective State Govt. and in case of any dispute as regard fixation of percentage of quota, it will be open to the management to approach the Committee. (Para 6) (Source : http://www.scconline.com)	Hon'ble Supreme Court of India
22.	Cochin University of Science and Technology and Another v. Thomas P. Joan and Others (Before B. N. Agrawal, H.S. Bedi and G.S. Singhvi, JJ.)	(2008)8 SCC 82	Educational institution must be left to its own devices in the matter of fixation of fee though profiteering or imposition of capitation fee is to be ruled out and that some amount	Hon'ble Supreme Court of India

			<p>towards surplus funds available to an institution must be permitted and visualized, but it has been also laid down by inference that if the broad principles with regard to fixation of fee are adopted, an educational institution cannot be called upon to explain the receipts and the expenses as before a Chartered Accountant.</p> <p>(Para 16) (Source : http://www.scconline.com)</p>	
23.	<p>St. Stephen's College v. University of Delhi and Others. (Ajit Prakash Shah, C.J. and S. Muralidhar, J.)</p>	<p>ILR (2009) 2 Del 472</p>	<p>The right of Minority educational institutions to appoint the head of the institutions cannot be taken away by any rule or regulation or by any enactment made by the state even if the institution is receiving 100 % aid. A law which interferes with the minority choice of Principal would be violative of Article 30 (1). Minority institutions are entitled to appoint a person, who according to it, is the most suited for the head of the institution. Clause 7(2) of the Ordinance which virtually takes away the right of a college to choose its Principal cannot bind a minority administered institution.</p> <p>(Para 22) (Source : http://www.scconline.com)</p>	Hon'ble Supreme Court of India

24.	<p>Modern Dental College and Research Centre and Others v. State of Madhya Pradesh and Others (Before Markandey Katju and Deepak Verma, JJ.)</p>	(2009)7 SCC 751	<p>Private Unaided institutions have a right to devise a rational manner of selecting and admitting students.</p> <p>(Para 7)</p> <p>However certain degree of state control is required over the private unaided professional institutions for the reason that recognition has to be granted by the State authorities and it is also the duty of the State to see that high standards of education are maintained in all professional institutions.</p> <p>(Para 10)</p> <p>(Source : http://www.scconline.com)</p>	Hon'ble Supreme Court of India
25.	<p>Sindhi Education Society and Another v. Chief Secretary, Government of NCT of Delhi and Others (Before B. S. Chauhan and Swatanter Kumar, JJ.)</p>	(2010)8 SCC 49	<p>A linguistic minority is entitled to conserve its language and culture by a constitutional mandate. Thus, it must select people who satisfy the prescribed criteria, qualification and eligibility and at the same time ensure better cultural and linguistic compatibility to the minority institution.</p> <p>(Para 101)</p> <p>(Source : http://www.scconline.com)</p>	Hon'ble Supreme Court of India
26.	<p>Kolawana Gram Vikas Kendra v. State of Gujarat and Others (Before V. S. Sirpurkar and</p>	(2010)1 SCC 133	<p>It would be perfectly all right for a minority institution to select the candidates without any interference from the Government. However,</p>	Hon'ble Supreme Court of India

	Deepak Verma, JJ.)		<p>the requirement of prior approval of State Government or Competent Authority is necessitated because it is for the Government to see as to whether there were actually posts available in the said institution as per the strength of the students, and secondly; whether the candidates, who are sought to be appointed, were having the requisite qualifications in terms of the rules and the regulations of the Education Department.</p> <p>(Para 7) (Source : http://www.sconline.com)</p>	Hon'ble Supreme Court of India
27.	Mrs. Satimbla Sharma & Others v. St. Paul's Senior Secondary School and Others (Before R. V. Raveendran and A. K. Patnaik, JJ.)	AIR 2011 SC 2926	<p>Teachers of Private Unaided Minority Schools had no right to claim salary equal to that of that of counterparts working in government schools and government-aided schools. (Para 16)</p> <p>Unaided Private Minority Schools over which the Government has no administrative control because of their autonomy under Article 30(1) of the Constitution are not State within the meaning of Article 12 of the Constitution.</p> <p>(Para 17) (Source : http://www.sconline.com)</p>	Hon'ble Supreme Court of India

28.	<p>The Forum of Minority Institutions and Associations v. The State of Tamil Nadu (Before D. Murugesan and Vinod K. Sharma, JJ.)</p>	<p>(2011)2 Mad LJ 641, 2011 SCC Online Mad 17, (2011) 1 CTC 162</p>	<p>Minority Educational Institutions' right to administer includes right to appoint teachers of their choice among NET/SLET qualified candidates. The UGC Regulations, 2000 interfering with right of administration would not be applicable to minority institutions, being violative of Article 30(1) of the Constitution. (Para 62) (Source : http://www.sconline.com)</p>	<p>Hon'ble High Court of Chennai</p>
29.	<p>P.A. Inamdar & Other v. UGC & Others</p>	<p>NCMEI Case No. 331 of 2012 (Date of Order 13/06/ 2012.</p>	<p>The Clause 5.1.4 and 5.1.5 of UGC Regulation, 2010 are not applicable to the Minority Educational Institutions in the appointment of Teaching Staff.</p>	<p>NCMEI, New Delhi</p>
30.	<p>Society for Un-aided Private Schools of Rajasthan v. Union of India and Another (Before S. H. Kapadia, C.J. and K.S.P. Radhakrishnan and Swatanter Kumar, JJ.)</p>	<p>(2012)6 SCC 1</p>	<p>Right of Children to Free and Compulsory Education Act, 2009, in particular Section 12(1) (c) and Section 18(3) infringes the fundamental freedom guaranteed unaided minority schools under Article 30 (1), and, consequently, the said 2009 Act shall not apply to such Schools. (Para 65) Article 21-A casts an obligation on the State to provide free and compulsory education to children of the age of 6</p>	<p>Hon'ble Supreme Court of India</p>

			<p>to 14 years and not on unaided non-minority and minority educational institutions.</p> <p>[Para 311(1)] (Source : http://www.scconline.com)</p>	
31.	<p>Dayanand Anglo Vedic (DAV) College Trust and Management Society v. State of Maharashtra and Another (Before S. S. Nijjar and M. Y. Eqbal, JJ.)</p>	AIR 2013 SC 1420	<p>Article 30 gives a right to religious or linguistic minority of a State to establish and administer educational institutions of their choice. Language being the basis for establishment of different states, for the purposes of Article 30, a “linguistic minority” will have to be determined in relation to the State in which the educational institution is sought to be established. The position with regard to the religious minorities is the similar, since both religious and linguistic minorities have been put on a par in Article 30. (Para 15) (Source : http://www.scconline.com)</p>	Hon'ble Supreme Court of India
32.	<p>Pramati Educational and Cultural Trust (Registered) and Others v. Union of India and Others (Before R.M. Lodha, C.J. and R. K. Patnaik, S.J. Mokhopadhyaya, Deepak Mishra and</p>	AIR 2014 SC 2114	<p>The Right of Children to Free and Compulsory Education Act, 2009 is not ultra vires to Article 19(1)(g), but so far as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra-vires the Constitution. (Para 56)</p>	Hon'ble Supreme Court of India

	F.M. Ibrahim Katifulla, JJ.)		(Source : http://www.scconline.com)	
33.	Chandana Das (Malakar) v. State of W. B. and Others (Before T. S Thakur and R. S. Banumathi, JJ.)	(2015) 12 SCC 140	<p>Though grant in aid is not included in constitutional guarantee to linguistic and religious minorities to establish and run their educational institutions, but such right cannot be denied only because institutions are established by linguistic or religious minorities. Grant of aid cannot be made subservient to conditions which deprive institutions of their substantive right of administering such institutions.</p> <p>Minority institution entitled to protection of Article 26 & 30, right to appoint teachers of its choice who satisfy eligibility conditions is implicit in their right to administer such institutions and such right cannot be diluted by state or its functionaries. (Para 21)</p> <p>(Source : http://www.scconline.com)</p>	Hon'ble Supreme Court of India
34.	Sk. Mohd. Rafique v. Managing Committee, Contai Rahamania High Madrasah and Others (Before Arun Mishra and Uday U. Lalit, JJ.)	(2020)6 SCC 689	<p>The right to administer an institution is primarily to consist of four principal aspects. First, the right to choose its managing or governing body. It is said that the founders of the minority institution have</p>	Hon'ble Supreme Court of India

			<p>faith and confidence in their committee or body consisting of persons selected by them. Secondly, the right to choose its teachers having compatibility with their ideals, aims and aspirations. Third, is the right not to be compelled to refuse admission to the students. Fourthly, the right to use its properties and assets for the benefit of its institution. This judgment thus unambiguously recognizes that the right to select its teachers is a part of the right to administer an institution which Article 30 has conferred on it.</p> <p>(Para 14) (Source : http://www.scconline.com)</p>	
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PART - IV

FREQUENTLY ASKED QUESTIONS (FAQS)

i. Whether prior permission of the Government is required for the Religious & Linguistic Minorities to establish (start or open) New Educational Institution i.e. Primary School/High School/College?

No. (*Rahmania Primary Teachers Training College, etc. v. State of Bihar and Another*, AIR 1992 Pat 1, Para 26)

ii. Whether subsequent Permission is required for the Religious & Linguistic Minorities from the Government after establishing (starting/opening) an Educational Institution?

Yes. For getting recognition to the Certificate or Degree Course, the Permission from the Government is required but not the prior permission. Therefore, the permission can be obtained after starting the school or college subject to the fulfillment of certain prescribed conditions. (*Ahmedabad ST. Xaviers College Society and Another v. State of Gujarat and Another*, (1974)1 SCC 717, Para 18 and *Hon'ble Patna High Court, Rahmania Primary Teachers Training College, etc. v. State of Bihar and Another*, AIR 1992 Pat 1, Para 21 & 41.)

iii. Whether any policy of the Government in respect of not giving permission to the particular type of New Educational Institution is binding on the Minority Educational Institution?

No. (*Andhra Kesari Education Society, Ongole v. Govt. of A. P. & Others*, AIR 1984 AP 251, Para 14 & 15 and *Society of St Ann's Mehdipatnam, Hyderabad, etc. v. The Secretary to Government, Education Department, Hyderabad & Others*, SCC OnLine AP 335, Para 84 & 86)

iv. Whether Government can reject any application for

permission of a Minority Education Institution to start a New School / College on the ground that such Education Institution is not needed in that particular locality?

No. (Andhra Kesari Education Society, Ongole v. Govt. of A. P. & Others, AIR 1984 AP 251, Para 14 & 15 and in Society of St Ann's Mehdipatnam, Hyderabad, etc. v. The Secretary to Government, Education Department, Hyderabad & Others, SCC OnLine AP 335, Para 84 & 86.)

v. Whether an educational institution established by the majority community but handed over to the minority community for administration becomes a Minority Educational Institution.

YES, provided the entire assets & management is handed over to the minority community by the majority community. (*Firdaus Amrut Higher Secondary School, Ahmedabad v. M. M. Dave*, AIR 1992 Guj 179, Para 17, 18 & 19.)

vi. Whether the Name of the Trust must reflect Minority character?

NO. Even if a simple name like the Maharashtra Cosmopolitan Education Society or such other name is given to the Trust it still remains a Minority Educational Institution.

vii. Whether a Letter from the Government/Directors of Education or the University Authorities recognizing the Institution as a Minority Institution is required First?

No.

For clarity, it is advisable to obtain such letter of recognition of minority character of the Educational Institution from the Government or Directors of Competent Authorities such as AICTE, NCTE, etc or from the University Authorities to avoid administrative complications. In short, the institution has to prove its Minority Character, but need not wait for the letter.

viii. What are the pre-requisites to show or prove that a particular Trust which runs a School/College is a Minority Educational Institution?

The only thing is required to be proved is- WHO are/were the Founder Trustees of that Trust? **Bombay High Court Division Bench Decision DT.17-12-1992 in Appeal No. 268/1988 Original Side and *St. Stephen's College v. University of Delhi*, (1992) 1 SCC 558, Para 129, 131 & 133.**

ix. What is the Eligibility for grant of Minority Status Certificate (MSC)?

(i) The educational institution is established by a member/ members of the religious minority community. (ii) The educational institution is established primarily for the benefit of the minority community. (iii) The educational institution is being administered by the minority community. (iv) If the Minority Educational Institution concerned is being run by a trust or a registered society, the majority of the trustees of the trust or members of the society, as the case may be, must be from the minority community and the trust deed/ Articles of Association must reflect the objective of sub-serving the interest of the minority community.

x. Where an Application by the Applicant/Educational Institution for Minority Status Certificate (MSC) can be made?

The Applicant/Educational Institution can apply for Minority Status Certificate (MSC) to : (i) **the State Government** as per the provisions contained in the National Commission for Minorities Act, 1992 (19 of 1992), where an authority established by the Central Government or any State Government, as the case may be, **OR** (ii) **the National Commission for Minority Educational Institutions (NCMEI)**, prior to which the Educational Institution/school

has to apply before the State Competent Authority for grant of No Objection Certificate (NOC) under section 10 of the NCMEI Act 2004.

The List of Competent Authority for all States appointed under Section 10 and 12 (B) of the National Commission for Minority Educational Institutions Act, 2004 is available on URL i.e.

<http://ncmei.gov.in/WriteReadData/LINKS/competent%20authority%20for%20all%20states92fa1fe9-8113-4056-b988-c7ce1802a022.pdf>.

Deemed No Objection Certificate (NOC) :

In case, the State Competent Authority does not take any action on the application for grant of No Objection Certificate within 90 days then it is deemed that the State Competent Authority has granted No Objection Certificate to the applicant Institution.

xi. How an Application for Minority Status Certificate (MSC) can be made by the Educational Institution?

The Applicant /Educational Institution can apply for Minority Status Certificate (MSC) in the prescribed format with all requisite documents either **OFFLINE or ONLINE** (URL <http://ncmei.gov.in/admnis/applicant/login.aspx>).

For applying **ONLINE**, please refer to “**NCMEI MSC Application Applicants User Manual (which contains the List of Requisite Documents)**” available on URL i.e. (<http://www.ncmei.gov.in/WriteReadData/ncmei%20Applicant%20Manual.pdf>).

In the State of Maharashtra, the Educational Institutions can apply **ONLINE** for Grant of Minority Status Certificate (MSC) with the help of URL i.e.

<https://aaplesarkar.mahaonline.gov.in/en?MenuID=1211#> .

The Applicant/Educational Institution must submit five sets of the application along with requisite documents. Envelopes and postage stamps are required to be submitted by the Applicant/Educational Institution along with the application for sending communications to the respondents.

xii. Whether the Decision given by the National Commission for Minority Educational Institutions (NCMEI) can be Final?

The National Commission for Minority Educational Institutions (NCMEI) is a quasi judicial body and has been endowed with the powers of a Civil Court for the purpose of discharging its functions under the NCMEI Act, 2004. So far as the affiliation of a minority educational institution to a university is concerned, the decision of the Commission would be final.

As per the judgment of Hon'ble Supreme Court of India, in the matter of *Sisters of St. Joseph of Cluny v. The State of West Bengal and Ors.*, (2018) 6 SCC 772, held that, this Commission has both original as well as appellate jurisdiction. Parliamentary paramountcy has been provided for by Articles 246 and 254 of the Constitution. In view of the mandate of these Articles of the Constitution, the National Commission for Minority Educational Institutions Act, 2004, being a Central law shall prevail over the State law. The State Government cannot add, alter or amend any provision of the Act by issuing executive instructions.

No court (except the Hon'ble Supreme Court of India and Hon'ble High Courts exercising jurisdiction under Article 226 and 227 of the Constitution of India) shall entertain any suit,

application or other proceedings in respect of any order made by the National Commission for Minority Educational Institutions (NCMEI).

xiii. Whether Provisions of the Right of Children to Free and Compulsory Education Act, 2009 are applicable to the Religious & Linguistic Minority Educational Institutions?
No. (Society for Un-aided Private Schools of Rajasthan v. Union of India and Another, (2012)6 SCC 1, Para 65, Para 311(1) and Pramati Educational and Cultural Trust (Registered) and Others v. Union of India and Others, AIR 2014 SC 2114, Para 56)

xiv. What right the Management of Religious and Linguistic Minority have in respect of selection and appointment of Teaching and Non-teaching Staff?

The Selection Committee constituted by the Minority Educational Institution should select such staff which fulfills all the conditions prescribed by the Government / Competent Authority in respect of educational qualifications, experience, age, etc. **(Ahmedabad ST. Xaviers College Society and Another v. State of Gujarat and Another, (1974)1 SCC 717, Para 18, 30 & 103)**

xv. Whether the provisions of appointing 50% of the Teaching and Non-teaching Staff in the Educational Institutional from Reserve Quota is Applicable to the Minority Educational Institution?

This provision is NOT applicable to the Minority Educational Institutions. (Hon'ble Bombay High Court in **Hyderabad (Sind) National College Board and Another v. the University of Bombay and Others**, AIR 1993 Bom 229, Para 7, 8 & 9)

xvi. Whether the rights of admission can be claimed by both the Religious & Linguistic Minority Institution, if it is

receiving grant-in-aid from the State or Central Government?

Yes. Establishing New Colleges, Schools, appointment of Principal, Vice-Principal, Head Master, Asst. Head Master, Teaching and Non-Teaching Staff, not appointing reserve quota seats in teaching and non-teaching staff, admission of Students in Educational Institutions, etc. as guaranteed by Article 30 (1) of the Constitution of India can be claimed by the Religious and Linguistic Minority Educational Institution, even if the Institution is receiving grant-in-aid from the appropriate Government.

xvii. Whether the Government/ University or any other Authority can interfere in the process of selection or appointment of the Members of the Managing Committee or Office-bearers of the Trust?

No. (*D. A. V. College, etc. v. State of Punjab and Others*, AIR 1971 SC 1737, Para 34)

xviii. Whether the Educational Institutions established by the Minorities have to impart an education only through the respective medium i.e. Muslims in Urdu, Christians in English, Sikhs in Gurumuki, Sindhis in Sindhi and Gujarati in Gujarati medium?

No. (*Ahmedabad ST. Xaviers College Society and Another v. State of Gujarat and Another*, (1974)1 SCC 717, Para 86 & 97)

xix. Can a person directly approach to the Hon'ble Supreme Court in case of a violation of Article 30(1) of the Indian Constitution?

Yes. Any individual can approach to the Hon'ble Supreme Court under Article 32 for the violation of his fundamental right guaranteed under Article 30(1), directly. The Supreme Court of India has original jurisdiction under this Article and

have to entertain a plea filed under this Article. However, Article 226 of the Constitution gives a person the right to approach the High Court of their respective State, if there is a violation of such person's fundamental rights for the same relief as one intends to receive from the Supreme Court.

xx. 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?

No. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe 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, etc. The merit may be determined either through a common entrance test conducted by the University or the Government concerned followed by counselling, or on the basis of an entrance test conducted. However, Reservation Policy of State or Central Government can't be made applicable to the Minority Educational Institutions.

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ABBREVIATIONS

UN	United Nations
ICCPR	International Convent on Civil and Political Rights
ICESCR	International Convent on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
CAT	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and their families
CRPD	Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities
NCMEI	National Commission for Minority Educational Institutions

**NAMES, ADDRESSES AND TELEPHONE
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