

# Cultural and Educational Rights: Articles 29-30 under Indian Constitution

By [Mariya Paliwala](#) - October 9, 2022

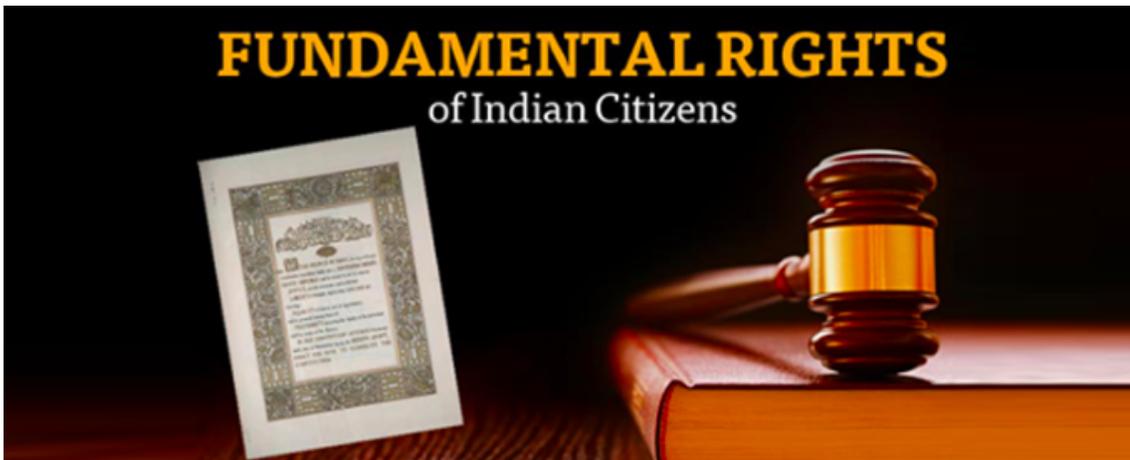


Image source - <https://bit.ly/39WtqZc>

*This article is written by [Millia Dasgupta](#) and [Nimisha Dublsh](#). This article covers the cultural and educational rights of minorities and discusses various landmark cases relating to the topic.*

*This article has been published by [Sneha Mahawar](#).*

## Table of Contents



1. Introduction
2. Who is a minority
3. An analysis of Article 29 of the Indian Constitution
4. Case laws
  - 4.1. S.P. Mittal v. Union of India, AIR 1983 SC 1
    - 4.1.1. Facts
    - 4.1.2. Issue Raised
    - 4.1.3. Decision
  - 4.2. The State of Madras v. Champakam Dorairajan (1951)
    - 4.2.1. Facts of the case
    - 4.2.2. Issues involved in the case
    - 4.2.3. Judgment of the Court
  - 4.3. State of Bombay v. Bombay Educational Society (1954)
    - 4.3.1. Facts of the case
    - 4.3.2. Issues involved in the case
    - 4.3.3. Judgment of the Court
  - 4.4. DAV College, Punjab v. State of Punjab (1971)
    - 4.4.1. Facts of the case
    - 4.4.2. Issues involved in the case
    - 4.4.3. Judgment of the Court
  - 4.5. Jallikattu's Case
  - 4.6. Rights of minorities
5. The distinction between Article 29(2) and Article 15(1)
  - 5.1. A tabular representation
6. Right of Minorities to establish and manage Educational Institutions
7. The Constitutional (44th Amendment) Act, 1978
8. Relationship between Articles 29(1) and 30(1)
9. Power of Government to regulate minority-run Educational Institutions
  - 9.1. St. Xavier's College v. the State of Gujarat, AIR 1974 SC 1389
    - 9.1.1. Facts
    - 9.1.2. The contention of the Parties
    - 9.1.3. Issue Raised
    - 9.1.4. Decision
  - 9.2. Re Kerala Education Bill, AIR 1958 SC 956
    - 9.2.1. Facts
    - 9.2.2. Issues Raised
    - 9.2.3. Decision
    - 9.2.4. Importance
  - 9.3. Sidhrajibhai v. State of Gujarat, AIR 1963 SC 540
    - 9.3.1. Facts
    - 9.3.2. Issue Raised
    - 9.3.3. Decision
10. Right of recognition or affiliation, not a Fundamental Right
11. Admissions of students and qualification of teachers in unaided minority institutions
12. Admissions in aided minority institutions
13. Right of non-minorities to run educational institutions
  - 13.1. T.M.A. Pai Foundation v. the State of Karnataka, AIR 2003 SC 355
    - 13.1.1. Facts
    - 13.1.2. Issue Raised
    - 13.1.3. Decision
  - 13.2. Islamic Academy of Education v. the State of Karnataka, AIR 2003 SC 3724
    - 13.2.1. Facts
    - 13.2.2. Decision
14. P.A. Inamdar v. the State of Maharashtra: Reservation in Private Educational Institution violative of Articles 30 and 19(1)(g)
  - 14.0.1. Facts
  - 14.0.2. Decision
15. The Jain Community is not a minority
16. Conclusion

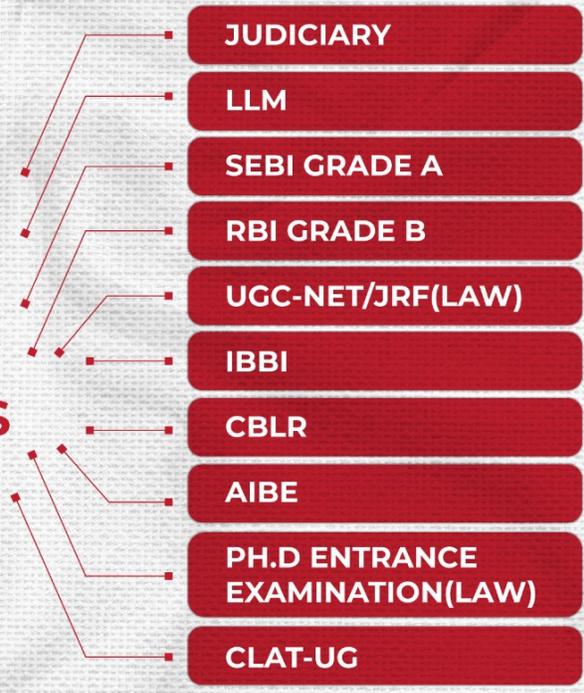
## Introduction

We have all heard that living room uncle or gossiping aunt proclaiming reservations are ruining our nation and the majority are the ones who suffer when it comes to admission. But one must stop and think, does the government truly have an inclination towards ruling for minority communities and their educational and cultural rights? To answer that question, we must first explore what are the cultural and educational rights minority communities have and how the government and courts deal with judicial questions concerning them. This article will explore such aspects in detail.

**REGISTER  
HERE**

**FOR FREE**

**STUDY MATERIALS  
OF FOLLOWING  
EXAMS**



## Who is a minority

[Article 30](#) of the Constitution talks about two types of minority communities – Linguistic and Religious. But while it defines the categories of minority communities, there is no official definition of the word by the government.

One can derive certain pointers from the various articles in our Constitution and reports from the government. [Article 29\(1\)](#) safeguards the rights of minority communities and states that anyone with “a distinct language, script or culture of its own” has the right to conserve it.

From the language of the text, we may understand that communities with distinct languages, scripts or cultures fall under minority communities. But in later cases such as [Bal Patil v. Union of India](#) and the [Islamic Academy of Education v. State of Karnataka](#), we see that courts rely on other factors such as economic welfare to decide whether a community is a minority or not.

In terms of religious minority communities, [Section 2\(c\) of the Minorities Act](#) recognizes 5 religions as minority communities namely Muslims, Sikhs, Christians, Buddhists, and Zoroastrians (NCMA).

## An analysis of Article 29 of the Indian Constitution

The basic rights of an Indian citizen are guaranteed by the Fundamental Rights enshrined in the Constitution of India. Basically, there are six fundamental rights entailed in the Constitution of India. [Article 29](#) along with [Article 30](#) of the [Constitution of India](#) talks about the cultural and educational rights that are given to an Indian citizen. The main aim of Article 29 of the Constitution of India is to protect the culture of the minority groups of India. India is a very diverse country which is both a strength and a weakness for it. The complex nature of India hence gives rise to the use of Article 29 of the Constitution. The Constitution acts as a guarantor of these rights to the minority groups of India. This helps in preserving all the marginalised groups of India. The people are also motivated to protect, propagate and preserve their culture.

Article 29 was [promulgated](#) in the year 1975 on 26th April. [Chapter 3](#) titled 'Fundamental Rights' contains Article 29 and comes under the Department of Personnel and Administrative Reforms.

The right is given only to those who are citizens of India and reside within the territory of India. Since India has a huge diversity of cultures and traditions, Article 29 of the Constitution of India gives the right to every citizen to maintain their culture and its related avenues.

In India, Hindus exist in the majority but they are in the minority in some states. If we take India as a whole, then the Christians, Muslims, etc. are the minorities, but in the states in which Hindus are a minority, it is lesser. So, whenever a minority has a fear of losing its cultural identity, it is backed by Article 29 of the Constitution of India.

Article 29(1) of the Indian Constitution aims at protecting the rights of a group. This is an absolute right for the groups in minority with respect to their cultural background. This provision cannot be subject to reasonable restrictions for the general public's interests.

Article 29(2) of the Indian Constitution aims at protecting the rights of an individual. The Article has provisions that guarantee the rights of an individual citizen (not related to the community to which the citizen belongs). Hence, Article 29 as a whole guarantees the protection of both religious and linguistic minorities.

As per the Constitution of India, there are only two types of minorities that are Religious and Linguistic. The Constitution in this Article has not mentioned the minorities as per caste, representation, etc. The Supreme Court said that the scope of the Article is not restricted to minorities only. The language used in the Article 'section of citizens' means that it includes both minorities as well as the majorities.

In the case of *Ravneet Kaur v. Christian Medical College (1997)*, the Court observed that the state was promoting discrimination in the institutes that were aided. The Court held that even the private schools and colleges which received government aid, cannot discriminate on the basis of religion, caste or race of the students.

In the case of *DP Joshi v. State of Madhya Bharat (1955)*, the Court noticed that there still exists one kind of discrimination that doesn't come across people and that is the 'place of residence. The state universities use the criteria of residence qualification for the admissions of students. In another case, *Ashoka Kumar Thakur v. Union of India (2008)*, The Supreme Court ruled that it would be preferable not to offer reservations based on residence or institutional preference when it comes to admissions to postgraduate courses.



Download free study material

LawSikho

**Diploma in Labour, Employment and Industrial Laws (including POSH) for HR Managers**

Course Duration: 6 Months

in association with

MEPSC  
Ministry of Labour and Industrial Training  
and Professional Skills Education

Skill India  
@Skill-1818

## Case laws

### S.P. Mittal v. Union of India, AIR 1983 SC 1

#### Facts

In this case, Sri Aurobindo was not only an excellent academist and administrator but he was also engaged in political work. Later on, he gave it all up for a life of meditation and moved to Pondicherry, Tamil Nadu. It was there where he met Madam M. Alfassa, who would, later on, be known as Mother, who became his disciple. Later on, his disciples and the Mother established The Sri Aurobindo Society to propagate and practice the ideals and beliefs of Sri Aurobindo.

Through this society, the founding president, the Mother, set up a township called Auroville which was meant for people to come and engage in various pursuits. Later on, [The United Nations Education, Scientific, and Cultural Organization \(UNESCO\)](#) took it upon themselves to fund provisions to help with the development of Auroville.

When the mother passed away, many problems such as mismanagement of the project and misuse of the funds cropped up which made it impossible for the townships functioning and growth. Thus, keeping in mind the international character of Auroville due to the agreement with UNESCO, the government of Tamil Nadu took management in their own hands and filed a presidential ordinance which later on became [The Auroville \(Emergency Provisions\) Act, 1980](#).

Seeing that the government took control of a 'religious' enterprise, the Constitutional validity of the Act was challenged on 4 grounds. One of the grounds was that it was violative of Article 29 and 30.



#### Issue Raised

Does the Act violate Article 29 and 30?

#### Decision

It was held by the bench that the aforesaid Act does not violate Article 29 and 30. The court held that it, in no way curtailed their right or prevented any citizen from conserving its own language, script or culture and thus was not violative of Article 29.

Also in this case, in order to seek protection under Article 30, one must prove that they are a linguistic or religious minority and the institution in question was established by them. Considering that Auroville was not religious and was founded on the ideology of Sri Aurobindo, they could not seek protection under these articles.

## The State of Madras v. Champakam Dorairajan (1951)

### Facts of the case

In the case of *State of Madras v. Champakam Dorairajan*, the people of Madras challenged the order related to the admissions passed by the Madras government. The order contained provisions for the admission of students to state medical and engineering colleges.

### Issues involved in the case

It was found that the order denying admissions was solely on the basis of caste/religion. The issue was whether the provisions were in violation of the rights of the citizens under Article 29(2) and Article 15(4) of the Constitution of India or not.

### Judgment of the Court

The order was held to be void and in violation of Article 29(2) of the Constitution of India. As a consequence of which, Article 15(4) of the Constitution of India was amended for the first time and it empowered the State to make special rules and regulations for bringing forward any sort of socially and educationally backward classes of the citizens of India. It also covered the Scheduled Castes (SC) and Scheduled Tribes (ST).

## State of Bombay v. Bombay Educational Society (1954)

### Facts of the case

In the case of *State of Bombay v. Bombay Educational Society*, it was found that the Bombay government passed an order that aimed at banning the admission of students whose mother tongue was not English. The English medium schools that received government aid were mandated to do so.

### Issues involved in the case

The order denied the admissions solely on the basis of the mother tongue language of the students. The order targeted the Anglo-Indians and directed them to admit only those students whose mother tongue is English. They were warned that if they admitted other students who don't speak English and don't fall under the category as prescribed by the government, then the aid provided by the government will be forfeited.

### Judgment of the Court

The Court said that minority institutions have the right to give admissions to the students of their choice even if they receive government aid. The Government aid provided to institutes does not give the right to the government to violate the rights of minorities.

## DAV College, Punjab v. State of Punjab (1971)

### Facts of the case

In the case of *DAV College, Punjab v. State of Punjab*, the University issued a notice declaring that the medium of teaching and instructing shall be Punjabi in all the affiliated institutes. A petition was filed against the university claiming that minorities should have the right to choose the medium of teaching and instructing.

### Issues involved in the case

The order was infringing on the rights of those who didn't know Punjabi. The issue was whether the notice was violating Article 29 and 30 of the Constitution of India or not.

### Judgment of the Court

The Court also agreed with the contentions made by the petitioners and granted relief to the affiliated institutes to teach and instruct in the languages that they felt comfortable with.

## Jallikattu's Case

In the infamous [case](#) of the Jallikattu festival, the very traditional game of bull-taming caught the attention of the political parties in the country. In the year 2021 in Tamil Nadu, the government got its eyes on the issue of the festival of Pongal. It has been a tradition for more than 2000 years. Jallikattu is a sport that is played to honour the bull owners who rear them for mating. The sport is a violent one as it tries to tame a bull for a prize, and if they fail, then the bull owner is given a prize. This sport is famous mainly in the districts of Madurai, Theni, Pudukkottai, Dindigul, and Tiruchirappalli in Tamil Nadu. These districts are famously known as the Jallikattu belt. The festival is celebrated in the month of January during the Tamil harvest time.

In the year 2011, bulls were added to the list of animals whose training and exhibition were prohibited. As a result, bull-taming sports were banned by the Supreme Court in the year 2014. But the current position of the Jallikattu bull festival is that it has been legalised by the government. The case was referred to the Supreme Court in 2018, which is pending in court and the final verdict is yet to be passed. The main conflict that is to be resolved is whether the tradition that is followed by the people of Tamil Nadu should be protected as a cultural right which is a fundamental right, or not. Another one is whether Article 29(1) of the Constitution of India is against the rights of animals or not.

## Rights of minorities

Certain rights are laid down to safeguard the right of minority communities. Article 29 ensures that anyone residing in India has the right to preserve a distinct language, script or culture and no State educational institute or any institute receiving aid from the state shall discriminate against anyone based on race, caste, creed, etc. Article 30 ensures the right of minority communities in educational institutions and prohibits discrimination against them.

With regard to the reservation and special provisions for minority communities, many have brought up the argument that such provisions are 'cushioning'. But in the case of [The Ahmedabad St. Xaviers College vs State Of Gujarat & Anr](#), Khanna J. stated that such provisions are necessary so that "none might have the feeling that any section of the population consisted of first-class citizens and the other of second class citizens". He also stated that a majority of the Fundamental Rights of the Constitution protect majority rights as it protects minority rights.

In the TMA Pai case, the judge considered the opinion of the [Permanent Court of International Justice](#) in the case of Minority Schools in Albania, advisory opinion was that there is a need for provisions that help minority groups preserve the uniqueness of their distinct culture and script and minority religions to uphold the uniqueness of their culture. Khanna J. stated that "the object of protection is to enable minority communities to preserve the characteristics which distinguish themselves from the minority".

In the [Kerala Education Bill](#) case, with regards to institutions handled by minority communities, Hidayatullah C.J stated that while Article 30 (1) might be general protection over distinct languages and scripts, it is also right to establish educational questions of choice. Thus this Act is not diminished if the institution's primary function is not protecting minority culture, its also for institutions that are established and managed by minority communities and they accept other students as well.

## The distinction between Article 29(2) and Article 15(1)

[Article 29 \(2\)](#) and [Article 15 \(1\)](#) are very similar due to the fact they both prevent discrimination on the basis of caste, race sex, etc and are sometimes seen as mutually exclusive. However, there is a big difference. While Article 15 provides a broader ambit against discrimination on the basis of caste, race sex, etc, Article 29 provides specific restitution for those who have faced discrimination from state-run educational institutions at the time of entry or admission.

Why did the fathers of the Constitution take an extra step to prevent discrimination by educational institutions? Education is important for a certain community to flourish and grow. When properly and efficiently educated, one becomes equipt to enter public services and search for jobs. Without the tools of education, the community shall be culturally but economically dominated. Thus, it is imperative that any minority community gets access to education and receives relief against discrimination.

## A tabular representation

S. No.	Article 29(2)	Article 15(1)
1.	The Article aims at protecting the rights of the citizen against the state and other institutions as well.	The Article aims to protect the rights of the citizens against the state only.
2.	The Article mainly prohibits discrimination like admissions into educational institutes i.e., schools and colleges.	The Article prohibits many types of discrimination.
3.	The clauses are primarily related to admission to educational institutions that are maintained or aided by the state.	The clauses cover a wider scope than Article 29(2) and are applicable to all citizens.
4.	Discrimination on the basis of sex and birthplace is not talked about in this article.	Discrimination on the basis of sex and birthplace is prohibited as per this clause of the article.

## Right of Minorities to establish and manage Educational Institutions

Under Article 30, the Constitution provides provisions for minority communities to establish and manage educational institutions and protect themselves from discrimination of granting aid by the government. Article 29 (1) gives any citizen the right to conserve a distinct language, script or culture of its own. While Article 29(2) also protects them, it is more for every citizen and is not specially tailored for minority groups.

One of the biggest debates in judicial history has been whether minority communities have the right to have autonomy while managing these institutions. Such questions gave birth to the famous [T.M.A. Pai Foundation v. State of Karnataka case](#) which had a massive 11 Judge Bench. In present times, the common consensus is that governments are allowed to regulate such institutes so long as such regulation is in pursuit of ensuring academic excellence and it does not harm the character of the minority institute.

# The Constitutional (44th Amendment) Act, 1978

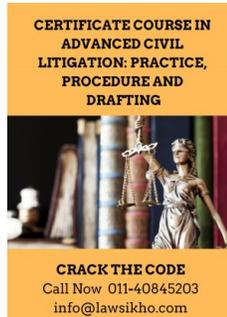
The [Constitutional \(44th Amendment\) Act](#) removed the right to property as a Fundamental Right under Article 19. However, it ensured that "the removal of property from the list of Fundamental rights would not affect the right of minority communities to establish and administer educational institutions of their choice".

## Relationship between Articles 29(1) and 30(1)

Article 29(1) states protect the rights of members of communities who have distinct language, culture, and script.

Article 30(1) protects minority rights with regard to establishing and managing educational institutions.

Thus both Acts facilitate minority rights to establish and manage their own educational institutions. The only difference is that 29(1) makes an attempt to define who minority communities are. Due to the articles being almost identical, many might believe that when seeking protection, you can only seek protection under one. But in *St. Xaviers College v. the State of Gujarat*, it was stated that Article 29(1) and 30(1) were not mutually exclusive.



[Click above](#)

## Power of Government to regulate minority-run Educational Institutions

### St. Xaviers College v. the State of Gujarat, AIR 1974 SC 1389

#### Facts

In this [case](#), St. Xaviers College, a religious denomination affiliated under the Gujarat University Act, 1949, provided education to not only Christians but students of other religions and creeds. They had challenged sections 35-A, 40, 41, 51-A and 52-A of the [Gujarat University Act, 1972](#) which dealt with the appointment of teachers and students of minority communities. They stated that the Act encroached on the autonomy of the universities.

#### The contention of the Parties

- Article 29 (1) of the Constitution safeguards a citizen's right to preserve his or her own language, script or culture, and Article 30 (1) states that minority communities have the right to establish and manage their own institutions.
- Article 30(2) also states that the government should not discriminate against any institution under minority management.
- Under [Article 32](#), they had a right to not only establish and administer institutes of their choice but they also had the right to affiliation( to operate independently, but also has a formal collaborative agreement with the state).

The opposition stated that [Article 29](#) and [30](#) were mutually exclusive and protection under these Acts can not be brought up at the same time. They also stated that affiliation was not a Fundamental Right and that a minority institution must abide by the provision if they wished to be affiliated. Another argument was unless the law was an absolute violation of minority rights under [Article 30\(1\)](#), then there was no reason for the Act to be struck down. They pleaded that the court wait until statutes and ordinances are issued in pursuit of the disputed sections.

#### Issue Raised

- Are Article 29 and 30 mutually exclusive?
- Is affiliation a Fundamental Right?
- Does section [35-A](#), [40](#), [41](#), [51-A](#), and [52-A](#) of the Act tamper with the institutes Fundamental Right?

#### Decision

It was held that

- Article 29 and 30 were not mutually exclusive.
- While affiliation is not a Fundamental Right, it is necessary for the meaningful management and establishment of such institutes
- [Section 35-A, 40, 41, 51-A and 52-A](#) of the Act would not apply to minority institutions as they tamper with their Fundamental Right to establish and manage educational institutions of their choice.

Ray C.J. and Palekar, J. stated that it would be wrong to limit their rights to only institutes that administer language, script, and culture. This would make the Act redundant. It is also wrong to believe that Article 29 and 30 are mutually exclusive because while Article 29 is for all citizens, Article 30 was placed to safeguard the rights of minority communities. Thus Article 30 must be treated as an extension of Article 29.

Jaganmohan Reddy, J. stated that while affiliation is not a Fundamental Right, the state cannot use it as a tool to force an institution to abide by certain rules. The institution has the right to "establish their institutions, lay down their own syllabi, provide instructions in the subjects of their choice, conduct examinations and award degrees or diplomas, seek recognition to their degrees and diplomas and ask for aid where aid is given to other educational institutions". The state can only discriminate on the basis of the excellence of the institution.

With regard to the various disputed sections of the Act, the general consensus of the bench was that minority-managed institutions had the right to function without government intrusion of such nature.

## Re Kerala Education Bill, AIR 1958 SC 956

### Facts

In this [case](#), the President under [Article 143](#) of the Constitution approached the Supreme Court regarding the Kerala Education Act 1958. Out of many of his inquiries, the President questioned Sub-Clause (5) of Clause 3 which stated 'any new school or any higher class opened in any private school that did not live up to the standards of government regulation would not be recognized by the Government'.

The President's question was whether giving such power to the government would be violative of Art 30 as minority communities had the right to manage and establish their own institutions.

### Issues Raised

While minority communities had the right to administer, do they have the right to maladminister?

### Decision

It was held that minority groups did not have the right to maladminister. Das, C.J. stated, "Reasonable regulations may certainly be imposed by the state as a condition for aid or even for recognition".

It also stated that while opening up educational institutes was essential for minority communities to exercise their right under Article 30, all educational institutes are subjected to Article 29(2) which states that all citizens in state or state-aided institutions must not be discriminated during the time of admission on the basis of race, sex, creed, etc.

### Importance

The court's opinion on government regulation on educational institutes and Article 29(2) have been used as persuasive precedents for landmark cases. An example is [T.M.A. Pai Foundation v. State of Karnataka](#).

## Sidhrajbhai v. State of Gujarat, AIR 1963 SC 540

### Facts

In this [case](#), the petitioners (Sidhrajbhai) are members of a society that has established many educational institutions, including a training school for teachers. The Bombay government issued an order that 80% of teaching seats in non-government training schools would be reserved for candidates chosen by the government. The government also ordered the principal of that training school to not admit private students more than 20% of the class's strength without the permission of the Educational inspector.

The principal expressed his inability to comply with orders and the government threatened them with disciplinary action. The society moved to the Supreme Court stating that this order violated several of their Fundamental Rights, including Article 30.

### Issue Raised

Did the government orders violate Article 30?

### Decision

The orders violated Article 30. Article 30 is an absolute right and unlike Article 19, it cannot be subjected to 'reasonable restrictions'. It was stated that such a right is for the protection of minority communities and their right to manage their own educational institutions. If it is diminished in the name of reasonable restrictions then it shall merely be an illusion and shall have no impact. [The Kerala Education Bill case](#) was quoted as in that case it was held that the State can impose legislation on educational institutions only if such restrictions are not

detrimental to the “character of the minority institution”. Thus, unless these legislative restrictions aid the institution towards educational excellence while helping them retain its minority character, the court shall not take them into consideration.

## Right of recognition or affiliation, not a Fundamental Right

When the right of minority communities to establish and manage educational institutions is a Fundamental Right, it makes you wonder if affiliation or recognition is a Fundamental Right as well? At the end of the day, in order for an institution to achieve sufficient excellence, it is imperative that they have some sort of recognition or affiliation from the state.

This exact query was brought up in [Sidhraj Bhai v. State of Gujarat](#). While the court recognized the importance of affiliation, they denied that it was a Fundamental Right. In later on cases like [T.M.A. Pai Foundation v. State of Karnataka](#) and [P.A. Inamdar v. State of Maharashtra](#), it was held that the government is allowed to set up rules and regulations that institutes must follow in order to get affiliation. These regulations must be in pursuit of educational excellence.

## Admissions of students and qualification of teachers in unaided minority institutions

Through the cases of [T.M.A. Pai Foundation v. the State of Karnataka](#) and [P.A. Inamdar v. the State of Maharashtra](#), the general consensus of courts is that while such institutes have autonomy over management, such institutes must make sure that during admission they adhere to Article 29(2)- majority community students and employers should be admitted as well.

## Admissions in aided minority institutions

The government has the right to regulate the management of such institutions including fee structure, admission of students and employment of teachers. They shall have fixed quotas depending on the local need.

## Right of non-minorities to run educational institutions

The two rights are [Art 19\(1\)\(g\)](#) which is right to the profession (subject to restrictions in [Art 19\(6\)](#)) and [Article 26](#) which is the right of all religious denominations to maintain and establish educational institutions.

## T.M.A. Pai Foundation v. the State of Karnataka, AIR 2003 SC 355

### Facts

In this [case](#), the [St Stephen’s College v University of Delhi](#) case was previously reviewed by a 5 Judge Bench, was transferred to a 6 Judge Bench and then a massive 11 Judge Bench to decide the status of minority rights.

### Issue Raised

Kirpal, CJI framed 5 main questions, those that are relevant to the article have been stated below-

1. “Is there a Fundamental Right to set up educational institutions and if so, under which provision?”
2. To what extent can private universities be regulated?
3. “In order to determine the existence of a religious minority in relation to Article 30, what is to be the unit?”
4. “To what extent can the rights of aided private minority institutions be regulated?”

### Decision

1. For non-minority groups, the two rights are Article 19(1)(g) [ the right to a profession which is subjected to restrictions of Article 19(6)] and Article 26 which gives the right to “all citizens and religious denominations to establish and maintain educational institutions”. For minority communities, Article 29(1) and Article 30(1) is provided by the Constitution.

The right of minority communities with regards to setting up educational institutes also includes the right to decide the method by which the students and teachers are selected. It should be fair, transparent and most importantly, based on merit. The same goes for un-aided schools.

But it is important for such authorities to abide by Article 29(2) during admission. They must not discriminate against students on the basis of sex, race, creed, etc at the time of admission, especially students from the majority community.

2. Private institutions are divided into three categories to answer this question-

- Private Unaided Non-Minority Educational Institutions- While the government can lay down rules and regulations (based on academic excellence) for affiliation, but the management of the institute should be autonomous.
- Private Unaided Professional Colleges- They have autonomy with regard to aspects such as fee structure and admission. But such colleges should not forgo the principle of merit and should reserve a few seats. These seats shall be reserved at the discretion of the management to those who have passed the entrance exam. The rest of the seats should go to people based on counseling by the state. For affiliation, the rules and regulations to achieve it should not be cohesive in nature.
- Private Aided Professional Institutions (non-minority)- Since the government is giving aid, they can lay down certain rules and regulations for management. They may also put guidelines for fee structure, admission for students and appointment of teachers.
- Other Aided Institutions- For such institutes, the government can lay down rules and regulations.

3. Linguistic and religious minority communities are covered by the expression "minority" under Article 30 of the Constitution. With regards to both Central and State law, the state shall be taken as the unit to decide whether a certain community is a minority or not. What happens when a community that is a minority in the country, is a majority in a certain state was left unanswered.

4. Article 30(1) does not override the law or government regulations, keeping in mind such regulations does not destroy the character of minority educational institutions. Laws pertaining to subjects such as health and morality still apply to them. This is despite the nature of the wording of Article 30. Regulations that ensure academic excellence and are for the welfare of teachers and students still apply.

When aid is given to such institutions, it must not come with certain conditions or regulations that harm the management and nature of the institution. But if such regulations are not detrimental to its management and character, then it is not violative of Article 30.

## Islamic Academy of Education v. the State of Karnataka, AIR 2003 SC 3724

### Facts

In this [case](#), several queries from the TMA Pai case were addressed. The importance of this case is that shows the various loopholes in the TMA Pai Foundation case, especially with regards to reservation of seats and autonomy of institutions with regards to management.

### Decision

- Educational institutes that are not given aid by the State are entitled to autonomy should not disregard the principle of merit.
- Management of unaided non-minority institutes could reserve a certain number of seats for students who had passed the entrance exam but the rest of the students should pass through counseling regulated by the state
- These unaided colleges should also provide provisions for the underprivileged.
- The percentage of the seat should be fixed according to the locality and the needs of such an area. Different percentages can be fixed for minority and non-minority groups.
- The bench considered Article 19 as the right to manage educational institutions for non-minority communities and Article 30 (1) as the right to manage educational institutions for minority communities.
- Appropriation of seats can not be held as a 'reasonable regulation' or a regulation in the interests of minority communities.
- The bench also stated that they would set up committees to monitor the fee structure and admission process in private universities.

## P.A. Inamdar v. the State of Maharashtra: Reservation in Private Educational Institution violative of Articles 30 and 19(1)(g)

### Facts

In this [case](#), several more queries from the T.M.A Pai verdict were addressed and the Islamic Educational Academy case was reviewed as well. This verdict goes against the Islamic Academy of Education verdict and reverts back to Pai.

## Decision

- In correlation with the Kerala Education Bill case, Lohoti, C.J divides the amount of protection educational institutions (both minority and non-minority) can seek from Article 30 into three categories.
  1. Unaided or unrecognized institutions that can enjoy protection under this Article to their "heart's content".
  2. Institutions asking for affiliation or recognition from the State must abide by the rules and regulations enforced by the government. This is only if the nature of such regulations is for the benefit of the institution.
  3. Institutions receiving state aid must abide by regulations with regards to the management of funds. Article 29(2) will also apply as they would be required to admit students from non-minority communities.
- The bench also puts a stop on policies that require unaided private colleges to reserve seats for citizens from backward classes. They believe such policies will cause the 'nationalizing' of seats. They believe such policies violated Article 30 of minority communities to set up and manage educational institutes autonomously and violated 19(1)(g) of non-minority colleges to practice any trade or profession. Instead, they let the state control the quota of seat-sharing between management.
- Interestingly, they do allow for the reservation of seats for non-resident Indians or NRIs. The reason they give behind this is that the high fees charged from such students could help students belonging to weaker parts of society.
- In regards to admission procedure in unaided education institutes, the Bench decided that merit for admission in various levels of education is crucial but its level of importance increases with the rising level of education. Merit might not have much of a role to play in kindergarten admission but had a crucial role to play in college admission.
- The bench also decides that every institute is allowed to set up its own fee structure but it shall be subjected to regulations to prevent excessive profiteering.
- And the last, but the most controversial, the bench stated that the Islamic Academy of Education case shall not exceed TMA Pai. Committees to monitor the fee structure and admission process of private universities shall not happen.

## The Jain Community is not a minority

In the case of [Bal Patil v. Union of India](#), it was debated whether Jains could become a minority under section 2(c) of the Minorities Act. The court rejected this claim and said it had statutory duties. They also stated-

"Before the Central Government takes a decision on claims of Jains as a 'minority' under Section 2(c) of the Act, the identification has to be done on a state basis. The power of the Central Government has to be exercised not merely on the advice and recommendation of the Commission but on consideration of the social, cultural and religious conditions of the Jain community in each state. Statistical data produced to show that a community is numerically a minority cannot be the sole criterion."

## Conclusion

Through this article, not only have we tried to understand who the government considers as minorities, but what logic the government has used to fix current-day reservation policies for minority colleges. We have seen the tedious process through which essential questions such as 'who can be considered a minority' and 'whether affiliation is a Fundamental Right'. While it is clear that our judiciary has done extensive work in the field of cultural and educational minority rights, it seems that we have miles to go.

---

*Students of [Lawsikho courses](#) regularly produce writing assignments and work on practical exercises as a part of their co*

---

*Students of [Lawsikho courses](#) regularly produce writing assignments and work on practical exercises as a part of their coursework and develop themselves in real-life practical skills.*

LawSikho has created a telegram group for exchanging legal knowledge, referrals, and various opportunities. You can click on this link and join:

<https://t.me/lawyerscommunity>

Follow us on [Instagram](#) and subscribe to our [YouTube](#) channel for more amazing legal content.