

MINORITY RIGHTS & EDUCATIONAL INSTITUTIONS: LATEST DEVELOPMENTS

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“In fact, one may well compare our nation to a big Jumbo jet flying through turbulent weather to a golden destination. For this flight every section of the people must be galvanised together as firmly as the various parts of the frame. The strength of the frame is equal only to the strength of the weakest section of the frame. *One little crack, i.e. a disgruntled minority, would force the jet to the ground till the crack is repaired.*” This is what Justice S.M. Sikri, former Chief Justice of India, has once said about the importance of minority rights. **The protection of the rights of minorities is a *sine qua non* in a healthy democracy.** For the political underdogs must be protected against the interference of the majority in their cultural development.

The Constitution of India protects minorities in different ways. Under Article 30, **it provides a fundamental right to religious and linguistic minorities to establish and administer educational institutions of their choice.** As per the interpretation of the Supreme Court, the right to establish and administer broadly comprises the following rights: a) to admit students; b) to set up a reasonable fee structure; c) to constitute a governing body; d) to appoint staff (teaching and non-teaching); and e) to take action if there is dereliction of duty on the part of any employees.¹

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*The depth and extent of these rights have been determined by a number of recent developments, including verdicts by the Apex Court and actions by the Legislative and the Executive. The recent trends of judicial interpretation and political interventions can be classified as positive and negative. **The positive trends** (I) are the emphasis on pluralism, secularism and equality as not only permitting but mandating special rights for the minorities, thus calling for a sympathetic and liberal interpretation of the educational right of the minorities. **The negative trends** (II) are the inroads created by unsympathetic judicial interpretations and unwarranted executive interferences, coupled with a few self-inflicted drawbacks by the minority institutions and their managements. In the last section (III), **we shall consider how minority institutions can best promote their rights in today's circumstances.***

I. Positive Trends

Pluralism and Minorities

The Supreme Court, through a Constitution Bench of eleven Judges, has reasserted in 2002 that “**India is a land of different castes, peoples, communities, languages, religions and cultures**”.² In the context of minority rights, the Court has used the imagery of a relief map in mosaic: “The one billion population of India consists of 6 main ethnic groups and 52 major tribes; 6 major religions and 6,400 castes and sub-castes; 18 major languages and 1,600 minor languages and dialects.”

“The essence of secularism in India can best be depicted if a relief map of India is made in mosaic, where the aforesaid one billion people are the small pieces of marble that go into the making of the map. *Each person, whatever his/her language, caste, religion has his/her individual identity, which has to be preserved, so that when pieced together it goes to form a depiction with the different geographical features of India. These small pieces of marble, in the form of human beings, which may individually be dissimilar to each other, when placed together in a systematic manner, produce the beautiful map of India. Each piece, like a citizen of India, plays an important part in the making of the whole.*” Even if one small piece of marble is removed, “the whole map of India would be scarred, and the beauty would be lost”.³ **This is clearly in tune with the constitutional concept of the**

composite culture of India.⁴ *The Judges rule out any absorptionist or inclusivist trend by clearly mandating that each piece has to retain its own identity.*

Secularism and Minority Educational Rights

The Supreme Court reiterated the earlier stand of a number of constitution benches that *secularism is one of the basic features of the constitution, thereby implying that it is even beyond the amending power of the Parliament. Besides, it laid down that Special Rights and Protection of Minorities are a necessary and essential ingredient of secularism.* Thus, it has declared baseless all kinds of theories founded on the concepts of pseudo-secularism or pampering of minorities. It has also overruled the view that unequal treatment or special rights and privileges in favour of minorities, especially religious minorities, is inconsistent with the ideal of secularism. The Supreme Court indeed unequivocally declared: *“The essence of secularism in India is the recognition and preservation of the different types of people, with diverse languages and different beliefs, and placing them together so as to form a whole and united India.”*⁵

Special Rights and Equality

The Apex Court has moreover set at rest the speculations regarding the content of the constitutional ideal of equality, as to whether giving special rights for special classes and groups is an exception to equality or whether it is a necessary ingredient and a mandatory requirement of equality itself.

The Judges have explained the ideal of substantive equality and differential treatment, using both constitutional concepts and poetic imagery. Our country is for example portrayed as a loving Mother. “Our country is often depicted as a person in the form of ‘Bharat Mata – Mother India’. The people of India are regarded as her children with their welfare being in her heart. Like any loving mother, the welfare of the family is of paramount importance for her.”⁶ *Then the text goes on to describe the relevance of preferential treatment.* For a healthy family, it is important that each member is strong and healthy. But then, all members do not have the same constitution, whether physical and/or mental. For harmonious and healthy growth, it is but natural for the parents, and the mother in

particular, to give more attention and food to the weaker child so as to help him/her become stronger. Giving extra food and attention and ensuring private tuition to help in his/her studies, will in a sense amount to giving the weaker child preferential treatment.⁷

It is further declared that conferring certain rights on a special class is not inequitable. “Just as lending physical support to the aged and the infirm, or providing a special diet, cannot be regarded as unfair or unjust, similarly, conferring certain rights on a special class, for good reasons, cannot be considered inequitable. All the people of India are not alike, and that is why preferential treatment to a special section of society is not frowned upon.”⁸ *“Article 30 is a special right conferred on the religious and linguistic minorities because of their numerical handicap and to instil in them a sense of security and confidence...”*⁹

Liberal and Sympathetic Approach to Articles 29 & 30

In 2002, the 11-Judge Bench in the TMA Pai’s case has quoted with approval the observations of Justice Khanna in the St. Xavier’s case, wherein he advocates that the provisions of the Constitution should be construed according to a liberal, generous and sympathetic approach. *“The minorities are as much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive the minorities of a sense of belonging, a feeling of security, a consciousness of equality and the awareness that the conservation of their religion, culture, language and script as also the protection of their educational institutions is a fundamental right enshrined in the Constitution.* The same generous, liberal and sympathetic approach should weigh with the courts in construing Articles 29 and 30, as marked the deliberations of the Constitution-makers in drafting those articles and making them part of the fundamental rights.”¹⁰ The Judgment adds that it can “be said to be an index of the level of civilisation and catholicity of a nation as to how far their minorities feel secure and are not subject to any discrimination or suppression”.¹¹

Conditions for State Regulations

The state can make reasonable regulations for minority institutions, but it must respect certain conditions. In this regard, the 11-Judge verdict approved and upheld in 2002 the dual test already

laid down in the Sidhajibhai's and St. Xavier's cases: "Recognising that the right to administer educational institutions could not include the right to maladminister, it was held that regulations could be lawfully imposed for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. *The regulation 'must satisfy a dual test, the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education'...* Regulations that embraced and reconciled the two objectives could be considered to be reasonable."¹²

In this connection the present judgment discusses with approval the St. Xavier's case. Justice Khanna had noted that a law which interfered with a minority's choice of qualified teachers, or its disciplinary control over teachers and other members of the staff, was void, as it was violative of Article 30(1). While it was permissible for the state and its educational authorities to prescribe the qualifications of teachers, it was held that once the teachers possessing the requisite qualifications were selected, the state would have no right to veto the selection of those teachers. *The selection and appointment of teachers for an educational institution was regarded as one of the essential ingredients under Article 30(1).*¹³ *This is applicable even in Aided Schools.*

Rights of Minorities Unaffected by Receipt of Aid

It was further held in the St. Stephen's case that the state could lay down reasonable conditions for obtaining a grant-in-aid and for its proper utilisation, but that the state had no power to compel minority institutions to give up their rights under Article 30(1). The present judgment reaffirms that the "regulation cannot change the character of the minority institution... *The rights under Article 30(1) remain unaffected even after securing financial assistance from the government.*"¹⁴ Explaining the implication of Article 30(2), the judgment reasserts that "the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution".¹⁵ Thus, "any grant that is given by the state to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution".¹⁶

The judgment further explains: "The conditions that can normally be permitted to be imposed on the educational institutions receiving the grant, must be related to the proper utilisation of the grant and the fulfillment of (its) objectives." Any such secular conditions like a proper audit "will be applicable and would not dilute the minority status of the educational institutions. *Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.*"¹⁷

Article 29(2) Cannot Annihilate Minority Rights

The 2002 judgment states: "Article 30(2) is an injunction to the state not to discriminate against any minority educational institution and prevent it from receiving aid... While, therefore, a minority educational institution receiving grant-in-aid would not be completely outside the discipline of Article 29(2), *by no stretch of imagination can the rights guaranteed under Article 30(1) be annihilated.*"¹⁸

The word 'only' in Article 29(2) "has been used for some avowed purpose. Denying admission to non-minorities for the purpose of accommodating minority students to a reasonable extent will not be *only* on grounds of religion etc., but is primarily meant to preserve the minority character of the institution and to effectuate the guarantee under Article 30(1)."¹⁹ **It is thus permissible to give preference to minority students even in aided institutions:** "As long as the minority educational institution permits the admission of citizens belonging to the non-minority class to a reasonable extent based upon merit, it will not be an infraction of Article 29(2), *even though the institution admits students of the minority group of its own choice for whom the institution was meant.*"²⁰

The Ratio of St. Stephen's Upheld

The 2002 judgment upholds the ratio of the decision in the Stephen's case (except the rigid ceiling of 50% in admission for minority students): "The right of the aided minority institution to preferably admit students of its community, when Article 29(2) was applicable, has been clarified by this Court over a decade ago in the St. Stephen's College case. While upholding the procedure for admitting students, this Court also held that *aided minority educational institutions were entitled to preferably admit their community candidates so as to maintain the*

minority character of the institution, and that the state may regulate the intake in this category..., but that this intake should not be more than 50% in any case... *Though we accept the ratio of St. Stephen's, which has held the field for over a decade, we have compelling reservations in accepting the rigid percentage stipulated therein.*"²¹

*"At the same time, the admissions to aided institutions, whether awarded to minority or non-minority students, cannot be at the absolute sweet will and pleasure of the management of minority educational institutions."*²² *"As the regulations to promote academic excellence and standards do not encroach upon the guaranteed rights under Article 30, the aided minority educational institutions can be required to observe inter se merit amongst the eligible minority applicants and the passage of a common entrance test by the candidates, where there is one, with regard to admissions in professional and non-professional colleges. If there is no such test, a rational method of assessing comparative merit has to be evolved."*²³

This judgment of the Supreme Court in 2002 has done a great service by highlighting education as one of the important solutions to the manifold problems faced by the country, especially the poor masses. In fact, the whole judgment proceeds on the premise that educational endeavours need to be given a push. The Court has also unshackled private enterprise in the field of education, while preventing it from being devoured by the monster of profiteering and capitation fees. **Now it is upto the people, Government and Legislatures to take this message forward and implement its vision without allowing it to be manipulated, vitiated or perverted.** *If the judgment and its rulings are misused, it will not be because it was bad but because the people who implement it are proved to be bad.*

National Commission for Minority Educational Institutions

In its 2004 Common Minimum Programme (CMP), the UPA Government had promised to set up a National Commission for Minority Educational Institutions. This has already been done by enacting the required statute.²⁴ *This law has also stated the right of a minority educational institution to seek recognition as an affiliated college of a Scheduled University.* The following such universities currently exist: University of Delhi, North Eastern Hill University,

Pondicherry University, Assam University, Nagaland University and Mizoram University.

Section 11 thus describes the functions of the Commission: "The Commission shall – (a) Advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it; (b) Look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a Scheduled University, and report its findings to the Central Government for implementation; and (c) Do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission." *Section 12 describes the powers of the Commission.*

The establishment of the National Commission is expected to further the fundamental rights of the religious and linguistic minorities to establish and administer educational institutions of their choice. The statutory right to get affiliation to the Scheduled Universities may help to enforce the fundamental rights of minorities, but it can also sometimes whittle down their rights in relation to other universities and authorities. **Only time will show the exact usefulness of the National Commission for the linguistic and religious minorities.**

II. Negative Trends: The Inroads into Minority Rights

The recent judgments of the Supreme Court in the TMA Pai's case, Islamic Academy case, Modern School case, Brahma Samaj Case and Usha Mehta case **have however made serious inroads into the constitutional rights of minorities** – contrary to the consistent interpretation held all through the past several decades. *The explicit negative trends are the prescription of the territorial unit alone for determining the minority status, the compulsory reservation for non-minorities in aided minority institutions, the provision for external appellate tribunals, and the permissibility of the national interest as a basis for regulations.*

Territorial Unit for the Determination of Minority Status

The main judgment by the majority of the Judges, delivered through Chief Justice B.N. Kirpal, has held that the unit for the determination

of a linguistic or religious minority should be the State, i.e. the province.²⁵ All the other judgments except that of Justice Ruma Pal have concurred with this view. **However, it appears that this view is incorrect, while that of Justice Ruma Pal is correct.**

First of all, this issue should not have been decided in a vacuum without the factual matrix which would have given more clarity. The majority of the Judges have fixed the state as the determining unit for minority status on the premises that the states were organised on a linguistic basis and that only linguistic minorities are relevant with regard to the states. Since linguistic and religious minorities are dealt together in Article 30, the same unit is also adopted for the latter.

But the whole logic seems flawed. The organisation of the states on linguistic lines does not necessarily mean that linguistic minorities ought to be determined in relation to the state alone. For instance, linguistic majorities in particular states need to be protected from the legislative and executive actions of the Union of India, in relation to which they are a minority. This is all the more so, now that the Parliament can legislate on education. In our democratic set up, the decision at the Union level can be influenced by the national linguistic majority groups. For example, the Parliament could prescribe Hindi as the compulsory medium of instruction in all educational institutions throughout the country. And the Malayalam-speaking people of Kerala would not be able to challenge this legislation under Article 30, whereas the Malayalam school in Delhi could effectively do so! All the schools in Kerala, Tamilnadu, Andhra, etc., would thus have to adopt Hindi as a medium of instruction!

To determine the minority character or status, the unit should be the one against which the protection is sought or whose action is impugned as offending Article 30. If the executive or legislative action of the Union is under challenge, then the unit for the determination of the minority character should be the Union. If the action of a state is under challenge, then the unit should be that of the state. This principle is very clear from the observations of Justice Mathew in the St. Xavier's case, to the effect that minority rights are a necessary concomitant of a democracy which, in fact, is a majority-rule. *Otherwise, when a majority in a state is a minority in relation to the whole nation, it*

would have no protection at the national level. This would greatly restrict the content and extent of the rights under Article 30.

The principle of adopting a liberal, sympathetic and purposive approach towards Article 30 moreover demands that, when there are two possibilities, we accept the more favourable interpretation for the minorities, the one which protects the greater number of groups and people. Furthermore, there is no incongruity or absurdity in adopting different criteria for the identification of the linguistic and the religious minorities. *Otherwise, the Christians residing in many North-Eastern States, the Muslims of Jammu & Kashmir and the Sikhs of Punjab would not belong to the minority communities of India!*

Compulsory Reservation for Non-Minorities

Even though the TMA Pai's judgment has attempted to interpret Articles 29(2) & 30 in a sound manner and discern the interplay between them through the principle of harmonious construction, the Judges (except Justices Quadri and Ruma Pal) have erred by prescribing a compulsory reservation and quota for non-minorities in minority institutions because they happen to receive some aid from the government. This does not even follow from the interpretation of Article 29(2) given by the majority judgment. This judgment indeed concludes from the word "only" that a preference by minority institutions to admit their own students does not go against Article 29(2). Hence, there is no reason to have a compulsory reservation or quota for non-minority students *as long as there are minority students*. **The interpretation of Justices Quadri and Ruma Pal thus appear to be the correct and sound one.**

Interference by an External Agency in Disciplinary Matters

The provision of a judicial tribunal as an appellate tribunal by the majority judgment goes against its own ruling that disciplinary matters are an ingredient of the right to administer. Such a tribunal could be permissible only after exhausting all the remedies within the management set-up and not as an appellate forum. The powers of such a tribunal should have been clearly delineated on limited grounds, at least as laid down by Justice Khare. *This possible challenge against disciplinary actions and orders will open the floodgates of litigation*

on all kinds of grounds. This in turn will seriously affect discipline and thus the very right of administration.

Permissible Regulations in View of the National Interest

In the Sidhajibhai's case, the Court had observed that the minority right under Article 30(1) "is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which, while maintaining the formal character of a minority institution, destroys (its) power of administration is held justifiable because it is in the public or national interest...., the (minority) right will be but a 'teasing illusion', a promise of unreality."²⁶

In his delivery of the 2002 majority judgment, Justice B.N. Kirpal thus 'clarified' these observations: "In the Sidhajibhai's case, it was laid down that regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. If this is so, it is difficult to appreciate how the government can be prevented from framing regulations that are in the national interest... Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. *Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the government from framing regulations in that behalf.* It is, of course, true that government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion."²⁷

Even though the 2002 judgment has upheld the dual test prescribed in the Sidhajibhai's and St. Xavier's cases, **the permissibility of regulations in the national interest is likely to create a lot of legislative and executive confusions.** The Court's observations in fact overrule those made in the Sidhajibhai's and St. Xavier's cases, but without expressly stating so. This ruling suffers from the vice of deciding a constitutional issue in a vacuum, without a factual matrix. *The concept of national interest is moreover so vague that the Court should have specified and clarified its exact meaning.* Some could indeed include under it the imposition of Hindi from the primary standards, and/or the compulsory teaching of the religious scriptures

of the majority religion. Unless clearly specified, the only permissible limits to the fundamental rights are those required by the integrity and unity of the nation, as indicated in the Preamble. If this is what the Court meant, it should have clearly stated it instead of leaving the concept of national interest extremely vague.

Territorial Restrictions in Aided Linguistic Minority Institutions

The TMA Pai's judgment has prescribed that *the aided linguistic minority institutions must admit the bulk of their minority students from the state where they operate.* Such an institution "is under an obligation to admit the bulk of the students fitting into the description of the minority community. Therefore, the students of that group residing in the state in which the institution is located have to be necessarily admitted in a large measure because they constitute the linguistic minority group as far as that state is concerned. *In other words, (there should be a) predominance of linguistic students hailing from the state...* The management bodies of such institutions cannot resort to the device of admitting the linguistic students of the adjoining state in which they are in a majority, under the facade of the protection given under Article 30(1). If not, the very objective of conferring the preferential right of admission... may be distorted."²⁸ **These directions are limited to aided linguistic minority institutions.** *However, there can be a danger that some states may unscrupulously apply this principle to religious minorities too. Let us hope it will not be applied to unaided minority institutions!*

The Islamic Academy Case

In the Islamic Academy case,²⁹ the Supreme Court (through a Constitution Bench of five Judges) introduced a few principles regarding the admission procedures and fee structure in unaided professional (medical and engineering) educational institutions. The verdict arose to clarify some doubts related to the decisions in the TMA Pai's case. Conceptually, the judgment observed that minority institutions are on a different footing than non-minority institutions. *However, on the ground that even unaided minority institutions are subject to the national interest, these institutions were brought at par with private unaided non-minority colleges, with a few cosmetic*

differences. In effect, the Court has directed the constitution of two committees: one for deciding the fee structure and another for overseeing the admission procedures and common entrance test. *The minority institutions are also subjected to these two committees.*

Instead of clarifying doubts, the Islamic Academy decisions have created more confusions regarding the constitutional rights of the minority educational institutions. This is strengthened by the fact that a Constitution Bench of 7 Judges of the Supreme Court has started hearings to further clarify the doubts raised by the Islamic Academy and TMA Pai's decisions.

The Modern School Case

The negative effect of moving with non-minority institutions became more evident for the minority-run schools of Delhi in the Modern School case.³⁰ This case arose from the decision of the High Court of Delhi with regard to the regulation of the fee structure in the unaided private schools of Delhi. The case related to both minority and non-minority unaided private schools. The minority schools involved in the case included Mater Dei School, Carmel Convent School, St. Xavier's School and Mount Carmel School. The special rights of the minority-run schools could not be considered in detail in the said case, but the directions bind them also. The most harmful effect of the decision is that it has applied and upheld, even in the case of minority schools, the directive of the Director of Education to the effect that *no amount of money whatsoever shall be transferred from the school fund to the Society or the Trust or any other institution.* The argument based on Rule 77 of the Delhi Education Act that it is permissible for the schools to assist or set up other schools under the same management was repelled.

The Brahma Samaj Case

*That the distinction between the rights of minority and non-minority educational institutions is disappearing became evident in another case, i.e. the Brahma Samaj Education Society Vs. State of West Bengal.*³¹ The Brahma Samaj Society claimed the minority status as a religious minority and challenged the State Government's interference in the selection of the teachers of their college. The Supreme Court held that, even in the case of aided colleges, interference in the

selection and appointment of teachers is unwarranted. But the Court did so by interpreting the fundamental right under Article 19(1)(g) as given to any citizen to start and run educational institutions as an occupation. *Thus, the Court held that it need not examine the minority rights of the Brahma Samaj Education Society.*

The Usha Mehta Case

*The concept of the so-called larger interest of the state and the nation got further approval from the Supreme Court when it ruled that a minority educational institution has to teach a state language.*³² The case stemmed from a policy decision of the Maharashtra Government that the study of Marathi be made compulsory throughout the schools of the state. As a result, the English-medium schools run by Gujarati linguistic minorities were compelled to teach four languages (Hindi, English, Marathi and their mother tongue Gujarati) as against the accepted "three-language formula". The constitutional validity of the imposition of Marathi as a compulsory study in schools run by linguistic minorities was the main matter for judgment in this case. *The Supreme Court interpreted the said imposition of the fourth language as the larger interest of the state and upheld it as not violative of Article 30.*³³

III. How can Minority Institutions Promote Their Rights?

Problems of Enforcement

Almost all the minority educational institutions, both aided and unaided, face a number of problems and hardships in enforcing their constitutional rights of establishing and administering the educational institutions of their choice. *Ignorance, social polarisation, anti-minority prejudices, political opportunism, economic constraints, non-viability of judicial remedies, etc., are some of the serious problems which deter the enforcement of minority rights.* Non-access or insufficient access to economic resources by the minorities and the requirement of huge financial resources in higher education will continue to plague the minority institutions. *This will become more glaring in competition, as the unaided non-minority institutions have been armoured with a new-found fundamental right under Articles 19(1)(g) and 26(a).*

Confronted with the problems of enforcement and the infringement of their fundamental rights, the minorities are often led to approach the High Courts and the Supreme Court through writ proceedings, thus spending much of their scanty resources. **The best suggestion should therefore be to adopt ways and means to avoid litigation as far as possible.**³⁴

Fighting Ignorance

Fighting ignorance is the most important step in this direction. There is a wide-range ignorance, even among the minorities themselves, with regard to the extent of their rights, the limits of governmental interference, and also the available remedies even prior to going for litigation. *Once the respective authorities are made aware of the extent of these rights, many of the problems and hardships could be avoided or nipped in the bud itself.* Appropriate information with all the relevant material, including the rulings by the Supreme Court and the respective High Courts, should therefore be made available to the concerned authorities.

The fundamental rights, especially the minority rights, should not be allowed to be silenced or waived for a little practical convenience. We should remember that these rights are provided not merely for the present institutions but also for the future generations and the other minority communities. *At the same time, it should be prudently seen that the minority rights are not over-emphasised to the extent of creating reactions or unnecessary heart-burn or jealousy.* It is important that all the persons concerned with minority institutions fully know the relevant regulations, clearly distinguishing what is and what is not permissible. **It is also very important to conscientise the staff, parents and students about the minority rights and their relevance.**

Practising Transparency

A reasonable transparency in all matters affecting the students, staff and the public has to be the rule rather than the exception. The principle that justice should be shown to be done is applicable in the case of these institutions also, especially since they are fulfilling a public or societal function. The 2002 judgment of the Supreme Court has also insisted on transparency. *A few steps like fixing the procedures*

for all educational matters, including admissions and appointments, and keeping all records, would to a great extent answer the requirement of transparency. It would be ideal to publicise the results of the admissions, selections, etc., at least within the institution itself, unless there is any detriment to the reasonable interest of the institution.

Following the Principles of Natural Justice

A strict compliance with the principles of natural justice would prevent a lot of litigation while following the requirements of fairness and transparency. The principle of *nemo iudex in sua causam* requires a procedure free of any appearance of bias. *Nobody should be seen as judging his own case.* Whoever has an interest in a particular matter should avoid taking any decision or action, especially those which will have negative consequences on others. The other principle of *audi alteram partem* (*hear the other party*) is equally important. *Everybody has a right to a hearing before being subjected to any detrimental consequence. Alternative dispute redressal mechanisms like arbitration, mediation and reconciliation ought to be used in all matters relating to minority institutions.*

Using the Existing Opportunities

In view of the liberalisation opened up by the national policies and the judicial interpretations, the minorities can consider a number of options to use these opportunities in the service of the nation, especially the poorer sections of the people. The possibility of starting unaided, self-financing and even autonomous educational institutions of excellence need to be explored, even those with foreign collaboration. A caution would however be relevant. The minorities should not be wary of establishing aided institutions for fear of difficulties and restrictions arising out of the aided nature of the institutions. **In spite of the additional regulations and restrictions, it would be worthwhile to go for aid wherever possible in order to serve the poorer sections, especially the Scheduled Castes, Scheduled Tribes and women.**

Avoiding the Mainstream and Minority Syndromes

The minority educational institutions need to guard themselves against both the mainstream and the minority syndromes. The first is

an excessive or exaggerated concern to dive into the national mainstream. *The opposite extreme is the minority syndrome which is a masochist inferiority stance.* Once overplayed, this can be a breeding-ground for fanatics and terrorists. *Even in its milder forms, this can be self-dwarfing and even instigative of communal clashes.*

It is necessary for the minorities to constantly remind themselves that the concept of minorities and the necessity to ensure special rights for them, even in a democratic form of government, evolve from *the basic tension and dialectics between the unit and the whole, or the individual and the society/organisation.* Usually, people's consciousness gradually expands from the narrower to the wider. The expansion from the minority to the majority without annihilating the minority is a great vision still relevant in the age of the small global village.

Conclusion

Minority educational institutions have a great and momentous role to fulfill not only for themselves but also for the nation and the world. *This is all the more true in the context of our fundamental duty to cherish the composite culture of this country and to aim at unity in diversity.*

The religious and linguistic minorities need to realise that they are not the only minorities who need protection. The educational rights assured by the Constitution are not merely meant for their own benefits. Exercising their special rights, **these minorities need to be in the service of the nation and the real minorities, the numerous marginalised groups like the poor, children, Dalits, Adivasis/Tribals, women and those who are mentally or physically challenged.** These constitute the voiceless millions who appear to have lost even their face in the demonic dance of modern democracy, which is not only scripted and directed but also funded by the unseen hands of the exploiters, oppressors and criminals, successfully hiding behind the attractive masks of different religions and popular political parties.

If the educational institutions are not masked phantoms lurking behind but are truly for the benefit of the minority, *then the possibilities and potentialities are huge not only for the members of the minority but also for the non-minorities and the nation as a whole.*

NOTES

1. T.M.A. Pai Foundation v. State of Karnataka, (2002) 8SCC 481 at 542 para 50. 2. Ibid, para 1. 3. Ibid, para 158. 4. Constitution of India, Article 51A(f). 5. T.M.A. Pai Foundation..., op. cit., para 161. 6. Ibid, para 156. 7. Ibid, para 157. 8. Ibid. 9. Ibid. 10. Ibid, para 121. 11. Ibid. 12. Ibid, para 122. 13. Ibid, para 123. 14. Ibid, para 142. 15. Ibid. 16. Ibid, para 143. 17. Ibid. 18. Ibid, para 149. 19. Ibid. 20. Ibid. 21. Ibid, para 151. 22. Ibid, para 152. 23. Ibid. 24. National Commission for Minority Educational Institutions Ordinance 2004 (Ordinance No. 6 of 2004 promulgated on 11th November 2004). 25. T.M.A. Pai Foundation..., op. cit., pages 551-553, paras 74-81. 26. Ibid, para 107. 27. Ibid. 28. Ibid, para 153. 29. Islamic Academy of Education v. State of Karnataka, (2003) 6SCC 697. 30. Modern School v. Union of India and Ors, (2004) 5 SCC 583. 31. (2004) 6 SCC 224. 32. Usha Mehta & Ors Vs. State of Maharashtra & Ors, (2004) 6 SCC 264. 33. Ibid. 34. M.P. Raju, *Minority Rights: Myth or Reality*, 2002, Media House, Delhi, pp. 114-120.