



## RIGHTS OF MINORITIES UNDER CONSTITUTION OF INDIA

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Arjit Pasayat \*

### ABSTRACT

*The Indian Constitution provides a robust framework to balance the preservation of diverse identities with national unity and equality, rejecting political segregation in favor of cultural and educational autonomy. As the Constitution does not explicitly define "minority," this status is fluid, determined by numerical, linguistic, and religious factors, and evaluated on a state-wise basis rather than nationally. This approach recognizes that a community may be a majority in one state and a minority in another. The protection of these groups is anchored in the "Golden Triangle" of equality (Articles 14, 15, and 16) and specific cultural and educational rights (Articles 29 and 30). The right to equality ensures that minority status is not a barrier to participation in national life, protecting individuals from arbitrary state action and religious discrimination. Complementing this, Articles 29 and 30 empower minorities to preserve their distinct heritage. Article 30 specifically grants religious and linguistic minorities the fundamental right to establish and administer educational institutions of their choice, providing the practical mechanism through which their cultural and linguistic identity is transmitted and preserved. While minority institutions enjoy autonomy in administration, including decisions regarding curriculum and staffing, they remain subject to reasonable state regulations to ensure educational excellence, transparency, and merit. Historically, these provisions reflect a conscious decision by the Constituent Assembly to foster a secular, democratic republic where diverse communities feel secure and valued. Through judicial activism, these rights have evolved into a shield against majoritarian impulses, ensuring that Indian democracy protects all its citizens and that "unity in diversity" remains a lived reality grounded in liberty, equality, and fraternity.*

**Keywords:** Religious Minorities, Linguistic Minorities, Educational Institutions, State-wise determination, Secularism, Non-discrimination, Unity in Diversity, Marginalization.

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\*BALLB, FIFTH YEAR, UNIVERSITY OF ALLAHABAD, CMP DEGREE COLLEGE, PRAYAGRAJ.

## INTRODUCTION

India, Bharat, is the mother of tolerance, of diversity and unity and nowhere to rarely, in the world such unified fulcrum of diverse people is seen. This diverse nature of our nations carries different kinds of problems and challenges faced by people as a community as well as us as a nation. It is natural for a place like India where innumerable communities' dwells to have a distinction among these communities in relation to their demographic population and their contribution to the political social and economic field. For better governance as well as maintaining equality in the nation among all the groups or communities, it becomes essential to divide their status based on their numbers and contributions. So based on the numeric contribution in the country's total population, they can be categorized based on the religion race caste or other factors in following two category-

1- Majority

2- Minority

Majority means a number or percentage equaling more than half of a total or the greater quantity or share.<sup>1</sup> Simply put majority refers to those communities which are more than half of total population present, put it in a scenario UK has over 87% of Whites and since this number is over half of total population whites based on racial calculation shall be majority race of UK.<sup>2</sup>

A minority is a national or ethnic, religious or linguistic group, fewer in number than the rest of the population, whose members share a common identity. Usually, minorities are non-dominant in comparison with majorities in the economic and political spheres of their country.<sup>3</sup> Minority also refers mainly to those communities that are lower than half number of most populous community like in India the dominant community is Hindu having formed a majority so if any other community here is more than half of what the Hindus make up together that shall not be calculated as a minority but its contradictory one.

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<sup>1</sup> Majority, Merriam-Webster.com Dictionary, available at: <https://www.merriam-webster.com/dictionary/majority> (last visited on April 19, 2026).

<sup>2</sup> United Kingdom, World Population Review, available at: <https://worldpopulationreview.com/countries/united-kingdom> (last visited on April 19, 2026).

<sup>3</sup> Minorities and Indigenous Peoples, UNHCR, available at: <https://www.unhcr.org/what-we-do/protect-human-rights/safeguarding-individuals/minorities-and-indigenous-peoples> (last visited on April 19, 2026).

## MEANING OF MINORITY

The term traces its origin from term 'minor' which means having little importance, influence, or effect, especially when compared with other things of the same type.<sup>4</sup> minority in the same prerogative is a culturally, ethnically, or racially distinct group that coexists with but is subordinate to a more dominant group.<sup>5</sup> In the general sense, Minorities are group of people that numerically constitutes less than 50 percent of population in respect of religion, language, culture, ethnic etc. According to Article 1 of United Nations Minorities Declaration 1992, minorities are as based on national or ethnic, cultural, religious and linguistic identity, and provides that States should protect their existence. There is no internationally agreed definition as to which groups constitute minorities.<sup>6</sup>

Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganization of the States in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put at par in Article 30, have to be considered State-wise.<sup>7</sup>

## WHAT IS MINORITY

Minority is a status given to certain set of people who belong to a community or ethnicity or race, but the defining character of a minority may defer region to region as the basis of minority influence the characteristics of a particular minority in a particular region, said easily it means that it is not an absolute status they may be given to anyone having lesser contribution in anything but that in order to categorize a minority there need be factor to look upon as such, minority status does not necessarily correlate to population. In some cases, one or more so-called minority groups may have a population many times the size of the dominating group, as was the case in South Africa under apartheid. Minority status doesn't always relate to population size; a minority group can be larger than the dominant group. Social separation from

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<sup>4</sup> Minor, Cambridge Dictionary, available at: <https://www.cambridge.org/dictionary/english/minor> (last visited on April 19, 2026).

<sup>5</sup> Minority, Encyclopædia Britannica, available at: <https://www.britannica.com/topic/minority> (last visited on April 19, 2026).

<sup>6</sup> K. Karikalan, Minority Rights in India: Constitutional Vision and Judicial Voices, 12(4) International Journal of Research and Analytical Reviews (IJRAR) (October 2025). Available at: <https://ijrar.org/papers/IJAR25D1540.pdf> (last visited on April 19, 2026).

<sup>7</sup> T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors., Writ Petition (Civil) No. 317 of 1993, Supreme Court of India (31 October 2002). Available at: <https://api.sci.gov.in/jonew/judis/18737.pdf> (last visited on April 19, 2026).

the dominant society often cuts minority group members off from full involvement and equal rewards. Minority groups may disappear through assimilation, adopting the dominant culture traditions, or acculturation, where groups exchange cultural traits.<sup>8</sup>

It is pretty much explicable to say that minority refers to more than one community or group of people and not an isolated one except when there are explicitly only two community and one makes more than half of total, the other one shall form such minority, but it is pretty much rare in this 21<sup>st</sup> century when there are a variety of so many communities or groups in every nation to the extent that host the existence of only one group or community as a minority. The direction i am referring to with my previous contention is pretty much towards the fact that in this time when commutation is easy it is not a big deal that a certain sect of people migrate to other nation and intermigration between nation is very much common and this makes it a particular reason as to why there becomes so much of different communities in a nation. For instance, the United States of America there exist total of 12 minorities communities that makes up to total of 40 percent of the population, although that country is pretty much the symbol of liberty and freedom so is the reason for dwelling of so many communities in there but same situation occurs with the most orthodox nations like turkey, resides total of six minorities.

Sociologist Louis Wirth (1945) defined a minority group as “any group of people who, because of their physical or cultural characteristics, are singled out from the others in the society in which they live for differential and unequal treatment, and who therefore regard themselves as objects of collective discrimination.” The term minority connotes discrimination, and in its sociological use, the term subordinate can be used interchangeably with the term minority, while the term dominant is often substituted for the group that’s in the majority. These definitions correlate to the concept that the dominant group is that which holds the most power in a given society, while subordinate groups are those who lack power compared to the dominant group.

Then question that arise is what the factors are, that determines the status of minority whether it is religion race caste or creed or sex or anything else. 1<sup>st</sup> thing that is to be pointed is that minorities are based or counted the nationally or regionally and not across the globe and since it is the sovereignty of every nationals as to how it deals with its internal affairs, so varies the

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<sup>8</sup> Minority, Encyclopædia Britannica, available at: <https://www.britannica.com/topic/minority> (last visited on April 19, 2026).

factors on which minority is counted by. There are following main factors for determination of minority status across the nations generally-

- 1- Religion
- 2- Communities
- 3- Tribes
- 4- Language
- 5- Culture
- 6- Any other such factors

Marginalization of some communities becomes a strong factor as to why minorities are formed and why a dominant community is created. Marginalization refers to the sidelining of a particular community from the mainstream one. Such marginalization can be backed by a verity of reason-based societal norms and values at the time, and such use of marginalization often leads to that community or group strangled in minority in the public spaces and their contribution in such events is much limited or restricted. Such, no public participation leads them to avert from the societal standards and this resolves in their becoming the backwards communities as well the relation of marginalization with minority is easy explainable with reference to domain that minority majority is calculated on, had it been on population such marginalization would not contribute to making of minority but on cultural, or linguistic data such marginalization would play a vital role.

### **MINORITY IN INDIA**

Minority in India has not been defined by its constitution but has been protected by its laws that safeguards its interest and its status, for the definition it has been left to the supreme court to decide and interpret by the reason of it being the supreme interpreter as well the guardian of the constitution while the government is embedded with task of identifying and categorizing the communities and groups from the among the population that falls within the interpreted definition of minorities.

Indian minority are those communities which forms less than half of the total population in India and are categorized by the national commission for minorities constituted under the

national commission for minorities act of 1992. Such determination of population in minority is done by the commission as per the criterion derived by supreme court through the interpretation of constitutional provision as explicitly our supreme document does not propagate any criteria for such evaluation neither has there been enacted any law upon such interest.

Constitutional provision that derives for minority are mainly article 29 and 30 that confer special right to the minorities but along with such conference of right it paves the way for determination of minority in India. Such pavement is often laid using two terms which is mentioned in article 29 that says minority whether religious or linguistic. This provision, as elaborated, aims to define the criteria of minority with the shelf of 2 racks 1<sup>st</sup> being religion and second language. Therefore, it is clear as to question of minority shall be determined over what, that it shall be classified and categorized based on the religions and language spoken.

Constitution does confer every right to minority and not only those mentioned in article 29 and 30, but it also just that these two provision are specially incorporated in the document to give them some extra rights.

### **MINORITIES IN INDIA - STATS**

Here are six major religious minorities in India. There are Muslim, Christian, Sikh, Buddhist, Jain and Parsi. The following is more information on religion-wise data of the Indian population as per the Census 2001 and 2011.

Communities	2001 Census Data in %	2011 Census Data in %
Hindu	80.5	79.8
Muslim	13.4	14.2
Christian	2.3	2.3
Sikh	1.9	1.7

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Buddhist	0.8	0.7
Jain	0.4	0.4

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- Sikh, Parsi, and Jains are well-off minority communities
- Muslims are the largest religious minority in India. They are in majority in Jammu and Kashmir and good size in Kerala, West Bengal, Uttar Pradesh, Andhra Pradesh, Karnataka, and Rajasthan
- Christians are the second-largest minority in India. They are in the majority in Nagaland (88%), Mizoram (87%), and Meghalaya (74%). They are in sizable numbers in Goa (25%) and Kerala (18.4%).
- Sikhs are the third-largest minority in India and they are in Majority in Punjab (58%).
- Buddhism communities in India have a sizable number in Sikkim (27%), Arunachal Pradesh (12%), and Maharashtra (6%).
- Jains minority are largely in Maharashtra (1.3 %), Gujarat (1%), and Delhi (1%).<sup>9</sup>

**Constitutional Provision** - The Indian Constitution provides specific safeguards for minorities, primarily under Articles 29 and 30.

#### **Article 29: Protection of Interests of Minorities**

Article 29 protects the distinct culture and identity of minority groups. It has two key clauses:

Clause (1): Any section of citizens residing in the territory of India or any part thereof having a distinct language, script, or culture of its own shall have the right to conserve the same. This clause grants all groups, not just minorities, the right to preserve their distinct culture.

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

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<sup>9</sup> Aseem Muhammed, Minorities in India, Clear IAS, (last updated on November 12, 2024), available at: <https://www.clearias.com/minorities-in-india/> (last visited on April 19, 2026).

or any of them. This clause ensures equal access to state-funded educational institutions for all citizens, preventing discrimination based on identity.

### **Article 30: Right of Minorities to Establish and Administer Educational Institutions**

Article 30 specifically focuses on the rights of minorities in education. It has two key clauses:

Clause (1): All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. This guarantees the right to establish and manage their educational institutions, preserving their distinct character and values.

Clause (2): The State shall not, in granting aid to educational institutions, discriminate against any educational institution because it is under the management of a minority, whether based on religion or language. This ensures that minority-run institutions receive equal treatment regarding state aid and are not discriminated against.

### **Role of Article 350-B and the Special Officer for Linguistic Minorities**

Article 350-B, inserted by the 7th Amendment Act of 1956, deals with the representation of linguistic minorities.

Special Officer for Linguistic Minorities: This article mandates the appointment of a Special Officer for Linguistic Minorities by the President of India.

Functions of the Special Officer: The Special Officer investigates all matters relating to the safeguards provided for linguistic minorities under the Constitution. They report to the President on those matters.<sup>10</sup>

### **DETERMINATION OF MINORITY RIGHTS**

Constitution of India allows only two kinds of minority to be determined by for the purpose of article 29 and 30, which are pivotal provision of constitution dealing with the right of minority.

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<sup>10</sup> Determination and Protection of Minority Status in India - UPSC Notes, SuperKalam, (Feb, 2025), available at: <https://superkalam.com/upsc-mains/topics/minority-status-protection-india-upsc> (last visited on April 19, 2026).

These two as mentioned above are religious minority and 2<sup>nd</sup> linguistic minority in the article 30 limits the basis for determination of minorities in India.

The bare reading of article 30 gives such proposal of conclusion of determination of minority which is thus-

‘All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. This guarantees the right to establish and manage their educational institutions, preserving their distinct character and values.’

Religious minority refers to those religions that are numerically smaller in number from the majority religion in country for instance the Hindus in India are 79.8 percent, that is more than a half and that makes every other religion in India a minority like for Muslims that are 14 percent and others too in smaller numbers.

The determination of religious minority can be done at two level, i.e. national as well state, meaning the minorities can be determined and categorized both at national level and state level. This ensures that minorities are not left aback from any development initiation whether taken by central government or state government by mandating such categorization at both levels. The Article 29 and 30 of the Constitution provide for protection of interest of minorities which includes linguistic minorities also. The working definition followed by the Commissioner for linguistic minorities is as follows:-“Linguistic Minorities are group or collectivities of individuals residing in the territory of India or any part thereof having a distinct language or script of their own. The language of the minority group need not be one of the twenty-two languages mentioned in the Eighth Schedule of the Constitution. In other words, linguistic minorities at the State level mean any group or groups of people whose mother tongues are different from the principal language of the State, and at the district and taluka/tehsil levels, different from the principal language of the district or taluka/tehsil concerned.” The linguistic minorities are therefore identified by the respective States/UTs. The State/UT wise, broad linguistic profile is available in the 52nd Report of the Commissioner for Linguistic Minorities (CLM). Further, the interest of linguistic minorities are accorded due consideration and the

office of Commissioner of Linguistic Minorities has been mandated to investigate all matters relating to the safeguards provided for linguistic minorities in the country.<sup>11</sup>

### **CONSTITUTIONAL ASSEMBLY DEBATE**

The provisions relating to minorities (particularly Articles 29 and 30) were included in the Indian Constitution after long debates in the Constituent Assembly because the framers wanted to provide a sense of security and confidence to religious and linguistic minorities in a newly independent nation scarred by Partition and communal tensions. The primary reason was to protect smaller communities from being culturally burdened over by the majority, while protecting from the divisive colonial-era system of separate electorates and political reservations. The Assembly consciously shifted from political safeguards to cultural and educational protections only.

Sardar Patel, in his key speech on 25–26 May 1949 while presenting the Advisory Committee’s report, explained the shift: the vast majority of minority communities had themselves realised the “evil effects” of past reservations and wanted to “merge themselves in the nation and stand on their own legs.” He emphasized that the goal was to lay “real and genuine foundations of a secular state” by trusting the “good sense and sense of fairness of the majority,” while urging the majority to be generous. Patel’s memorable words captured the vision: “It would be in the interest of all to forget that there is anything like majority or minority in this country and that in India there is only one community.” He added that minorities should have an “honorable place” with full opportunities for self-realization, leading to a “synthesis of cultures” based on equality, liberty, and fraternity.

Dr. B.R. Ambedkar clarified the broader intent behind Article 29(1), noting that the word “minority” was deliberately replaced with “any section of the citizens” so that the right to conserve distinct language, script, or culture would not be limited to technically recognized minorities but would extend to any group with a cultural or linguistic identity. Article 30(1) specifically granted religious and linguistic minorities the right to establish and administer educational institutions of their choice, along with non-discrimination in state aid (Article

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<sup>11</sup> Definition of Minority, Press Information Bureau, Ministry of Minority Affairs, Government of India (09 August 2021), available at: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1744064> (last visited on April 19, 2026).

30(2)). This was intended to enable minorities to preserve their distinct identity through education while participating in nation-building.

The significance of these provisions lies in striking a delicate balance: they reassure minorities against discrimination and cultural erosion, promote India's pluralistic and secular character, and serve as a foundational safeguard for diversity in a democratic republic. By rejecting political reservations for religious minorities while retaining cultural-educational rights, the framers aimed to foster unity in diversity ensuring that minorities feel secure without perpetuating divisions. These articles continue to be among the most vital Fundamental Rights, shaping judicial interpretations on minority institutions even today.<sup>12</sup>

### **RIGHTS OF MINORITY**

The law in India has not discriminated anyway between minority and majority and the earlier one has right to access every right the kater on has, moreover their certain specific rights that are conferred only upon the minority and majority has no such right to avail them. This types if treatment is mainly inspired from the constitution so that no minority feel anywhere near that its is being excluded and there is any such apprehension to its language or religion that may lead towards omission of their identity. The right we are referring here are mainly one that emanates from the constitution as it is the ultimate law, we shall deal with mainly the fundamental rights that are bestowed to minority.

Based on our earlier mention regarding the nature of right that can be availed by minority in the constitution we can categorize such right into following-

- 1- Right in general
- 2- Right exclusive

**RIGHT IN GENERAL-** This right as we categorized refers to such rights that are available to everyone whether majority or minority having no significance of the status available to

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<sup>12</sup> Mohammad Mohibul Haque, Constituent Assembly Debates on Minority Rights, e-PG Pathshala, Module 04, Paper 09: Human Rights of Minorities, available at: [https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/human\\_rights\\_and\\_duties/09\\_human\\_rights\\_of\\_minorities/04\\_constituent\\_assembly\\_debates\\_on\\_minority\\_rights/et/7966\\_et\\_04.pdf](https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/human_rights_and_duties/09_human_rights_of_minorities/04_constituent_assembly_debates_on_minority_rights/et/7966_et_04.pdf) (last visited on April 19, 2026).

everyone as because such person is the citizen of India. There are following general rights available to minority.

## **RIGHT TO EQUALITY**

**‘The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.’**

Above referred text is drawn from article 14 of Indian constitution that propagates that everyone India shall receive equal protection whether he belongs minority or majority. Such a right of equality is not limited but extended to everyone, and it is the influence of this right that exclusive rights are bestowed upon the minority in the constitution. This right of equality is the cornerstone of every right given to minority and in case of any discrimination of unequal treatment from that of majority they have right under article 32 to reach out to supreme court of India to enforce such right to equality.

Further article 15 of India constitution whose bare reading lies so-

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

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

(5) 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.

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making-

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) 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, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation- For the purposes of this article and article 16, “economically weaker sections” shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

This provision aims to omit any form of discrimination aimed at by state on the basis of religion race cast sex or place of birth. Moreover, this provision is bluntly related to minority as if any such discrimination occurs to them based on his religion, that is the blatant ground of minority they can enforce their right. This provision empowers them with the surety that even if their numerical contribution is low still, they shall not be subject to any form of discrimination on public places by state.

Further section 16 of the Indian constitutions which reads thus-

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favor of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.

This provision is directly related to religious and linguistic minorities as it ensures equality of opportunity in public employment and explicitly protects them from discrimination on the ground of religion. Clause (1) guarantees every citizen equality of opportunity in matters relating to employment or appointment to any office under the State, while Clause (2) categorically prohibits the State from discriminating against any citizen only on the ground of religion, race, caste, sex, descent, place of birth or residence. This provision acts as a vital safeguard for religious minorities, ensuring that Muslims, Christians, Sikhs, Buddhists, Jains, and Parsis cannot be denied government jobs, promotions or appointments merely because of their faith. The framers deliberately avoided religion-based reservations in public employment for minorities unlike the provisions for Scheduled Castes and Tribes under Article 16(4), choosing instead to rely on the principle of equal opportunity to promote national integration and prevent communal divisions after Partition. At the same time, Article 16(5) permits the State to reserve posts in religious or denominational institutions for persons professing a particular religion, thereby indirectly protecting the autonomy of minority-managed institutions in matters of employment connected with their religious affairs. In essence, Article 16 strengthens the secular fabric of the Constitution by guaranteeing minorities fair and equal access to public employment without any religious bias.

### **EXCLUSIVE RIGHT**

Beyond the general fundamental rights guaranteed to every citizen, the Indian Constitution provides a specialized set of protections designed exclusively for the preservation and empowerment of minority communities. These particular safeguards are established to ensure that the diverse fabric of the nation is maintained by giving minorities the legal authority to protect their distinct identities.

These specific protections are articulated under Articles 29 and 30, which are detailed below:

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

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

#### Article 30-

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Articles 29 and 30 of the Indian Constitution are closely interlinked and serve as important safeguards for minorities in a diverse country like India. Article 29(1) gives any section of citizens (including minorities) the right to conserve their distinct language, script, or culture. This provision is broader in scope and not limited only to notified minorities — it protects cultural identity from being eroded. Article 29(2) further ensures non-discrimination by stating that no citizen shall be denied admission into any State-maintained or State-aided educational institution solely on grounds of religion, race, caste, or language. Together, these clauses help minorities preserve their heritage while ensuring equal access to education.

Article 30 specifically empowers religious and linguistic minorities to establish and administer educational institutions of their choice. This right allows minorities to set up schools and colleges where they can impart education in their own language, promote their culture, and impart religious values if needed, without excessive state interference (though the State can impose reasonable regulations for standards). Article 30(2) adds that the government cannot discriminate against such minority institutions while granting financial aid. In essence, while Article 29 focuses on cultural preservation and protection against discrimination, Article 30 provides the practical mechanism through educational institutions to achieve that preservation.

## **RIGHT TO ESTABLISH EDUCATIONAL INSTITUTION**

The right of minorities to establish and administer educational institutions is a fundamental guarantee provided under Article 30 of the Indian Constitution, which forms a vital part of the Cultural and Educational Rights. Article 30(1) explicitly states that all religious and linguistic minorities shall have the right to establish and administer educational institutions of their choice. This provision is not merely a negative right (protection against interference) but a positive right that empowers minorities to actively preserve, promote, and transmit their distinct culture, language, and religion through the medium of education.

This right is closely connected with Article 29, which protects the cultural and linguistic identity of any section of citizens. While Article 29(1) gives the right to conserve language, script, or culture, Article 30 provides the practical instrument — educational institutions — to make this conservation meaningful and effective. Without the power to establish their own schools and colleges, the cultural rights under Article 29 would remain largely illusory. Therefore, the Supreme Court has consistently held that Articles 29 and 30 are complementary to each other.

The phrase “of their choice” in Article 30(1) is very significant. It means minorities are free to choose the type of institution (primary, secondary, higher education, technical, or professional), the medium of instruction, the curriculum, and even whether the institution will have a religious character or not. This freedom extends to the administration of the institution as well, including the right to appoint teachers, principals, and staff, and to manage its day-to-day affairs, subject only to reasonable regulations imposed by the State in the interest of educational standards, national interest, or public order.

The “establishment” of an institution by the minority is necessary for the said minority to claim right of administration under Article 30. The words “establish” and “administer” are used conjunctively in Article 30 of the Constitution. The term “establish” in Article 30 means “to bring into existence or to create” and cannot be conflated with generic phrases such as “genesis of the institution” or the “founding moment of the institution”.<sup>13</sup>

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<sup>13</sup> Aligarh Muslim University through its Registrar Faizan Mustafa v. Naresh Agarwal, Civil Appeal No. 2286 of 2006 (Diary No. 9287 of 2006), Supreme Court of India (08 November 2024). Available at: [https://www.sci.gov.in/view-pdf/?diary\\_no=92872006&type=j&order\\_date=2024-11-08&from=latest\\_judgements\\_order](https://www.sci.gov.in/view-pdf/?diary_no=92872006&type=j&order_date=2024-11-08&from=latest_judgements_order) (last visited on April 19, 2026).

Article 30 is strictly in nature of minority rights as in absolute sense that is intended to protect the right of minorities. The freedom to establish and have full and absolute control over the institution cannot be taken over completely as its has wide scope and not confined like article 29 only to conserve language script and culture.<sup>14</sup>

Admission of students to unaided minority educational institutions, viz., schools and undergraduate colleges where the scope for merit-based selection is practically nil, cannot be regulated by the concerned State or University, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards. The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the state government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions. A minority institution does not cease to be so, the moment grant-in aid is received by the institution. An aided minority educational institution, therefore, 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. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The concerned State Government has to notify the percentage of the non-minority students to be admitted in the light of the above observations. Observance of inter se merit amongst the applicants belonging to the minority group could be ensured. In the case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the state agency is necessary to seek admission. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the state agency followed by counselling wherever it exists.<sup>15</sup>

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<sup>14</sup> *Father Prrost v State of Bihar* AIR 1969 SC 465.

<sup>15</sup> *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.*, Writ Petition (Civil) No. 317 of 1993, Supreme Court of India (31 October 2002). Available at: <https://api.sci.gov.in/jonew/judis/18737.pdf> (last visited on April 19, 2026).

A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to mal-administration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.<sup>16</sup>

### **DETERMINATION OF MINORITY INSTITUTION**

The minority status is determined on the basis of demographic compulsion of a State i.e. on proportionate position of a community in a state and not on all India basis. determination of minority institution status is based on proof of establishment by the minority, administration by the minority, and genuine purpose of serving and preserving the minority's distinct identity. If these conditions are fulfilled, the institution enjoys greater autonomy under Article 30(1) and protection against discriminatory denial of aid under Article 30(2), while remaining subject to reasonable regulations for educational excellence.

The real positive indicia for determining the question of establishment of an institution would have to be developed on a case-to-case basis with the following broad parameters in mind:

I. Firstly, to claim "establishment", the minority community must actually and tangibly bring the entirety of the institution into existence. The role played by the minority community must be predominant, in fact almost complete to the point of exclusion of all other forces. The indicia which may be illustrative and exhaustive in this regard may be the nature of the institution, the legal/statutory basis required for establishing the institution, whether the establishment required any "negotiation" with outside forces, the role in acquiring lands, obtaining funds, constructing buildings, and other related matters must have been held completely by the minority community. Similarly, while teachers, curriculum, medium of instruction, etc. can be on secular lines, however, the decision-making authority regarding hiring teachers, curriculum decisions, medium of instruction, admission criteria, and similar matters must be the minority community. The choice of having secular education in the institution must be made expressly

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<sup>16</sup> T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors., Writ Petition (Civil) No. 317 of 1993, Supreme Court of India (31 October 2002). Available at: <https://api.sci.gov.in/jonew/judis/18737.pdf> (last visited on April 19, 2026).

by the minority community, demonstrating the link between institution and the persons claiming to establish it.

II. Secondly, the purpose of the institution must have been to predominantly serve the interests of the minority community or the sole betterment of the minority community, irrespective of the form of education provided and the mode of admission adopted. Therefore, as per the choice of the minority community, an institution may have secular education, but such secular education and the resultant institution, must be predominantly meant for the overall betterment of the minority community.

III. Thirdly, the institution must be predominantly administered as a minority institution with the actual functional, executive and policy administration vested with the minority. The minority community should determine the selection, removal criteria, and procedures for hiring teaching, administrative staff, and other personnel. The authority to hire and fire staff must be from the minority community. Further, even if teaching or administrative staff may include non-minority persons, the final authority exercising functional, directional, and policy control over these authorities must be from the minority community. This ensures that the thoughts, beliefs, and ideas of the minority community regarding administration are implemented. This represents the real decision-making authority of the institution being of the minority community. In ascertaining the above, it would be open for the Court to look at the true purpose behind each of the above factors and to pierce the veil.<sup>17</sup>

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<sup>17</sup> Aligarh Muslim University through its Registrar Faizan Mustafa v. Naresh Agarwal & Ors., Civil Appeal No. 2286 of 2006, Supreme Court of India (08 November 2024). Available at: [https://www.sci.gov.in/view-pdf/?diary\\_no=92872006&type=j&order\\_date=2024-11-08&from=latest\\_judgements\\_order](https://www.sci.gov.in/view-pdf/?diary_no=92872006&type=j&order_date=2024-11-08&from=latest_judgements_order) (last visited on April 19, 2026).