
(2000) 09 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2684 of 2000

Vijay Shanti Edu. Trust

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:

Constitution of India, 1950 — Article 143, 19, 25, 26, 27
Hindu Marriage Act, 1955 — Section 2
Succession Act, 1925 — Section 218

Citation : (2000) 4 RLW 431 : (2001) 4 WLC 345 : (2001) 1 WLN 191

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties.

2. This petition has been filed by the petitioner, an educational trust claiming for the following reliefs:

I. by an appropriate writ, order or direction, the order dated 1.8.2000 (Annex. * 16) and 3.8.2000 (Annex. 17) be declared illegal and be quashed with all consequential benefits to the petitioner.

II. by an appropriate writ, order or direction, it may be declared that the Jain community falls in the religious minority in the State of Rajasthan and is entitled to exercise its right conferred by Article 30 of the Constitution of India.

III. by an appropriate writ, order or direction respondents may be directed to permit the petitioner to grant admission to BDS Course from Academic Session 2000-1 against 50% management quota in exercise of its rights as an institution run by religious minority and the respondents may be restrained from interfering with the exercise of rights of the petitioner in the matter of admission so far as the management quota (to the extent of 50% of the seats of a religious minority institution is concerned;

IV. Any other appropriate order or direction, which this Hon"ble Court considers

just and proper in the facts and circumstances of this case, may kindly be passed in favour of the petitioner.

V. Costs of the writ petition may kindly be awarded to the petitioner.

3. Reply to writ petition has been filed by respondent No. 3. No further reply is sought to be filed by other respondents and is adopted by them. The case has been finally heard as per earlier order passed by the Court on 20.8.2000. The petitioner Trust was settled by Settlor one Shri V.C. Jain. The Settlor alongwith Shri Suresh Kumar Jain, Shri Chandan Kumar Jain and Shri Naresh Kumar Jain are the Founder Patron Trustees. The Trust was to be managed by Board of Trustees consisting of the founder patron Trustees, and other members of the Board. The President, Secretary and treasurer were designated as office bearers who were to be elected by the Board of Trustees from amongst themselves. The essential condition to become a Trustee of the Trust is that the person should be a Shwetamber Jain and must originally belong to State of Rajasthan and is major and such person can become a member of the Trust on payment of a sum to be fixed by the Board of Trustees from time to time on being confirmed by the Trust Board. Clause 4(c) of the object clause of the Deed of Trust stated:

The Trust is established and shall be deemed to have been established and maintained by members of the Jain community for the charitable purpose of imparting education.

4. It is on these premise that Trust is settled by a person belonging to a member of the Jain community from Rajasthan and it is being and to be administered by persons belonging to same denomination namely Shwetamber Jains from Rajasthan, and is established and maintained for "charitable educational purpose for imparting education", the educational institution set up and managed by the petitioner educational Trust is to be treated as an "educational institution established and administered by the Shwetamber Jains, a religious minority community" within the meaning of Article 30 of the Constitution. This is the claim laid in this petition.

5. The further case of the petitioner is that in furtherance of its object of establishing educational institution as a public charitable institution, it applied to Dental Council of India for its permission to open a dental college at Udaipur after creating infrastructure as per the norms laid by the Council, after securing Essentiality Certificate/No Objection Certificate recommending for granting such permission from Government of Rajasthan. On such permission having been granted, the petitioner has in fact established the dental college at Udaipur known as Darshan Dental College, with 100 beds as per the approval made by the Dental Council of India. The said college was also granted provisional affiliation by University of Rajasthan.

6. The petitioner also made a request to the State Govt. that since the Darshan Dental College established and administered by it is an educational institution to impart training in a professional course and is established and administered by

the religious community of Jains which is a religious minority in State of Rajasthan, it be recognised and treated as a religious minority community educational institution for the purposes of Article 30 of the Constitution of India. So far as the petitioner Trust is concerned, it has already received such recognition as minority religious community from the State Minority Commission of Tamilnadu within whose territory it was settled. On 23rd June, 1999, the State Govt. in the first instance, informed the petitioner Trust to approach the Minorities Commission of Rajasthan vide its letter dated 7.9.1999, who in its turn issued a certificate on 16.9.1999 that the petitioner Trust is administered and managed by members of Jain religious minority community and that the said Trust has established and is managing the Darshan Dental College at Udaipur as a Jain minority educational institution. However, vide communication dated 2.2.2000, the petitioner was informed by the State Minority Commission that the question of declaring the Jain community as minority community in Rajasthan is under consideration before the Commission and decision is yet to be taken and in this context the certificate issued by the Commission on 16.9.1999 (Ex.9) has been cancelled of which a public notice was also issued. This led to filing of the S.B.Civil Writ Petition No. 373/2000 which was disposed of by this Court on 18.7.2000 with direction to State Govt. to decide the representation of the petitioner as early as possible and in no case later than 31.8.2000, and that meanwhile the State Government shall permit the petitioner to give admission in Dental Course in the said College as Minority Educational Institution subject to the decision on the representation made by the petitioner. The petitioner was left free to prosecute its remedies in case any adverse order is made on such representation by the Government. The petitioner issued a public notice inviting applications for admission in the First Year BDS Course 2000-2001 from qualified candidates for filling Jain minority community management seats and NRI discretionary quota on or before 10th of August, 2000. This notice was issued on 30th June, 2000. On 1st August, 2000, the impugned order was made rejecting the petitioner's claim to religious minority community educational institution. The reasons stated therein were two fold. Firstly, that the Rajasthan Minority Commission has not been empowered to declare any institution as a minority institution and therefore, the Minority Commission of Rajasthan is not authorised to issue any certificate in that regard, Secondly, the State Government has accepted only such communities as religious minority communities which have been notified by the Central Government. Since the Central Government has not accepted Jain community as minority community it is not possible for the State Government to accept the claim of the petitioner.

7. It has been contended before the Court by learned Counsel for the petitioner that right of minority communities to establish minority community educational institutions flows from Article 30 of the Constitution of India and not from the Municipal Laws enacted by Parliament or the State Legislatures and ambit and scope of right flowing from Article 30 can neither be curtailed nor restricted by the legislative authority of the State. It was urged that all minority communities

whether based on religion or language have the fundamental right to establish and administer the educational institutions of their choice. The Jain community following the preaching and precepts of Jainism is in microscopic minority all over the country, and at any rate in the State of Rajasthan as per the "Census of India 1991 Report" relating to Rajasthan, the Jains, one of the six major religious communities identified to exist in Rajasthan alongwith other smaller communities not separately mentioned, account for only 1.28% of the total population of Rajasthan.

8. Learned Counsel contends that for the purpose of enjoying the benefit and securing the protection of right under Article 30 in the context of any activities within the State, it is the minority status vis a vis the population of the State concerned is the relevant factor. He contended that even if a community which may not be holding a minority status in all India scenario may still be a minority community in the context of the right, protection of which has been sought vis a vis particular State. He placed reliance of decision of Supreme Court in D.A.V. College, Vs. State of Punjab and Others, in which the Hindus in Punjab were held to be constituting religious minority community within the State of Punjab for the purpose of State legislation whose provisions were under consideration, and also Arya Samajis were held to be entitled to such benefits within the State of Punjab by dint of its population ratio within that State. He also relied on a decision of Delhi High Court in Arya Samaj Education Trust, Delhi and Others Vs. The Director of Education, Delhi Administration, Delhi and Others, holding "Jains" to be a religious minority community within the union territory of Delhi. On that premise, it was further contended by Mr. Singhvi that since the petitioner has established and is administering an educational institution in the State of Rajasthan, and the petitioner Trust is wholly settled by a member of the Jain community from Rajasthan and is managed exclusively by the members of the Jain community from Rajasthan and has in fact established a dental college after obtaining necessary permission from all concerned authorities, as well as affiliation with University of Rajasthan it fulfills the twin conditions of Article 30 to attract its operation in the present case. It cannot be doubted that Jains are an independent religious community in their own right, which has a religious philosophy distinct from other religions.

9. As concluding limb of this argument, it was contended that any educational institution imparting professional education which is established and managed by a religious minority community, the management of such institution is entitled to fill upto 50% of the available seats at its own discretion out of the members belonging to the religious minority community which administers it by devising its own method of selection. On this basis, a claim to fill up 50% of the available seats in the dental college fall within the domain of the management and respondent State authorities do not have reach to all the admissions available in the institution. In this connection St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., , T.M.A. Pai Foundation and Others (I) Vs. State of Karnataka and Others, , T.M.A. Pai Foundation and others Vs. State of Karnataka

and others, etc., and Mathammal Sheela Engg. College Vs. State of Tamil Nadu and Others, .

10. Contesting the claim of the petitioner, learned Addl. Advocate General contended that the Parliament has enacted National Minority Commission Act, 1992 (hereinafter called "the Act of 1992") under which the term "minority" has been defined to mean "a community notified as such by the Central Govt." Therefore, unless any community is declared as a minority community by the Central Government by notification u/s 2(c) of the National Commission for Minority Act, 1992, it cannot lay claim to the minority status for the purpose of Article 30 also. Learned Counsel also contended that mere minority in number of any community is not enough for securing the benefit under Article 29 & 30 of the Constitution. Before it can secure any right or benefit under Articles 29 & 30 it must satisfy further tests as evolved by the Courts in this Country. Learned Counsel placed reliance on Andhra Kesari Educational Society and Vs. State of Andhra Pradesh and Others, , Yogendra Nath Singh and another Vs. State of U.P. and others, Shiva Nand Pandey v. Bhagwan Das Harlalka 1999 Cal. 321 , A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, and Misbah Alam Shaikh v. State of Maharashtra (1997) SC 1409.

11. At the outset it would be appropriate to have a glance through the provisions of Articles 25 to 30 which relate to the freedoms which are captioned under "the right of freedom of religion" under Chapter III of the Constitution. While Article 25 recognises fundamental right or freedom of the individual to adhere to his conscience and freedom to profess, practice and propagate any religion, faith or persuasion, Articles 26, 29 and 30 relate to the community interest of any religious denomination or a Section thereof as well as rights of minorities recognised on the basis of religion or language. Article 26 upholds the right of freedom of any religious denomination or any Section thereof to manage its religious affairs. It provides that subject to public order, morality and health, every religious denomination or any Section thereof shall have the right to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion; to own and acquire movable and immovable property; and to administer such property in accordance with law. Obviously, rights under Article 26 are different and distinct from right of minorities to establish and administer educational institutions as provided under Article 30, which provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. The right under Article 26 is not confined to a minority of populace but is equally exercisable by all religious denominations or any Section thereof irrespective of its numerical strength, whether more or less than 50% of the total population of Collegium. The word "denomination" is of wider import. The expression has been interpreted by the Supreme Court in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., . It means that a collection of individual placed together under the same name of religious sect for having a common faith in essence designated by

distinctive name.

12. The three conditions to constitute a religious denomination as adopted by the Supreme Court in *Acharya Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another*, are:

(1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith;

(2) Common organisation; and

(3) designation by a distinctive name.

13. Thus, for the purpose of Article 26, every religious denomination or even if it is a Section thereof can be called a religious community as it is a commune of people having a common faith, organisation and a common name.

14. Article 27 deals with the freedom from payment of taxes on spending for promotion of any particular religion. Article 28 is in the character or restrictions on imparting religious instructions or holding religious worship in aided educational institutions. While it generally prohibits imparting of any religious instructions in any educational institutions wholly maintained out of the State funds. But from the aforesaid prohibition, it excepts the educational institutions which have been established under any endowment or trust which requires that religious instructions be imparted in such institution even in case where such educational institutions are administered by the State. However, any student of any educational institution recognised by the State or receiving aid out of State funds cannot be compelled to attend such educational instructions or to participate in any religious worship or practices that may be performed in such institution or in any premises attached thereto, except with his consent or with the consent or permission of his guardian, if such person is a minor. Article 28 too is of general character and is in aid of Article 25 protecting the freedom of conscience of individual, and prohibits any compulsions to take any religious instructions or to participate in any religious worship or practices without his consent and, to maintain secular character of State by prohibiting imparting of any religious instructions or carrying any religious practices in educational institutions maintained by the State funds except to the extent permissible by terms of any endowment or trust which has founded such institution.

15. Articles 29 and 30 are provisions relating to protection of cultural and educational rights on two different parameters.

16. Article 29 deals with protection and interests of distinct linguistic and cultural Section of any region. It provides the right of any Section of citizens having a distinct language, script or culture of its own to have a right to conserve it. This is a right not founded on a classification founded on religion of numerical strength of any religious denomination but is for all or any Section of people residing in any part of territory of India, if they have a distinct language, script or

culture from others in the said territory. For attracting Article 29 the group of people in any territory must be identifiable by a common link of distinctly spoken language, whether it has a separate script or not or a community of distinctly identifiable culture. While margin note speaks of "minority", in the Article 29 itself expression minority is not used, but refers to right of community in any territory having a distinct language, script or culture within the territory where such community is identifiably exist, it has the right to conserve its language, script and culture. Such right neither depends on any commonality of religion or comparative numerical strength in any given territory. It solely depends on distinct identifiable group on the basis of its common spoken language or adherence to common culture. For the purpose of Article 29, if persons belong to different religions, but have a common language, script or culture, the same is recognisable as a community founded on language, script or culture.

17. Unlike Article 29, Article 30 speaks about community right of people who are identifiable as minority on the strength of its identity linked with a common religion or a common language. For "religious minority community" the numerical strength of the group of persons identifiable or follower of one common faith in comparison to total population of the area, with reference to which enquiry is to be undertaken. Likewise linguistic minority is to be considered on the numerical strength which can be termed in minority vis à vis total population identifiable on the basis of spoken language. The right recognised is limited to establish and administer any educational institution of its own choice. That is the view expressed by Apex Court in *DAV College v. State of Punjab* 1972 SC 1737.

18. In contrast with recognition of freedom of conscience under Article 25 and recognition of rights generally of all religious denomination or Section thereof to establish and manage its religious institutions irrespective of its relative numerical strength. Article 30 recognises the rights of minorities only whether based on religion or language to establish and administer educational institution of their choice. This right is a community right which vests not in an individual, but in a community founded on the basis of religion or language and which numerically constitutes minority in the given territory. The expression "minority" has not been defined in the Constitution.

19. Considering the question whether in the absence of any declaration by the Central Government u/s (c) of the Act of 1992 declaring any religious community to be a minority community could deprive a religious community from asserting and securing its right to establish and administer own educational institution of its own choice and avail the benefits as such as per the law of the land available to all religious minority community institution without exception, it may be necessary to determine the meaning of expression "minority" in Article 30 of the Constitution.

20. In AIR 1951 Gau 163, it has been held that the persons who are eligible to be considered in minority, must be minority in the particular region where such

institution is situated.

21. In *Aldo Maria Patroni and Another Vs. E.C. Kesavan and Others*, , a Full Bench of the Kerala High Court opined that the word "minority" has not been defined in the Constitution and in absence of any special definition, it must be held that any. community, religious, or linguistic, which is less than fifty per cent of population of the State is entitled to the fundamental right guaranteed by Article 30 of the Constitution.

22. The Apex Court accepted the literal meaning of word "minority" to mean numerically less than 50%. The question arose before the Supreme Court in connection with a reference made to it under Article 143 of the Constitution in respect of *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, The Court posed for it the question, "what is minority" and answered that "it is a term which is not defined in the Constitution. It is easy to say that the minority community means the community which is numerically less than 50%."

23. However, the Court said that it would not finally answer the question whether a Christian to be treated as a minority community, merely after assigning the meaning that the minority means numerically less than 50%. It would require the answer to the question, but what is it 50% of ? Is it of entire population of India or 50% population of the State, being a part of the Union or 50% of population or any part of any State ? The Court said with reference to question before it that for determination of the said expression, figures relating to the total population of Kerala State and the population of communities of Christians, Muslims and Anglo Indians have to be taken into consideration. Since in the *Kerala Education Bill's* case, the court accepted that determinative factor for holding any religion or linguistic community is its numerical strength of the group whether classified on the basis of common language or common religion, as the case may be depending upon the basis on which claim is made which is less than 50% of the total population of a given territory. Only question the Court did not finally decide was whether the territory of which the ratio of total population and community population is to be considered will be whole of India, or State or even any particular region. Yet made it clear that since it was determining the question arising from the purposed bill which is proposed to be applicable to State of Kerala, the relevant consideration will be total population of State of Kerala and not whole of India.

24. The question fell to be decided in a later decision of the Supreme Court in *DAV College, Jullunder* 1971 SC 1737.

25. Supreme Court after considering the observations made by it in *Re-Kerala Education Bill* (supra), held that the religious or linguistic minorities are to be determined only in relation to the particular legislation which is sought to be impugned. Thus, if it is the State Legislature, these minorities are to be determined in relation to the population of the State. A linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken

language. It is not necessary that this language should also have a distinct script for those who speak it. It further held that Arya Samajis have a distinct language viz. Hindi and script of their own, namely, Devnagri, therefore, they are entitled to invoke the right guaranteed under Article 29(1) because they are a Section of citizens having a distinct language and script and under Article 30(1) being a minority. As regards religious minority community, it was laid down that the existence of a minority community should in all circumstances and for purposes of all laws of that State be determined on the basis of the population of the whole State and not with reference to population of India. In coming to this conclusion the Court referred to and considered its earlier decision in *Re Kerala Education Bill*

26. Now, there cannot be doubt that for the purposes of Article 30 a religious minority or linguistic minority has to be determined with reference to its numerical strength vis-a-vis total population of the State if the enquiry concerns the laws relating to the population of the State.

27. The National Commission of Minority Act, 1992 nowhere defines the term "minority" for the purpose of determining the right flowing from Article 30 of the constitution but it has defined the expression "minority" for the purposes of this Act means a community notified as such by the Central Government. Thus confining the scope of notification issued by Central Govt. to the bounds of Act.

28. To understand the expression "For the purpose of this Act" u/s 2(c) one has to look at the provisions of the Act. Preamble of the Act reads "An Act to constitute a National Commission for Minorities and to provide for matters connected therewith or incidental thereto." Prior to Act of 1992 a minority commission was in existence since 1972 but without any statutory foundation. This Act provided it one. Section 3 of the Act provides for constitution of Commission. Only the members of minorities can be nominated as member of the Commission. Therefore, for the purpose of constitution of Commission only persons from such communities can be considered, which have been so declared by Central Govt. u/s 2(c) and not from outside those communities. Thus, for fulfilling on of the purposes of the Act to constitute "a Minority Commission" with statutory status, the notification u/s 2(c) was to provide its constituent polity. Such constituency was to be provided by Central Govt. through notifying the religious communities for that purposes.

29. It is to achieve the objects and to fulfill the functions assigned to the Commission as detailed in Section 9 of the Act of 1992 that the Central Government has been assigned task to name the minority communities in respect of which the Commission shall be gathering information evaluating the progress of the development of the minority communities so declared by the Central Government and monitor the working of the safeguards provided in the Constitution for the protection of the interest of minorities and under laws enacted by Parliament and State Legislatures. It neither lays down any criterion for the Central Govt. to enlist any religious community as minority community

nor it assigns this task to Central Govt. to exhaustively enlist all religious minority communities in its notification. It also does not exclude, and it could not so exclude, any community laying claim to protection of its rights under any provisions of Constitution on establishing its minority status on the twin test of identifiable religions and less than 50% of numerical strength within the population of State, whose name has not so been included in the notification issued by the Central Govt. u/s 2(c). Significantly, the Act also does not assign the functions of declaring any community as minority community to the Commission.

30. In determining the ambit and scope of statutory sphere of field of activities of Minority Commission the "Religions" which have been notified as "minority" by Central Govt., provide the necessary ground for the activities of the Commission.

31. If it be taken that the Commission can gather information in respect of other communities also and accordingly make its recommendations in regard of those communities not so notified by the Central Govt. u/s 2(c) of the Act, then the reach of commission to look beyond to other religious communities is part of its research and make recommendation regarding their constitutional rights too is a part of the object of commission. The fact that commission can look beyond the communities named in notification u/s 2(c) and make its suggestions, and recommendations to secure their constitutional rights serves the purpose of the Act in giving effect to provisions of Constitution is a proof positive that existence of religious minority communities in India is not confined to notification issued u/s 2(c), nor it can be the object of the Act to deny constitutional rights and protection to be confined to and depend on inclusion of any religion in notification to be issued by the Central Govt.

32. It may be noticed that the National Commission for Minorities has been constituted for the first time in 1978 even before the Act of 1992 assigning it the various functions which in the opinion of the Central Government constituting it to assign it. The scope of activities of Commission prior to the enactment 1992 Act was governed by the terms of the order under which the Commission was constituted whereas after the promulgation of the Act of the 1992 the scope and ambit of the activities of the Commission are governed by the Act of 1992 giving its statutory status.

33. It would also be apposite to look the statement of objects and reasons to find whether any sanctity can be given to the contentions made by the learned Addl. Advocate General that a community claiming to be religious minority community which has not been declared as such can be denied protection under Article 30 if it is otherwise able to establish it.

STATEMENT OF OBJECTS AND REASONS

The Minorities Commission was set up in January 1978 for the providing an institutional arrangement for evaluating the safeguards provided in the Constitution for protection of the minorities and to make recommendations for

ensuring implementation of the safeguards and the laws.

2. The Minorities Commission with statutory status would infuse confidence among the minorities about the working and effectiveness of the Commission. It would also carry more weight with the State Governments/Union territory Administration and the Ministries/ Departments and the other organizations of the Central Government.

3. It has, therefore, been decided to give statutory status to the Minorities Commission by the proposed legislation.

4. The National Commission for Minorities will consist of a Chairperson and six Members.

5. The main task of the Commission shall be to evaluate the progress of the development of minorities, monitor the working of the safeguards provided in the Constitution for the protection of the interests of minorities and in laws enacted by the Central Government or State Governments, besides looking into the specific complaints regarding deprivation of rights and safeguards of the minorities. It shall also cause studies, research and analysis to be undertaken on the issues relating to socio- economic and educational development of the minorities and make recommendations for the effective implementation of the safeguards for the protection of interests of minorities by the Central Government or State Governments. It may also suggest appropriate measures in respect of any minority to be undertaken by the Central Government or State Governments.

6. The Bill seeks to achieve the aforesaid objects.

34. The primary object of the enactment was to confer upon the existing "Minority Commission" a statutory status which would infuse confidence among the minorities about the working and effectiveness of the Commission. Therefore, in my opinion, the declaration made by the Central Government for the purposes of the Act of 1992 cannot be raised to a status where of religious community claiming their status as minority community on the basis of pursuing a particular religious faith can be excluded from the purview of Article 30 and to be denied admittance to its benefits.

35. There is yet another aspect of the matter. While interpreting Article 30 in DAV College Jullundur's case (supra), a Constitution Bench has opined rejecting the plea canvassed before it that:

Though there was a faint attempt to canvass the position that religious or linguistic minorities should be minorities in relation to the entire population of the country, in our view they are to be determined only in relation to the entire population of the country, in our view they are to be determined only in relation to the particular legislation which is sought to be impugned, namely that if it is the state legislature these minorities have to be determined in relation to the population of the State. On this aspect Das, C.J. in Kerala Education Bill case

speaking for the majority thought that there was a fallacy in the suggestion that a minority or Section envisaged by Article 30(1) and Article 29(1) could mean only such persons as constitute numerically minority in the particular region where the educational institution was situated or resided under local authority. He however, thought, it was not necessary to express a final opinion as to whether education being the subject matter of Item 11 of the State list, subject only to the provisions of Entry 62, 63, 64 and 66 of List I and Entry 25 of List III, the existence of a minority community should in all circumstances and for purposes of all laws of the State be determined on the basis of the population of the whole State or whether it should be determined on the said basis only when the whole State is in question or whether it should be determined on the basis of a population of a locality when the law under that Act applies only to that locality, because in that case the Bill before the Court extended to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State.

36. Thus, holding after explaining the remarks made by DAS CJ in *Re. Kerala Bill*'s case and upholding that "numerical strength" would decide the question of identity as minority, the Court held that where a regional minority community has to be identified qua the population of the State or qua the entire population of the country would depend on the subject and right in the context of which the controversy has been raised. Thus in the very nature of things any general declaration by the Central Government recognising certain communities as minor communities for the purposes of Act of 1992 which obviously in the context of country's population as a whole, through its operation field could not limit the content and reach of Article 30 by restricting the rights flowing from Article 30 to the communities enumerated in the notification issued u/s 2(c) of the Act of 1992 and those religions who have not been included in the list to be denied of their right under Article 30 of the constitution by mere omission on the part of the Central Government. It is on the aforesaid premise that the Supreme Court in *DAV College* (supra) found that it is undisputed and it was also conceded by the State of Punjab that the Hindus of Punjab are a religious minority in the State of Punjab though they may not be so in relation to the entire country. The claim of Arya Samaj to be a linguistic minority community was also upheld. This was founded on the premise that while the script of majority of people in Punjab who speak in Punjabi is Gurmukhi, the language of Arya Samaji's being Hindi which has a distinct script in the form of "Devnagari" constituted a linguistic minority within the State of Punjab. Thus notwithstanding Hindus are not a minority community on the national scene, would still be a minority in Punjab while deciding controversy arising out of action of Punjab Govt. whose territorial jurisdiction is State of Punjab. In such circumstances the numerical strength of Hindus vis a vis total population in Punjab alone is relevant factor and if their strength is less than 50% of total population, Hindus are entitled to claim rights and confine the same which flow from Article 30. This concept of expression "religious minority" finds place in Article 30 and explained by the Apex Court

cannot be construed restrictively because of the Act of 1992, which is not an Act amending Constitution. The contention advanced by learned AAG, would result that an Act of Parliament, without making necessary amendment can provide a restrictive meaning to any expression used in Constitution, thus usurping the functions of supreme Court of India, who alone is the final arbiter on interpretation of Constitution under the scheme of Constitution.

37. It may be noticed that Article 29 and 30 are not inhibited like Article 19 to be subject to reasonable restrictions framed by State. Reference in this connection may be made to *Sidhrajibhai v. State of Gujarat* AIR 1963 SC 540. Shah J. speaking for six judges Bench said:

Unlike Article 19, the fundamental freedom to establish and administer educational institutions by minorities guaranteed under Article 30 is absolute in terms: it is not made subject to any reasonable restrictions of the nature fundamental freedoms enunciated in Article 19 may be subjected to. All minorities, linguistic or religious have by Article 30(1) would be to that extent void.

38. The acceptance of contention of learned AAG would result in restricting the operation of Article 30 of reading the provisions of Article 30(I) as "All minorities as notified by Central Govt., whether based on religion or language shall have the right..." in place of "all minorities whether based on religion of language shall have right...." such a restrictive, reading of provisions of Constitution which is inherent in the contention of AAG, would be against all canons of interpretation. The only reasonable construction in the scheme of guaranteeing freedom of religion and incidental right to conserve and promote cultural and educational interest of religious and linguistic minorities is to hold that rights under Article 29 & 30 flow from the "less than majority numerical strength" of given religious denomination or distinct Section of people having distinct language, script and culture, which such community or Section bears to total population of the State or region or Country, depending on the context in which such enquiry is to be held.

39. Moreover to accord with the contention of learned AAG, keeping in view the law laid by the Supreme Court, it would necessarily require a Statewise declaration of minority communities by the Central Govt. u/s 2(c) and unless the Central Govt. undertakes such exercise and declares an exhaustive list of minority communities in each State, a community having a minority in any State will be deprived of its rights under constitution on that basis. Such an interpretation neither commends to us nor to learned Counsel when it was put to him. No provision of the Act of 1992 prohibits laying claim by any community as minority and assert its right to enjoy protection of any right as such flowing from Constitution in any State in the context of any action by such State.

40. It is not permissible for legislature to restrict the scope and ambit of rights flowing from the Constitution directly, by using very same expression that has

been used in the Constitution and its meaning determined by the Supreme Court. No Act of legislature can restrict the expanse of Constitutional rights as explained by Supreme Court except by amending Constitution within the permissible limits, that is to say without affecting the basic structure of the Constitution.

41. In the face of this, for the purpose of considering when a community claims status of religious minority for the purpose of Article 30, there can hardly be any room of doubt that merely on the ground of want of declaration under the Act of 1992, the State can not deny such rights, if it has otherwise established its claim as a regional minority community, which flows to it under Article 30. .

42. Once such facts are established viz. (1) existence of distinct religious faith, (2) its numerical strength vis a vis total population of the territory with reference to which such rights are claimed, then the rights under Article 30 flows.

43. Act of 1992 has to be read in that light. In fact, no part of Act of 1992 even lay down the flow of rights from Article 29 or 30 to be enjoyable only by the communities declared by Central Govt. u/s 2(c) of the Act, but confines operation of such notification only for the purposes of Act of 1992. No provision of Act of 1992 can be related to contention of learned AAG the even if the minority status of a religious community is established on undisputed facts, exercise of constitutional rights by it can be withheld.

44. However what right flow, on identifying a community to be in minority status depends on variable facts.

45. Coming to claim of the petitioner. Two facts have not been denied viz. identity of Jainism as a distinct religion and numerical strength of Jains within the State of Rajasthan is far too below 50% of the population of Rajasthan.

46. There is ample evidence otherwise also, available in the present case to suggest that the "Jainism" is a religion distinct from other religions in Rajasthan where the educational institution viz. Darshan Dental College in question is situate and in connection with admission to which the controversy has arisen.

47. Firstly the census report of. 1991 is replete with statements about communities which are the main "religious communities" in the State as a whole.

48. The following part of the report for the present purpose throws light on the issue whether "Jainism" is a distinct religion and Jain community is a religious minority community in Rajasthan.

Question 8. Religion

XXXX XXXX

49. The religion-wise data was compiled from household schedules in Regional Tabulation Offices.

50. The following are the main religious communities in the state as a whole.

These are arranged in order of their numerical strength as state level:

Males	Females	Sex Ratio	Communities	(Females per 1000 males)	Religious	Persons
20,543,219	18,657,880				Hindu	39,201,099
1,835,622	1,689,717				Muslim	3,525,339
343,997	305,177				Sikh	949,174
284,148	278,658				Jain	562,806
24,308	1,880	727			Christian	47,989

51. The percentage of the population accounted for by each of the six major religious communities, namely, Hindus, Muslims, Sikhs, Jains, Christians and Buddhists at the 1991 Census are given below at state level:

Communities	Percentage to Total	Percentage Decadal	Religious	Growth Rate
Hindu	89.09			+28.09
Muslim				8.01
Sikh				+41.46
Jain	1.28	-		1.48 +31.73
Christian				9.85
Buddhist	0.01	+		+21.28

52. The pattern of distribution of the population of the six major religious communities between rural and urban areas is as follows:

Percentage Urban	Percentage rural	Communities	Population to total	Religious	Rural population to total
31,358,285	92.40		7,842,814	Hindu	77.90
1,789,947	5.27		1,735,392	Muslim	17.24
1.59			107,434	Sikh	541,739
0.65			342,088	Jain	220,718
				Christian	3.40

16,012	0.05	31,977	0.32
-----			Buddhist
2,676	0.01	1,791	0.02

For the convenience of the readers two statements giving religion data at various levels are also given in the following pages. While statement-1 shows distribution of population by religion at 1981 and 1991 censuses at State/ District level, Statement-2 gives total population and population for each of the six major religious communities viz; Hindus, Muslims, Christians, Sikhs, Buddhists and Jains and the combined figures FOR "Other religions and persuasions" and "Religion not stated" for India and its states and union territories. The data presented in this statement include all population those living in normal and institutional households and the houseless population. The religions in this statements have been arranged in order of their numerical strength at the country level."

53. In this report, it lists Hindus, Muslims, Christians, Sikhs, Buddhist and Jains as the main religious communities in the State in respect of which specified material has been gathered. It has been stated in the report that which are the main religious communities in the State as a whole in a prefatory paragraph. It enlists six religious communities situate within the State of Rajasthan and in this Jain has been described as a distinct religious community alongwith Hindus, Muslims, Sikhs, Christians and Buddhist. It again states that while statement-1 shows distribution of population by religion at 1981 and 1991 censuses at State/ District level, Statement-2 gives total population and population for each of the six major religious communities viz. Hindus, Muslims, Sikhs, Jains, Christians and Buddhists and the combined figures for other religions and persuasions. The major six religions are stated and arranged in different tables in decending order of population strength which they bear to total population in India. This statement clearly betrays that in India "Jains" are recognised as a distinct major religion practised in India and that the religious communities in India are not confined to the 6 communities named in the census report but other religious communities also exist but do not find their distinct identities mentioned in the list either because non- mentioning independently by followers of such religions while furnishing information about their religion or because of their microscopic numbers which has been made it inexpedient to list their population independently in tabular form. The fact remains that even the list given in the census report is not exhaustive of religions followed in this country and even any other community may lay claim to the minority status so far as rights flowing from constitution is concerned.

54. Apart from this, the Central Legislation time and again has referred Hindus, Sikhs, Jains and Buddhists as the distinct religions alongwith Parsis, Muslims and Christians.

55. As early as in 1925 British Parliament in enacting the Indian Succession Act

has recognised Jains in India distinct from other major communities viz. Hindus, Muslim, Sikh, Buddhist. Section 218 of the Indian Succession Act, 1925 which provided the persons to whom grant of probate and letters of administration could be granted, enumerates different class of persons. It states that if the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jains or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate. Again when after independence the Hindu Code Bill was designed providing uniformity in matters of succession, marriage, maintenance, adoption and guardianship of minors which resulted in passing of 4 different Acts, the legislators took pains while providing applicability of the Acts and excluding the class of persons to whom each of enactment was not applicable, to make a deeming provision for the purposes of treating Buddhist, Jains and Sikhs to be Hindus for the purposes of those enactments.

56. In the Hindu Succession Act, The Hindu Marriage Act, Hindu Adoption and Maintenance Act and Hindu Minor and Guardianship Act, the Parliament was categorical in making a legal fiction in respect of Jains to be deemed Hindus while determining the application of the Act. In all the four Acts, the provision providing for the application of the Act similar provisions were made. For illustration Section 2 of the Hindu Marriage Act reads:

2. (1) This Act applies-

(a) to any person who is a Hindu by religion in any of its forms or developments, including in Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj.

(b) to any other person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

57. Thus, legislative enactments affecting personal matters, which otherwise were governed by personal law, the British Parliament as well as Indian Parliament have recognised existence of Jains an independent religious community like Buddhists and Sikhs from Hindus and not one as a sect or Section of the Hindus. This is of significance that while in the matter of spiritual faith all the four communities always recognised different, in their worldly affairs were governed by a common code, which was founded on texts on Dharm as law distinct from Dharm as faith as moderated by custom.

58. This apart, scholars too have treated the Jains and Buddhist, having quite similarity in their propagation and having historically emerged on the Indian

Horizon almost at the same period represent different schools of thought than Vedic or Hindu thought of religious philosophy.

59. Abingdon Dictionary of Living Religions while speaking about the Jainism writes:

Jainism-"follower of a jina". a system of radical Asceticism, founded at least as early as the sixth century B.C. Jina is an honorific title given to the great teachers and ascetics of the movement, particularly to a series of twenty-four great teachers known as TIRTHANKARS. Jainism's doctrine and history are permeated by religious convictions related to the notion of conquest, and its goal is absolute triumph over all material existence.

60. The Encyclopedia of World Religions by G.T. Bettany deals with the Jain philosophy as a religion independent of the other religions. It "says that the careful researches of several eminent scholars have led them to the belief that Jainism is coeval with, if not slightly older than, Buddhism, and took its rise in the same development of Brahman asceticism and reaction from Brahmanical tyranny. While not entering into the said conflict, the writer further says that

there are some resemblances between Buddhism and Jainism which do not necessarily show that the one is derived from the other, but rather that they took their rise in the same age or during the same intellectual period, Buddhism proved the more adaptable and appealed to more widespread sympathies, and surpassed and overshadowed Jainism; but the latter, less corrupted, and more characterised by charitable actions, has survived in India, while the former is extinct.

61. Thus encyclopedia describes Jainism as an independent faith in Indian sub-continent amongst other faiths.

Encyclopedia Britannica says:

"Jainism" a religion and philosophy of India, founded in about the 6th century BC by Vardhamana Mahavira-the 24th of the Jinas (Conquerors), or great religious figures on whose example the religion is centered-in protest against the orthodox Vedic (early Hindu ritualistic cult of the period. Jainism, which does not espouse belief in a creator god, has as its ethical core the doctrine of ahimsa, or non-injury to all living creatures, and as its religious ideal the perfection of man's nature, to be achieved predominantly through the monastic and ascetic life.

The encyclopedia Britannica further says "in many senses the difference between the other religions and the Jainism is in the pursuit of its philosophy."

62. Apart from this opinion from authors of foreign origin, the reference to some Indian Publications will show that scholars in India places Jainism as a different faith and philosophy from Vedic or Hindu philosophy.

63. In The Cultural Heritage of India, a work of eminent scholars edited under the Editorial Board headed by Dr. Sarvapalli Radhakrishnan, and undertaken as a

major responsibility of the Institute of Culture, Calcutta in Vol. I of its 6 Volume work dealing with "early phases of prehistoric, Vedic and Upanishads, Jains and Buddhist", recognises Jainism as a Philosophy of great antiquity running parallel to the opposed to current of vedic thought and as old as the Vedas. In Chapter 23 of the Volume giving a brief historical survey it is stated:

The Jains claim a great antiquity for their religion. Their earliest prophet was Rishabhdeva, who is mentioned even in the Visnu and Bhagavata Puranas as belonging to a very remote past. In the earliest Brahmanic literature are found traces of the existence of a religious Order which ranged itself strongly against the authority of the Vedas and the institution of animal sacrifice. According to the Jaina tradition, at the time of the Mahabharata war, this Order was led by Neminatha, who is said to have belonged to the same Yadava family as Krsna and who is recognized as the twenty-second Tirthankara. The Order gathered particular strength during the eighth century B.C. under Parsvanatha the twenty-third Tirthankaran, who was born at Varanasi. This Order we may call the sramana Sangha (as distinct from the Vedic Order), which later became divided into the Jaina and the Buddhist Orders under Mahavira and the Buddha, respectively.

Thus, it places origine of Jain and Buddha to the same root, which later on divided.

64. In Chapter 24 introducing Jainism it has been stated:

Throughout Vedic Literature we find two parallel currents of thought opposed to each other one enjoining animal sacrifice in the Yajnas (sacrifices) and other condemning it, the former being Represented by Brahmanas of Kuru-pancal country in the West and the latter by the Kshatriyas of eastern countries consisting of Kasi, Kosala, Videha and Majadha....And again in the eastern countries instead of pure Sanskrit, Prakrit were prevalent, which were the canonnial language of Jainism and Buddhism. Further the "Atma Vidya" of the upnishads is found to be cultivated by the Kashatriyas of these eastern countries, as against the sacrificial religion and the adoration of the gods in "Kuru-Panchala" country. As we find these features in Jainism and Buddhism which later arose in this very area, we may conclude that Jainism was prevalent in countries and as old as Vedas.

65. The scholars further classified "darsanas" or philosophies that flourished in this land in two groups viz. "Vedic" and "non- Vedic" and pointed out that while the farmer included "Samkhya" and "Yoga", "Nyaya" and "Vaisesika", "Mimansa and Vedanta, under the latter came Jaina, Buddha and Carvak. In Chapter V while introducing some fundamental principle of non-Vedic Jainism, it opened up by relating it to period of Parsvanath".

Many religious and philosophical movements contributed their different hues to the Multi-coloured canvas of the ancient culture of India. Of these, the religious and philosophical system, at present known as Jainism, was, in the time of

Parsvanatha or, more accurately, of Mahavira designated Nirgranthism (Niggantha Dhamma), though it was known by the general name Sramanism as well, a term which was applied to all non-Brahmanical sects. It was known as Nirgranthism, because it laid supreme stress on non-possession and on renunciation of the house (agara or grha), which was considered a knot (grantha). It also held the conquest of the evil tendencies of attachment and hatred was the real end, and that the act of non-violence or austerity or renunciation which fails to achieve this end was spiritually futile. The promulgators of this idea came to be regarded as jinas (victors), and their religion came to be known as Jainism. Over and above the general characteristics of Sramanism, Nirgranthism or Jainism has some specific characteristics, ethical and philosophical, based on equality and non-violence.

66. This clearly delineated the stress of ethical than celestial foundation of the thought giving it as a distinct identity as religion different from vedic or Hindu thought.

67. The another work of significance on Indian History published by Bhartiya Vidhya Bombay in Twelve volumes titled as "The History and Culture of the Indian People" compiled under the Editorial Board headed by Dr. R.C. Majumdar Ex-Vice Chancellor and Professors of History at Dacca University in its Volume Two while referring to "Religion and philosophy in the age of imperial unity during the pre-Christian era" has too identified "Jainism" as a distinct religion, though claimed to be of great antiquity in its literature, but at historically traceable at least to times of Parsvanath the 23rd Tirthankar". Even according to other religious scriptures, notably of Buddhist and propounds that Jainism was not founded by Mahavira the 24th Tirthankar as popularly believed, but is traceable to earlier times of Parsvanath, and Mahaveer acted as reformer of the existing, religion propagated by Parsvanth. Commenting that first twenty two Tirthankars (prior to Parsvanth) seem to be completely mythical, the authors opine:

The case, however, is different with the last two prophets, Parsva and Mahavira. All that Jain tradition reports of them is quite probable. The contemporaries of Mahavira were well-known and the Buddhist canon supplies us with incontrovertible proof of their historicity.

The belief in the historicity of Parsva is confirmed by the canon, which not only gives us some idea of his doctrines but preserves anecdotes about his followers.

A Buddhist Sutra mistakenly attributes to Mahavira the religion of the four vows, which really belonged to Parsva...and such a mistake could only have occurred if Parsva actually had followers existing at the time.

It is thus highly probable that some kind of Jain faith existed before Mahavira, and his teachings were based on it.

Thus, unlike Buddha, Mahavira was more a reformer of an existing religion and possibly of a church, than the founder of a new faith. This fact is well brought out

by the differences in their traditional lives. We are told that Buddha, at the beginning of his spiritual career; lived with some teachers, with whose teachings he became dissatisfied and finally found out the truth for himself. The Jain tradition makes no such claim for Mahavira. He is represented as following a well-established creed, most probably that of Parsva.

68. Likewise Dr. Raj Bali Pandey in his Dictionarial Work "Hindu Dharam Kosh" published by U.P. Hindi Sansthan, Lucknow recognises and introduces Jain Dharm as a religion not accepting the authenticity of Vedas in following words:

tSu /keZ&osn dks izek.k u ekuus okyk ,d Hkkjrh; /keZ] tks vius uSfrd vkpj.k es vfgalk R;kx] riL;k vkfn dks izeq[k ekurk gS AtSu "kCn ^ftu^ ls cuk gS ftldk vFkZ gS og iq:"k ftlus leLr ekuoh; oklukvks ij fot; izkIr dj yh gS A^ vgZu vFkok rhFkZdj blh izdkj ds O;fDr Fks vr% muls izofrZr /keZ tSu /keZ dgyk;k A tSu ykx ekurs gS fd mudk /keZ vukfn ,oa lukru gS A vkfn rhFkZdj _"kHknso Fks ftudh x.kuk lukru&/kehZ fgUnw fo".kq ds pkSchl vorkjks es djrs gS A bUgh ls ekuo /keZ ?lektuhfr] jktuhfr vkfn? dh O;oLFkk izpfyr gqbZ A rsblos rhFkZdj ik'oZukFk gq, ftudk fuokZ.k 776 bZ-iw- es gqv k A pkSchlos rhFkZdj o/kZeku egkohj gq, ? ns- egkohj? A bUgh rhFkZdjks ds mins" k vkSj opuks ls tSu /keZ dk fodkl vkSj izpkj gqv k A

69. Reference of all these works denote the acceptance of "Jainism" as a distinct religious order existing in Indian polity since times of great antiquity and was opposed to ritualistic cult of Vedic philosophy. Above legislative and scholarly recognition support the view about existence of Jainism and Jain Community in India since at least 700 B.C.

70. There is no questioning that Buddhism and Sikhism have in fact been recognised and notified as separate and distinct religions u/s 2(c) of the Act of 1992 also. There appears to be no reason to treat "Jainism" differently, when according to all scholar's unanimous opinion all the three have risen as a reaction to orthodox ritualistic vedic culture.

71. This apart, the judicial pronouncements of the Courts in this Country amply support the view that Jainism is a distinct religion and Jains constitute in distinct religious community.

72. (1) In The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., the Court considered the meaning of expression "religious" in the context of set of provisions in the Constitution guaranteeing freedom conscience and practice any religion, particularly with reference to protection of rights arising under Article 26 and 27 of the Constitution . B.K. mukerjee spoke for the Constitution Bench said.

Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God, in any Intelligent First Cause.

The Court thus recognised Jainism and Buddhism equally two distinct religions

professed in India in contrast with Vedic religion.

73. The matter came up before the Supreme Court in *State of Rajasthan v. Sajjanlal* AIR 1975 706 in connection with the controversy arising under the Rajasthan Public Trust Act and its applicability to well known temple of Rajasthan "Rikhabdevji" also known as Keshariyanathji situated at Rishabdev near Udaipur. In this case the State of Rajasthan has contended that the temple in question was not a Jain Temple but a Hindu Temple. This plea was founded on existence of Jains and Hindus as two distinct religions. The Court held:

No doubt Rikhabdevji Temple is a Jain Temple and the State has failed to show that it is a Hindu Temple.

74. The Court held that the temple was a Jain temple and not a temple of Hindu deity and though administered by the State from the times of Mewar State and was not administered by the community, the management constituted by the State must have on its management the members from the Jain denomination. The question whether it belongs to the Digambar Section or Shwetamber Section was left open to be decided later on. But the fact remains that the Court accepted the existence of Jain religious denomination in India as distinct from the Vedic or Hindu religion and its different sects and Jains were not considered to be a part or Section of Hindu denomination in this Country.

75. In this connection, it may be profitable to notice the expression used in the Constitution Article 26 which guarantees freedom to manage religious affairs. It speaks "Subject to public order, morality and health, every religious denomination or any Section thereof shall have the right. The right conferred under Article 26 is not confined to minority but to all religions irrespective of whether it is in minority or majority. The term "denomination" in Article 26 denotes to an independent religious community is to be found in *Sajjanlal's* case (supra). The Court on the question said:

The word "persuasion" is a synonym of faith, creed, denomination, religion etc. Webster's Third New International Dictionary Vol. II p. 16688 gives the meaning of "persuasion" among others (a) as "a system of religious or other beliefs (the several Protestants...); (b) a group, faction, sect, or party that adheres to a particular system of beliefs or ideas or promotes a particular view, theory, or cause..." The same dictionary in Vol. I gives the meaning of "denomination" at p. 602 as "a religious group of a community of believers called by the same name.

76. Thus, the denomination while refers to religious community, the term "minority" in Article 30 refers to religious denomination who is numerically less than the majority denomination of the religion.

77. The Rajasthan High Court in its decision in *Sajjanlal v. State of Rajasthan* RLW 1966 593 posed for it three questions to be determined, one of which was whether temple of Shri Rikhabdeoiji is a Jain Shwetamber temple or a Hindu temple. Referring the evidence of great antiquity which included the Royal

Farman of Mughal Emperor Akbar containing grant of number of mountain hillocks in favour of Hear-bijoy Soori described "these mountains and places of worship and pilgrimage which are the places of the followers of Jain Shwetamber religion are given to Hear Bijoy Soori. They are the followers of Jain Religion", and also to Imperial Gazetteer of India came to conclusion that Rikhabdeoiji is a Jain Temple and not a Hindu Temple. This part of the finding of the Rajasthan High Court was affirmed by the Supreme Court in its decision reported in State of Rajasthan and Others Vs. Shri Sajjanlal Panjawat and Others, though it did not decide the controversy whether it is a Shwetamber Jain Temple or a Digamber Jain Temple. For the present purposes fact remains that even during the reign of Akbar the existence of Jain Religious Community independent of Hindus was accepted so far as following the spiritual attainment through following particular faith or precept was concerned. The fact that Jainism exist as an independent religious community cannot be blurred by the fact that in their sectarian matters like marriage, succession, property etc. Jain, Buddhists and Sikhs, in India have always been governed by same set of law and custom governing Hindus in respective regions. These are two different fields.

78. In Arya Samaj Education Trust, Delhi and Others Vs. The Director of Education, Delhi Administration, Delhi and Others, , the Jain religion was considered to be a distinct religion within the Union Territory of Delhi.

79. In Sree Jain Swetamber Terapanthi Vidyalaya and Another Vs. The State of W.B. and Others, , Sree Jain Shwetamber Terapanthi Vidyalaya, a society registered under West Bengal Societies Registration Act challenged the action of State in superseding the management committee of the society and appointing adhoc committee for administering the school established and managed by the aforesaid society inter alia on the ground that the institution was an educational institution established and administered by religious minority community of Shwetamber Terapanthi Jains. The State of West Bengal contested the claim to protection of rights of Articles 29 and 30 alleging that Jains are not in minority and is only a sect of Hindu denomination and not a distinct religion. The Court repelled the contention. B.C. Ray J., as he then was, spoke about the minority status:

It is to be considered first whether persons belonging to the Jain Shwetamber faith do form numerically a minority compared to the total population of this State.

80. Taking into consideration the untraversed averments that Jain community is minority community and Census figures of 1971 showing Jain population at a meagre 0.47% of total population, the Court concluded:

Therefore, in view of this state of pleadings, in my opinion, the members professing Jain faith and belonging to the Jain Shwetamber Terapanthi sect do constitute a religious minority in India, particularly in West Bengal where this educational institution is situated.

81. The Court also opined about Jainism as different religion from Hindu religion:

In my opinion considering the decision in Commissioner of Wealth Tax, West Bengal III Vs. Smt. Champa Kumari Singhi and Others, and also of the specific mention of Jains both in the Hindu Law as well as in the various Acts such as Hindu Marriage Act, Hindu Adoptions and Maintenance Act, Hindu Succession Act etc. Jain Shwetamber Terapanthi Sect profess a faith different from Hindu Religion.

82. Likewise Madras High Court too found Jains to be distinct religious community having minority status in State of Madras. This fact appears from a recent case in A.M. Jain College Vs. Government of Tamil Nadu and Another, . It referred to earlier judgment of that Court in W.P. No. 1149/75 holding Sri S.S. Jain Education Society, which was conducting the petitioner College, in the case before it, to be a religious minority institution within the meaning of Article 30(1) of the Constitution. The State of Tamil Nadu, in pursuance of decision in W.P. No. 1149/75 declared the petitioner College as minority institution. The Court observed that it is also an admitted fact that Jain Community in Madras, Tamil Nadu is religious and linguistic minority.

83. From the aforesaid, it can well be concluded that Jain religion is independent of other religions and it is numerically less than other communities pursuing different faiths in the State of Rajasthan vis a vis State of Rajasthan, it must be held to be a religious minority community. In fact, in the report filed by the respondent but for the recommendation not granted by the Rajasthan Government for the purposes of Act of 1992, the claim of the petitioners have been accepted with Para 14 of the reply, it has been specifically stated in Para No. 14 of the reply affidavit.

It is, however, humbly submitted that if the Jain community is granted the minority status then it becomes entitled to have 50% admissions at its own level in the 1st year in BDS Course as stated in this para and that is why they got the said Certificate issued in the manner stated above.

84. So far as denying claim of Jain community to its status as religious minority community is concerned, the reply only emphasises the reasons given in the impugned order viz. that the Parliament has enacted the Act of 1992 and which extends to whole of the Country except Jammu & Kashmir. After referring the Clause (c) of Section 2 of the Act of 1992, the reply states:

In view of Clause (c) of Section 2 of the Act of 1992, a community acquires the status of minority if that community is notified as such by the Central Government. The Central Government has not granted the Jain community the status of minority community by issuing any notification in this regard and therefore, this community is neither entitled to claim the status of minority community nor entitled to take any benefit available to the minority communities.

85. It may be clarified that the question whether Jainism or Hinduism or Sikhism

are different religious beliefs is quite distinct from the fact which law governs their corporal rights in the matter of worldly affairs like marriage, property and succession, Religion is concern of faith or belief in a code of conduct of spiritual attainment of soul, and sectarian matters are not the essence of religion. It has long been established that notwithstanding Jains, Hindus, Sikhs and Buddhists, though persue different philosophies or "darsan" in their worldly affairs or sectarian matters are governed by customary law applicable to Hindus.

86. The contention has been raised by Mr. R.L. Jangid, learned Additional Advocate General, that it is essential that the admissions to educational institution of any religious minority community must be restricted to followers of such religion only, wherever in the trust deed it is not mentioned that the beneficiary of the Trust is only minority community, but it is for establishment of education institution for the benefit of all people without confining its admittance to benefits to the Jain community only. Suffice it to say, what is necessary for availing right under Article 30 is establishment by the minority community and its administration by such minority. It is not necessary that the educational institution must impart religious education or confine its admittance to the minority. It has been held in *St. Xavier's College v. State of Gujarat* AIR 1974 SC 1383 that an education imparted at such institution may be religious or secular wholly unconnected with the language and script of culture. It is also not necessary that the institution should be established for the benefit of a particular religious minority. It is the view expressed by the Supreme Court in *Ref. Kerala Education Bill, 1957* AIR 1958 SC 956 *Rev. Sidhrajbhai v. State of Bombay* AIR 1963 SC 540 and *Rev. Father W. Proost and Others Vs. The State of Bihar and Others*, and *St. Stephen's College* (Supra).

87. In *Sidhrajbhai's* case (supra), the Supreme Court said:

The fundamental freedom is to establish and to administer what are in truth educational institutions which cater to the educational needs of the citizens, or Section thereof.

88. The question was considered by Supreme Court in the case of *Rev.W.Proost* (supra) wherein relying on certain observation from the reference in *Kerala Education Bill* case it was contended by the State drawing support from Article 29 that where educational institution opens admission to general candidates it is not entitled to protection under Article 30 because it cannot be said to be a minority institution then. The Court repelled the contention by considering *Kerala Bill's* case and the *Sidhrajbhai's* case. Reiterating the view expressed in *Sidhrajbhai's* case, the Court said:

The emphasis here was rightly placed not upon the needs of the community exclusively but upon educational needs of the citizen or Section thereof. In other words the suggestion that Article 30(1) is limited to the needs of single community or that only its own culture, language or script need to be provided for is not the right approach.... In our judgment the language of Article 30(1) is

wide and must receive full meaning. We are dealing with protection of minorities and attempts to whittle down the protection cannot be allowed. We need not enlarge the protection but we may not reduce a protection naturally flowing from the words. Here the protection clearly flows from the words and there is nothing on the basis of which aid can be sought from Article 29(1).

89. It is also not necessary that for seeking protection of Article 30(1), the majority of the people manning the institution must belong to the religious minority in question. Thus, this contention of the learned Additional Advocate General that because of the deed of Trust does not confine the availability of benefit of trust to the members of Jain community, must also fail.

90. It is not the case of State at all that the purpose and action of petitioner institution does not serve the interests of community but is run for the personal interests. Under Article 30(1), right of minorities to establish and administer educational institutions is protected. It is accepted now by Court in India that the interest of the minority community is served through recognising right of such institution through education of the children of the said group which help maintain its culture. In furtherance of the object the Courts also accepted the right of the management of such minority education institutions to have right of admittance to students free from interference to some extent not exceeding 50% which may be regulated by State. However, the strength of the members of students of its own community should not exceed 50% of the total intake. That was the principle enunciated in the case of St. Stephen's College. But this right of management in giving admittance to candidate of its own chance is not uninhibited. The Court had made it clear that such rights can be regulated and ratio of such admission can be limited looking to the interest of community and the development of the area in which the institution is established, keeping in view to the population of the minority. The Court has made it clear that such number of admissions to which the management can lay claim, cannot exceed 50% nor the State by regulatory measures provide such management quota in excess of 50%, but it can certainly reduce the management quota by framing appropriate regulatory provisions. However, until regulatory measures are framed by the State or other Competent Authority, the minority institution, having protection under Article 30(1), can legitimately claim its right to admit students of its own community up to 50% of the total permissible intake. This principle continues to operate for the time being until decision by the larger Bench of the Supreme Court is delivered notwithstanding that the Supreme Court has left the maximum percentage of seats available for management quota open for reconsideration in reference made to 7 Judges Bench, for deciding the questions raised in the wake of decision of this Court in St. Stephen's College case (supra). However, the basic right to have limited number of seats to be filled from amongst its own community is not in doubt. Only the maximum extent upto which right can be enjoyed has been left open. That is to say whether such right can go upto 50% or to some lesser or more extent is the question left open.

91. In the present case, ordinarily, the question would have required consideration even after findings that the Jain is a religious community and on the basis of population figures, made available in the census report, is a minority religious community in the State of Rajasthan, whether it fulfils other conditions for availing the benefit of protection under Article 30(1) of the Constitution, in some detail. However, on the admitted facts, namely, that the institution has been established by persons belonging to Jain community, that the management of the institution is confined to the members of Jain community and that the institution has in fact been established for imparting education in Dentistry after obtaining clearance from the appropriate authority under the Dentist Act as well as the State and that it has also been granted provisional affiliation by University of Rajasthan and the fact that the respondents have admitted that but for recognition of the "Jains" as a religious minority community by a Notification issued u/s 2(c) of the National Commission for Minorities Act, 1992, the claim of the petitioner is justified, the petitioner is entitled to rights flowing to it from Article 30(1) as an educational institution established and administered by religious minority community of Jains as laid down by the Supreme Court in St. Stephen's College case (supra) in the matter of having management quota for giving admittance to members of minority community, not exceeding of 50% of its total entry until any regulatory provisions are made to the contrary in that regard by the State Government regulating such quota.

92. Of course, in giving admission to the members of the minority in College, the management shall have to follow the eligibility condition for admission laid down by the University of Rajasthan and the Dentistry Council of India and admissions will also have to be strictly in accordance with comparative merit of the candidates for such admission. The comparative merit may be determined either on the basis of marks obtained in qualifying examinations or selection tests conducted by institution itself for evaluating the competing merit of the aspirant candidates or as per the competing merit of such candidates determined through the examination conducted by the University or the State as the case may be, for the purpose of admittance to its affiliated colleges. However, this management quota is confined to admittance to the members of the said religious community as no management quota is envisaged for giving admittance to any other category of students. In Unni Krishnan's case the Supreme Court has clearly laid while accepting payment quota upto 50% vis a vis free seats, that no management quota is permissible even against payment seats. The right of management to admit upto 50% of total intake of candidates from minority community which has been established and administered by such minority has been recognised by Supreme Court in decision of St. Stephen College's case on the anvil of Article 30(1).

93. It is now fairly well established that three conditions for availing the benefit of right guaranteed under Article 30(1) are that it must be established by a person or persons belonging to the minority community; that it must be managed and administered by person or persons belonging to such minority

community, and that it must have a nexus to serve the interest of community and there must positively exist an educational institute of minorities, duly established in accordance with law.

94. Last of the above principles was enunciated in A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, it was a case in which the appellant- Society before the Supreme Court had admitted the students to the Medical College in First Year MBBS course, without fulfilling any condition for running the Medical College, without there being any permission of the State Government to the establishment of the Medical College, nor affiliation was granted by any University. Despite the strong protest and warnings of the University, the Society even admitted of its choice to students to the Medical College. The Court found that it could not be considered as a minority education institution without fulfilling a necessity requisite for establishing such an education institution in accordance with law and in the absence of necessary infrastructures to impart education with a requisite excellence in the field of discipline as chosen.

95. Considering a large number of decisions, including the decisions of A.P. Christian Medical Educational Society's case and St. Stephen's College v. University of Delhi (1992) 1 SCC 559, the Apex Court laid down in conclusions that under Article 30(1), minorities have right to establish educational institutions of their choice and proof of establishment of the institution by a distinct and identifiable religious or linguistic minority group is a precondition for claiming right to administer the institution. The words "establish" and "administer" used in Article 30(1) are to be read conjunctively. The right claimed by a minority community to administer the educational institution depends upon the proof of the establishment of the institution. The proof of establishment of institution. is thus, a condition precedent for claiming the right to administer the institution.

96. In the present case, the fact that the petitioner-Society is founded by the persons of Jain community, is not in dispute. Under the deed of trust, any institution under its administration, is to be managed by the Board of trustees. As per the terms of settlement, only member of Shwetamber Jain community can become a trustee. Thus the educational institution can also be said to be administered by Jain. In fact no dispute has been raised about fulfilment of these conditions by the State.

97. There is no dispute about the fact that after obtaining proper sanction from the Dental Council of India under the Dentist Act, the Darshan Dental College in question has been established at Udaipur. The State Government has recommended for grant of Essential Certificate/NOC and Dental College has been provisionally affiliated to the University of Rajasthan. Thus, all the conditions as envisaged in the St. Stephen's College, stand fulfilled in the case of the petitioner.

98. The holding of religious community to be a minority community is one thing. It may give its right to establish and maintain the educational institutions of its own choice. However, that by itself does not absolve it from being subjected to reasonable regulations for the benefit of educational institutions and laws subject to which such courses of study can be conducted. It has to be administered in consistency with the national interest and provisions of law made for the maintenance of the institution. The right to administer may consist of the right to choose its managing or governing body and also the right to use its property or income for the benefit of the institution. Keeping in view the scheme of the provisions of Constitution, the Apex Court also held that it also includes right to admit certain number of students of its own community not exceeding total number of admission and to devise its own selection method for determining the comparative merits of competing claim of candidates towards management seats for minority community. However, it does not confer any right to provide admissions to more candidates than permissible under law or to provide its own eligibility criterion in choosing members of staff or students other than that provides under relevant law governing such matters. Eligibility criterion is not the same as mode of determining competitive merit.

99. Learned AAG has referred to a decision of Allahabad High Court in Yogendra Nath Singh and another Vs. State of U.P. and others, It was a case in which the institution claiming the protection of Article 30, was not established by any religious minority, but was established by certain prominent citizens, which included not only the members of the Muslim community but Hindu community also. It was in that background that Court observed that the institution was established for imparting general and technical education and there was no provision specially with reference to the Muslim minority community. Obviously the very foundation that such education institution must have been established by the minority claiming such right was not established in the above case.

100. Next the decision of Calcutta High Court in Shiva Nand Pandey and etc. Vs. Bhagwan Das Harlalka and Others, was relied on by AAG. It was a case where the institution in question claiming protection under Articles 29 and 30 was established in the State of West Bengal. Notwithstanding that claim was laid that it was founded by some Hindi speaking people, the Court found that the school was originally established in two Section, namely, Bengali and Hindi, it was not an institution established for conserving distinct linguistic interest in the State of West Bengal. Therefore, it was found that it was not an institution for preserving the culture of distinct language and script of a Section of people, but was in furtherance of education in general. Apparently, the ratio cannot be applied to an educational institution which is established by a religious minority and claiming protection under Article 30 of the Constitution on fulfilment of all conditions.

101. The case of Andhra Kesari Educational Society v. State of Andhra Pradesh AIR 1988 Andhra Pradesh 256 also is not of any assistance to the respondents, because the case proceeds on peculiar facts of its own, in which the Court found

that it is inclined to believe that the persons who have formed the said society are merely seeking to reap unfair advantage over other similar educational institutions by claiming fraudulently the status of a minority educational institution, and also to exploit the students, teachers, and the staff. The Court also found that only after obtaining the permission when the question of admittance to student arose, it claimed the said status of minority of education institution, but not at the time of seeking a permission to establish the college of education. On these finding the claim of institution established by a four person for their own personal gain and claiming protection even before establishing the institution and without obtaining permission/sanction from appropriate authority, the Court declined to accept the claim of the petitioner to seek protection of rights under Article 30(1) as a minority educational institution.

102. No such parallels exists in the case in hand. In this case, right from the beginning, the petitioner has made a request that it may be recognised as minority educational institution and, in fact, such recognition was, in the first instance, granted to it by the State Minority Commission which was later on withdrawn solely for want of notification u/s 2(c) of the Act of 1992 notwithstanding. The State Commission itself has recommended for such recognition as minority religious community to Jain community in State of Rajasthan. Even before, this Court the case of the State is not that it is not established and administered by the minority community or that it is a fraudulent claim in order to reap the benefit of any personal nature by the founders of the institution. The only objection in permitting the management to avail the benefit arising out of its status as minority education institution", is that "Jainism" is to included in the notification issued by the Central Government u/s 2(c) of the Act, 1992 and in the absence of such Notification, no claim can be laid to the minority status, otherwise it is entitled to such benefit.

103. For the reasons already stated above, this claim of the respondents cannot be sustained.

104. No other ground has been raised for not considering the "Jains" as religious minority community for the purpose of availing right under Article 30.

105. Once that conclusion is reached that Jain community is religious minority community within the State of Rajasthan, the question then arise is whether the petitioner is entitled to avail the right flowing from Article 30 in respect of educational institution in question. As noticed above, the respondents in their reply have admitted that but for recommendation of the Jain community as a minority community it is entitled to have 50% admission of its own in BDS course as stated by the petididner. This statement flows from the law declared by the Supreme Court in St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., wherein the Court after referring to a large number of decisions including in DAV College's case a decision of the Supreme Court as well as decision of the Andhra Pradesh High Court and Kerala High Court, laid down the following principle:

There is by now, fairly abundant case law on the questions as to "minority", the minority's right to "establish", and their right to "administer" educational institutions all over the country.The courts in certain cases have accepted without much scrutiny the version of the claimant that the institution in question was founded by a minority community while in some cases the courts have examined very minutely the proof of the establishment of the "administer" used in Article 30(1) are to be read conjunctively... The right claimed by a minority community to administer the educational institution depends upon the proof of establishment of the institution, the proof of establishment of the institution, is thus a condition precedent for claiming the right to administer the institution...After the Constitution, the minority under Article 30 must necessarily mean those who form a distinct and identifiable group of citizens of India. Whether it is "old stuff or "new project", the object of the institute should be genuine, and not devious or dubious. There should be nexus between the means employed and the ends desired. As pointed out in A.P. Christian Educational Society case there must exist some positive index to enable the educational institution to be identified with religious or linguistic minorities. Article 30(1) is a protective measure only for the benefit of religious and linguistic minorities and, it is essential, to make it absolutely clear that no ill-fit or camouflaged institution should get away with the constitutional protection.

106. With these parameters once the institution falls to that category, the right which a minority community institution could claim was further stated by the Court:

The minority aided educational institution are entitled to prefer their community candidates to maintain the minority character of the institution subject of course to conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed 50 per cent of the annual admission.

107. From the aforesaid it is apparent that while for the purposes of claiming the right flowing from Article 30(1) by any educational institution, the triple conditions must be satisfied namely (1) it must have actually come into existence (ii) it must have been established by person or persons belonging to the religious minority community, and (iii) also that it must be managed and administered by the person or persons belonging to the said community. These three conditions are to be in conjunction. Further condition that it must not be commercial venture of one or more persons only but must be of the same community. While under Article 29 the condition is that institution must exist for conservation of the distinct community founded on language script or culture, no such inhibition is attached with Article 30 which is to serve educational need of the society in general or a Section thereof.

108. Merely by finding that a group of persons belonging to a religious faith are numerically less and in minority, does not give any personal or individual right to

one or more persons to rights under Article 29 and 30 to establish and maintain educational institution Right is conferred on religious or linguistic minority communities, and not on one or more members of such community only. The individual rights are subject to general municipal law. But it is community right that flows from Article 29 and 30 of the Constitution. Therefore, in addition to enjoying the status of being established by a person or persons of such community and maintained by the persons belonging to that community, it must further have its character as subservient to community interest.

109. Obviously, if such educational institutions are purely for commercial gain of one or more persons only, it cannot be termed as religious minority community educational institution.

110. For availing rights under Article 30, it is not necessary that admissions to the educational institution established and administered by a religious minority must be exclusively or predominantly reserved for such minority community. What is of essence is that institution must be established and administered by a person or persons of such community but not necessarily exclusively for the community if the general charitable purpose serves the interest of community in fulfilling its religious faith, or income of such institution is applied for the benefit of community's purposes, it will be entitled to such benefit. So also if such institution is established primarily for imparting religious education, the secular state has not much to say about it, except that such preaching cannot take place compulsorily in any educational institution, even where such instructions are permissible to be imparted under Article 28.

111. However, it does not give uncontrolled right to run syllabus contrary to laws regulating specified courses, nor any right to preferential treatment in any sphere other than envisaged under Articles 25, 26, 27, 28, 29, and 30. It does not give any right to reservations in any employment or lay claim to any other benefit on the basis of such minority status except to have right to manage the institution without interference and to have a share in the intake of students to professional courses, to the extent not exceeding 50% of total intake which is in furtherance of object of Article 30 itself.

112. Even though right to establish and administer an educational institution by a religious or linguistic minority is absolute in terms but can still be subject to regulations that may be made by State looking to the need of the community and development of the area where such institution is to serve. In *Sidhrajibhai's* case AIR 1963 SC 540, the Supreme Court while holding such right of religious minority to be absolute one not inhibited by doctrine of reasonable restrictions on freedoms enunciated under Article 19 held that reasonable regulations (not reasonable restrictions) in the interest of efficient administration and proper functioning of the institution may be made. The Court said:

Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation morality, public order and the like may undoubtedly be

imposed. Such regulations are not restrictions on the substance of the right which is guaranteed; they secure the proper functioning of the institutions, in matters educational.

113. Where such educational institutions are imparting training in general syllabus prescribed for recognised examination and professional or technical education, the imparting of such education and establishing of such institutions within the parameters fixed by law for such purposes, such institutions can only be established and maintained subject to such regulations as has been prescribed by law. For example, the educational institution in question is to impart professional training in dentistry. The norms for setting up of any dental college and required qualification for imparting such education has been laid by the Dentists Act and the college having basic infrastructure requirement has been affiliated to University of Rajasthan. The college is under all such regulations laid by Dental Council of India as well as University to which it is affiliated in the matter of running of course and maintenance of professional efficiency except to the extent that no interference in the administration of such institution can be made by the State.

114. It is in recognition of this right keeping in view the interest of advancement of educational interests of minority that the Supreme Court has laid down in *St. Stephen College*'s case that the management has right to admit intake of certain admissions confined to members of the community to which it serves, not exceeding 50% in maximum, which too is liable to be regulated by State.

115. But, in doing so, the management enjoys no freedom to choose a less meritorious candidate amongst the class of candidates from whom such choice may be made, subject to eligibility criteria for pursuing such course as laid by Dental Council of India and University to which it is affiliated. Nor right of management in respect of regulating admissions to such professional institutions extends beyond admitting members of community to such % of total intake as may be regulated by State not exceeding 50% of total intake capacity.

116. Any uninhibited right to admit to professional courses has been specifically denied to management in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, while laying down the scheme for private educational institution running professional and technical courses, which scheme was to operate until appropriate legislative action is taken by appropriate authority in the field, the Court has suggested to make law on the guideline laid by it.

117. As discussed above, the petitioner fulfils the triple criteria for availing benefit under Article 30 of the Constitution as an educational institution established and administered by Jains which is a religious minority. The entitlement to exercise right to give admission to the members of the minority community serves the nexus between the means employed and ends desired and it show that it serves and promotes in some manner, the interests of the minority

community or a considerable Section thereof. There is no dispute that an educational institution it otherwise fulfills all criterion of a religious minority community educational institution in Rajasthan. For the reasons already discussed in such circumstances the plea of State in denying the protection of rights flowing from Article 30(1) of the constitution cannot be denied to the petitioner for the reason that has weighed with the State of Rajasthan in making the impugned order dated 1.8.2000 (Ex.9). Since no regulatory measures have been prescribed by the State Govt. limiting the intake of the minority community students in such minority aided institutions, the right which the petitioner can enjoy in respect of the institution in question is subject to the maximum limit of 50%.

118. Before closing this discussion, it must be noticed that subsequent to the decision in St. Stephen College, the matter has again been examined by the Supreme Court in T.M.A. Pai Foundation and Others (I) Vs. State of Karnataka and Others, and T.M.A. Pai Foundation and Others (II) Vs. State of Karnataka and Others, In the latter case the Court made a reference to its earlier decision by which the Court had referred the following three questions which needed to be authoritatively decided by a larger Bench:

(1) What is the meaning and content of the expression "minorities" in Article 30 of the Constitution of India ?

(2) What is the meaning of the expression "Minority Educational Institution" and what are the indicia to determine whether an educational institution is a Minority Educational institution ?

(3) Whether the decision of this Court in St. Stephen's is right in saying that Article 30 clothes a Minority Educational Institution with the power to admit students by adopting its own method of selection and that the State or the affiliating University has no power to regulate admission of students to such Minority Educational Institution even while permitting the Minority Educational Institution to admit students belonging to the relevant minority to the extent of 50% of its intake capacity?

119. The Court said that the 7 Judges Bench after hearing the parties re-framed the question for opening in the aforesaid reference. The relevant questions No. (2) or (5) for the present purposes were recast as under: -

Question No. 2.

What are the indicia for treating an educational institution as a minority educational institution? Would an institution be regarded as a minority educational institution only because it was established by a person(s) belonging to a religious or linguistic minority or it is being administered by a person(s) belonging to a religious or linguistic minority?

Question No. 5.

Whether the decision of this Court in St. Stephen's is right in saying that Article 30 clothes a minority educational institution with the power to admit students by adopting its own method of selection and that the State or the affiliated University has the power to regulate admission of students to such minority educational institution to admit students belonging to the relevant minority to the extent of 50% of intake capacity. We make it clear that the percentage decided in St. Stephen's case will equally be open for reconsideration.

120. It also left open to reconsider the question of percentage decided in St. Stephen College upto which a minority community can admit students of its own choice subject to criteria of determination merit amongst those candidates. Since in the present case both factors namely establishment of the institute by a person relating to religious minority community as well as its administration by religious minority person is not in doubt. The question in the present case is not of much significance but for the general as minority community of the State. An other minority criteria in securing the right flowing from the exposition of ambit and scope of Article 30 in St. Stephen College case has not been disputed by the State Govt.

121. The principles that emerge from above discussion can be summarised.

1. Once such facts are established viz. (1) existence of distinct religious faith, (2) numerical strength of population following such religion vis a vis total population of the territory with reference to which such rights are claimed, then the rights under Article 30 flow.

2. Rights conferred under Article 30 cannot be subjected to any restrictive legislation to limit its operation only to certain classes recognised by any agency and denying such rights to others. Except numerical strength of less than 50% vis a vis total population of area in the context of which right is claimed or infringement of right is complained, by follower of or believer of any particular religious belief, faith or persuasion no other artificial criterion can be adopted for determining the claim to religious minority status and consequential rights flowing to such minority community.

3. The legislation can lay down the procedure to hold such enquiry to reach such conclusion objectively, but cannot confine the scope of the operation of Article 30 by limiting the rights enjoyable by minority communities under Article 30 to depend upon declaration made by Central Govt. of a list of recognition.

4. In addition to enjoying the status of being established by a person or persons of such community and maintained by the persons belonging to that community, it must further have in character as subservient to community interest.

5. Any Educational Institutions which is purely for commercial gain of one or more persons only, cannot be termed as religious minority community educational institution.

6. If intent of such institution is for the purposes of general or community

charitable purpose, it may be treated such an minority education institution, notwithstanding that benefit is not confined to religious minority.

7. Minority Status does not confer uncontrolled right to run any syllabus contrary to laws regulating specified courses, nor does it confer any right to preferential treatment in any sphere other than envisaged under Articles 29 and 30. Such status does not give any right to reservations in any employment or to lay claim to any other benefit on the basis of such minority status having right to manage the educational institution without interference and to have, except to the extent a share in the intake of students to professional courses, which is in furtherance of object of Article 30 itself. No right on that basis can also be claimed to have separate law relating to sectarian matters.

8. It is in recognition of this right that Supreme Court has laid down in *St. Stephen College's* case that the management's right to admit intake of certain admissions confined to members of the community to which it serves, not exceeding 50% in maximum, which too is liable to be regulated by State.

9. In enjoying right to intake a fixed percentage of intake capacity for admittance to such educational institution the management enjoys no freedom to choose a less meritorious candidate amongst the class of candidates for whom such choice may fall.

10. Such admissions have to be subject to eligibility criteria for pursuing such course as laid by concerned statutory body and University to which it is affiliated. Right of management in respect of regulating admissions to such professional institutions does not extend beyond admitting members of community to such % of total intake as may be permitted not exceeding 50% of total intake capacity.

122. For considering application of above principles to the present case, the facts emerge from the case are noticed as under.

(1) The Darshan Dental College is established by a public Charitable Trust founded by a person belonging to Jain Community.

(2) The Trust and the institution established by it are to be administered by a Board of Trustees of the petitioner Trust, who are exclusively to be drawn from Jain community.

(3) The Trust has its object of advancement of education as a general charitable purpose for the benefit of community and not for personal gain.

(4) Right as minority education institution has been asserted immediately by seeking approval/recognition from State Minority Commission, which was in fact accepted by it vide (Annex. 9) in the first instance.

(5) Petitioner Trust has been recognised as a, religious minority institution established by Shwetamber Jains for the purposes of Article 30 by Tamil Nadu State.

(6) In State of Rajasthan as per Census Report of 1991 enumerates "Jainism as one of the major religion practiced in State of Rajasthan amongst six religions.

(7) The population of Jain community classified on the basis of religion under the said Census report reveals that Jains account for only 1.28% of the total population of Rajasthan.

(8) The minority status of the institution was accepted by State Minority Commission vide certificate dt. 16.9.1999 (Ex.9).

(9) It has also recommended Jains as a minority religious community within the State of Rajasthan.

(10) The Dental College has in fact been established by the petitioner Trust in Rajasthan after obtaining necessary approval from Dental Council of India on satisfying itself about establishing basic infrastructures for grant of such provision.

(11) The University of Raj. too has granted provisions affiliation.

(12) State Govt. has refused to accept the status of the Darshan Dental College as an Educational Institution established by religious minority of Jains on the sole ground that unless Jainism is included in notification u/s 2(c) of the Act of 1992, it cannot enjoy such rights as are conferred under Article 29/30 of the Constitution.

(13) However it admits that but for such inclusion of Jainism in notification by Central Govt. u/s 2(c) of the Act of 1992 the petitioner is entitled to avail rights as minority education institution.

123. In the light of aforesaid undisputed facts and keeping in view the principle governing rights of religious minority guaranteed under Article 30 of the Constitution of India, it must be held that Darshan Dental College, Udaipur, established and maintained by the petitioner Trust is a religious minority community educational Institution and is entitled to avail the benefit flowing from Article 30 as minority institution. In the absence of any specific regulation framed in this regard, the petitioner have the right to admit candidates from the minority community to which it belongs to the extent it desires, which may not exceed 50% of total permissible intake of admission. The petitioner is, therefore, entitled to such direction to respondent that until regulations are made in this regard by appropriate measures by it in consonance with guideline contained in St. Stephen College's case (supra) they shall not interfere with the right of institution to admit certain number of student of its own choice from amongst the jain community subject to maximum limit of 50% of total intake. This right will not be exercisable in general to other categories of candidates. To the extent seats remain unfilled within 50% of management quota from amongst the religious community which established and administers the institution, it shall be filled in accordance with normal procedure. Even in the matters of offering admission to fifty percent of intake, available to be filled from amongst

candidates of Jain community, the institution shall be bound by the conditions laid by Dental Council of India and University of Rajasthan as to eligibility conditions for the students to be admitted and curriculum to be followed in imparting education in the field of Dentistry. While the management shall be free to give admission to students from amongst its own community, in doing so keeping in view that the purpose of the basic object of higher education in the field of technical and professional course is to give admission to the best available talent, the selection shall be made strictly on merit amongst the candidates seeking admission to the institution in question. Such merit may be determined on the basis of academic performance at the qualifying examination or on the basis of any test that the institution may devise to evaluate competing merit or on the basis of the performance of the selection test that the State Govt. itself may hold in the State. It will be optional for the petitioner to adopt any one of the three modes of selection and apply it uniformly to the candidates belonging to the religious minority community or which such intake is permitted. The candidates so selected shall be subject to such conditions in the payment of admission fees and other conditions of curriculum as may be prescribed by the authorities concerned in that regard.

124. The petition, in view of the above, is disposed of with the aforesaid directions.