CHAPTER- V
CONCLUDING REMARKS

The material collected is almost a compendium of minorities' rights in India. These rights may be ethnic, religious, caste and linguistic minorities affiliated to distinct belief systems, sub-cultures and regions. Integration of these diverse communities, some large enough to aspire to a regional homeland and others content to remain as part of the Indian state has been a central preoccupation of Indian governments since 1947.

It is important to understand the condition of the minority in the present and past scenario. Despite the several efforts made by the state as mentioned in the various reports to improve the condition of the minority, constitutional guaranteed rights, different institution and commission established, the various verdicts of the Supreme Court and high court protected their rights, minorities face discrimination, violence and atrocities.

The purpose to guarantee these rights and to distinguish them from majority was not creating such discrimination but to make them able, to diffuse them with the majority. The underlying reason was to instill confidence in them, to make them believe that in a democracy run by the majority they will never be overrun by the them and to integrate minorities fully and equally into the national life of the state. Even the foreigner residing in India and forming the well-defined religious and linguistic minority also fall under the preview of article 30 of the Constitution of India.

The various rights- socio-economic, cultural and educational rights etc. guaranteed by the Constitution has certain underlying purpose. India is a secular state and to maintain it the minority must be allowed to mix with the mainstream society. It can also help in the development of the country. Other reason is that India is a country of diverse culture, and everybody is equal. Hence they have the equal opportunity to preserve their own religion and culture. One of the best means to conserve culture is undoubtedly education and therefore this right is mostly treated the main right which is given to minorities only. The reason behind that a thick minority of the country infact is backward so far as the education is concerned. The blame can not only be given to the respective government for this backwardness but the Muslim clergymen are also responsible for this backwardness who confine them only to *Madarsas*. Therefore, in order to uplift their education any special rights if given to them it

will not only improve their educational backwardness but they will be improved socially and economically as the root cause of the backwardness is also illiteracy.

This object can only be achieved by giving them right to establish and administer educational institutions of their own choice as guaranteed under the Constitution of India. The Supreme Court in *Ahmedabad St. Xavier College* v. *State of Gujarat* [7] rightly pointed out that the spirit behind the provision of the Article 30 is to develop conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their child the best general education to make them complete man and women of the country.

But it is a very sad story that nowhere in our constitution there is any provision which defines minority nor does it prescribe sufficient guidelines to determine a group as minority. Perhaps the founding fathers of our constitution and member of Constituent Assembly presumably left it to the wisdom of the cauldron of Courts of Law to supply the omission. However, it is respectfully submitted that sometimes observations of the courts rather encouraging the will of the framers of the Constitution, they frustrate the very purpose of the constitution. Illustratively, on various occasions the high courts and the apex courts have interpreted the rights of minorities relating to various aspects. For example a famous case that is still debating and substituted as precedent by the some of high courts that is *Aziz Basha* v. *Union of India*[8]. In this case the apex court decided that Aligarh Muslim University was established by the Central Government through an Act of Parliament and not by the minority community and at the same time the court observed that its administration was in the hands of government and not in the hands of minority. The original Act of 1920 itself recognizes the contribution of Sir Syed and other Muslim intellectuals in order to establish AMO College which was later converted into the Aligarh Muslim University in 1920.

The government and the members of the Parliament appreciated the efforts of the community and their contribution by all means to make it such type of institution which could be converted into university. They also congratulated the community for their march towards the development of education in India. Initially, and up to certain extent till now, according to Sachar Committee Report, the Muslims of the country are the most backward class of the

[7] [1975]1 SCR 173.
[8] AIR 1968 SC 662.

country as far as education is concerned. Therefore, reservation for their upliftment towards education is neither inconsonance with the constitution nor the development of the society at all and for this purpose they should be encouraged to establish and administer educational institution of their own choice, whether they are college or schools or universities, engineering or medical colleges etc.

Here, we submit that in Aziz Basha's case the learned court observed that, though the contribution ,as far as AMO College is concerned, was of course made by the Muslim community but since the university was declared through Aligarh Muslim University Act XL of 1920 and thus the administration was in the hands of government. The community and their leaders did all the best what they could do to collect all the facilities which were required to be declared a university. Obviously the university can only be declared through the Act of legislature, it does not mean the establishment of a particular institution which is given a statutory recognition is not established by the concerned community. Even the Act itself is an evidence in the form of the history of the university that the community did everything to establish the university what it could do. It is little difficult to understand the observation of learned judges that mere passing a legislation all the contributions for a particular institution made by any community extinguish at the moment it is given statutory recognition. At the same time the court held that the administration was also in the hands of the government and not with the community concerned. The reason behind that in the Act there were provisions for visitor and rector to look after the university. The President of India and Governor of Uttar Pradesh are holding these positions respectively. It may be submitted that the learned court could not demarcate the distinction between supervision and administration. No administration can give a clean chit so that the administrator so that they should run the institute without any check and balance. Therefore, the Act also provides supervision over the administration in the form of visitor and rector, which means that as per statute, the administration was in the hands of community but of course the supervision was in the hands of government. The Article 30 as it requires that establishment and administration are inter-related, therefore, apart from legislative activity done by the government all activities related to establishment was done by the Muslim community and therefore the University was established by them and therefore, they have right to administer the university subject to the supervision of the concerned authorities as mentioned above. The Allahabad High Court have also given a verdict relating to the admissions governed by the medical college of the AMU on the lines of Supreme Court decision stated above.

There are also other major concerns like commercialisation of education, which affects the minority institution. But unfortunately, the court has failed to properly deal with the matter. Although the minority institutions have been prohibited to charge any capitation fee, there is no regulation on the charging of institution fee. The court has closed one door of preventing commercialisation of education; at the same time they have opened another door.

Similarly, some common rights of the citizens, which are also available to minorities, sometimes they impinged on religious minorities is the issue of consideration. For example, in various decisions, freedom of speech and expression and freedom of practice one's business, sometimes affected if they are attacked indirectly by the state through some rules etc. and the court uphold those rules. The prevention of slaughter of animals on certain occasions is undoubtedly affect right to occupation of a group belonging to minority community and even deprive them from their right to livelihood, but in some parts these initiatives of the state are approved by the court. Similarly, the personal law and its interpretation are related to the religion and the freedom of religion is guaranteed by the constitution. In this regard Supreme Court and high courts, while deciding the cases relating to marriage and maintenance have been deviated from the traditional law, which is approved by the religion, and it voiced as an encroachment on the freedom of religion guaranteed under article 25 of the Constitution.

The next issue is the anti-conversion laws made by some state in the recent past also indirectly affect the right to practice and propagate religion of minority community as they are structured.

With the declaration of Jamia Milia Islamia as a minority educational institution, another controversy triggered relating to the power of the National Commission for Minority Educational Institutions to declare central university as a minority educational institution. The National Commission of Minority Educational Institution was considered to be a welcome step as it was seen by many that the actual implementation of article 30 will be effectuated with the help of this commission but after its historic decision on 22 February, 2011 relating to Jamia Milia Islamia it has dragged itself to controversy. However the High Court of Delhi gave clean chit to the minority character of Jamia Milia Islamia, New Delhi underThe National Commission for Minority Educational Institutions Act, 2004.

It may be submitted that a bit of Government control is required so that the institutions can serve the broader societal interest and also maintain academic excellence but that control should in no way be in the manner to threaten the very existence of such institutions.

Moreover, undoubtedly in many aspects dealing with minority educational institutions, the courts have deviated up to a certain extent in some cases to secure a more appropriate interpretation, which is in the interest of the minorities and as per the true spirit of the framers of the constitution. The position of the interpretation by the courts vitiates not only on rights of minorities relating to education but as it is evident from our collection, it is almost similar in the application of all the rights relating to minorities whether they come under specific domain or common domain, whether they are related to their socio-economic upliftment or their religious rights and family matters.

The ultimate objective of the legislation as well as the judiciary is to accommodate the preamble objectives of 'unity in diversity' when striking a balance between minority rights and national unity. Unity in diversity should be in tandem. It should not be- unity first, diversity follows.