

EDUCATIONAL RIGHTS OF MINORITIES IN INDIA: REFLECTION ON ARTICLES 29 AND 30 OF THE CONSTITUTION

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“Education is a better safeguard of liberty than a standing army.”

-Edward Everett

Introduction

For a democracy to be healthy and efficient, the protection of the rights of minorities is a *sine qua non*. The protection of the underdogs from the dominating class is essential for their development. The apex court of India has time and again asserted that India is a land of different castes, people, communities, religions and cultures; a land of 6 main ethnic groups, 52 major tribes, 6 major religions and 64 castes and sub-castes. The judges reject any absorptionist or inclusivist trend, attempting to preserve the distinct identity of each group. The Constitution of India broadly recognizes two categories of minorities: linguistic and religious. Under Section 2(c) of the Statute of the National Commission of Minorities, the Government of India has officially recognized Muslims, Christians, Sikhs, Buddhists and Zoroastrians as minority communities. Although the Government of India used religion as the basis for categorizing the population, the religious minorities are not the only minorities in India.

Secularism is one of the basic features of the constitution, thereby indicating that it is beyond the amending power of the Parliament. The essence of secularism in India is the recognition and preservation of the different types of people, with diverse languages and different beliefs, and placing them together so as to form a united and cohesive India. Regarding the constitutional ideal of equality, the Supreme Court of India has explained the ideals of ‘substantive equality’ and ‘differential treatment’. Legitimizing the conferring of

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certain rights on a special class of citizens, the court has stated that all the people of India are not alike, making preferential treatment to a special section of society the need of the hour. Article 30 of the Constitution is a special right conferred on the religious and linguistic minorities because of their numerical handicap, to instill in them a sense of security and confidence.¹

Concept of Minority

The word 'minority' has been derived from the Latin word 'minor' which means smaller. The Britannica Encyclopedia defines minority as a culturally, ethnically, or racially distinct group that coexists with but is subordinate to a more dominant group (whatever the numerical strength of such minority). In social scientific usage the term 'minority' is used to denote a group that is assigned an inferior status in society. A minority group is often defined on the basis of a relatively permanent and constant status and on the basis of being different from the majority group. This includes groups with deeply held common identities that are relatively unlikely to change, i.e., linguistic and religious minorities. Minority groups are generally different in a way that is 'socially significant' from groups that hold a dominant place and they are relegated to a subservient position in society. The United Nations Sub-Committee on Prevention of Discrimination and Protection of Minorities and Minority Rights in India has defined the term 'minority' as "only those non-dominant groups in a population, which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population". The members of a minority are often excluded from a full share in mainstream life in society on account of their 'difference' from the majority. Such situations tend to give rise to a discriminatory and bigoted attitude towards the minority in question. Minorities in turn respond strongly by developing a sense

¹ M.P. Raju, *Minority Rights & Educational Institutions: Latest Developments*, Vol. 9 No.1 Integral Liberation (2005).

of group loyalty and unity isolating them further from the rest of the society.²

The Indian Constitution neither defines the term 'minority', nor provides any conditions that need to be fulfilled for a group to be eligible to be recognized as a minority. The drafters of the Constitution left this task to the judiciary. The Supreme Court of India in 1958 set out parameters for determining if a community constituted a minority community.

In *Re: The Kerala Education Bill*³ the first attempt was made at interpreting the meaning and ambit of the term 'minority'. In this case the Supreme Court held that minority means a community which is numerically less than 50 per cent of the population. This, however, does not define the geographical limits within which the said 50 per cent is to be determined. Later in *D.A.V. College Jalandhar v. State of Punjab*⁴ rejecting the contention that a religious or linguistic minority should be determined with respect to the entire population of the country, the Supreme Court held that a minority has to be determined in relation to a particular legislation which is sought to be implemented. In the case of a state law, minorities have to be determined in relation to the population of the state, not the entire country.

In *T.M.A. Pai Foundation v. State of Karnataka*⁵ it has been held by the eleven judges' bench of the Supreme Court that a minority, whether linguistic or religious, is determinable only by reference to the demography of the state and not by taking into consideration the population of the country as a whole. The court further held that the rights of linguistic and religious minorities as well as the majority community to set up educational institutions of their choice are unfettered, but that the right to administer them is not absolute.

² Brij Pal, *Empowerment of Minority in India*, Vol. 1(4), Global Advanced Research Journal of History, Political Science and International Relations, pp. 089-094 (2012).

³ AIR 1958 SC 956.

⁴ AIR 1971 SC 1737.

⁵ (2002) 8 SCC 481.

History of Minority Rights in India

Group-preference state policies in India have been in existence since the early twentieth century. Although not very well defined and extensive, provisions for improving the conditions of minorities and bringing them at par with the rest of the society have been around for quite some time. Provisions for special representation for those considered backward in the legislatures and reservation in government employment had been set in motion by the British governance in India as well as by some princely states. Dominant nationalist opinion in the Constituent Assembly believed that availing of group-preference provisions included in the Constitution by religious minorities in India was not fair as such safeguards were being included for the sole reason of helping backward sections of society in overcoming their disabilities and not for promoting the preservation of distinct cultural identities. The concept of safeguards for minorities as a matter of general policy was rejected and such protection was considered legitimate only in the case of particular groups with the specific purpose of expunging the social and economic disabilities of backward sections of society. During the colonial period, minority safeguards were defended as a mechanism to facilitate the political accommodation of different communities and as a means to ameliorate the conditions of disadvantaged groups. The maintenance of a political balance between different communities was regarded as an unacceptable basis for minority safeguards in the nationalist vision and hence the case for safeguards for religious minorities was weakened.⁶

The need for special rights for minorities was felt during the British period when minority-majority awareness was at its peak. The implementation of the divide and rule policy of the British led to the estrangement of the minorities. Above all, fear in the minds of the minority regarding their status and rights post-independence was fuelled by the identification of the Congress with the upper-caste Hindus. Under these conditions, rights protecting minority interests were sought to be incorporated within the framework of the upcoming

⁶ Rochana Bajpai, *Constituent Assembly Debates and Minority Rights*, Vol. 35, Economic and Political Weekly, pp.1837-1845 (2000) .

Constitution of independent India to dispel the fears of the minorities and to set their concerns to rest.⁷ Under the Constitution of 1950, preferential provisions were restricted mainly to the scheduled castes and scheduled tribes. In order to protect the interests of minorities in India, numerous provisions have been incorporated in the nation's Constitution under the head of the 'inalienable' fundamental rights.

Constitutional Assembly Debates

Special treatment for certain groups of people was based on a history of exploitation and injustice by Hindu (high caste) society and the notion that justice required atonement in some form was held. Minority safeguards were intended to be temporary, transitional measures necessary until backward sections of the population were brought up to the level of the rest.

It is generally assumed that all the Constitution-makers advocated the notion of secularism and democracy. Dominant nationalist opinion visualized the ideal as a future situation in which safeguards for minorities would no longer be necessary. It was believed that the inclusion of such safeguards would undermine the fundamental principles on which the new nation state was to be formed. Such protection required the recognition of a person's caste in public policy hence marring the commitment to secularism. A scheme of group preference would lead to departures from a system of equal individual rights and the result would be a compromise on equality and justice. The granting of political safeguards to minorities would fuel separatist tendencies and weaken national unity and cohesion. In the pre-Constitution period, minority safeguards were regarded as instruments of the colonial 'divide and rule' policy intentionally fabricated by the 'deceitful' colonial rulers to mislead the minorities and to create friction between different sections of the nation hence delaying the transfer of power when it became unavoidable.

⁷ Ranu Jain, *Minority Rights in Education: Reflections on Article 30 of the Indian Constitution*, Economic and Political Weekly, June 11, 2005.

Though secularism is commonly interpreted to imply that the state does not give preference to any particular religion, it does not relate to matters of religion alone. In general usage it refers to the elimination of religion and caste as categories of the process of public policy-making. Dominant opinion held that building a nation required the formation of a secular spirit which would prompt people to stop viewing themselves as members of a particular community and instead see themselves as Indians. To be caught in petty group concerns by being communal would undermine the very basis of the new secular ethos aimed at by the dominant nationalists. This view exemplified by Pandit Nehru regarded claims for minority safeguards as distractions from the more pressing problems of development. During this period, the nationalist opinion being liberal in nature propagated the idea of equal individual rights further according centrality to the individual over the community.⁸

Protection Offered to Minorities in the Indian Constitution

Conscious of the complexity of the minority problem in India and estrangement between different sections of the society that it could cause in a country that had recently attained independence, the Constitution-framers were sure to include Constitutional safeguards for the protection of minority rights, though fundamental rights were made available to every citizen of India irrespective of their caste, creed, sex, the language they spoke, race or culture. To prevent the majority from exerting their will unreasonably on unwilling minorities the Constitution, in addition to ensuring basic rights, provided them with the opportunity to preserve their culture, religion and language. To ensure 'actual' equality among the 'unequals' special rights were included in the Constitution for the minorities by giving them the right to establish educational institutions and guaranteeing to them autonomy in matters of administration of these institutions.

Predominantly due to the existence of constitutional safeguards preserving the language, religion and culture

⁸ Rochana Bajpai, *Constituent Assembly Debates and Minority Rights*, Vol. 35, Economic and Political Weekly, pp.1837-1845 (2000).

of the minorities, the ideals of pluralism and secularism have proved to be flexible in India despite attacks from the majority. The Constitution of India confers various rights on the minorities-Articles 15, 16, 25, 26, 27, 28, 29 and 30. Article 15 provides that the State should not discriminate on grounds of religion, race, caste, sex or place of birth against any citizen. Article 16 states that no citizen shall be denied public employment on the ground of religion, race, caste, sex, descent, place of birth or residence. In the interest of the minorities, however, Article 16(4) allows the State to take special measures for the backward class citizens in government positions, in case they are not adequately represented. Article 25 grants every individual the freedom of conscience and the right to profess practice and propagate freely his\her religion. However, this right is not absolute. The freedom to manage one's own religious affairs is provided by Article 26. This Article confers the right to every religious denomination to exercise its own rights. This right has to be exercised in a manner that conforms to morality, public order and health. Article 26 is complementary to Article 25. Further, Article 27 specifies that no person shall be compelled to pay any taxes, the proceeds of which are specifically allocated for the payment of expenses for the promotion and maintenance of any particular religion or religious denomination. Article 28(1) prohibits any educational institution, which is wholly maintained out of State funds, to provide religious instruction on account of India being a secular state.⁹

A. Educational Rights

Article 29 and 30 confer cultural and educational rights on the minorities. Article 29(1) grants the right to any group of the citizens residing in India having a distinct language, script or culture of its own, to preserve the same. Article 29(1) essentially refers to sections of citizens who have a distinct language, script or culture. The link that runs through Article 29(1) is language, script or culture, and not religion. Whether they belong to a minority recognised by the Government or not, Article 29(1) gives the right to all sections of citizens, to preserve their language, script or culture. In the exercise of this

⁹ Manoj Kumar Sinha, *Minority Rights: A Case Study of India*, 12 *International Journal on Minority and Group Rights* 355-374 (2005).

right to preserve their culture or language that section of the society can set up educational institutions. This right is associated with the right conferred by Article 30. However, the right under Article 30 is not absolute. Article 29(2) lays down that in case an educational institution is maintained by the State or receives aid, no citizen shall be denied admission on the grounds only of religion, race, caste, or language.

B. Effect of Governmental Aid on Minority Rights

Article 29(2) holds that no citizen shall be denied admission on grounds only of religion, race, caste or language to any educational institution maintained by the State or that receives aid out of State funds. On the other hand Article 30(1) guarantees all minorities, whether linguistic or religious, the right to establish and administer educational institutions of their choice. The nature and scope of Government control over minority educational institutions in the context of the non-discrimination principle under Article 29(2) has been interpreted and laid out in the case of *Unnikrishnan v. State of Andhra Pradesh*¹⁰. According to the majority opinion in the *T.M.A. Pai* case an aided minority educational institution would be required to admit a reasonable extent of non-minority students so that the rights under Article 30(1) would be substantially conferred while the citizens' rights under Article 29(2) would not be violated. However, the Court left it to the State to determine the percentage of non-minority students to be admitted in various minority institutions. The minority right to establish and administer educational institutions is currently governed by the law laid down in the case of *St. Stephen's College v. University of Delhi*¹¹. This judgment granted complete freedom to minority educational institutions as long as 50 per cent of the available seats were given to non-minority students. However, in the *T.M.A. Pai* case it was found that fixing the percentage of seats to be given to non-minority students is not desirable in practice. The non-minority component should be reasonable, changing according to the size of the minority, the type of institution and the varying educational needs of the

¹⁰ (1993) 1 SCC 645.

¹¹ 1992 (1) SCC 588.

minorities. It was further held in this case that the State could lay down reasonable conditions to be fulfilled by the institution when it was applying for governmental aid, however, it could not force them to give up their rights guaranteed under Article 30. The rights of the minority educational institutions in general remain unchanged despite receiving grants-in-aid.

Judges in general opine that any regulation framed in national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. The right conferred by Article 30(1) cannot override national interest or prevent the government from framing regulations for that purpose; but this would mean that minorities cannot have any special fundamental rights, which are not available to the majority community. A major flaw in the reasoning of the decision is the body responsible for the determining whether a group is a linguistic or religious minority. Majority opinion held that the deciding body should be the State. Minority institutions, which administer educational institutions in the spirit of service alone, have nothing to lose from the judgment in case they do not receive aid from the government and are totally free from any State control.

C. National Commission for Minority Educational Institutions Act, 2004

In order to enforce this right the National Commission for Minority Educational Institutions Act has been enacted to safeguard minority interests. Section 2(g) of the Act defines a minority educational institution as a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities. In *S.P. Mittal v. Union of India*¹² the Supreme Court has held that in order to claim the benefit of Article 30(1) the community must show

1. That it is a linguistic/religious minority.
2. That the institution was established by it.

¹² AIR 1983 SC 1.

Unless and until these two conditions are fulfilled, the institution cannot claim the guaranteed rights to administer it. The proof of the fact of the establishment of the institution is a precedent for claiming the right to administer the institution. The onus of proof lies on one who asserts that an institution is a minority institution. Whether the Government declares it or not, a minority educational institution continues to be one. When the Government makes such a declaration regarding an educational institution, it merely recognizes that the institution was established and is being administered by a minority community. It is merely an open acceptance of the legal character of the institution which must have existed antecedent to such declaration.

The right enshrined in Article 30(1) of the Constitution is meant to benefit the minority by protecting and promoting its interests. However, there should be a nexus between the institution and the particular minority to which it claims to belong. The right claimed by a minority community to administer the educational institutions depends on the proof of establishment of the institution. In *P.A. Inamdar v. State of Maharashtra*¹³ it has been held that the minority institutions are free to admit students of their own choice including students of non-minority community and also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational status is lost. If they do so, they lose the protection of Article 30(1) of the Constitution”.

The objects sought to be achieved by Article 30(1) are:

1. to enable the minorities to conserve their religion and language, and
2. to give a thorough good general education to the children belonging to such minority.

So long as the institution retains its minority character by achieving and continuing to achieve the two objectives, the institution would remain a minority institution. The State Government can prescribe percentage of the minority community to be admitted in a

¹³ (2005) 6 SCC 537.

minority educational institution receiving financial aid from the Government, taking into account the population and educational needs of the area in which the institution is located. There cannot be a common regulation in respect of types of educational institutions in different levels of education, for the entire State, fixing the uniform ceiling in the matter of admission of students in minority educational institutions. A balance has to be kept between preserving the right of the minorities to admit students of their own community and that of admitting a few outsiders in their institutions subject to the condition that the manner and number of such admissions is not violative of the minority character of the institution. The minority educational institution is primarily for the benefit of the concerned minority. Hence, the sprinkling of the non-minority students in the student population of the minority educational institution is expected to be peripheral either for generating additional financial source or for cultural courtesy. Thus, a substantive section of student population in minority educational institution should belong to the minority.

The States Reorganization Commission that was set up in the early 1950's to rationalize the administrative structure of the country came to the conclusion that languages of minority groups were commonly not among the languages mentioned in the Eighth Schedule of the Constitution. Therefore, it recommended certain measures to be followed to promote the cause of linguistic minorities. Consequently, Articles 350A and 350B were added to the Constitution. Article 350A discusses the duty of the State to provide adequate facilities for instruction in schools at the primary stage in their mother tongue to children belonging to linguistic minorities. Further, Article 350B makes provisions for the appointment of a Commissioner for Linguistic Minorities whose sole responsibility would be to protect the educational and linguistic rights of minorities.¹⁴

¹⁴ Kamal K Sridhar, *Language in Education: Minorities and Multilingualism in India*, Vol. 42, International Review of Education, pp.327-347.

D. Relation between Articles 29 And 30

Close inspection reveals a deep-rooted difference between the two Articles. On one hand Article 30 provides the exclusive right to establish and administer educational institutions to the linguistic and religious minorities, and on the other hand Article 29(2) provides the right to admission in government administered and aided educational institutions to the citizens of India. In the case of *St. Xavier's College v. State of Gujarat*¹⁵ a bench of nine judges examined the interrelationship between Articles 29 and 30 and held that Articles 29(1) and 30(1) dealt with distinct matters and may be considered supplementary to each other in relation to certain cultural rights of minorities.

The case of *St Stephen's College*¹⁶ decided by a bench of five judges of the Supreme Court is a landmark case while examining the relation between Article 29(2) and Article 30(1). It was opined that minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of their institutions in 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 not allowing the intake to exceed 50 per cent of the annual admission. The admission of other community candidates shall be done purely on the basis of their merit and capabilities. The ratio outlined in the *St Stephen's College* case is correct but rigid percentage cannot be stipulated. The authorities can stipulate reasonable percentage in accordance with the type of institution, population and educational needs of the minorities.

Conclusion

The constituent assembly debates show a tolerant rather than an encouraging approach of the state towards the minorities. This further explains the stand of the Constitution-makers to make provisions for minorities who want to seek special rights by asserting their

¹⁵ AIR 1974 SC 1389.

¹⁶ AIR 1992 SC 1654.

demands instead of giving everything on a platter. The partition of the nation and many other factors had caused the Constitution-makers to become cautious when it came to minorities demanding rights to prevent any hindrance to the process of development in the nation. This was one of the main reasons for imposing restrictions on political rights of the minorities and confining them to social, educational and cultural spheres. The Article itself has been kept a little vague to allow periodical interpretation of the rights by the Indian courts, keeping in consideration the historical requirements of the nation and minority-majority relations. In case of interpretation of Article 30 by the courts, the judgments vary from one case to another, hence, reflecting the personal biases of the judges. This results in making the interpretation of this Article very subjective and vague. The interpretation of this Article further reflects a trend towards gradually reducing the scope of the Article by meting out liberal treatment to linguistic minorities over religious minorities. This has caused many minority communities to be deprived of what is their due. In addition to this, the conjunctive use of Articles 29 and 30 has caused many issues like quote-fixing in seats. Although it is accepted that admission should not be denied to any individual who meets the eligibility criteria set by the institution, the rigid fixing of a ratio affects the enrolment of the members from the minority community in the institution. This provision works to the disadvantage of the minorities who come from a backward economic and educational background and may not have the resources to buy a seat in a general institution or the required merit. In the *T.M.A. Pai* case, although, the ratio of 50:50 has been rejected, the concerned authorities have been given power to adapt the ratio with the educational need of the area. Such a situation could result in creating friction between the government and the minorities. The rising issues in case of minority educational institutions are those of procuring and proving one's minority status which is not always easily granted, government aid compelling such institutions to abide by demands of the State (limiting their autonomy).