

MINORITIES, CONSTITUTION AND THE LAW

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Introduction

Abraham Lincoln, the great American President and the champion of democracy has once said that: "In a democracy even if there is a single person on the one side and the rest of the community on the other side the opinion of that single person is as important as the opinion of rest of the community and it should be respected". In a real democracy therefore the rights of the minority groups are protected by special provisions of the Constitution and the law. The founding fathers of the Constitution have therefore very rightly provided Article 30(1) of the Constitution and the Supreme Court has observed that the spirit of this Article is the 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 children the best general education to make them complete men and women of our country.

The expression "minority" has been derived from the Latin word 'minor' and the suffix 'ity' which means "small in number".

According to Encyclopedia Britannica 'minorities' means 'groups held together by ties of common descent, language or religious faith and feeling different in these respects from the majority of the inhabitants of a given political entity'.

J.A. Laponee in his book *The Protection to Minority* describes "Minority" as a group of persons having different race, language or religion from that of majority of inhabitants.

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In the Year Book on Human Rights U.N. Publication 1950 ed. minority has been described as non dominant groups having different religion or linguistic traditions than the majority population.

The Motilal Nehru Report of 1928 showed a prominent desire to afford protection to minorities, but did not define the expression. The Sapru Report (1945) also proposed, inter alia, a Minorities Commission but did not define Minority. The U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities has defined minority as under:

- a) The term 'minority' includes only those non-documents group of the populations which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;
- b) Such minorities should properly include the number of persons sufficient by themselves to preserve such traditions or characteristics; and
- c) Such minorities should be loyal to the state of which they are nationals.¹

The initial courtroom attempt to answer the first question was made in *In Re: The Kerla Education Bill* where the Hon'ble Justice S.R. Das, Chief Justice of India, opined that the expression 'minority' would mean "a community which is numerically less than 50 percent of the total population."²

The First Minority Rights were created by Diet of Hungary in 1849. The first post-war international treaty to protect minority, designed to protect them from the greatest threat to their existence was the U.N convention on the protection and punishment of the crime of Genocide.

The Constitution of India contains Articles to give them identity, right to move independently, no restriction regarding movement etc. Article 29 and 30 of the Constitution of India expressly recognizes the rights of minorities. The Constitution of India provides not only

¹ <http://www.legalservicesindia.com/articles/judi.html>.

² Also see, A.M. Patroni v. E. C. Kesavan, AIR 1965 Kerala, 75.

basic rights which are contained in Articles 14 to 32 to the minorities but such rights conserved their religion, language and culture. Article 29 and 30 of the Constitution provides cultural and education rights to minorities.

In *D.A.V. College v. State of Punjab*,³ there was a question that whether an Arya Samaji Hindu in Punjab were a linguistic minority. Justice P. Jaganmohon Reddy, Supreme Court of India observed that: "The Arya Samajis are entitled to invoke the right guaranteed by Art. 29(1), because, they are a section of citizens having a distinct script also, they are entitled to invoke Art. 30(1), because they are a religious minority.

Thus, It is conceivable that a linguistic or religious minority may start educational institution of its choice solely or mainly with the object of preserving its own language, script or culture. So language as it is apparent that the object of the educational institution founded by religious or linguistic minority is to preserve and develop their own language, script or culture, they are entitled to the protection guaranteed by the Art 30(1).

The Supreme Court in other landmark case of the *Director, L.F. Hospital, Angamaly v. State of Kerala*⁴ held that the Christian community in Kerala have the rights to establish and administer educational institution. A school of Nursing is an educational institution. Art.30 confers a right to establish and managed the institution in accordance with their vision and purpose. The right to administer cannot be separated from the right to establish. Because of either of the two is taken away the remaining one would become meaningless. Both the rights are implicit in the right under Art 29. Education is necessary adjunct to the conservation of culture and language. Therefore, the word establish and administer in Art 30(1) must be read conjunctively and so it comes clear.

³ *D.A.V. College v. State of Punjab*, 1971 AIR 1737, 1971 SCR 688.

⁴ *Town Brethren Assembly, Angamaly v. The State of Kerala* Represented by on 23 February, 2010.

The Supreme Court has pointed out in *Ahmedabad St. Xaviers College v. State of Gujarat*,⁵ that the spirit behind article 30(1) is the 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 children the best general education to make them complete men and women of the country.

Article 30(1) uses the terms 'linguistic' or 'religious' minorities. The word 'or' means that a minority may either be linguistic or religious and that it does not have to be both – a religious minority as well as linguistic minority. It is sufficient if it is one or the other or both.

The constitution uses the term 'minority' without defining it. *In Re: The Kerala Education Bill* the Supreme Court opined that while it is easy to say that minority means a community which is numerically less than 50 per cent, the important question is 50 % of what? Should it be of the entire population of India, or of a state, or a part thereof? It is possible that a community may be in majority in a state but in a minority in the whole of India. A community may be concentrated in a part of a state and may thus be in majority there, though it may be in minority in the state as a whole. If a part of a state is to be taken, then the question is where to draw the line and what is to be taken into consideration a district, town, a municipality or its wards.

The ruling *In Re: The Kerala Education Bill* has been reiterated by the Supreme Court in *Guru Nanak University case*,⁶ In that case, the Supreme Court rejected the contention of the state of Punjab that a religious or linguistic minority should be a minority in relation to the entire population of India. The Court has ruled that a minority has to be determined, in relation to the particular legislation which is sought to be impugned. If it is a state law, the minorities have to be determined in relation to the state population. The Hindus in Punjab constitute a religious minority. Therefore, Arya Samajists in Punjab also constitute a religious minority having their own distinct language and script. It is within the realm of

⁵ *St. Xaviers College Society v. State of Gujarat*, (1974) 1 SCC 71.

⁶ *D.A.V. College v. State of Punjab*, [1971] Supp. S.Q.R. 688.

possibility that the population of a state may be so fragmented that no linguistic or religious group may by itself constitute 50 percent of the total state population. In such a situation, every group will fall within the umbrella of Art. 30(1) without there being a majority group in the state against which minorities need to claim protection.

Article 30(1) postulate that the religious community will have the right to establish and administer educational institutions of their choice. In *S.P Mittal v. Union of India*,⁷ the Supreme Court has stated: "In order to claim the benefit of Article 30(1), the community must show: (a) that it is religious/linguistic minority, (b) that the institution was established by it. Without satisfying these two conditions it cannot claim the guaranteed rights to administer it". In *Andhra Pradesh Christian Medical Association v. Government of Andhra Pradesh*,⁸ it was held by the court that the institution in question was not a minority institution. The court classified that the protection of Article 30(1) is not available if the institution is a mere cloak or pretension and the real motive is business adventure.

In *Ahemdabad, St. Stephens College v. Government of Gujarat*, (1957, A.I.R. 1958 SC 956) it was observed by the court that: "Every educational institution irrespective of community to which it belongs is a 'melting pot' in our national life" and that it is essential that there should be a "proper mix of students of different communities in all educational institutions." This means that a minority institution cannot refuse admission to students of other minority and majority communities.

In *Managing Board, M.T.M v. State of Bihar*⁹ the Supreme Court has emphasized that the right to establish educational institutions of their choice must mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to them.

⁷ *S.P. Mittal v. Union of India & Ors.*, [1985] 1 SCC 51.

⁸ *A.P. Christians Medical Educational Society v. Government of Andhra Pradesh*, [1986] 2 SCC 667.

⁹ *Managing Board, M.T.M. v. State of Bihar*, A.I.R. 1984 S.C. 1757.

Supreme Court has invariably invalidated provisions seeking to regulate the composition and personnel of the managing bodies of minority institutions. A provision interfering with the minorities' choice of managing body for an institution has been held to violate article 30(1). The Gujarat University Act provided that the governing body of every college must include amongst its members a representative of the University nominated by the Vice-Chancellor, representatives of teaching and non-teaching staff and of the college students. In the celebrated *St. Xavier's College* case,¹⁰ the Supreme Court declared the provision as non-applicable to minority institutions because it displaced the management and entrusted it to a different agency; autonomy in administration was lost and new elements in the shape of representatives of different types were brought in. The court emphasized that while the University could take steps to cure maladministration in a college, the choice of personnel of management was a part of administration which could not be interfered with.

In the *St. Stephen's College v. University of Delhi*,¹¹ the Court ruled out that college was established and administered by a minority community, viz., the Christian community which is indisputably a religious minority in India as well as in the union territory of Delhi where the college is located and hence enjoys the status of a minority institution. On the question of admission of students of the concerned minority community, the court has ruled that, according to Article 30(1), the minorities whether based on religion or language have the right "to establish and administer" educational institutions of their choice and the right to select students for admission is a part of administration. On this point, the court has observed: "It is indeed an important facet of administration.

The right of a minority to establish and administer educational institutions of its choice also carries with it the right to impart instruction to its children in its own language. In *D.A.V. College, Bathinda v. State of Punjab*¹² by a notification, the Punjab Government compulsorily

¹⁰ *St. Xaviers College Society v. State of Gujarat*, (1974) 1 SCC 717.

¹¹ ((1992) 1 SCC 558).

¹² 1971 AIR 1731 1971 SCR 677.

affiliated certain colleges to the Punjab University which prescribed Punjabi in the Gurumukhi script as the sole and exclusive medium of instruction and examination for certain courses. The Supreme Court declared that it violated the right of the Arya Samajists to use their own script in the colleges run by them and compulsorily affiliated to the University.

The National Commission for Minority Educational Institutions Act was passed in year 2004 for giving more teeth to minority education in India. This act allows direct affiliation of minority educational institutes to central universities. This act was enacted in order to provide quality education in minority institutes.

In *T.M.A. Pai Foundation & Others v. State of Karnataka & Others*¹³ stands out as the most significant in terms of its reach, complexity and potential for shaping the future of education in the country. The case which was pending in the apex court for nearly 10 years got transferred from a Bench of five judges to one of seven judges and finally to a eleven judge Bench as it involved a fundamental issue of determining who constituted a "minority" for availing the special right of minorities under Article 30(1) of the Constitution "to establish and administer educational institutions of their choice."

The Supreme Court seems to be in favour of freeing minority educational institutions from Government control excepting to maintain academic standards through prescribing qualifications for teachers and minimum eligibility for students. The court is emphatic in declaring that admission of students to unaided minority educational institutions cannot be regulated at all by a State or University if the procedure is transparent and merit-based. The right to admit students is part of the right to administer educational institutions.

Conclusion

India believes in conservation and maintenance of the cultures of diverse groups including minority groups since a democratic system signifies cultural and social

¹³ AIR 2003 SC 355, AIR 2002 SCW 4957.

unity in diversity. It is therefore imperative that in a democracy special protection should be accorded to the minority groups to enable them to retain their cultural identity and to pursue the path of progress along with the main stream of the country.

Our Judiciary has clarified that it is inconceivable that linguistic or religious minority may start educational institutions of its choice solely or mainly with the object of preserving its own language, script and culture. Therefore religious or linguistic minority can start and maintain their educational institutions to preserve and develop their own language, script and culture along with imparting general education to their children.

Indian Judiciary has played a marathon role in protecting and promoting the various rights of the minority groups in the country through their brilliant judicial pronouncements and has contributed phenomenally to achieving the objectives enshrined in the Preamble of the Constitution.

