

MINORITY EDUCATIONAL INSTITUTIONS IN INDIA: CONSTITUTIONAL AND JUDICIAL PERSPECTIVES

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Introduction

The Constitution recognizes the differences among the people of India, but it gives equal importance to each of them, their differences notwithstanding, for only then can there be a unified secular nation. 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 whole and united India. Articles 29 and 30 do not more than seek to preserve the differences that exist, and at the same time, unite the people to form one strong nation.¹

With regard to the establishment of educational institutions, three articles of the Constitution come into play. Article 19(1)(g) gives the right to all the citizens to practice any profession or to carry on any occupation, trade or business; this right is subject to reasonable restrictions that may be placed under Art. 19(6). Article 26 gives the right to every religious denomination respectively to establish and maintain an institution for religious and charitable purposes, which would include an educational institution. Article 19(1)(g) and Art. 26, therefore, confer rights on all citizens and religious denominations to establish and maintain educational institutions. There was no serious dispute that the majority community as well as linguistic and religious minorities would have a right under Arts. 19(1)(g) and 26 to establish educational institutions. In addition, Art. 30(1), in no uncertain terms, gives the right to the religious and linguistic minorities to establish and administer educational institutions of their choice.²The

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¹ T.M.A. Pai Foundation v. State of Karnataka, AIR 2003 SC 355, Para 160 & 161.

² *Id.*

rights of minority institutions are governed by Articles 29 and 30 of the Constitution of India.³

The Constitution itself by Article 30 makes a classification as between the minority and the majority, and, by Article 19, a classification as between the citizen and the non-citizen. Different treatment based on this classification is authorized by the Constitution itself.

Articles 29 and 30 are set out in Part III of our Constitution which guarantees our fundamental rights. They are grouped together under the sub-head "Cultural and Educational Rights". The text and the marginal notes of both the articles show that their purpose is to confer those fundamental rights on certain sections of the community which constitute minority communities. Under Clause (1) of Article 29 any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve the same. It is obvious that a minority community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred

³ **Art. 29. Protection of Interests of minorities.-**

- (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religious, race, caste, language or any of them.

Art. 30. Right of minorities to establish and administer educational institutions.-

- (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
 [(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]
- (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

on all minorities by Article 30(1).⁴ This right, however, is subject to Cl. 2 of Art. 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Art. 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-a-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in *St. Xavier's College* case⁵ that "the whole object of conferring the right on minorities under Art. 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be denied equality." In other words,⁶ the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavored or, for that matter, receive more favorable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do.

Against the background of partition it was felt necessary to allay the apprehensions and fears in the minds of

⁴ In Re: The Kerala Education Bill, 1957, AIR 1958 SC 956.

⁵ Ahmedabad St. Xavier College Society v. State of Gujarat, AIR 1974 SC 1389.

⁶ *Supra* Note 1, Para 138.

Muslims and other religious communities by providing to them special guarantee and protection of their religious, cultural and educational rights. Such protection was found necessary to maintain unity and integrity of free India because even after partition of India, communities like Muslims and Christians in greater numbers living in different parts of India opted to continue to live in India as children of its soil. The Constitution through all its organs is committed to protect religious, cultural and educational rights of all. Arts. 25 to 30 guarantee cultural and religious freedoms to both majority and minority groups. The constitutional ideal, which can be gathered from the group of articles in the Constitution under Chapters of Fundamental Rights and Fundamental Duties, is to create social conditions where there remains no necessity to shield or protect rights of minority or majority.⁷

Minority Educational Institution–Right to Establish and Administer

The expression "education" in the Articles of the Constitution means and includes education at all levels from the primary school level up to the post-graduate level. It includes professional education. The expression "educational institutions" means institutions that impart education, where "education" is as understood hereinabove.

In Re: The Kerala Education case,⁸ the Supreme Court observed that the language employed in Art. 30(1) is wide enough to cover both pre-Constitution and post-Constitution institutions. It must not be overlooked that Art. 30(1) gives the minorities two rights, namely, (a) to establish, and (b) to administer, educational institutions of their choice. *In Re: The Kerala Education case*⁹, the Supreme Court observed that a minority community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve

⁷ Bal Patil v. Union of India, AIR 2005 SC 3172.

⁸ *Supra* Note 4.

⁹ *Id.*

its distinctive language, script or culture and that is what is conferred on all minorities by Article 30 (1).

The words "establish and administer" in Article 30 (1) must be read conjunctively and so read it clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise.¹⁰ The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other it might have been administering it before the Constitution came into force.

The words "educational institutions" are of very wide import and would include a university also, and therefore, it may be accepted that a religious minority had the right to establish a university under Article 30(1).¹¹

For the purpose of Article 30(1) the word "establish" means "to bring into existence" and the right given by the Article to the minority is to bring into existence an educational institution, and if they do so, to administer it. The Aligarh University when it came into existence in 1920 was established by the Central legislature by the Aligarh Muslim University Act, 1920. It may be that the 1920 Act was passed as a result of the efforts of the Muslim minority. But that does not mean that the Aligarh University when it came into being under the 1920 Act was established by the Muslim minority.¹²

Article 30(1) covers institutions imparting general secular education.¹³ The object of Article 30 is to enable children of minorities to go out in the world fully equipped. It will be wrong to read Article 30(1) as restricting the right of minorities to establish and administer educational institutions of their choice only to cases where such institutions are concerned with language, script or culture of the minorities. Article 29

¹⁰ S. Azeez Basha v. Union of India, AIR 1968 SC 662.

¹¹ *Id.*

¹² *Id.*

¹³ *Supra* Note 5.

and 30 create two separate rights though it is possible that the rights might meet in a given case.

The words "establish" and "administer" used in Art. 30(1) is 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.¹⁴ The proof of establishment of the institution is thus a condition precedent for claiming the right to administer the institution.

The minorities do not stand to gain much from the general Bill of Rights or Fundamental Rights which are available only to individuals. The minorities require positive safeguards to preserve their minority interests which are also termed as group rights. The safeguards and group rights have been the part of our Constitution making. The right to establish an educational institution is not confined to purposes of conservation of language, script or culture. The rights in Article 30(1) are of wider amplitude. The width of Article 30(1) cannot be cut down by the considerations on which Article 29 (1) is based. The words "of their choice" in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes.¹⁵

The Supreme Court held¹⁶ that Article 30(1) gives religious and linguistic minorities the right to establish and administer educational institutions of their choice. The use of the words "of their choice" indicates that even professional educational institutions would be covered by Art. 30.

Recognition, Affiliation and Financial Aid/Grant

Private educational institutions, both aided and unaided, are established and administered by religious and linguistic minorities, as well as by non-minorities. Such

¹⁴ St. Stephen's College v. University of Delhi, AIR 1992 SC 1630.

¹⁵ *Id.*

¹⁶ *Supra* Note 1.

private educational institutions provide education at three levels, viz., school, college and professional level.

The State may prescribe reasonable regulations to ensure the excellence of the educational institutions to be granted aid or to be recognized. But in the name of laying down conditions for aid or recognition, the State cannot directly or indirectly defeat the very protection conferred by Art. 30. The considerations for granting recognition to a minority educational institution and casting accompanying regulation would be a similar as applicable to a non-minority institution subject to two overriding considerations:

- (1) The recognition is not denied solely on the ground of the educational institution being one belonging to minority; and
- (2) The regulation is neither aimed at nor has the effect of depriving the institution of its minority status.¹⁷

It has been observed that many educational institutions run by minorities' are being improperly administered as far as the efficiency, excellence and competence in the administration is concerned. Hence, though right to administer a minority educational institution is a fundamental right, yet the Supreme Court does not permit maladministration. The various decisions of the Supreme Court not only regulate the administration of the minority educational institutions but also compels them not to mal-administer their institutions as an absolute right.

National Commission for Minority Educational Institutions

The National Commission for Minority Educational Institutions Act, 2004 was enacted to constitute a National Commission for Minority Educational Institutions and to provide for matters connected therewith or incidental thereto. It was amended twice in the years of 2006 and 2010. As per this Act, educational rights to minorities means, the rights of minorities to establish and administer educational institutions of their choice. Minority, for the purpose of this Act, means a

¹⁷ P.A. Inamdar v. State of Maharashtra, AIR 2005 SC 3226.

community notified as such by the Central Government. Minority Educational Institution means a college or an educational institution established and administered by a minority or minorities.

Conclusion

Art. 30(1) conferred certain rights not only on religious but on linguistic minorities as well. One such right was to establish educational institutions of their own choice; but that right was not limited to teaching their religion alone or their language alone. No limitation had been placed on the subjects to be taught in such educational institutions. Minorities would ordinarily desire to establish such institutions as would serve both purposes, namely the purpose of conserving their religion, language or culture and also the purpose of giving a good general education to their children. The key to Article 30(1) lay in the words “of their own choice”.

On the basis of the various decisions of the apex court following conclusions may be drawn which includes the right to establish and administer educational institutions comprises right:

- (a)** To admit students,
- (b)** To set up a reasonable fee structure,
- (c)** To constitute a governing body,
- (d)** To appoint staff (teaching and non-teaching),
- (e)** To take action if there is dereliction of duty on the part of any employees.
- (f)** To maintain educational standards and excellence, and
- (g)** To protect against discrimination on the ground of minority and to be treated equally in the matters of establishment and administration of educational institutions.

Though the Minority Educational Institutions Commission Act, 2004 has been enacted, in view of Fundamental rights of minorities and judicial decisions on minority educational institutions, it is need of an hour to make the law by the Parliament, on ‘Minority Educational Institutions’, taking into consideration a) the educational interests of minorities, to maintain standards of education at par with the best educational

institutions to bring the minorities in mainstream; b) regulation of the affairs of the minority educational institutions with a view to enjoy equal rights as of other educational institutions. There shall be the provisions as to rights of minority educational institutions; definition of 'minority'- religious and linguistic; meaning of the term 'of their choice' which includes general and secular education, professional education etc; definition of 'educational institution'; right to aid from the state in view of Art.30 (2); right to recognition from the government, educational and professional bodies; right to affiliation of University; right to admit students, right to fix reasonable fee structure, right to appoint teaching and non-teaching staff; right to take action if there is dereliction of duty on the part of any employees.

