

## MINORITY RIGHTS AND EDUCATION

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### Introduction

India is the largest democracy of the world. It is a land of religious, cultural and linguistic diversity. Correspondingly we have the division of population into a majority and several minorities on the basis of religious, cultural as well as on linguistic communities.

The basic object of minority protection is to instill confidence in them, create a feeling that they will never be overrun by the majority and to homogenize the pluralities in a civil society and to integrate minorities fully and equally into the national life of the state characterized by the ethos and interest of majority. The term minority occurs only in Articles 29 and 30 of the Indian Constitution. Article 30 recognizes the right of a minority whether based on religion or language to establish and administer educational institutions of their choice and prohibits the state from discriminating against any educational institutions on the ground that it is under the management of a minority. Article 30(1) holds a very special place for the fact that through education alone minorities can conserve their language, script and cultural heritage. It is the most important factor for the development of man as well as of the society. Even the international law recognizes that education is general human right and also crucial part of minority rights.

The Constitution of India uses the word 'minority' or its plural form in some Articles – 29 to 30 and 350A to 350B -but does not define it anywhere. Article 29 has the word "minorities" in its marginal heading but speaks of "any sections of citizens... have a distinct language, script or

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culture". Article 30 speaks specifically of two categories of minorities - religious and linguistic. The remaining two Articles - 350A and 350B - relate to linguistic minorities only. In common parlance, the word "minority" means a group comprising less than half of the population and differing from others, especially the predominant section, in race, religion, traditions and culture, language, etc.<sup>1</sup> The word "Minority" is defined by the Oxford Dictionary as a smaller number or part; a number or part representing less than half of the whole; a relatively small group of people, differing from others in race, religion, language or political persuasion". The United Nations Human Rights Commission appoint a special Subcommittee on the Protection of Minority Rights in 1946 which defines the word 'minority' as those "non-dominant groups in a population which possess a wish to preserve stable ethnic, religious and linguistic traditions or characteristics markedly different from those of the rest of the population."

### **Minority Rights under Article 30 of the India Constitution**

Article 30(1) – the “minorities only” clause that is at the centre of all this.

All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

### **Article 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

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<sup>1</sup> Khan Arshi, *Exclusion of Minorities in South Asia: Denial, Deprivation And Discrimination*, INDIAN JOURNALS.COM (Feb. 8, 2014), <http://jfmt.indianjournals.com/ijor.aspx?target=ijor:jes&volume=2&issue=1&article=009>.

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.

Article 19(1)(g) the “secular provision” that has gained traction as one that protects all citizens including Hindus and minorities from engaging in any activity including education

- (g)** All citizens shall have the right, to practice any profession, or to carry on any occupation, trade or business.

Article 29(1) under “Protection of interests of Minorities” says any section of citizens having a distinct culture, language, or script of its own shall have the right to conserve the same.

The Constitution of India provides certain fundamental rights (Articles 15-17, 25 to 30) and directive principles (Articles 330- 339 and 350) for the benefit of minorities in India.

The rights are protected by a prohibition against their violation, and are backed by a promise of enforcement. They, being part of the Fundamental Rights, are invested with sanctity and a status higher than that of the ordinary law and, consequently, every legal provision or executive action must conform to the mandates implied in them. The prohibition is contained in Article 13 which bars the state from making any law abridging or limiting any of these provisions and threatens to veto any law found inconsistent with. The injunction runs against the whole state which term under Article 12 is defined to include government and Parliament of India and the government and the legislature of each of the states and all local and other authorities. The term 'law' includes

within its amplitude any ordinance, order, bye-law. Rule, regulation, notification, custom or usage having the force of law; and the prohibition binds all such instrumentalities within the state as have legal authority to formulate such law. The promise of enforcement is contained in Article 32 which, conferring practicability to the assertions contained in Article 13, declares that the right to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights is guaranteed and thus imposes a duty upon the highest court to afford protection against any violation and vests a corresponding right in the religious and linguistic minorities to seek remedy in case the rights are threatened with deprivation or infringement. A similar jurisdiction has been conferred upon the High Court's under Article 226. The rights are made justifiable before the courts for double purpose of protecting them against arbitrary action of regulatory authorities wielding the force of state and against excesses of elected legislatures dominated by transient numerical majorities and often swayed by passions and prejudices.<sup>2</sup>

As regards religious minorities at the national level in India, all those who profess a religion other than Hindu are considered minorities, since over 80 per cent [of the] population of the country professes the Hindu religion. At the national level, Muslims are the largest minority. Other minorities are much smaller in size. Next to the Muslims are the Christians (2.34 per cent) and Sikhs (1.9 per cent); while all the other religious groups are still smaller. As regards linguistic minorities, there is no majority at the national level and the minority status is to be essentially decided at the state/union territory level. At the state/union territory level – which is quite important in a federal structure like ours – the Muslims are the majority in the state of Jammu and Kashmir and the union territory of Lakshadweep. In the states of Meghalaya, Mizoram and Nagaland, Christians constitute the majority. Sikhs are the majority community in the state of Punjab. No other religious community among the minorities is a majority in any other state/UT.

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<sup>2</sup> Ranu Jain, *Minority Rights in Education: Reflections on Article 30 of the Indian Constitution*, 40, ECONOMIC AND POLITICAL WEEKLY, 2430, 2437 (2005).

Education is the vehicle by which a child grows to be an independent adult. It is also the means by which cultural values are transmitted and the child is bound to his or her family, community and society. The right to education has a special value as it enables children to increase their chances of having their other rights fulfilled. "Education is the single most important instrument for social and economic transformation. A well educated population, adequately equipped with knowledge and skill is not only essential to support economic growth, but is also a precondition for growth to be inclusive since it is the educated and skilled person who can stand to benefit most from the employment opportunities which growth will provide." The Muslim community should realize that there is a need for systematic transformation of the thinking process and the resulting behaviour through proper education. "In fact our salvation lies in acquiring strong knowledge economies powered by information technology, innovation and education."

Going by the Sachar Committee Report, Muslims were scraping the bottom of the educational barrel of the country. Their enrolment and retention rates at the primary and secondary levels were lower than the national average. Sufficient numbers of educational institutions were not available for Muslims across the country. Equal opportunity was also not available to all sections of Muslims.<sup>3</sup>

Most of their institutions are lacking in infrastructural and instructional facilities. Growth in numbers of their educational institutions has not been accompanied by an improvement in the delivery of quality education.

An important section of children of the Muslim community had involuntarily been excluded from mainstream education on account of their economic, social and cultural status. Concerted efforts were needed to promote access for such children to schooling and other educational resources. "Minorities in general and Muslims in particular should strive hard to harness every

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<sup>3</sup> M.S.A. Siddiqui, *Focus on Education of Minority Communities*, The Hindu, Dec. 19, 2012.

source that could lead them to quality education, quality growth and quality development”.

Given the importance of a knowledge economy, the establishment of educational institutions of global standards ought to become the priority of minority communities. Internationalism in higher education needed to be promoted. The development of self-respect, a strong sense of ethics and inter-faith understanding through education were perhaps the most important mission of educational institutions.

Educational rights for minority groups may be included in states' education systems and also enshrined in their statutes. However, states' laws, their declarations and their educational systems are largely normative statements. For many minority groups, the key issue is whether educational practice actually recognizes those legal obligations and aspirations and provides a full, effective and fulfilling education for their young people.

### **Sachar Committee Report**

The Government of India constituted Justice Sachar Committee for preparation of a Report on the Social, Economic and Educational Status of Muslim Community of India, and Justice Ranganath Mishra Commission for identifying criteria for socially and economically backward classes among the religious and linguistic minorities, and to suggest various welfare measures for Minorities including Reservation.

The members of the Committee visited different parts of the country to assess the grassroots situation and grasp the realities by experience rather than merely with the help of statistics brought to their desks by investigators. The Committee tried to sift the perception of members of the Muslim community (as well as of non-Muslims) and understand the nature and magnitude of the community's grievances, to be able to judge the veracity or otherwise of the expressions of negligence and deprivation.

Most of the grievances of the community are common knowledge and those who have access to the Urdu press

in different parts of the country are fully aware of the endless stories of 'woes' and 'miseries' of the community. But a systematic study of these grievances had to be made and the Sachar Committee ventured to do that. We shall deal with the grievances briefly later but, first, a review of the findings of the Sachar Committee in different areas of its concern.<sup>4</sup>

### **Finding of the Sachar Committee**

The 403-page report, has listed its findings on population growth, literacy levels, employment, health and various other developmental indicators. The Sachar Committee report also put forth recommendations to address the conditions and issues identified as affecting Muslims in India. These include creation of an Equal Opportunity Commission, mechanisms to promote participation of Muslims in public bodies, financial support to help increase employment share, and provisions examining ways of linking *madarsas* to the formalized education and employment structure.

### **Main Recommendations<sup>5</sup>**

- Set up an Equal Opportunity Commission to look into grievances of deprived groups like minorities.
- Create a 'nomination' procedure to increase participation of minorities in public bodies.
- Provide legal mechanism to address complaints of discrimination against minorities in matters of employment, housing, schooling and obtaining bank loans.
- Establish a delimitation procedure that does not reserve constituencies with high minority population for SCs.

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<sup>4</sup> Anees Chishti, *Sachar Committee Report: A Review*, XLV, MAINSTREAM WEEKLY (2006).

<sup>5</sup> Priya Parker, *Summary of Sachar Committee Report: High Level Committee to examine the socio-economic and educational status of the Muslim community in India*, PRS LEGISLATIVE RESEARCH, (Feb. 8, 2014)

<http://www.prsindia.org/parliamenttrack/report-summaries/sachar-committee-report-high-level-committee-to-examine-the-socio-economic-and-educational-status-of-the-muslim-community-in-india-660/>.

- Initiate and institutionalize a process of evaluating contents of textbooks to purge them of explicit and implicit material that may impart inappropriate social values, especially religious intolerance.
- Create a National Data Bank (NDB) where all relevant data for various socio-religious categories are maintained.
- Set up an autonomous assessment and monitoring authority to evaluate the extent of development benefits.
- Encourage the University Grants Commission to evolve a system where part of allocation to colleges and universities is linked to diversity in student population.
- Facilitate admissions to the most backward amongst all socio-religious categories in regular universities and autonomous colleges and evolving alternate admission criteria
- Provide different types of affirmative action to three main Muslim groups (Ashrafs, Ajlafs and Arzals): Designate Arzals Muslim group as most backward classes as they need multifarious measures, including reservation. Provide Hindu-OBC-type attention to Ajlaf Muslim group.
- Provide financial and other support to initiatives built around occupations where Muslims are concentrated and that have growth potential.
- Increase employment share of Muslims, particularly where there is great deal of public dealing. Working out mechanisms to link *madarsas* with higher secondary school board.
- Recognize degrees from *madarsas* for eligibility in defense, civil and banking examinations.
- Provide hostel facilities at reasonable costs for students from minorities on a priority basis.
- Promote and enhancing access to Muslims in 'Priority Sector Advances'.
- Include in teacher training components that introduce importance of diversity and plurality and sensitizing teachers towards needs and aspirations of Muslims and other marginalized communities.
- Open high quality Urdu medium schools wherever they are in demand and ensuring high quality textbooks for students in the Urdu language.



- Draw Muslims on relevant interview panels and boards.
- Improve participation and share of minorities, particularly Muslims, in business of regular commercial banks.
- Set up a national Wakf development corporation with a revolving corpus fund of Rs. 500 crore.
- Create new cadre to deal with specific Wakf affairs.

The government approved 72 of 76 recommendations made by the Sachar Committee, while rejecting three of them and deferring a decision on another. The government rejected three of its recommendations to enumerate castes as a part of its decennial census exercise. The government also turned down the Committee's recommendations to have a new all India cadre of officer to manage state Wakf Boards and the Central Wakf Council, besides having an alternative admission criterion to facilitate admission of the most backwards among all socio-religious categories (SRCs) in universities and autonomous colleges.

After the implementation of Recommendation made by the Sachar Committee Recruitment of minorities had increased in government jobs, security forces and the banking sector, and simultaneously priority sector lending for minorities had gone up from 9 per cent to 15 per cent. Besides, 40 lakh scholarships were awarded to minority students, and minority-specific development programmes implemented in as many as 90 minority-concentration districts.<sup>6</sup>

### **Supreme Court Judgment: Minority Education Right**

The recent Supreme Court judgment on the educational rights of minorities does not adequately reflect international trends for strengthening protection of minority rights. There is a need to rethink and reformulate minority rights, and enact a central law providing for multi-culturalism and pluralism along with inter culturalism in all educational institutions, with the provision that minorities will have unfettered right to

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<sup>6</sup> Manmohan, *Minorities have benefited after Sachar Committee Report*, THE HINDU, Dec. 30, 2011.

regulate their admission without resorting to exclusion of non-minorities<sup>7</sup>.The Supreme Court takes them as a protective arrangement.

In its 2005 judgment in *Bal Patil v. Union of India*, the court said: "The group of Articles 25 to 30 of the Constitution, as the historical background of partition of India shows, was only to give guarantee of security to the identified minorities and thus to maintain integrity of the country." The apex court, in its 2005 judgment, felt that the special guarantees and protection to the religious, cultural and educational rights of minorities was guaranteed as a fundamental right in the Constitution, in the backdrop of the bloody partition, to allay apprehensions and fears in the minds of Muslims and other religious communities.<sup>8</sup>

"Such protection was found necessary to maintain unity and integrity of free India because even after partition, communities like Muslims and Christians in greater numbers living in different parts of India opted to live in India as children of its soil."

In *T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors.* the larger bench of the Supreme Court headed by Chief Justice B.N. Kirpal held that 'the state governments and universities cannot regulate the admission policy of unaided educational institutions run by linguistic and religious minorities, but state governments and universities can specify academic qualifications for students and make rules and regulations for maintaining academic standards. The same principle applies in the appointment of teachers and other staff and an unaided minority educational institution would be free to hire as it pleased as long as some essential qualifications were adhered to. Minority educational institutions would have to comply with conditions laid down by universities or boards to get recognition or affiliation. They have the right to admit

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<sup>7</sup> Iqbal A Ansari, *Minority Rights in Education: Reflections on Article 30 of the Indian Constitution*, 38 ECONOMIC AND POLITICAL WEEKLY 1827,1829 (2003).

<sup>8</sup> Dhananjay Mahapatra, *Statute ensures minorities rights*, THE TIMES OF INDIA, Apr. 6, 2007.

students of their choice, but subject to an objective and rational procedure of selection and compliance of conditions if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them scholarships. The admissions should be on merit and be conducted in a transparent manner.<sup>9</sup>

The court further held that commercialization of education was not permissible. The *Unni Krishnan's* case was partly overruled to the extent of scheme relating to the grant of admission and the fixing of the fee as it was not considered to be correct. The court also overruled the decision in *St. Stephen's* case where it had held that minority educational institutions were free to reserve seats up to 50% for minority students. The court has now empowered the states to fix quotas for minority students taking into account the type of institution, population and educational needs of the minorities.

It said the minorities initially recognized were based on religion and on a national level, for example Muslims, Christians, Anglo-Indians and Parsis.

However, it had sounded a warning against vote bank politics based on divisive tactics and underlined that "the constitutional ideal, which can be gathered from the group of articles in the Constitution under Chapters Fundamental Rights and Fundamental Duties, is to create social condition where there remains no necessity to shield or protect rights of minority or majority."

## **Conclusion**

Treating unequals as equal is as bad as treating equals as unequals. Our Constitution provides for equality for equality of opportunity to all but meting out equal treatment to those who did not start off equally in the first place means treating unequals as equals. Minorities in India have had to face adverse discrimination and, therefore, do not stand on equal footing with others, which made the framers of the Constitution, through

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<sup>9</sup> All India Taleemi Ghar Lucknow, (Feb. 8, 2014), <http://www.feduni.org/TMA-V-Karnataka.asp>.

Article 29 and Article 30, accord special rights to the people who form religious or linguistic minority in India.<sup>10</sup> There are excellent minority educational institutions which have been rendering quality education at moderate costs before the capitation fee menace began warranting judicial intervention. The situation is different today because of the policy of liberalization, politics of conversion, and the compulsions of democratic governance. Minority institutions which continue to administer educational institutions in the spirit of service (and not profiteering) have nothing to lose or fear from the judgment.

The subject of minority education rights is a sensitive issue. At the same time the educational process has the potential to effectively facilitate and strengthen mutual respect and understanding between the various communities within States.



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<sup>10</sup> Kamaluddin Khan, *Educational rights of minorities*, (Feb.8, 2014), [http://twocircles.net/legal\\_circle/educational\\_rights\\_minorities\\_kamaluddin\\_khan.html](http://twocircles.net/legal_circle/educational_rights_minorities_kamaluddin_khan.html).