

Constitutional and Legislative Protection of Right to Education of Minorities in India

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Abstract – In Ancient time India was considered to be a land of minorities from previous times which consists of various groups like religious, racial, cultural and linguistic. The people of India at that time were divided by difference of race, religion, language, culture and socio-economic factors. One of the important tasks of the constitution makers was to construct a constitutional arrangement which protects maximum number of minorities from the evil of discrimination and promises to safeguard those characteristics which have divided them apart from the rest. The uncertain idea of rights of minorities to establish and administer educational institutions promised in good faith to reassure India's agitated minorities at the time of partition. It has now taken such root in India that it has become the prime source of inequality among the people of this Country. This article will deal with the present scenario of the constitutional and legislative protection of minority groups. Article 30 of the Indian constitution proclaims that: (1) All minorities, whether or not they are based on religion or on language, they shall have the right to establish and administer educational institutions of their own choice. (2) The state shall not discriminate against any institution in granting aid to them on the bottom that it's beneath the management of a minority, whether or not it's supported faith or language. The essence of article 30 is that it is intended to ensure are not discriminated against or denied equal treatment. But in practice it has started to mean that non-minority institutions can be denied the right to "establish and administer" institutions in their own way. This article deals with the state of protection given to the minorities to the state of going towards autonomy of institutions.

Keywords: Minorities, Education, Constitution of India.

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INTRODUCTION

The problem of minorities is of not recent origin. It was implanted by the British by the formula of "Divide and Rule Policy". Everybody has experience of the partition of the country and the "hide and seek game" of the British. The division of the country on the basis of religion and declaration of an Islamic State in Pakistan were the result of the long treacherous British rule. Loot, murder, plunder and wholesale destruction of opposite community at the time of partition of our nation were the scars on the body politic of India at the dawn of Independence.¹

The protection of rights of the ethnic and religious minorities is the backbone of India's secular values. With a legacy of bringing all religions under its fold, India has always advocated the principle of equality. "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."². The Ministry of Human Resource Development has focused on an inclusive agenda, with a vision of realizing India's human resource potential to its fullest, with equity and excellence. The Article 30 of the Indian constitution is one of the many provisions that ensure preservation of minority rights. Article 30 is classified under Part III of the Constitution of India throws light on the fundamental rights provided to the citizens of India irrespective of their caste, religion and sex. Article 30 promises the rights of minorities "to establish and administer educational institutions".

Article 30 has two clauses:

Article 30 (1) promises to all linguistic and religious minorities the 'right to establish' and the 'right to administer' educational institutions of their own choice. The right is provided by this clause on two types of minorities, namely, religious and linguistic minorities. The right vested in the above minorities

¹ D.S Prakash Rao "Protection of minorities rights: Need of the hour", Legal Journal quest for justice, Vol -II ,No -1 ,Academic year 2006-07.pp-63-64

² Para 10.1 of the Approach to the 12th Five Year Plan.

is to establish and administer educational institutions of their choice. The word "establish" indicates the right to bring into existence, while the right to administer an institution means the right to effectively manage and conduct the affairs of the institution. The administration implies management and affairs of the institution. The management must be free of control and restrictions so that the founders of their community can frame the institution as they think fit in correspondence with their views and ideas of how the interest of the community in general and the institution will be delivered. Thus it gives choice to the minority community to establish such educational institutions as it will serve both purposes, that is, the purpose of protecting their religion, language or culture, and also the purpose of giving through general education to their children in their own language.

Article 30 (2) restricts the State from making discrimination in the matter of providing help to any educational institution on the ground that it is managed by a religious minority or linguistic minority.

Protection of Right to Education of Minorities under the Constitution of India

The Article 29 of the Constitution of India, 1950 deals with the concept of protection of the interest of minorities and Article 30 talks about the right to establish and administer educational institution of their choice. In general it can be said the scope of minority right in constitution is:

1. To preserve the language, script or culture
2. To establish the educational institution
3. To administer educational institution
4. To administer according to their choice

So, it can be said that a minority can preserve language, script, culture through the educational institution. But the right to minority education doesn't indicate religious teaching but general secular education. Generally establish means coming into existence of an educational institution by the minority and administer means day to day administration of the institution. The power of administration has many sides like admission of the students, appointment of teachers, choice to determination of language of educational institution etc.

Article 29 -Protection of interest 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 citizens shall be denied admission into any educational institution maintained by the

State or receiving aid out of State fund on ground only of religion, race, caste, language or any of them.

Article 30 .Right of Minorities to establish and administer educational institution:

- (1) All minorities, whether based on religion or language shall have the right to establish and administer educational institution of their choice [(1A) In making any law providing for the compulsory acquisition of any property of and educational institution established and administered by a majority, 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 the clause]³
- (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 minority whether based on religion or language.

The Article 46 of the Constitution of India states that, "The State shall promote, with special care, the education and economic interests of the weaker sections of the people, and, in particular of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of social exploitation." Articles 330, 332, 335, 338 to 342 and the entire Fifth and Sixth Schedules of the Constitution deal with the special provisions for implementation of the objectives which are set forth in Article 46. Beside these, Article 350A says 'facilities for instruction in mother tongue at primary stage'⁴ Article 350 B says "special officer for linguistic minorities"⁵

Now, it can be clearly said that a minority can preserve language, script, culture through the educational institution. But the right to minority education doesn't indicate religious teaching but general secular education. Generally establish means coming into existence of an educational institution by the minority and administer means day to day administration of the institution. The power of administration has many facets like admission of the students, appointment of teachers, choice to determination of language of educational institution etc. The observation of the Supreme Court in **Re Kerala Education Bill**⁶ that 'the right conferred minorities to administer educational institution of their choice is not an absolute right'

³ Ins: by the constitutional (Forty four Amendment Act ,1978, Sec 4 (w.e.f 20/06/1999)

⁴ Article 350 A Constitution of India

⁵ Article 350 B Constitution of India

⁶ A.I.R 1958 S.C 956

The minority educational institution can be classified into:

- (1) Recognised aided institution
- (2) Recognised unaided institution.
- (3) Unrecognised institution

The unaided minorities institution is also subject to regulation of the Government. The honorable Supreme Court of India by its judicial dictum has tried to interfere the "letter and spirit" of the constitutional provision regarding the minority right to education at this post modernism and global era keeping in view the recent socio-economical jurisprudential orientation and the new trend of unaided minority educational institution. To satisfy the new trend of liberalization, privatization and globalization the intelligent judiciary in *T.M.A Pai Foundation case*⁷ has overruled the view of *Unnikrishan*⁸ that the nationalization of education and surrendering the process of selection to the State but *T.M.A Pai Foundation*⁹ allowed to educational institution to generate a reasonable surplus to meet the cost of expansion and augmentation of facilities who would not amount to profit. In case of *Islamic Academy*¹⁰, the ratio of *Pai Foundation*¹¹ that autonomy of unaided non-minority institution is an important facet of their right under Article 19 (1) (g) and in case minority under Article 19(1)(g) read with Article 30 of the constitution has been ignored.

The guideline for reservation, admission procedure, fees structure, capitation for unaided private institution both minority and non-minority in *P.A. Inamdar vs State of Maharashtra*¹² can be summarized as follow:

- (1) Admission procedure: The court held that there is nothing wrong in having centralized entrance test being held for one group of institution imparting same or similar education. Admission to be made from the list of successful candidate without altering inter se merit. It would benefit twin objects, first serving student free from exploitation and secondly, ensuring merit admission.
- (2) Reservation: In unaided private professional institution (both minority and non-minority), the Court held that the scheme for reservation of seats as state quota is violative of Article 30 and 19(1)(g). Its affect the autonomy of such institution. However a limited reservation of 15 % may be made for

Non Resident of India (N.R.I) depending on the discretion of management subject to two condition: First, such seats should be utilized for benefit of N.R.I wards and secondly money collected should be utilized for the benefit of economically backwards students.

- (3) Fee Structure: It was held that every institution free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee directly or indirectly or in any form is charged. Fees structure can be regulated for preventing profiteering. The right to establish and administer an institution within the meaning of Article 30(1) of the constitution includes the right to fix reasonable fee structure.
- (4) Capitation: Charging of capitation fees is not to be permitted. 'Profession' has to be distinguished from business or a mere 'occupation'

Inter-Relation between Articles 29 and 30

The Articles 29 and 30 of the Constitution of India, 1950 are grouped under the same heading "Cultural and Educational rights". Both the articles protect and guarantee certain collective rights for the minorities to help them to preserve their language, religion and culture. These rights also contribute to preserve the rich diversity of the country and give minority a sense of security.

Together, they confer four distinct rights on minorities. These include the right of:

- (a) the citizen against denial of admission to any State-maintained or State-aided educational institution.
- (b) an educational institution against discrimination by State in the matter of State aid (on the ground that it is under the management of religious or linguistic minority; and
- (c) any section of citizens to conserve its own language, script or culture;
- (d) all religious and linguistic minorities to establish and administer educational institutions of their choice;¹³

Article 29, especially clause (1) thereof, is more generally worded, whereas article 30 is focused on the right of minorities to (i) establish and (ii) administer educational institutions. Notwithstanding

⁷ AIR 2003 SC 355

⁸ Unnikrishna, J.P vs State of A.P, (1993) I SCC 645

⁹ AIR 1970 SC 259.

¹⁰ Islamic Academy vs State of Karnataka AIR 2003SC 3724

¹¹ AIR 1970 SC 259.

¹² AIR 2005 SC 3236

¹³ Goyal K.N., "Majorities Right to Establish and Administer Educational Institution", Journal of Indian Law Institute, Volume 38, Number 3, July – September 1996, p. 283.

the fact that the right of the minority to establish and administer educational institutions would be protected by article 19(1) (g), the framers of the Constitution incorporated article 30 in the Constitution with the obvious intention of instilling confidence among minorities against any legislative or executive encroachment on their right to establish and administer educational institutions. In the absence of such an explicit provision, it might have been possible for the State to control or regulate educational institutions, established by religious or linguistic minorities, by law enacted under clause (6) of article 19.

Over the decades, the interplay of these two Articles has been the cause of intense debate, firstly, touching on issues such as secularism and secondly, the degree of control over private educational institutions maintained by the State or receiving aid out of State funds; on grounds only of religion, race, caste, language or any of them. Article 29(1) deals with right of any section of the citizens residing in India to preserve their language, script or culture. In order to invoke Article 29(1), all that is essential is that a section of the citizens, residing in India should have a distinct language, script or culture of its own. If so, then they will have the right to conserve the same.

Article 29(2) prohibits discrimination in matters of admission into educational institutions on grounds only of religion, race, caste, language or any of them. This provision guarantees the rights of individual irrespective of the community to which he/she belongs.¹⁴

Article 30 (1) provides that all religious and linguistic minorities have the right to establish and administer educational institutions of their choice. Article 30(2) prevents States from making any discrimination against any educational institution in granting aid on the ground that it is managed by a religious or linguistic minority.

National Monitoring Committee for Minorities' Education (NMCME)

The National Monitoring Committee for Minorities' Education (NMCME) has been reconstituted via Ministry's Resolution No. 6-4/2010-MC (Pt.) dated 23.12.2011. The first meeting of the reconstituted Committee was held on March 5, 2012 at New Delhi. At this meeting, a decision was taken to constitute a Standing Committee of NMCME and five sub-Committees of NMCME as under:

Implementation of Schemes Aimed at Minorities

- ▶ Mapping of Educational Requirements of Minorities - Region & District-wise

¹⁴ Molishree, "Minority Educational Institution- A Critical analysis." Visited on 25th October 2019. <http://socialjustice.nic.in/obes/minority.htm>

- ▶ Vocational Education & Skill Development of Minorities
- ▶ Girls' Education
- ▶ Promotion of Urdu Language and enhance compatibility amongst minorities through knowledge of English.

The Government is also running the following Schemes for the improvement of Educational and Economic lot of the Minorities:

- ▶ Central Sponsored Scheme for Providing Quality Education in Madrasa (SPQEM)
- ▶ Scheme for Infrastructure Development Private Aided/Unaided Minority Institutes (IDMI) - (Elementary Secondary/Senior Secondary Schools)

The following work is done for granting equal opportunities to the Minorities in the country:-

- ▶ Prime Minister's 15-Point Programme for Minorities' Welfare (Including Status Report)
- ▶ Major Initiatives for Educational Advancement of Minorities
- ▶ Government Decisions on Sachar Committee Recommendations (Including Monitoring of Action Taken)
- ▶ Findings of Research Conducted by NUEPA - Participation of Muslims in Higher Education

Article 347: Special provision relating to language spoken by a section of the population of a State

On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognized by that State, direct that such language shall also be officially recognized throughout that State or any part thereof for such purpose as he may specify.

Special provisions have also been made under Articles 350A and 350B to provide smaller communities educational opportunities in their mother tongue and to appoint a special officer for linguistic minorities.

Article 350: Language to be used in representations for redress of grievances

Every person shall be entitled to submit a representation for the redressal of any grievance to any officer or authority of the Union or a State in any

of the languages used in the Union or in the State, as the case may be.

Art. 350A: Facilities for instruction in mother-tongue at primary stage

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

These provisions are unique in their thoroughness and seek to accommodate the interest of linguistic minorities. When provisions under Articles 29 and 30 are considered along with other provisions in the Chapter of Fundamental Rights and elsewhere in the Constitution safeguarding the rights of religious, linguistic and racial minorities, it becomes clear that the sole purpose of these provisions is to give linguistic minorities, the right to preserve and develop their language and to facilitate teaching in mother tongue to their children in early ages.¹⁵ But the minority status of the language in an area does not have a bearing on the social and economic status of those who speak the minority language. In fact every State has speakers of minority languages though the percentage of speakers varies.

National Commissioner of Linguistic Minorities

We have National Commissioner for Linguistic Minorities, an organization to monitor and implementation of Constitutional and Consensual safeguards for linguistic minorities. Safeguards provided to the linguistic minorities are of two kinds:

1. Those provided by the Constitution
2. Those arrived at by the consensus by Central and State Governments through series of meetings.
3. The combined scheme.

National Commission for Minority Educational Institutions Act, 2004¹⁶

The National Commission for Minority Educational Institutions Act is the outcome of the UPA Government's manifesto that called for 'National

Common Minimum Programme. In the National Common Minimum Programme, in its Section on "National Harmony, Welfare of Minorities," it was mentioned that a commission for minority educational institutions would be established which will provide direct affiliation for minority professional institutions to Central Universities. The Government brought out an Ordinance in November 2004 establishing the Commission. Later a Bill was introduced in the Parliament in December 2004 and both Houses passed the Bill. The NCMEI Act was notified in January 2005.

The National Commission for Minority Educational Institutions Act, 2004

was enacted to constitute a Commission charged with the responsibilities of advising the Central Government or any State Government on any matter relating to education of minorities that may be referred to it, looking into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice, deciding on any dispute relating to affiliation to a scheduled University and reporting its findings to the Central Government for implementation. The Act was extensively amended in 2006 (Act 18 of 2006), inter-alia, empowering the Commission to enquire *suo moto* or on a petition presented to it by any minority educational institution (or any persons on its behalf) into complaints regarding deprivation or violation of rights of minorities to establish and administer an educational institution of its choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation. The Act also provides that if any dispute arises between a minority educational institution and a University relating to its affiliation to such University, the decision of the Commission thereon shall be final.

National Minorities Development Finance Corporation (NMDFC)

National Minorities Development Financial Corporation was incorporated under the aegis of "Ministry of Social Justice and Empowerment", Government of India on the 30th of September 1994 under the Section 25 of the Companies Act – 1956 with the main objective to promote economic development of the poorer section of Minorities. The people belonging to five communities i.e. Muslims, Christians, Sikhs, Buddhists & Parsis have been notified as minorities under the National Commission for Minorities Act, 1992. The prime mandate of NMDFC has been to provide concessional finance to the minorities living below double the poverty line for self-employment. NMDFC functions under the administrative control of

¹⁵ Constitutional and Legislative provisions Regarding the Minorities – Justice Ranganath Misra Report, 2007, p. 36.

¹⁶ A Constitution Amendment Bill, viz. the Constitution (One Hundred and Third Amendment) Bill, 2004 has been introduced so as to add a new article, viz, Article 340A to constitute a National Commission for Minorities with a constitutional status. A Bill to repeal the National Commission for Minorities Act, 1992 has simultaneously been introduced.

the Ministry of Social Justice & Empowerment, Government of India.¹⁷

Educational Right under UDHR¹⁸

Article 26(1) of the Universal Declaration of Human Rights says that everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Beside these sub clause 2 says that education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups and shall further the activities of the United Nations for maintenance of peace¹⁹. Furthermore clause 3 of this article²⁰ says that parents have a prior right to choose the kind of education that shall be given to their children.

Right to Education under International Covenant on Economic Social and Cultural Rights

The International Covenant on Economic Social and Cultural Rights is also sound for education. Regarding the value of education it says:

“The State Parties to the Present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of dignity, and shall strengthen the respect for human rights and fundamental freedoms.

They further agree that education shall enable all people to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial ethnic or religious groups and further the activities of the United Nations for the maintenance of peace²¹”:

With a view to achieving full relation of right to education, the State Parties to the International Covenant on Economic, Social and Cultural Rights recognize that²²:

- (a) *Primary education shall be compulsory and available free to all.*

- (b) *Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education.*

- (c) *Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.*

- (d) *The development of a system of school at all level shall be actively pursued, an adequate fellowship system shall be established and the material conditions of teaching staff shall be continuously improved.*

Article 5 of the International Covenant on the Elimination of All Forms of Racial Discrimination guarantees the right of education to everyone without distinction as to the race, colour and national or ethnic origin.

CONCLUSION AND SUGGESTIONS

The world human right documents say for example Universal Declaration of Human Rights and International Covenant on Economic Social and Cultural Rights Recorded the high esteemed cultural and educational rights of everyone but all over the world there is economic inequality among the citizen. International Covenant on Economic Social and Cultural Rights establishes the compulsory and free primary education to all but in India it has been seen that there are two kinds of education system- (1) general government school base education system and (2) English medium private base education system. The inclusion of caste in census 2011 is also a threat to the minority to retain their identity. The sociologist Imtiaz Ahmed, whose pioneering work demonstrated the pervasive consciousness caste among Muslim, feared that religious minorities would not be enumerated as having a caste, thus immediately denying them entry into any category on the basis of caste²³. The inclusion of the minorities at the footing of SC, ST and OBC is also a direct threat to culture of the minority.

Scheme for Providing Quality Education for minorities are:

- ▶ Scheme for Infrastructure Development of Private Aided/Unaided Minority Institutions (IDMI)
- ▶ Sarva Shiksha Abhiyan (SSA)

¹⁷ Mahmood Tahir, “Minority Matters”, The Times of India, April 11, 2007.

¹⁸ Universal Declaration of Human Rights

¹⁹ Article 26(2) of the Universal Declaration of Human Rights

²⁰ Article 26(3) of the Universal Declaration of Human Rights

²¹ Article 13(1) of the International Covenant on Economic, Social and Cultural Rights.

²² Ibid. Article 13(2)

²³ Vikhar Ahmed Sayeed, “The Cast Factor” Frontline, Sep 10, 2010, vol-27, p-108.

- ▶ Kasturba Gandhi Balika Vidyalayas (KGBVs)
 - ▶ Extension of Mid-Day-Meals (MDM) Scheme to Madarsas/Maqtabs
 - ▶ 'Saakshar Bharat'
 - ▶ Rashtriya Madhyamik Shiksha Abhiyan (RMSA)
 - ▶ Strengthening of the National Council for Promotion of Urdu Language (NCPUL)
 - ▶ Establishment of the National Commission for Minority Educational Institutions (NCMEI)
 - ▶ List of Minority Concentration Districts
 - ▶ Sub-Mission on Polytechniques under the coordinated Action for skill development
 - ▶ Girls Hostel Scheme
 - ▶ Setting up model schools
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