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A Study on Educational Rights of the Minorities under Article 30 of the Indian Constitution

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Abstract – From time immemorial India is considered to be a land of minorities comprising various groups — racial religious, linguistic and cultural Hindus, Muslims, Buddhists, Christians, Sikhs, Jain, Jews and Parsis have been in this land for centuries. There was communal harmony and mutual understanding and, hence, in the ancient days, India witnessed run major political problems of the existence of minorities.

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INTRODUCTION

The problem of minorities in India is comparatively of very recent origin. The historical background of the problem of minorities in India can be picked up since the advent of the British Rule in India. In the war of 1857, all the communities in India fought unitedly as a common cause against the British invaders and suffered heavily and almost equally. The war of 1857 shook the British administration in India. They resorted to "Divide and Rule" policy with the intention to break the solidarity of the people of India and their combinations.

Under the myth of the 'martial races', immediately after the great revolt of 1857, the Indian Army was reorganized on tribal, sectarian and caste basis. Jawaharlal Nehru has rightly pointed out that "The policy of balance and counterpoise was deliberately furthered in the Indian Army. Various groups were so arranged as to prevent any sentiment of national unity grouping amongst them, and tribal and communal loyalties and slogans were encouraged." The next step by the British rulers was the partition of Bengal in 1905 by which two communal provinces were created, i.e., the western Bengal where Hindus were greater in number and Eastern Bengal, having Muslim majority. By dividing Bengal the British rulers had cut the very source of Indian Nationalism. The partition, though effected by the Government for administrative convenience, created a great gulf between the two major communities — Hindus and Muslims. At the beginning of the present century, the debate on constitutional safeguards for minorities centered around the issue- of the 'method of selection of Indian representatives to the legislative institution. The most effective method by which the British could succeed in dividing the Indian mass was the establishment of communal representation in legislatures. The British rulers gave adequate trials, the theory of separate

electorate on communal representation, Montague-Chelmsford Reforms of 1919, Government of India Act 1935 and the Cabinet Mission Scheme of 1946. The communal representation granted to Muslims led to similar demands by Sikhs, Europeans, Anglo-Indians and Indian Christians. The communal representation in India had created a minority consciousness amongst the various religious and communal groups.⁷ According to the author, the term 'minorities' in India was invented by the British rulers themselves.⁸ It is said that the Indian Muslims formally entered politics and acquired a separate constitutional identity by the grant of separate electorates. The brief account of some of the historical events prove that the problem of minorities which exists in acute form in India is the gift of British Rulers. In the words of Jawaharlal Nehru, "Nearly all the major problems have- grown up during British rule and as a result of British policy, the princess: the minority problem ...". Thus it remains a fact that the British Rulers were responsible to graft communal division in India.

The following were the 14 points:—

- (1) The form of the future constitution should be federal, with the residuary powers vested in the provinces.
- (2) Any Bill opposed by three-fourth members of any community present shall not be proceeded with.
- (3) Right of separate electorate of Muslim members remain intact till they themselves give it up.

- (4) No cabinet, either central or provincial, should be formed without there being a proposition of one-third Muslim ministers.
- (5) Any territorial redistribution that might at any time be necessary shall not in any way affect the Muslim majority in the Punjab, Bengal or the North West Frontier Province.
- (6) Reforms should be introduced in Baluchistan and North west Frontier Province, on the same lines as in other provinces.
- (7) The central legislature Muslim representatives shall not be less than one-third.
- (8) Reservation of Muslims in the services.
- (9) Protection of Muslim culture, language, religion and education, personal laws and Muslim charitable institutions.

The Conference concluded emphatically declaring that "no constitution will be acceptable to Indian Muslims unless it conforms with the principles embodied in this resolution". For the Hindus the attitude of Muslims appeared to be anti-national and the trouble of majority-minority conflict found its full strength. The fact that the Muslim minority was in need of some special safeguards and an assured position was officially recognized by the Statutory Commission Report in 1930. The Commission after analyzing the representation made by various communities came to the conclusion until the spirit of tolerance is more wide spread in India, and until there is evidence that minority are prepared to trust to the sense of justice of the majority, we feel that there is indeed, need for safeguards.

The most common general description of a minority group used is of an aggregate of people who are distinct in race, religion, language or nationality from other members of the society in which they live and who think of themselves and are thought by others, as being separate and distinct. The term 'minority', in modern political terminology, is restricted to the distinct "racial" or "national" minority groups of numerical strength within a state. Here the word minority assumes an arithmetical connotation denoting by indication that a minority is a smaller part of a larger whole. But in the sociological sphere a minority need not always be a numerically small group of the population. For example, in the southern states of the USA, blacks form numerically larger group, but still they are treated as a minority group in relation to the numerically smaller dominant group of whites. The members constituting minority group, have a feeling of belonging to one common unit, a sense of kindness or community which distinguishes them from those of belonging to the majority of the inhabitants. They are "groups held together by ties of common descent, language or religious faith and feeling themselves different in these respects from the majority of the

inhabitants of a given political entity". A consciousness of the difference with the majority on the basis of certain common characteristics is, therefore, considered as a distinguishing mark, and as such a subjective element.

The persons of inherence of this right secured by Article 30(1) of the constitution are those who are distinguishable from others by the characteristics of either religion or language or both. "Religion" and "Language" being the criteria indicated Article 30, a precondition to invoke the protection guaranteed by Article 30, the constitution itself tends to confine the task of the courts to the ascertainment whether the group claiming the protection is a group identifiable in the characteristics of religion or language and is also numerically non-dominant. The expression 'based on religion' emphasizes that unless the only basis of a minority is religious, it is not to be covered by the words "

In Article 30(1), therefore, the word "minority" cannot apply to a class or a section of Hindus". It can be said that for the purpose of Article 30, a 'minority' means a non-dominant collectivity distinguishable from the majority of the population, by the 'objective factors of religion or language or a combination of both. For the application of Article 30, it is necessary that an institution is proved to have been established by a minority. The nature of proof or the quantum of evidence is however a matter for the courts discretion and satisfaction. As early as in 1951, the proof of minority status, and consequently the question of proof of establishment by a minority came up before the Assam High Court. The contention of the petitioner that the college in question was established by a minority was rejected by the court on the ground that there was no statement in the petition to the effect that it was established as a minority institution. The mere statement in the affidavit that the college "intends and purposes a minority college" was found by the High Court to be insufficient to justify the claim.

Kerala High Court accepted the claims of the petitioners as the institutions in question were established by minorities, without any investigation into the correctness or otherwise of the claim of establishment. Union of India the search for proof led the Supreme Court not only to trace the history of foundation of the Aligarh Muslim University but also to scrutinize at length the provisions of the Aligarh Muslim University Act, 1920 to ascertain if the university was in fact established by the Muslim minority and accordingly the Supreme Court concluded that the university was not established by the Muslims but was the creation of the Act of 1920.

Recognition is a facility which the State grants to an educational institution for enabling the students in such institution to sit for an examination conducted by the State in the subjects prescribed and to obtain certificates or degrees. The students of an unrecognized educational institution are not eligible to

obtain such recognized certificates or degrees and hence they are denied higher education as well as employment opportunities. Hence minorities have an interest in recognition of their educational institutions without which they cannot fulfill the real objects of their choice. When a minority institution seeks recognition from the State, it expresses its choice to participate in the system of general education and expresses its intention to adopt for itself the courses of instruction prescribed for other institutions.

It is evident from the language of Article 30(1) that the right to recognition or affiliation is not expressly granted. The judicial approach is that although recognition or affiliation is not a fundamental right, recognition of affiliation cannot be given cum conditions which will force minorities to give up totally or partially their rights under Article 30(1). The two views hardly seem to be well reconciled with each other. What Article 337 did was to protect such financial grants which the Anglo-Indian institutions were getting before independence. Such grants were initially protected in a period of three years. Thereafter during each year, the same could be reduced by 10 per cent than those for the immediately preceding period of three years. The Anglo- Indian educational institutions, as a condition precedent to get grants were under an obligation, according to the second proviso to Article 337, to make available 40 per cent of the annual admissions to other communities. Likewise, Article 29(2) of the Constitution provide inter alia, that no citizen shall be denied admission in any educational institution receiving aid out of state funds on grounds only of religion, race, caste and language . One special feature of such grant was that it was not open to the state to put any other pre-conditions for receiving such grants.

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