

## MINORITIES RIGHTS UNDER ARTICLE 29 & ARTICLE 30 (1) OF THE CONSTITUTION OF INDIA: AN ANALYSIS

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### ABSTRACT

Minorities all over the world religious or linguistic or ethnic have been constitutionally recognised as groups which need special or exclusive rights to be at par with the majority. Indian Constitution is one of the best in the world which provides a detailed catalogue of human rights to every citizen of the country including those belonging to religious and linguistic minorities without any discrimination. It is in this context, the paper deals with the protection of interests of minorities & their rights to establish and administer the educational institutions. Further, the paper provides insights to better understand the inter-relationship between Article 29 & Article 30 of the Constitution of India. The biggest loophole of this provision is that it does not define the term "minority." Several questions have been raised before the Courts of Law in India whenever the State has failed to provide adequate protection to the minorities including the Article 30 of the Constitution. As a matter of fact, the pronouncement of Courts has not been consistent in this regard. Sometimes the protection under Article 30(1) was declared as 'special rights' and at times it is upheld as principle of 'equal rights'. Despite these arguments, the paper focuses that Article 30 offers an important space to minorities to shape their educational situation in accordance to their desires and that minority students have every right to grow exponentially like their majority counterparts. It also argues that, if the State intervenes in this spirit, the very purpose of Article 30(1) of the Constitution of India becomes meaningless.

**Keywords:** minority protection, educational rights, interpretation of article 29 & 30

### 1. Introduction

The expression "Minority" has been derived from the Latin word 'minor' and the suffix 'ity' which means "small in number". According to Encyclopaedia Britannica "minorities" means "groups held together by ties of common descent, language of religious faith and feeling different in these respects from the majority of the inhabitants of a given political entity". The Oxford dictionary defines minority as a small 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 and political persuasion. The National commission for minorities in India has identified Muslims, Christians, Sikhs, Buddhists and Parsees which constitute 20.22% of the total population of the country as religious minorities, while Hindus who are 80% constitutes the majority group. The United Nations Declaration on the Rights of persons belonging to National, Ethnic, Religious and Linguistic Minorities says that the promotion and protection of the rights of persons belonging to such minorities contribute to the political and social stability of the

countries in which they live (Mollah and Bera :2018). In the present era, the term "minority" applies to more or less distinct groups living within a State which are dominated by majority group. Despite innumerable references found nationally and internationally there is no generally accepted definition of the term "Minority". Any effort to define the term has always created difficulties and complexities that neither the experts in this field nor the United Nations Organisation had been able to do so.

"Unity in Diversity" is a characterisation of India which is reflected in the constitutional commitments pertaining to equality of citizens and the responsibility of the State to protect, preserve and assure the rights of the minorities. India is the largest democracy of the world with secular character and is governed by the Constitution. In order to preserve secular traditions and to promote national integration, the Government of India attaches highest importance to the enforcement of safeguards provided for the minorities in the Constitution. It also takes care that effective institutional arrangements are urgently required for the enforcement and implementation of all the

safeguards available to them. As a result of which, the Government of India established the National Commission for Minority Educational Institutions (NCMEI) in 2005. The Commission has powers to advise the Central Government & the State Governments regarding any matter which directly or indirectly deprives the minority community of their educational rights enshrined in Article 30. Article 30(1) of the Constitution of India gives linguistic and religious minorities a fundamental right to establish and administer educational institutions of their choice (Thamarasseri: 2014). In the St. Xavier's College case, the Supreme Court has rightly pointed out, "The whole object of conferring the right on minorities under article 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".<sup>1</sup> Hence no laws can be framed to discriminate against them with regard to establish & administer their educational institutions. Article 30 is a special right conferred on the religious and linguistic minorities because of their numerical handicapness and to instil in them a sense of confidence.

While upholding these rights, the Supreme Court has in the TMA Pai case endorsed that there should be no reverse discrimination and opined that "the essence of Article 30(1) is to ensure equal treatment between the majority and minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable 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."<sup>2</sup>

## **2. Constitutional Rights accorded to Minorities in India**

The expression 'minority' which has been used in Article 29 & Article 30 of the Constitution of India has not been defined or described anywhere in the Constitution of India. On the issue of scope of the term "minority", B.R.Ambedkar, noted in the Constituent Assembly that, the term minority was used therein not in the technical sense of the word 'minority' as we have been accustomed to use

it for the purposes of certain political safeguards...The article intends to give protection in the matter of culture, language and script not only to a minority technically, but also to a minority in the wider sense of the terms...(Vijapur and Jamil:2017). In order to determine Minority under Article 30, the Supreme Court in Re Kerala Education Bill, 1957 suggested a technique of arithmetical tabulation of less than 50% of population for identifying a minority (Ibid). The Supreme Court also held that this population has to be determined in accordance to the applicability of the law in question. For example, if an Act is applicable nationwide then the minority group would be decided on the national figures and in the case of the Act being applicable in a State; the minority group would be decided on the basis of State figures.

Eleven Judge Bench of Supreme Court in T.M.A.Pai Foundation vs. State of Karnataka pronounced that the view of the past precedents as well as the fact that States have been organised on linguistic lines minority status shall be determined on the basis of State and not whole of India (Vijapur and Jamil: 2017). This applies both to linguistic as well as religious minorities.

Vulnerability of a religion or a language must be an essential criterion in the determination of minority under that article (Singh and Shukla : 2008). As far as language is concerned, Supreme Court in DAV College, Jullundur vs. State of Punjab observed that, a linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language, it is not necessary that the language should also have a distinct script or those who speak it (Ibid). With respect to religion, the 11 bench in the TMA Pai Foundation case did not speak, and left the space for divergent interpretations in this regard (Vijapur and Jamil: 2017) The denominations or sections of one religion cannot constitute religious minorities. The term 'minority' based on religion should be restricted only to those religious minorities i.e. the Muslims, Christians, Jains, Buddhists, Sikhs and the Parsees who have kept their identities separate from the majority i.e. the Hindus.

These rights are protected by a prohibition against their violation. The prohibition is

contained in Article 13 of the Constitution which declares that any law in breach of the fundamental rights would be void to the extent of such violation. It is to be noted that Article 30(1) cannot be read in a narrow and pedantic sense and being a fundamental right, it should be given its widest amplitude. The width of Article 30(1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein.

### **3. Protection of Interests of Minorities under Article 29 and Minority Rights to establish & administer Educational Institutions under Article 30**

Article 29 of the Constitution of India protects the interests of minorities as mentioned above, while Article 30 provides the rights to minorities to establish and administer their educational institutions. For easy reference, Article 29 and Article 30 are stated as,

- (i) Article 29 protects the interests of minorities-

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. No citizen shall be denied admission into any educational institution on grounds of religion, race, caste, language or any of them maintained by the State or receiving aid out of State funds.

- (ii) Article 30 provides Right to Minorities to establish and administer educational institutions-

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 any 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 the clause]<sup>3</sup>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. From the careful perusal of both

Articles 29 and 30 of the Indian Constitution, it is found that these rights are provided to the minorities to conserve their cultural and religious values. But unfortunately, the biggest hurdle in the process of implementing these rights depends on defining the term 'minorities'.

### **4. Inter-relation between the two Articles 29 & 30**

The Article 29 and Article 30 are grouped under the category of "Cultural & Educational Rights". Both of them protect and guarantee certain collective rights to minorities to protect their language, religion, culture and provide them a sense of security. Together, they confer four distinct rights on minorities-

- (i) Right to conserve their own language, script or culture.
- (ii) Right to all religious and linguistic minorities to establish and administer educational institutions of their choice.
- (iii) Right of 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)
- (iv) Right of the citizen against denial of admission to any State maintained or State-aided educational institution.

The issue of interrelationship between Article 29 and Article 30 has been the subject of discussion in many Supreme Court judgements<sup>4</sup>, the most important one being the case of St. Xavier's College vs State of Gujarat. On the interrelationship between Article 30(1) and 29(1) the Court held that, "article 30(1) covers institutions imparting general secular education. The Supreme Court has pointed out 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. It is also to be noted that Article 29(1) does not deal with education while Article 30(1) deals with the establishment and administration of educational institutions and it does not be exercised for the purpose of conserving any

language, script or culture. The conservation of any language, script or culture under Article 29(1) does not match or remains wholly unconnected with the right to establish and administer educational institutions under Article 30(1). Therefore, Article 29(1) is not confined to minorities but extends to all citizens while the scope of Article 30(1) extends to all religious and linguistic minorities. As M.P.Singh puts it, Article 29(1), neither controls the scope of Article 30(1) nor is controlled by that article (Vijapur and Jamil: 2017).

The interrelationship between Article 29(2) and 30(1) has been the subject of controversy in a plethora of cases. Some author calls this relationship as paradoxical generating confusions like; can minority education institutions deny admission to any student on the basis of religion or language? Whether in admission to minority educational institutions, preference can be given to minority students, overruling the criteria of merit?

The Supreme Court looking into these issues in *St. Stephen's College vs. University of Delhi*<sup>5</sup> case held that the purpose of Article 30(1) does not mean that the minority can establish any educational institution for the benefit of their own communities. The right provided to them is not for their exclusive benefit. The Court observed that "Every educational institution irrespective of community to which it belongs is a 'melting-pot' in our national life and therefore it is necessary that there should be a proper mix of students of different communities in all educational institutions and that the students and teachers are critical ingredients and they should develop respect for and tolerance of, the cultures and belief of others.

The Court further opined that the minority institutions shall make available at least 50% of the admission seats to members of other communities other than the minorities. It is to be noted that the above opinion of Supreme Court is not in line with the constitutional provisions. Therefore realising this, the Supreme Court in *TMA Pai* case opined that since the rigid percentage cannot be stipulated, therefore the authorities can stipulate reasonable percentage in accordance to the type of institution, population and educational needs

of the minorities. It can be concluded that the Courts have attempted to strike a balance between these two articles Article 29 and Article 30, when confronted with the question of interrelationship.

## 5. Conclusion

It is worthy to note that our Constitution of India has afforded protection to the minorities in the country. The framers of the Constitution were quite aware that in a pluralistic society, right of minorities and weaker section needs to be protected and safeguarded. The idea of giving special right to the minorities is not to treat them as privileged section of the population but to give to the minorities a sense of security (Bakshi: 2001). The special rights for minorities are designed not to create inequalities but to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing autonomy in the matter of administration of these institutions.

In India, the safeguards for minorities under the Constitution of India are in the form of fundamental rights (Das: 2008). Firstly, the Constitution of India nowhere discriminates among the citizens of India on the grounds of religion, race, caste etc and secondly, the rights conferred under Articles 25 to 30 are fundamental rights. The State is duty bound to protect the fundamental rights. If fundamental rights are infringed the remedy lies under Article 32 and 226. A person can directly approach the Supreme Court or the High Court in case of violation of fundamental rights. So the true spirit and intention of the Constitution is to provide a very formal and water tight arrangement for safeguarding the interests of minorities (Desai: 1996).

However, apart from these provisions about the right of minorities to establish and administer educational institutions under Article 30(1) of the Constitution of India, there appears that there is the biggest loophole of this provision is that it does not define the term 'minority'. In addition to this, the ambiguous nature of Article 30 has brought plethora of issues before the Courts. It has been observed that because of this ambiguity much of the law on minority educational institutions has been a product not of centralised legislation but the Court's ruling

in different cases. It is obvious that with regard to the minority educational institutions the constitutional position lacks clarity. On One hand there is Supreme Court ruling like TMA Pai and Inamdar where the equal rights view were applied whereas on the other hand there are rulings of the subsequent small benches which upheld the right of minority educational institutions as special rights. In a subsequent case after TMA Pai Case, it was held by the Court that right and Article 30(1) cannot put minority educational institutions in a more advantageous position than non-minority educational institutions, leading to 'reverse - discrimination' ( Chandra: 2017). From the perusal of significant judgements, it is clear that their interpretation and implementation is an area of prime concern. It is also to be noted that the courts have given green signal to few regulations which are good for the governance of minority educational institutions.

But one should always keep in mind, that students should always be put first in any policy decision. Minority students have every right to grow exponentially like their majority counterparts. If any policy of the State intervenes in this spirit, then the logic of conferring 'special rights' or 'exclusive rights' become meaningless. The Courts and Lawmakers must think in this direction otherwise justice will be denied to minority educational institutions and particularly the minority students.

#### Notes

1. Ahmedabad St. Xavier's College vs State of Gujarat AIR 1974 SC 1389.
2. T.M.A.Pai Foundation vs State of Karnataka, (1995) 5 SCC 220.
3. Inserted by the Constitution ( Forty Fourth) Amendment Act, 1978.
4. AIR 1974 SC 1389
5. AIR 1992 SC 1630

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