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RIGHT TO EDUCATION OF MINORITIES UNDER THE INDIAN CONSTITUTION: THE EVOLVING ROLE OF JUDICIARY

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Abstract

The Constitution of India enshrines the right to education as a basic fundamental right under Article 21A and further endeavours to safeguard the rights of minorities through Articles 29 and 30, thereby empowering the minority groups to establish and administer educational institutions of their preference and choice. These provisions constitute the foundational elements of India's pluralistic society and educational framework which believes in inclusivity. Nonetheless, the journey to the acquire and practice these rights has not been complicated. It required consistent judicial scrutiny and interpretation to address the intricate tensions between state oversight, public interest, and minority autonomy. The author through this paper intends to investigate the parameters of the right to education in regards to minorities present in India, while also analysing the evolving stance and role of the Indian judiciary in interpreting and enforcing these rights with the help of comprehensive Supreme Court rulings, constitutional provisions, and legislative advancements. The paper tries to focus in the light of judiciary's crucial role in elucidating the scope, constraints, and practical consequences of minority education rights.

Keywords

Linguistic Minorities, Religious Minorities, Education, Judicial role, Pluralistic Society

Introduction

According to the view of the Father of Nation Mahatma Gandhi he believe that "*A nation's greatness lies in protecting its smallest voices.*"

The Oxford dictionary defines "minority" as a smaller number or portion, particularly of a group in a community, whether it be racial, religious or the total number of votes etcetera in a country. Simply taking the phrase minority and using it literally will not adequate explain it for practical purposes. If this were the case, practically every community including families, social economic classes, cultural and jingoistic groups et cetera that exist within the state would be classified as minority. The minority is it typically viewed as an anti thesis of the majority. On the numerical ratio to the

population as a whole in a given place' is the basis in democratic societies.

Modern sociologist, minorities a group of people who are different from other members of the same society because of their race, nationality, religion or language. They believe that they Are a distant group and others perceive them as such. They also believe that they are subject to prejudice from outside the group and certain behaviours such as discrimination exclusion, from within the group.

Minority is defined as "*a group of people who because of a common racial, linguistic, religious, or national heritage which singles them out from the politically dominant cultural group, fear that they may either be prevented from integrating themselves into the national*

community of their choice or be obliged to do so at the expense of their identity." This definition was developed by Professor J.A.Laponce, who started the issue of protecting minorities from a political science perspective.

Minority groups have sentiments about the religions and cultures. Minorities' cultural sentiments can occasionally be more valuable than their actual lives. Minority communities therefore feel strongly about the preservation of their unique culture. The majority community is not much different in this regard, for whatever reason. This is the concept of the minority's subjective component. One of the most important aspect of community's identity is it's desire or intention to maintain its original language, culture or religion. If not it isn't really a minority community. Stated differently, they can be referred to us socially isolated groups rather than minority communities. As a result, loneliness is significant facto.

Education serves as the foundational pillar of any forward thinking society. For minority communities, it transcends mere social economic progression; but it stands out as a formidable tool for preservation of cultural heritage and the promotion of empowerment. The Indian constitution, acknowledging the pluralistic nature of Indian society incorporates specific provisions aimed at safeguarding the educational entitlements of minority groups such as Article 29 and Article 30. Over the years, the Indian judiciary has assumed a pivotal role in the interpretation and thus creating equilibrium of these rights within the broader context of national development and social equity. Right to education that all Indian citizens are titled to and enjoy or unaffected by the rights granted to minorities under article 30 of the Constitution. Christians make up 2.5% of India's minorities, followed by six (2%), Jain (1%), Muslims (12%). With over 80% of Indian population being Hindu, the majority is made up of Hindus. Giving Muslims the special right to create and run their own education institution was not only patriotic but also a commitment to fraternity because of the low literacy rates

among minorities in general and Muslims in particular, which prevent them

from obtaining skilled occupations in the service industry and higher positions in government offices.¹³⁸⁶

II Minorities in India

The Indian Constitution does not define a minority, article 30 recognises two categories of minorities: linguistic minorities and religious minorities. However, the Indian constitution does not take cultural diversity into account. Minorities in India come in a variety of forms, contributing to country's multiculturalism I am too realistic make up. There are other different groups that as also at risk for example schedule castes and scheduled Tribes as well as untouchables and socially and educationally backward classes. These linguistic and religious minorities are characterised by the following etiquette.

Six religious minorities are officially recognised in India: Muslims, Sikhs, Christians, Buddhist, Zoroastrians (Parsis) and Jains. According to 2011 census, Muslims make up the largest minority with 14.2% while Hindu make up the majority at 79.8%. The combined percentage of other minority religions is 6%. Recently, Maharashtra awarded minority status to the Jewish community. Muslims have the greatest social economic obstacles of any minority group. Despite making up 14% of the population, Muslims only make up 2.5% of the Indian executive services and their development levels are even lower than those of the schedule caste and schedule Tribes according to the Sachar committee report which was established in the year 2005 and released in the year 2006.

India has 1599 other languages and 122 main languages according to the census of year 2011, the exact numbers depend on how languages and dialects are classified. Despite being spoken by 97% of the population, only 22

¹³⁸⁶ Mohammad Asif, Mohammad Saif, Constitutional Protection for Minorities in India in the Light of Judicial Pronouncement in Md. Tabish Eqbal and Ali Fara Gulrez (eds.) Contemporary Legal Issues: Prospects and Challenges 127, New Academic Publishers, New Delhi, 1 st ed., 2016.

languages are listed in the Constitution's eighth schedule. Languages spoken by fewer than 10,000 people or not included in the census and about 3% of people speak one of the 92 smaller and unrecognised languages. Not all these 22 scheduled languages are official in the states where they are spoken, despite the constitutional recognition. Konkani for instance is recognised in Goa but not in Kerala or Maharashtra. In the same vein, although they are scheduled languages, Maithili, Santali, Kashmiri, Cindya, Dogri and Bodo or not recognised as official in any state.

The intricate nature of the issue was recognised by the drafters of the Indian constitution. They firmly believe that granting my nauti is the right to liberty, equality, fraternity and justice would foster a positive national consins. The Indian constitution essentially uses a balancing method to ensure that everyone including minorities has access to a healthy and prosperous life and position through the cultural and educational rights of minorities. The Constitution has established special rights for minorities in order to promote equality by guaranteeing the maintenance of minority institutions and giving minorities autonomy over how these institutions are run.

III Roots of Minorities?

In India, national minorities have a long history that is primarily attributed to migration. Religious minorities like Buddhist and Jains formed during 563-460 8BC as a protest against Brahma nickel domination, led by Goutam Buddha and Mahavira. Since their arrival in India in AD 712, Muslims have been in minority, specially during the Mughal era (1526-1700), when many of them migrated or converted, specially from lower social classes. Additionally, Christians are acknowledged as a sizeable national religious minority.

Christians and Jews from the Middle East had already established themselves in Southern India prior to the advent of Muslims. In the seventh century AD, Zoroaster's adherents, the Parsis left Persia. Sikhism first appeared in the

15th century, and by the end of 17th century sikhs had become a recognised religious group.

Colony in authority, which was characterised by bloodshed and the bus station led to the division of India and the establishment of Pakistan as an Islamic state. Many Muslims, Indian Christians, Anglo-Indians and some Europeans decided to stay in India even after Pakistan was created¹³⁸⁷. Further complicating communal attitude was the little creation of Bangladesh in 1971, which made Indian Muslims feel the need to continuously reaffirm the allegiance to the nation and frequently loop with the eye of suspicion.

By defending the minority's access to an education, the founding fathers of the Constitution attempted to appease their hopes, aspirations and desires. The honourable Dr Rajendra Prasad, the chairman of the constitutional assembly of India gave the minority the following assurances during its fifth session. *"To all the minorities in India we give the assurance that they will receive fair and just treatment and there will be no discrimination in any from against them .The religion, their culture and their language are safe and they will enjoy all the right and privileges of citizenship, and will be expected in their turn to render loyalty to the country in which they live and its constitution ..."*¹³⁸⁸

These have always existed in India, but it was not until British administration that concerns about their safety surfaced. Prior to the 1857 uprising, when all villages banded together to oppose the British, there was communal peace. This unity frightened the British who implemented the "divide and rule" programme to erode Indian unity. The Indian Army was the 1st to adopt this doctrine under the Martial race idea. Jawaharlal Nehru acknowledged and disapproved of this polarising tactic as well. Sir Syed Ahmad Khan who believe that Hindus and Muslims constitute one nation once said that

¹³⁸⁷ D.S Prakash Rao, Protection of Minorities Rights: Need of the Hour, Vol-II Legal Journal Quest for Justice, 63, 64 (2006- 07).

¹³⁸⁸ Remarks of Dr Rajendra Prasad at the Fifth Session of the Constituent Assembly of India, C.A. Deb, Vol 5, P-2

*"India is just like a beautiful bride whose two eyes are Hindus and the Muslims and the two eyes be of equal lustre."*¹³⁸⁹

III Constitutional Provisions Pertaining Right to Education

Essential to emphasise that in addition to the stipulations outlined in Article 30, which explicitly guarantees the right of minority groups to establish and manage educational institutions for the advancement of the respective languages and religions, there exists other constitutional provisions that confer educational rights to all citizens of India. These provisions are not confined solely to the majority demographic. Both majority and minority groups possess the entitlement to access these rights, thereby underscoring the necessity to elucidate these provisions.

Article 21 a of the Constitution states that the state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as they may by law determine. This article which was incorporated by the Constitution (86th Amendment) Act of 2002, establishes education for individuals aged 6 to 14 years as a fundamental right, with particular emphasis on primary education. The entitlement conferred by article 21A of the Constitution is designed to be accessible to every Indian child within the specified age bracket, irrespective of whether the child belongs to a minority or majority community. Children from minority backgrounds age between six and 14 years are guaranteed free and compulsory education and cannot be denied this right on the basis of their minority status. In the matter of ***Associated Management of (Government recognised Unaided English medium) primary and secondary schools in Karnataka v. State of Karnataka***¹³⁹⁰ the Karnataka High Court observed that pursuant to article 21A, the medium of instruction for a child should be

exclusively determined by the preferences of the parents and the child; moreover, it asserted that no entity possesses great insight then the parents regarding the educational requisites necessary for the child's career and future. Additionally, in ***Ng. Komon v. State of Manipur***¹³⁹¹, the Supreme Court determined that the relocation of a school from Komlathabi to Liwanchanagning would effectively disenfranchise the school-age children of Komlathabi village of their fundamental rights to access free and compulsory education in government school, thereby constituting a contravention of right to education as enshrined in Article 21A of the Constitution. Stipulations articulated in Article 21A happening for the solidified by the promulgation of the Right of Children to Free and Compulsory Education Act 2009 which delineates in Section 3(1) that every child of the age of 6 to 14 years including a child reference to clause (d) or clause (e) of section 2 shall possess the right to free and compulsory education in a neighbourhood school until the completion of his or her elementary education.

Articles 41 and 45 albeit situated under the directive principles of state policy also guarantees the right to education for citizens of India. By virtue of article 41, "The state shall, within the confines of its economy capacity and development, make a effective provisions for securing the right to work, to education and public assistance in instances of unemployment, old age, sickness, disability as well as in other cases of undeserved want". Meanwhile, Article 45 mandates that "the state shall endeavour to provide early childhood care and education for all children until they attain the age of six years." The advantages conferred by these constitutional provisions are universally accessible to minorities as citizens of India, devoid of any form of discrimination.

IV Provisions Pertaining to Right to Education of Minorities

¹³⁸⁹ Rajendra Prasad, India Divided, Hind Kitab, Bombay (1947) p. 102.

¹³⁹⁰ Associated Management of (Government recognised Unaided English medium) primary and secondary schools in Karnataka v. State of Karnataka, AIR 2008 (NOC) 2790 (Kar.).

¹³⁹¹ Ng. Komon v. State of Manipur, AIR 2010 Gau 102.

A. **Article 29:** Article 29, stipulates that any segment of the population residing within the territorial bounds of India, or any constituent thereof, possessing a unique language, script or cultural identity shall possess the inherent right to preserve such attributes. No individual shall be obstructed from gaining admission into any educational establishment funded by the state or receiving financial support from state resources solely on the basis of religion, race, caste, language or any combination thereof.

B. **Article 30:** Article 30, articulates, all minority groups, irrespective of whether their status is predicated on religion or language, shall retain the right to establish and govern educational institutions of their preference. In enacting any legislation pertaining to the compulsory acquisition of property belonging to an educational institution founded and operated by a minority, as reference in clause (1), the state must ensure that the compensation prescribed by or determined under such legislation for the acquisition of said property does not infringe upon or nullify the rights guaranteed within that clause. (2) the state shall refrain from discriminating against any educational institution in the allocation of financial assistance on the grounds that it is administered by a minority, whether such minority is defined by religion or language. The stipulations of Article 29(1) seemingly augment Article 30(1). This assertion arises from the fact that the educational institution intended for establishment and administration inherently aims to foster the language, scripted religion of the pertinent minority, in addition to promoting the overall development and enhancement of both individuals and society. Article 29(2), it is evident, does not constitute a right exclusively to minorities; however as previously articulated, minorities, akin to all other citizens within the nation, are entitled to the privileges conferred by Article 29(2) regarding admission to any educational institution that is government-owned or government-funded. This entitlement is to be regarded as a right of the individual as a citizen, rather than as a member of any

community or class. In the case of *State of Bombay v. Bombay Educational Society*¹³⁹², the Supreme Court invalidated a directive issued by the Bombay Government that imposed bans on the ones who did not practice English. The Supreme Court invalidated because the school discriminated on ground of language.

V Right to Establish Educational Institution

The Supreme Court in the case of *Azzez Basha v. Union Of India*¹³⁹³, stated that the word "establish" has multiple meanings. Therefore it cannot be said that the word "establish" has only one meaning which is found in the context of the founding of an educational institution. Instead, we must determine how the word has been employed in this Article of our Constitution. The word "establish" has several definitions in the third edition of the shorter Oxford English dictionary which includes "to found", "to create", "to ratify, confirm and settle". Since the Aligarh Muslim University was founded by legislation rather than by Muslims they are not entitled to continue it.

The Patna High court noted in the case of *Dipendra Nath Parker v. State of Bihar and Others*¹³⁹⁴ that minority institutions financial contribution is irrelevant for it to qualify as a minority institution. In this instance, the Bankipore Brahmo Samaj a religiously focused minority group founded the "Balika Vidyalaya" school in 1930. Since the school's founding the Samaj has been in charge of its administration. The managing committee was subsequently disbanded by the Bihar Board of secondary education in accordance with the government resolution. Consequently, the Samaj filed a petition in the Patna High Court. The respondent asserts that no money was taken from the Samaj fund and that the majority of the money used to build the school came from local residents. Speaking on behalf of the court Chaudhary J. noted that the summons claim could not be rejected because the organisation

¹³⁹² State of Bombay v. Bombay Educational Society, AIR 1954 SC 561.

¹³⁹³ Azzez Basha v. Union Of India, AIR 1968 SC 662: (1968) 1 SCR 833.

¹³⁹⁴ Dipendra Nath Parker v. State of Bihar and Others, (1961) AIR 1962 Pat 101.

did not contribute any money of its own to the disputed institution.

there is a second category of situation in which a community that is neither a linguistic nor a religious minority founded the education institution. the supreme court ruled in the case of **Brahmachari Siddeshwar v. State of West Bengal**¹³⁹⁵ famously known as the Ramakrishna mission case that the Ramakrishna mission founded by Swami Vivekananda to spread vedanta values as exposed by Ramakrishna is a religious sect or denomination of hinduism and as such is not entitled to the fundamental right under Article 30(1) of the Constitution to establish and run educational institutions of their choosing.

Even one charitable person from the minority group in question can establish the organisation on his own.¹³⁹⁶ According to Hidayatullah, chief justice in the case of **State of Kerala v. Reverend mother Provincial**¹³⁹⁷, the freedom to create an institution would cover situation in which even a single philanthropic individual be this own means find the institution.

The Supreme Court has occasionally been asked to decide cases involving the definition of "education" and "educational Institute" the Constitution never defines these terms and as they relate to Article 30. The Supreme Court noted in **P.A. Inamdar v. State of Maharashtra**¹³⁹⁸ that the term "education" in the constitution refers to and encompasses education at all levels, from elementary school to post graduate.

VI Right to Administer

A linguistic religious minority has the authority to establish and administer any educational institution in accordance with Article 30(1). In Article 30(1), the terms administer and establish must be interpreted together. Therefore a

minority can only assert its authority to run an education institution if it founded it; then why is it cannot.¹³⁹⁹ The Supreme Court ruled in **S.P. Mittal v. Union of India**¹⁴⁰⁰ that the minority institution must need to requirements in order to be eligible for the benefits under this Article. The court declared that the community must demonstrate that it is a religious or linguistic minority in order to enjoy the benefits of Article 30 (1).

Simply because a religious minority had been running an educational institution before the Constitution went into effect, it does not have the authority to take over an institution that was founded by someone else. Thus, the authority to run an educational institution and the authority to create one or complimentary. None of it is legitimate but for one another, and none of them is self-sufficient.

Brahmachari Siddeshwar v. State of West Bengal¹⁴⁰¹ famously known as the Ramakrishna mission case that the Ramakrishna mission founded by Swami Vivekananda to spread vedanta values as exposed by Ramakrishna is a religious sect or denomination of hinduism and as such is not entitled to the fundamental right under Article 30(1) of the Constitution to establish and run educational institutions of their choosing.

Supreme Court in the case of **P.A. Inamdar v. State of Maharashtra**¹⁴⁰² noted that, with regard to statutory provisions governing the various aspects of administration, the regulatory measures of control should be minimal in case of an unaided minority education institution and that requirements for recognition and affiliation with the university or board must be met. However, when it comes to day to day management, such as staff appointments, teaching and non-teaching and administrative control over them the management should

¹³⁹⁵ Brahmachari Siddeshwar v. State of West Bengal, (1995) 4 SCC 646.

¹³⁹⁶ Manager, St. Thomas U.P. School, Kerala v. Commr. and Secretary of General Education Dept., AIR 2002 SC 756.(2002) 2 SCC 497

¹³⁹⁷State of Kerala v. Reverend mother Provincial, AIR 1970 SC 2079: (1970) 2 SCC 417.

¹³⁹⁸P.A. Inamdar v. State of Maharashtra, AIR 2005 SC 3226; (2005) SCC 537, 590

¹³⁹⁹ Azeez Basha v. Union of India, AIR 1968 SC 662.

¹⁴⁰⁰ S.P. Mittal v. U.O.I, AIR 1983 SC 1; (1983) 1 SCC 51.

¹⁴⁰¹ Brahmachari Siddeshwar v. State of West Bengal, (1995) 4 SCC 646.

¹⁴⁰² P.A. Inamdar v. State of Maharashtra, AIR 1963 SC 540: (1963) 3 SCR 837.

have the freedom to choose and no outside controlling agencies should be involved.

VII Right to Administer According to Choice

Linguistic or religious minority has the authority to "establish" and "administer" any educational institution in accordance with Article 30(1). In Article 30(1) the terms "administer" and "establish" must be interpreted together. Therefore, a minority can only assert its authority to run an educational institution if it founded it otherwise it cannot.

Simply because a religious minority had been running an educational institution before the constitution went into effect, it does not have the authority to take over an institution that was founded by someone else. As a result, the authority to run an educational institution and the authority to create one are complementary. All of it is only legitimate in relation to one another and none of them is self sufficient.

The Supreme Court ruled in **S.P. Mittal v. Union of India**¹⁴⁰³ that the minority institution must need to requirements in order to be eligible for the benefits under this Article. The court declared that the community must demonstrate that it is a religious or linguistic minority in order to enjoy the benefits of Article 30 (1).

Simply because a religious minority had been running an educational institutions before the constitution went into effect, it does not have the authority to take over an institution that was founded by someone else. As a result, the authority to run an educational institution and the authority to create one is complementary. Or if it is only legitimate in relation to one another, and none of them is self-sufficient.¹⁴⁰⁴

The Supreme court in the well-known case of **Re Kerala Education Bill**¹⁴⁰⁵ noted that "The right granted to religious and linguistic minorities to administer educational institutions of their choice is not an absolute right." As a result, rules

that guarantee the institutions qualities and pertain to its appropriate role in educational concerns are acceptable. When a regulatory measure is challenged, the court must determine whether the provisions actually strike a reasonable balance between maintaining the minority's right to run the institution as a minority institution and guaranteeing an institution's standard of excellence. Maladministering cannot be included in the right to administer.

Fazal Ali J. Outlined three crucial criteria in **All Saints High School v. Government of Andhra Pradesh**¹⁴⁰⁶ that would establish whether or not the government's behaviour amounted to interference with the institutions management:

- 1) the founders must be allowed to shape the institution as they see fit in order for its management to be free from outside influence;
- 2) the government cannot take away any portion of the management or transfer it to another entity without violating the constitutional granted right outlined in Article 30(1);
- 3) There is an exception to this general rule, though in that the government or university Main act regulations to raise educational standards that are relevant to the political system and guided by the advancement of the nation and its citizens.

This means that a minority institution cannot be permitted to fall short of the standards of excellence expected of education institutions under the pretext of autonomy or the exclusive right of management.

Supreme Court in the case of **P.A. Inamdar v. State of Maharashtra**¹⁴⁰⁷ noted that, with regard to statutory provisions governing the various aspects of administration, the regulatory measures of control should be minimal in case of an unaided minority education institution and that requirements for recognition and

¹⁴⁰³ 1403 S.P. Mittal v. U.O.I, AIR 1983 SC 1; (1983) 1 SCC 51.

¹⁴⁰⁴ M.P. Jain, Indian Constitutional Law, 1230-1235, (5th Eds., Wadhwa Nagpur, Wadhwa, 2005)

¹⁴⁰⁵ Re Kerala Education Bill, AIR 1958 SC 956.

¹⁴⁰⁶ All Saints High School v. Government of Andhra Pradesh, (1980) 2 SCC 478; AIR 1980 SC 1042.

¹⁴⁰⁷ P.A. Inamdar v. State of Maharashtra, AIR 1963 SC 540: (1963) 3 SCR 837.

affiliation with the university or board must be met. However, when it comes to day to day management, such as staff appointments, teaching and non-teaching and administrative control over them the management should have the freedom to choose and no outside controlling agencies should be involved.

In the case of ***Secy. Malankara Syrian Catholic College v. T. Jose***¹⁴⁰⁸ the court ruled that the general laws of the land relating to national interest will equally apply to minority institutions, the court appears to have partially restored the lost status for minorities in this case.

By ruling that the Delhi Education Act, 1973's rule reserving teaching positions for SC and ST teachers could not be applied to minority educational institutions, the court once more moved to restore the pre ***T.M.A. Pai Foundation case in Sindhi Education Society v. Government of NCT***¹⁴⁰⁹ the court held that the state may not be well within its constitutional duty to compel the linguistic minority institution to accept a policy decision, enforcement of which will infringe their fundamental right and/or protection does emphasising that the national interest must be in accordance with the law.

VIII Admission to the Institution

The administration of a minority educational institution bears significant responsibility for the admission policy. It is up to the institution's management to decide whether the institution should be open to both boys and girls or to neither of them. Another facet of administration is yet mission of students to education institutions. Two issues are brought up by the administration of the minority institutions: first, did the state have the authority to control admittance to minority institution by setting aside certain seats and second being could admission to minority educational institution fall

under the purview of Article 30(1)'s right to administer?

Charles Robson v. State of Tamil Nadu and Ors¹⁴¹⁰, directly address the issue of whether minorities have the right to allow children from other committees to their educational establishments.

Rev. Nagra. Mark Netto v. Government of Kerala¹⁴¹¹, raise the issue, in this instance the regional deputy director of Public instrument Trivandrum in accordance with the rule 12 (iii) of chapter VI of the Kerala education rules, 1959 issued a decision denying the petitioner's request to admit girls to the school. The following are the grounds for denying it authorisation. First of all the school had been a boys school for 25 years and had not been established as a coeducational institution. The second ground was that a nearby girls school which was found by Muslim and was a minority institution provided a place for the education of the local females. Unanimous ruling, Justice Amit Walia speaking for the court said that the girls could be accepted to a boys school located in an area without a girls school, indicating that the main goal of the contest provision did not appear to be minority or discipline related. The expert judge went on to say that while it may be secondary reason any concern about pupils' schools does not appear to be the primary one. The school was never allowed to operate as a mixed school, despite the state's contention that it had been operated as a boys only institution for at least 25 years and was never authorised to run as a mixed school. "The self-imposed restriction by the management in vogue for a number of years restricting the admission for boys only per se Are wholly insufficient to cast legal ban on them not to admit girls," his lordships added rejecting this claim.

The Madras "Invalidate the government order dated June 10, 1969 in the matter of ***Director of School Education v. Rev. Brother G.***

¹⁴⁰⁸ *Secy. Malankara Syrian Catholic College v. T. Jose*, (2007) 1 SCC 386.

¹⁴⁰⁹ *T.M.A. Pai Foundation case in Sindhi Education Society v. Government of NCT*, (2010) 8 SCC 49.

¹⁴¹⁰ *Charles Robson v. State of Tamil Nadu and Ors*, 5 AIR 1978 Mad 392.

¹⁴¹¹ *Rev. Nagra. Mark Netto v. Government of Kerala*, 1979 AIR 83.

Arogiaswami, S.H.J¹⁴¹² on the grounds that it violated Article 30 (1). According to the aforementioned ruling the choosing authority was required to set aside 16% of the seats for schedule castes and scheduled Tribes and 25% for the latter, in compliance with the applicable laws. It puts the minority community's students up against the overall population of students from that and all the communities. Because of Article 15 (1) and 29 (2), applications for admission to any institution cannot be limited to specific community. As a result, a student from the Roman Catholic community, which is thought to make up less than 10% of the population but clearly have a very slim chance of being admitted when competing with students from other communities who all have applied for admission, which goes against the protection provided by Article 30(1).

In the case of **State of Kerala v. Manager, Corporate Management Schools**¹⁴¹³, Rules 6,7,8 of Chapter XXV of the Kerala Education Rules (1959) were at issue. The Kerala High Court was asked to decide whether a clause reserving 80% of the seats in minority colleges amounted to 1 and constitutional limitation on those institutions' freedom to enrol students of their own choice. Kerala court determined that the purpose of the training school was to prepare teachers for employment in organisations created to for the Christian minorities's religion and culture. It stated that since the poll of Article 30(1) is to preserve or promote the religious culture of minority groups, it is clear that limiting the community's ability to select candidates for training in their schools to 20% of the student body would undoubtedly harm the community's interests and as a result, violate the freedom guaranteed by Article 30(1). The court noted in the example case that 80% of the candidates selected by external parties would have a significant impact on the institution's reputation.

In the case of **M.R. Balaji v. State of Mysore**¹⁴¹⁴, it was held that there can be no specific standard laid down as to what percentage is permissible to be valid in cases of reservation but it must be less than 50%.

In the case of **Sheetanshu Srivastava v. Principal, Allahabad Agricultural Institute, Naini**¹⁴¹⁵, the renowned institute was founded by an American Christian philanthropist Saint Higginbotham in 1911. The institute used to conduct entrance test for admission in BTech and BSc (agriculture) programmes. Certain students were denied admission in the institution even though they secured high percentages of marks in competitive exam because seats have been reserved for church sponsored and tribal. Justice R.M.Sahai relied on the observations made in Saint Xaviers College case and excellently summarise the principle that "neither the government has the right to contravene with the right of minority and make directions to give admission to students as it might interfere minority institution's choice which will violate Article 30 and nor the institution can reject the opportunity of admission to any student because they do not belong from the minority community as it shall be violation of Article 29 (2).

In the case of **St. Stephen's College v. University of Delhi**¹⁴¹⁶, it was decided that neither the state nor the affiliated University may mandate that admissions to a minority educational institution be made on the basis of man is it as established by a joint or common entrance exam and that the minority education institution itself must selected students from the common pool based on merit. Regarding their phone mentioned holding we are open to serious reservation. We see no reason why the state or affiliated university cannot mandate that both general and minority students be admitted based solely on merit as determined by common or joint entrance exam and that

¹⁴¹² Director of School Education, Tamil Nadu v. Arogiaswami, AIR 1971 Mad 440

¹⁴¹³ State of Kerala v. Manager Corporate Management, AIR1990KER35

¹⁴¹⁴ M.R. Balaji v. State of Mysore, AIR 1963 SC 649.

¹⁴¹⁵ Sheetanshu Srivastava v. Principal; Agricultural Institute, AIR 1989 AII 117.

¹⁴¹⁶ St. Stephen's College, Delhi v. University of Delhi, AIR 1992 SC 1630

minority community students be admitted based on merit alone, as long as the minority educational institution is allowed to draw students from the minority to the extent of 50% seats, even by going down the merit list. We believe that the minority educational institution does not have the authority to choose its own student selection process under Article 30.

IX Registration of Fees

It's also the subject of fees collected by the unaided minority institution from its people. It is obvious that a minority College without assistance cannot be forced to charge the same tuition fee as one with the assistance. The reason for this is because unassisted schools must use their own funds to cover the expense of construction, with student fees serving as the primary source. These establishments however are not allowed to engage in the commercialisation of education.

In the case of **Father Thomas Shingare and Ors v. State of Maharashtra**¹⁴¹⁷, "Little flower school" at Aurangabad was a religious minority school. In this case section 7 of Maharashtra educational Institutions (Prohibition of capitation fee) act, 1987, prescribed that the fee cannot extend to more than ₹15 per month was in question. Supreme Court in this case observed that, the term prescribed rate of fees is limited to institution that receive it. Regarding unaided schools, the act gave the state government the authority to authorise the fee schedules. These prices don't have to be the same for every institution. Additionally, it may be for various classes, different institutions or even separate study programmes. Additionally, the rates may vary by location. Accordingly, before the school administration is held accountable for collecting capitation fees, the state government must have authorised the price schedule for the various requirements that apply to Little flower school as well.

X Medium of Instruction

Any segment of the population with a unique language and script has the right to keep it alive according to Article 29 (one). The best way to preserve a language is to create educational institutions. Consequently, Article 30 for the stipulates that minority communities have the freedom to create and run educational institution in the ways that they see fit. A harmonic interpretation of Articles 29 (one) and 30 (one) suggests that the minority has a choice in the medium of teaching. The minority's right to receive education in their native tongue is a reasonable concentrate on instruction.

The Supreme Court noted in **State of Bombay v. Bombay Educational Society**¹⁴¹⁸ that Anglo Indians are both linguistic and religious minority. Does under Article 30(1) they have the right to preserve their language, writing and culture.

D.A.V College v. State of Punjab¹⁴¹⁹ Speaking on. Behalf of Supreme Court, Justice P. Jaganmohan Reddy noted "Linguistic minority is one that must have a distinct spoken language for the purposes of Article 30 (1) languages do not necessarily need to have unique scripts; some of the languages spoken in this country do not but their speakers will still be considered linguistic minorities and be protected under Article 30(1).

he Punjabi University Case¹⁴²⁰ is the most important case on this issue. Section 4(3) of the Punjabi University Act of 1961 was at issue in this instance. The University established Punjabi as the only language of instruction under the aforementioned clause and it also mandated that all exams be administered in that language. In this instance, the petitioners are educational establishments that are established as an organisation of Arya Samajis under the Society Registration Act of

¹⁴¹⁷Father Thomas Shingare v. State of Maharashtra, AIR 2002 SC 463.

¹⁴¹⁸ State of Bombay v. Bombay Educational Society, AIR 1954 SC 561.

¹⁴¹⁹D.A.V College v. State of Punjab, AIR 1971 SC 1731.

¹⁴²⁰ D.A.V College, Bhatinda v. State of Punjab AIR 1971 SC 1731: (1971) 2 SCC 269

1860. Punjabi “will be the sole medium of instruction and examination for the Pre-university even for the Science group with effect from the academic session 1970-71” the university announced in a circular dated June 15, 1970. The Supreme Court noted that the June 15, 1970 circular is void and goes beyond the University’s adopted “Punjabi” as the only and exclusive language for its associated colleges in accordance with Section 4(3) of the aforementioned Act, and no concessions were made to any minority schools. Additionally, because the petitioners are religious minority run institutions, the requirement that all colleges use the Punjabi language in the Gurmukhi script exclusively for instruction and exams directly violates the petitioner’s right to preserve their script and provide their own instruction.

XI Affiliation and Recognition

Courts have frequently heard arguments on grants, affiliations and recognition for minority run educational institutions. These are important questions for these institutions. Today, an educational institution cannot exist without government funding, nor can it award degrees without being associated with the university. Though it is not their sole goal, minorities create institutions to educate their children in an environment conducive to the preservation of the language or culture. Additionally, they want people to be prepared for their successful professions. The court upheld Supreme court’s decision in **Re Kerala Education Bill**¹⁴²¹ in **Ahmedabad St. Xavier’s Case**¹⁴²², the Supreme Court believed that if the minority educational institutions were not accepted or affiliated by a state or university, respectively the right protected by Article 30(1) would be nullified. Therefore, the majority held the opinion that educational institutions that offer secular instruction ought to be connected or recognised in order to meaningfully exercise their right to build and run their institutions as minority populations prefer. The majority

thought that without this right, which is protected by Article 30(1), it would only be a husk, a taunting mirage or a promise of an reality..

In the case of **Managing Board, M.T.M v. State of Bihar**¹⁴²³, the Supreme Court underlined that the freedom to create educational institutions of their choice must entail the freedom to create legitimate establishments that will successfully meet the needs of their community and the students who attend them. the court has clarified its stance on the issue of minority institutions’ affiliation or grants, stating that while there is undoubtedly no such thing as a fundamental right to state recognition, denying recognition to education institutions other than on the condition that they cede their constitutional right to administer institutions of their choice would actually deprive them of their rights under Article 30(1).

In the **Re Kerala Education Bill case**¹⁴²⁴, justice S.R.Das was of the view that as with the right to recognition, the right to it is not implied in Article 30(1), and minority institutions do not have a basic right to governmental assistance. What conditions the state can impose is the next question that comes up. The educational institutions were separated into two groups for the purpose of providing aid to these institutions: those that are specifically eligible for grants under Constitution and those that or not, but yet apply for grants. Article 337 should be covered in this context. Anglo Indian educational institutions are specifically covered by Article 337, which grants them the right to receive grants from the state for 10 years following the constitution’s ratification if they were receiving them up until the fiscal year that ended on March 31, 1948. According to Article 337’s 2nd proviso, these Anglo Indian institutions are specifically required to provide 40% of the yearly admittance to other population. This right though seized after the expiration period of 10 years.

¹⁴²¹ Re Kerala Education Bill, AIR 1958 SC 956.

¹⁴²² Ahmedabad S.T. Xavier College Society v. State of Gujarat, AIR 1974 SC 1389.

¹⁴²³ Managing Board, M.T.M v. State of Bihar, AIR 1984 SC 1757

¹⁴²⁴ Re Kerala Education Bill case, AIR 1958 SC 956.

XII Conclusion

The article explored the educational rights accorded to minorities extend beyond the confines of Article 30(1), which asserts the entitlement of minorities to establish and govern educational institutions of their preference. It has been posited that minorities possess additional educational rights under the Constitution that are available to all Indian citizens, regardless of their majority or minority status. For instance, the rights enshrined in Articles 21A, which guarantees the fundamental right to education for children aged six to fourteen. The entitlement provided under Article 30 of the Constitution represents a distinctive right conferred solely to minorities, facilitating their ability to establish and manage educational institutions aimed at preserving their cultural heritage, language, and religion, in addition to preparing their children and students to confront future challenges. The research also explored the various dimensions of Article 30(1) in light of judicial interpretations, concluding that despite the apparent lack of conditions accompanying these rights, they are not without limitations, as no right can be deemed absolute within any civil society. The judicial precedents established indeed contribute in growth of minorities, their active participation to upheld the rights of minorities is a worthy measure to bring minorities at par with the main stream groups.

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