



# PROTECTION OF MINORITY'S RIGHTS UNDER THE INDIAN CONSTITUTION: A CONSTITUTIONAL APPROACH

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## INTRODUCTION

The cultural and educational rights provided to minorities are very important for the development of minorities. Therefore, our Constitution provides them not only the protection of their basic rights of minorities but also special protection to them under various Articles of the Constitution to preserve their cultural, linguistic and educational rights. Therefore, in order to protect the interests of minorities there are various Articles which have been provided under the Indian Constitution regarding the protection of the instant rights of the minorities.

Articles 29 and 30 of the Constitution of India guarantee cultural and educational rights. While, Article 29(1) secures to *every section of citizens*, residing in the territory of India, the right to conserve its own language, script or culture, Article 30 (1) guarantees to *every religious or linguistic minority*, the right to establish and administer educational Institution of their choice. The object behind Articles 29 and 30, is the recognition and preservation of different types of people, with diverse languages and different beliefs, which constitute the essence of Secularism in India.<sup>1</sup>

The Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka*,<sup>2</sup> explained: Articles 29 and 30 do not more than seek to preserve the differences that exist, and at the same time, unite the people to form one strong nation. Thus, the protection under Articles 29 and 30 is not a privilege, but is a protection to the religious or linguistic minority communities, to attain equality with other religious or minority groups of India.<sup>3</sup>

The idea behind the above article is to analysis the Constitutional approach towards the protection of minorities' rights. The Constitution gives the right to every section of the citizens, which has a distinct language, script or culture, to conserve the same. If such section of the citizens desires to preserve their own language, script or culture, the State would not stand in their way.

## MEANING OF MINORITY

The word 'minority' has not been defined in the Constitution. The *Motilal Nehru Report (1928)* showed a prominent desire to afford protection to minorities but did not define the expression. The *Sapru Report (1945)* also proposed a minority commission but did not define minority. The *U.N. Sub-Commission on Prevention of Discrimination and Protection of minorities* has defined 'minority' as the term minority includes only those non-document groups in a population which possess and wish to presser stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population. Such minorities should properly include a number of persons sufficient by themselves to preserve such traditions or characteristics. Such minorities should be loyal to the State of which they are nationals.<sup>4</sup>

*Article 27 of the International Covenant on Civil and Political Rights* does not define the expression but gives the following rights to them: - In those States in which ethnic, religious or linguistic minorities exist, persons

<sup>1</sup> Kumar, Narender, Constitutional law of India, 9<sup>th</sup> Edi. P.433

<sup>2</sup> AIR2003 SC 355

<sup>3</sup> Clause (1) of Article 29 & 30 of the constitution of India

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<sup>4</sup> Bakshi, P.M. The Constitution of India 11<sup>th</sup> Ed.(2011)P.80



belonging to such minorities shall not be denied to the right, in community with the other members of their groups, to enjoy their own culture, to profess and practice their own religion or to use their own language.<sup>5</sup>

In re the Kerala Education Bill,<sup>6</sup> the Supreme Court opined that while it is easy to say that minority means a community which is numerically less than 50 per cent. Now the main issue is whether 50 per cent should be from the State population or it should be from the entire population of the Country. It is possible that a community may be in majority in a State but in a minority in the whole of the India. A community may be concentrated in a part of a State and may thus in majority there, though it may in minority in the State as a whole. If a part is to be taken, then the question is where to draw the line and what unit is to be taken into consideration—a district, town, a municipality or its wards.

The Supreme Court did not however decide this point definitively. However it had come to be accepted that 'minority' is to be determined only in relation to the particular legislation which is being challenged. Thus if a State law extending to the whole of the State is in question, the minority must be determined with reference to the entire State population. In such a case, any community, linguistic or religious, which is numerically less than 50 per cent of the entire State population, will be regarded as a minority for purposes of Article 30(1). Thus, the Christian community being 22 per cent of the population in Kerala is a minority there.<sup>7</sup>

The ruling in the Kerala Education Bill has been reiterated by the Supreme Court in the Guru Nanak University case.<sup>8</sup> In that case, the Supreme Court rejected the contention of the State of Punjab that a religious or linguistic minority should be a minority in relation to the entire population of India. The court has ruled that a minority has to be determined, in relation to the particular legislation which is sought to be impugned. If it is a State law, the minorities have to be determined in relation to the State population. The Hindus in Punjab constitute a religious minority. Therefore, Arya Samajists in Punjab also constitute a religious minority having their own distinct language or script. They are therefore entitled to invoke the right guaranteed under Article 29(1) because they are a section of citizens having a distinct script and under Article 30(1) because of their being a religious minority.

T.M.A. Pai Foundation v. Karnataka,<sup>9</sup> case specifically dealt with the issue whether in order to determine the existence of a religious or linguistic minority in relation to Article 30, the State of the country as a whole is to be taken as the unit. There were three concurring and two dissenting judgments on the issue. The majority view was that language being the basis for the establishment of different States, for the purpose of Article 30, "a linguistic minority" will have to determine in relation to the State in which the educational institution is sought to be established. The position with regard to the religious minority is similar, since both the religious and linguistic minorities have been put on a par in Article 30. Therefore the test for determining who are Linguistic or religious minorities within the meaning of Article 30 would be one and the same either in relation of a state legislation or central legislation.

#### CULTURAL AND EDUCATIONAL RIGHTS OF MINORITIES

According to *Clause (1) of Article 29 of the Constitution of India*, 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.

Thus, to claim the aforesaid right the following conditions must be satisfied:-

- a) The right can be claimed by any section of citizens,
- b) That section of citizens must be residing in the territory of India or any part thereof,
- c) That section of citizens must have a distinct language, script or culture of its own.<sup>10</sup>

The "right to conserve" means that the right to maintain or to work for one's own language, script or culture. The right to conserve the language includes the right to agitate for the protection of the language.

<sup>5</sup> Ibid

<sup>6</sup> AIR 1958 SC 956.

<sup>7</sup> Jain, M.P., Indian Constitutional Law 7<sup>th</sup> Ed. PP.1271-1272

<sup>8</sup> AIR 1989 P H 40

<sup>9</sup> (2002) 8 SCC 481, at P. 553: AIR 2003 SC 355

<sup>10</sup> Kumar, Narender, Constitutional law of India, 9<sup>th</sup> Ed.P. 434



Political agitation for conservation of the language cannot be regarded as a corrupt practice within the meaning of Section 123(3) of the representation of the Peoples Act, 1951. Likewise, promotion of the majority language did not mean stifling of the minority language or script.<sup>11</sup>

*Article 29(2) of the Constitution of India* provides that No citizen shall be denied to take admission into any education institution maintained by the State or receiving aid out of State funds on ground only of religion, race, caste, language or any of them.

*Approach of Article 29(2) and 15(1)*

Article 15(1) of the constitution of India also prohibits discrimination on ground of religion, race, sex, caste or place of birth. There are, however, significant differences between Article 15(1) and Article 29(2). While Article 15(1) protects all citizens against discrimination by the State on the grounds stated therein, Article 29(2) extends protection against the State, or anybody else, who denies the right conferred by it. Further, while Article 15(1) protects all citizens against discrimination generally in all matters, Article 29(2) gives protection against only a particular species of wrongs; namely, denial of admission into State aided or maintained educational institutions. While Article 15(1) prohibits discrimination, inter alia, on the ground of sex or place of birth, Article 29(2) does not mention these two grounds.<sup>12</sup>

*Approach of Article 15(4) and 29(2)*

Article 15(4) was added by the First Amendment of the Constitution to ensure advancement of the socially and educationally backward classes of citizens, or of the Scheduled Caste and Scheduled Tribes. The Fundamental Right guaranteed by Article 29(2) is abridged to some extent by Article 15(4) under which seats may be reserved in an educational institution for certain sections of the Indian citizens. A provision to be valid under Article 15(4) is to be for the advancement of the backward classes and not for abridging their rights under any other provision of the constitution. If a State prescribes a maximum of 15 percent seats in a teaching institution for the backward classes, and if the students from these classes by their merit secure more than 15 per cent seats in the general competition, then the rule of 15 per cent cannot be invoked to reject the students over the prescribed number, for in that case their Fundamental Right under Article 29(2) would be infringed.<sup>13</sup>

**JUDICIAL APPROACH REGARDING THE RIGHTS OF MINORITIES TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS**

Clause (1) of Article 30 provides that all minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

The word 'or' in Article 30(1) indicates that a minority, for the purpose of this Article, may either be linguistic or religious and that it does not have to be both. A linguistic minority is one which has a separate spoken language and that language need not have a distinct script. In India, a number of languages are spoken having no script of their own. And, people speaking such a language constitute a linguistic minority for the purpose of Article 30(1).<sup>14</sup>

The right of a minority to establish administer educational institutions of its choice also carries with it the right to impart instruction in its institutions to its children in its own language. The minority has the choice of medium of instruction and the power to determine the medium of instruction up to the extent necessary to give effect to their rights.<sup>15</sup>

The most important case on this point is the Punjab University Case,<sup>16</sup> the court emphasized in this case that if a University affiliates minority colleges to itself and prescribe the medium of instruction and examination to be in a language which is not their mother tongue, or requires examinations to be taken in a script which is not their own, then it would interfere with their Fundamental Rights. No linguistic minority can insist that a University

<sup>11</sup> Ibid.

<sup>12</sup> Jain, M.P., Indian Constitutional Law 7<sup>th</sup> Ed. PP.1271-1272

<sup>13</sup> Supra note 12, PP.1269-1270

<sup>14</sup> Kumar, Narender, Constitutional law of India, 9<sup>th</sup> Edi. PP.437-440

<sup>15</sup> Jain, M.P., Indian Constitutional Law 7<sup>th</sup> Ed., P.1295

<sup>16</sup> AIR 1971SC1731.



must conduct its examinations in the language or script of the minority, but at the same time, the University also cannot force the minority institutions to compulsorily affiliate themselves to it or impose on them a medium of instruction which is different from the minority's language or script. The State has to harmonize its power to prescribe the medium of instruction with the rights of religious or linguistic minorities to have a medium of instruction and instruction of their own choice. The State can therefore either provide for instruction in the media of these minorities, or allow their instructions to get affiliated to such other Universities outside the State as have the same medium of instruction as the minority institution.

The words 'establish' and 'administer' must be read conjointly so that the minorities have the right to administer educational institutions of their choice provided they have established it. The word 'establish' means "to bring in to existence".<sup>17</sup>

In *S. Azeem Basha v. Union of India*,<sup>18</sup> it was held that as Aligarh Muslim University was established by the Central Legislation under an Act, 1920, the Muslim minority could not claim to administer it. It is not necessary that the whole community must be involved in the establishment of an educational institution. It may be established even by a single philanthropic individual with its own means in the interest of minority community.

The court in *T.M.A. Pai Foundation* case was unanimously of the view that the right to establish and administer an institution in Article 30(1) of the Constitution comprises the rights: (a) to admit students;

(b) to set up a reasonable fee structure;

(c) to constitute a governing body;

(d) to appoint staff (teaching and non-teaching);

(e) to take action if there is dereliction of duty on the part of any of the employees.<sup>19</sup>

Beside the above right, Clause (1A) of Article 30 says that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, 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 to minorities.

The effect of this provision is that while fixing the amount of compensation, the State has to ensure that acquisition of property of a minority educational institution does not affect the right, that is, the financial capacity and resourcefulness to establish and administer educational institutions shall not be put to any detriment. For such an acquisition general law of the land such as the Land Acquisition Act, 1894 is not applicable. Clause (1-A) requires a special law providing for the acquisition of the property of a minority educational institution.<sup>20</sup>

The Supreme Court in *Society of St. Joseph's College v. Union of India*<sup>21</sup> emphasized that Article 30(1A) requires that Parliament or a State Legislature, as the case may be, ought to make a specific law to provide for the compulsory acquisition of the property belonging to minority educational institutions. The provision of this law should be such as would ensure that the amount payable to the educational institution for the acquisition of its property will not in any manner impair the functioning of the educational institution.

Article 30 Clause (2) also provides that 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.

In *Sidhrajibhai Sabhai v. State of Gujarat*,<sup>22</sup> it was decided that Clause (2) is only a phase of non-discrimination clause of the Constitution and does not derogate provisions made in Clause (1). The clause is expressed in negative terms and the State is thereby enjoined not to discriminate in granting aid to educational institutions on the ground that the management of the institution is in the hands of the minority, religious or linguistic. The clause does not mean that the State is competent otherwise to discriminate so as to impose restrictions upon the substance of right to establish and administer educational institutions by minorities. The right established by

<sup>17</sup> Shukla, V.N., Constitution of India, 13<sup>th</sup> Ed. P.289

<sup>18</sup> AIR 1968 SC 662.

<sup>19</sup> Jain, M.P., Indian Constitutional Law 7<sup>th</sup> Ed.P.1274

<sup>20</sup> Shukla, V.N., Constitution of India, 13<sup>th</sup> Ed. P.299

<sup>21</sup> AIR 2002 SC195

<sup>22</sup> AIR 1963SC 540



Article 30(1) is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their choice.

In *T.M.A.Pai Foundation v. State of Karnataka*,<sup>23</sup> it was held that Clause (2) does not give a right to minorities to get grants from the State either for establishing or for administering or for both educational institutions of their choice. It merely commands the State not to discriminate against the minority institutions in matter of giving grants to similar to non-minority educational institutions.

#### CONCLUSION

India is a democratic and secular country. It is important to maintain the integrity of the nation by providing a status of equality between all the citizens of the India. It is expressly provided in the Indian Constitution that it is the duty of the States to protect the existence of ethnic, cultural, religious and linguistic identity of minorities residing within their respective territories. All over India it has been realized that there is a large gap between the minority and majority communities. There are various problems which are being faced by minorities in every sphere of life. Although, the Constitution of India has not defined the term 'minority' but had provided them various opportunities for the protection of their culture, religion and language in the form of fundamental rights. The founding father of the Constitution tried to satisfy the hope, aspiration and desire of the minority's by safeguarding their cultural, linguistic and educational rights. Therefore, the constitution of India has conferred some special rights on the minorities under its various provisions.

Persons belonging to minorities have the right to participate effectively in cultural, religious, social and economic affairs of life. Person's belonging to minority's community also have the right to participate effectively in decisions making policies at regional and national level regarding the protection of their rights. Therefore, the States must take necessary steps to create favorable conditions to help persons belonging to minorities and to develop their culture, linguistic and religious rights.

The main focus of the Indian constitution for inserting these special provisions for minority community is to create a confidence and sense of security in their mind so that they would not face any kind of discrimination among other citizens of India. And the protection of the minority community can be fulfilled not only by creating the laws but through the proper enforcement of these laws by keeping in mind the spirit of common brotherhood and democracy as well. Therefore it may be concluded that the minorities, linguistic or religious, can took the help of constitutional approach which is available to them in the form of constitutional and legislative provisions to protect their rights as well as to solve out the various conflicts which arises at different levels in their life.

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<sup>23</sup> AIR 2003 SC 355