

Minority Educational Institutional Rights: A Violation of Fundamental Rights?



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Abstract

India is land of myriad ethnic, religious, caste and linguistic minorities associated with distinct faiths, beliefs, sub-cultures and genres specific to regions. The amalgam or mix of these heterogeneous communities varying in proportions to main population has been among the central issues of concern of the Indian government and its constitutional framework since inception. The apex judicial institution, the Supreme Court of India also from time to time has been providing guidelines and judgments for functioning of the minorities educational institutions.

But the truth remains that with the inherent intentions, political will and ideology of the ruling party the ways and mannerisms in which the issues of the minority is addressed keeps changing. At times it could be community specific protective or in other times it could be negatively targeted on the adopting measures detrimental to the specific sections of the minority or even its elimination. Consequently the constitutional guidelines have failed to keep pace and address the issues of the institutions in totality. India witnessed a series of targeted community specific mass lynchings and atrocities that have widely cornered the security and unhindered development of minorities.

In this paper we attempt to critically analyze whether the minority educational institutional rights conferred upon the 'minority', are in harmony with the fundamental rights as laid down by the Constitution of India. To achieve this objective the legislative intent, case laws and reports of the various committees have been analyzed in keeping with changing diasporas of socio-cultural context of India on one hand and need for prioritizing education and development of minorities on the other.

Keywords: Minority, Educational Institutional, Violation, Fundamental Introduction

India is conglomeration of many ethnic, religious, caste and linguistic minorities associated with distinct faiths, beliefs, sub-cultures and genres specific to regions. The amalgam or mix of these heterogeneous communities varying in proportions to main population has been among the central issues of concern of the Indian government and its constitutional framework since inception. Religion in India is marked by its diverse religious beliefs and practices. India is a secular state by the 42nd Amendment to the Constitution in 1976, meaning that all religions are treated equally by the state. The Indian subcontinent is the origin of world's major religions, Hinduism, Buddhism, Jainism and Sikhism. India is distinct with its religious diversity and religious tolerance that is ensured also by the laws and customs of the Constitution of India.

Religious Heterogeneity and Education

As per the Census 2011, 79.8 per cent of the population of India practiced Hinduism followed by 14.2 per cent Islam, and the remaining 6 per cent belonging to other religions (Christianity, Sikhism, Buddhism, Jainism and various indigenous ethnically-bound faiths). Thus, after Islam, Christianity is the 3rd largest religion in India. It is noteworthy that the diverse cultural composition of the land encompasses world's largest population of people adhering Zoroastrianism (i.e. Parsis and Iranis) and Bahá'í Faith, though these communities do not originate from India. Also India is home to third largest Shia population in the world, and also 2 million Ahmadi Muslims. (Census 2011, Government of India)

In keeping with the vast mass of population of India that comprises of the minorities it is important that the incorporation of these minority groups holistically in the development process is well envisaged. Education that is understood as the panacea for eradicating all development hurdles; it is pertinent to pave the path of the development of

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the minorities via special impetus on equal opportunity to education. In this move, it is important that the state takes a lead role in framing laws, rules and methods for the smooth proliferation of and functioning of minority educational intuitions. The legislative intent as reflected in the Constitution of India through its fundamental rights, directive principles of state policy and amendments made from time to time shows that there has been an ongoing and conscious effort on the part of the state to ensure that the rights of the minorities is ensured. The apex judicial institution, the Supreme Court of India also from time to time has been providing guidelines and judgments for functioning of the minorities educational institutions.

Aim of the Paper

The aim of this paper is to critically analyze the institutional rights of the minority In relation to the basic fundamental rights as laid down by the Constitution of India.

Review of Literature

The ambiguousness associated with the term minority has yet to be adequately covered by the constitution which still has no clear definition of minority. The Motilal Nehru Report (1928) reflected a prominent desire to afford protection to minorities but failed to provide a definition to the expression of 'minority'. Similarly, with all positive intent the Sapru Report (1945) which proposed for a Minorities Commission failed to provide for a definition of Minority. The U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities defined minority as under (Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its 46th Session, U.N. Doc. E/CN.4/Sub.2/1994/56, 1994):

1. The term 'minority' includes only those non-documents group of the population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;
2. Such minorities should properly include the number of persons sufficient by themselves to preserve such traditions or characteristics; and
3. Such minorities should be loyal to the state of which they are nationals.

The judiciary took the preliminary step while answering the first question that was made, eight years after the constitution was adopted, in **Kerala Education Bill, 1958**, where **Chief Justice S. R. Das** held that a minority means an "community which is numerically less than 50 per cent" of the total population. Thus, suggesting the technique of arithmetical tabulation. "Thus, while considering 'minority', a numerically smaller group, as against the majority in a defined area, some place emphasis upon certain characteristics commonly possessed by the members constituting the minority and, to them, these characteristics serves as objective factors of distinction. In this sense the term used to cover "racial, religious or linguistic sections of the population within a State which differ in these respects from the majority of the population." (Bohra Saroj, 2014)

Educational Rights of Minorities

Flowing from the ambiguousness of the definition of minority let us traverse to the rights of the minority educational institutions as enshrined in the Constitution of India, ensured by the International declarations and judicial interventions and interpretations from time to time. It is a pertinent truth that with the inherent intentions, ideologies and political will of the majority in the house of Parliament the ways and mannerisms in which the issues of the minority is addressed, keeps changing. Consequently, the constitutional guidelines may have been interpreted differently and affected the pace to address the issues of the institutions in totality. (Kandhamal communal violence, Harsh Mander (The Quint, Sep 14, 2016 22:41 IST; Mohammad Akhlaq Case, 28 September 2015, as reported by The Quint, 28.09.17).

Findings and Discussion

The entire debate in the Constituent Assembly on Article 23 of the draft Constitution (that later took the shape of Articles 29 and 30), orbit around the issues: What rights could or should be conceded to minorities? To have a proper understanding of the above question, it is important to delve into the origin of these rights as conferred to the minority educational institutions in India, as an outcome of the deliberations that took place in the Constituent Assembly and also through the judiciary from time to time.

Exhibit 1

<p>Article 29 -Protection of interest of minorities</p> <p>(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.</p> <p>(2) No citizens shall be denied admission into any educational institution maintained by the State or receiving aid out of State fund on ground only of religion, race, caste, language or any of them.</p>
<p>Article 30- Right of Minorities to establish and administer educational institution:</p> <p>(1) All minorities ,whether based on religion or language shall have the right to establish and administer educational institution of their choice [(1A) In making any law providing for the compulsory acquisition of any property of and educational institution established and administered by a majority, referred to in clause (1) The State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under the clause]</p> <p>(2)The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of minority whether based on religion or language.</p>
<p>Source: Developed from the Constitution of India</p>

In the Exhibit 1, Clause (1) endows rights to all minorities based on religion or language the right to establish and administer educational institution **of their own choice**. "The minority under article 30 must

necessarily mean those who form a distinct and identifiable group of citizen in India'. It nowhere mentions that such minority communities based on religion should/can establish educational institutions for teaching of their own language alone. The Article 30 leaves room for choice based decision to establish such educational institutions to serve the dual purpose of conserving their religion, language, or culture, and also the purpose of imparting thorough general education to their children. Minorities are, however, not entitled to have educational institutions exclusively for their benefit.

In keeping with their assurances the constitution of India bestowed the rights of minorities under specific articles, Article 29 and 30 of the Indian Constitution. The term "minorities" specifically has been used as an expression at only four places in the constitution of India. Article 29, Article 30 and sub clause (1) & (2) of Article 30 uses the term 'minorities'. (Bohra Saroj, 2014). The Articles 15 and 16 of the Constitution prohibit the state from making any discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them either generally i.e., every kind of state action in relation to citizens (Article 15) or in matters relating to employment or appointment to any office under the state (Article 16).

The Fundamental Rights of Minority Educational Institutions: The Conflict

India is a land of 8 major religions and 22 official languages. This amalgam of different religions practicing different cultures, speaking varied languages need to be endowed with special and specific impetus to ensure that their interest do not get marginalized as being under the 'minority' status. Therefore, the essence of tolerance and secularism remains the foundation stone of our constitution. Let us start with our analysis of the minority educational institutional rights as conferred upon the 'minority' in harmony with the fundamental rights of our Constitution of India. Therefore, we try to delve into the legislative intent, case laws and reports of the various committees that have tried to keep pace with the varying Diasporas of socio-cultural milieu of modern India. This has been done in keeping with the importance of education and mainstreaming the minorities into the process of development.

In the earlier sections of the paper we have discussed the ambiguousness of the definitions in the Articles and clauses of the Indian Constitution that have let enough room for misinterpretations and dilemma. The judiciary in *Unni Krishnan* case (1993), strived to read right to education as part of right to life as well acknowledged by the Indian Constitution via 86th Constitutional Amendment. It is noteworthy to state here that this Right to Education got acknowledged by our Constitution of India in last 25 years only, but issue of minority rights had well been assimilated in our Constitution by the founding fathers conferring the right to minorities to establish educational institutions of their own choice.

With acknowledgement of the right to education emerged an issue of conflict of interest of

the state on one hand and the minorities on the other. Let us consider the articles 21A and article 30 (1) of Constitution of India. While the former confers on individual child of the nation the right to education the latter refers to the collective right of a religious or linguistic minority to education.

On many occasions there have been accusations on the religious minority educational institutions to function as breeding fundamentalism in young minds. Triggering a fresh controversy, Maharashtra is set to declare at least one lakh students in the state as "out of school" children. The government also announced that Madrasas that do not offer mathematics, science and social studies will not be recognized as formal schools. (Indian Express, July 3, 2015). Therefore, the question of 'choice' as conferred upon by the Article 30 remains questioned as far as autonomy in curriculum designing is concerned in keeping with the specific religious beliefs. Though both the articles discussed above target the issue of education but the difference in approach creates rift or dilemma.

Thus the conflicts; basic education versus specialized education and the scope of clause 'educational institutions of their choice', as used in article 30 (1), Constitution of India remains debatable. Article 21A of Constitution of India is a positive right to have an elementary education provided to all children of India, irrespective of caste, class or creed or religion etc. With the fundamental right to education guaranteed to every child, no child can be waived off from education in general. With the Article 21A, the cohort that remains the target of universalization of education is in the age bracket 6 to 14 years, thereby, making its application even more enforcing.

What needs contemplation is: while the educational institutions established under article 30(1) of the Constitution of India may include any type of education which a minority community wants to, there may be a propensity of these institutions to nurture and groom their children in their own institutions specifically designed to profess, propagate and flourish their religion on one hand and on the other hand mainstream with growing global educational demands. The Article 30 leaves it to their choice to establish such educational institutions as will serve the dual purposes of preserving their religion, language or culture on one hand and stay abreast with the growing demands of contemporary education.

Several studies have pointed to the major issue of contention that arises when the functioning of an minority specific institution for education is seen as in conflict with the Article 21 A of the Indian Constitution that envisages providing the citizens of India an equal opportunity to avail education and that education cannot be denied on any religious grounds if the education institution receives grants from the state.

Another issue of contention is the article 30 (1) of the constitution that guarantees these educational institutions the right to "their choice". The scope of this phrase as used in the clause 1 in common parlance means that they are free to follow

their choice in terms of setting up their institute with specialization in subjects of humanities or any other branch. But the scope remains ambiguous when it relates to circumferencing its scope to regular syllabus. Do these institutes have the right to choose their curriculum based on typical religious instructions? The dilemma and contention emerges and conflicts aggravate when regulation of the state is reacted upon or resisted upon. Therefore, in keeping with the secularity and religious tolerance as guiding principle that forms the basic premise of our constitution there is need to set the scope of the above clause and remove room for ambiguities.

"Freedom, which may be expressed in absolute terms in the Constitution, is not inconsistent with regulatory measures in an orderly society in the interest of the society. The regulatory measures must necessarily be uniformly applicable to all educational institutions and cannot be discriminatory".

Supreme Court in the Saint Xavier College v/s State of Gujarat case, 26th April 1974

The court held that in keeping with the larger interests and basic structure of the constitution regulatory measures can be applied by the state to all educational institutions including aided and unaided minority education institutions.

"Nothing in this article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30."

Article 15 v/s Article 30: The clause (5) of Article 15 and Article 21A were inserted in the Constitution by Parliament using the power of amendment given under Article 368 of the Constitution. In *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625, Chandrachud, C.J held that,

"The Articles 14, 19 and 21 of the Constitution constitute the golden triangle which affords to the people of this country an assurance that the promise held forth by the Preamble will be performed by ushering an egalitarian era through the discipline of fundamental rights, that is, without emasculating of the rights to liberty and equality which alone can help preserve the dignity of the individual".

In parlance with the debate raised in the earlier section based on the conflict of interest as enshrined in the Articles 21 A, Article 29 and Article 30 (1) the court held that the right of minority institutions under Article 30 (1) would be affected by

admission of students who do not belong to the minority community.

"Although the right to administer includes within it a right to grant admission to students of their choice under Article 30(1), when such a minority institution is granted the facility of receiving grant-in-aid, Article 29(2) would apply, and necessarily, therefore, one of the right of administration of the minorities would be eroded to some extent. Article 30(2) is an injunction against the state not to discriminate against the minority educational institution and prevent it from receiving aid on the ground that the institution is under the management of a minority. While, therefore, a minority educational institution receiving grant-in-aid would not be completely outside the discipline of Article 29(2) of the Constitution by no stretch of imagination can the rights guaranteed under Article 30(1) be annihilated".

Kirpal C.J. in his judgment in T.M.A. Pai Foundation (supra) held in para 149, pg.s 582 & 583 of the SCC, 31st Oct. 2002

It is important to mention the significance of inclusion of the term "only" in the Article 29(2). This leaves scope for these minority institutions to effectuate the guarantees under Article 30(1). The denial of admission to a non-minority student to effectively accommodate the minority students to a reasonable extent will not be only on grounds of religion etc. But this practice is primarily aimed to retain the minority character of the institution and to effectuate the guarantee under Article 30 (1).

A mid-way that could lead to a panacea would be to hold that as long as the minority educational institution permits admission of citizens belonging to the non-minority class to a reasonable extent based upon merit, it will not be an infraction of Article 29(2). But the next question that emerges out of this is, "What would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix any specific percentage?" The answer could be that such proportions could vary with the type of institution and the nature of education that is being imparted in the institution.

Conclusion

From the above discussions we may conclude that the guarantees ensured to the minorities under different articles of the Constitution are not absolute. Rather these rights are subject to the basic and overriding principles of our Constitution, such as equality and secularism. It is important to note here that most of the judgments have confined to issues of administration of these educational institutions and there still remains room for dilemma and confusion regarding other issues of the minority

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institutions as well which need to be raised, deliberated and guided.

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