

Admission and Management Rights of Minority Educational Institutions: An Analytical Study



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Abstract

Human development of a nation rest on the importance it has bestowed on education and its imparting institutions. To impart the necessary knowledge and skills to the population, to contribute actively to the design of reforms of structures and processes of educational management that facilitate realization of the Education 2030 Goal, it is necessary to "*Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all*".

Keywords: Minority Educational Institutions.

Introduction

India is a developing economy and showcases vibrant socio-cultural variances. We need to take due cognizance of the varying needs of these heterogeneous societies and to create and provide a par playing ground for all. In this context the Indian constitution framers played a vital role. Recognizing the need for 'Education for All', and to make the Education system in India strong; access to education emerged as a fundamental concern to achieve.

With plethora of laws the confusion over rights vis a vis restrictions and controls on education imparting institutions has emerged as a major area of contestation. The state needs to act proactively to address the growing commercialization of education on one hand and need for access to education for all.

Indian population comprises of varied religious denominations but Hinduism emerges as the most dominant with 79.8 per cent of the population of India practicing Hinduism, as per the Census 2011. The other religions like Islam (14.2 per cent) and other remaining religions 6 per cent include Christianity, Sikhism, Buddhism, Jainism and various indigenous ethnically-bound faiths. 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 Baha'i 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)

The diversity in composition of population by religion in a federal structure of India shows that the Muslims form a dominant population group in the state of Jammu and Kashmir and the Union Territory of Lakshadweep. The states of Meghalaya, Mizoram and Nagaland show dominance of Christian population as majority. Similarly in the state of Punjab there is more concentration of Sikh population. Therefore, the interstate difference in population composition by religion paints the cultural diversity of India. Sikhs are the majority community in the state of Punjab. (Census 2011, Government of India)

Review of Literature

Defining Minorities

Before we delve into the constitutional debates, provisions ensured for minorities etc. included in the legislative intent of the Constitution of India, we must try to understand the term 'minority' as defined by the law of the land and other acknowledged bodies of the judiciary including the Supreme Court of India. The term "minority" is derived from Latin words "minor" and "ity" meaning "small in numbers". According to the Britannica Encyclopedia it means "group held together by ties of common decent, language or religious faith and feeling different in these respects from the inhabitant of a given political entity." The term 'minority' fails to be adequately defined in the Constitution of India. Though

there has been plethora of attempts to circumscribe its boundaries but there still has not been defined in the Constitution. The Motilal Nehru Report (1928), The Sapru Report (1945) and others tried to ensure protection to minorities but did not define the expression.

It was for the first time in 1958, i.e. eight years after India had a written and adopted Constitution that the judiciary initiated the primary step in Kerala Education Bill, 1958, to decipher the term 'Minority'. In Kerala Education Bill, 1958, Chief Justice S. R. Das held that a minority means a "community which is numerically less than 50 per cent" of the total population. Thus, suggesting the technique of arithmetical tabulation.

In absence of any concrete and comprehensive definition of minority, the distinction based on religion and language forms the base of Article 30. Taking note of the gaps the judiciary from time to time has been attempting to delineate its scope. Justice V.S. Deshpande in *Arya Samaj Education Trust matter in the Delhi High Court* referring to the phrase "based on religion" rightly pointed out that the expression would mean that "the only or the principal basis of the 'minority' must be their adherence to one of the many religions and not a sect or a part of the religion and that the other features of the minority are subordinate to the main feature, namely, its separateness because of the religion." A similar interpretation can also be placed on the words 'based on language'. Therefore, conclusively, the purpose of Article 30 confines to minority as distinct from the majority by the objective factors of religion or language or a combination of both. (*Arya Samaj Education Trust & Other's Vs The Director of Education Delhi Administration, AIR 1976 Del 207*)

Constitutional Provisions to Ensure Minority Rights

The Indian Constitution through its Fundamental Rights and Directive Principles of the State Policy guarantees all minorities based on religion or language, are ensured the right to establish and administer educational institutions of their choice and 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. The Clause (1) of Article 30 gives rights to all minorities based on religion or language the right to establish and administer educational institution of their own choice.

The constitutional guidelines and provisions for minorities are strongly backed by other (other than Articles 29 and 30) parallel enforcing Article 19(1)(g) that provides the right to practice any profession or to carry on any occupation, trade or business to all citizens subject to Article 19 (6) which enumerates the nature of restriction that can be imposed by the state upon the above right of the citizens. The framers of the Constitution incorporated Article 30 in the Constitution with the apparent purpose of instilling confidence among minorities against any legislative or

executive infringement on their right to establish and administer educational institutions.

The National Commission for Minority Educational Institutions Act 2004 (2 of 2005) as amended by the NCMEI (Amendment Act 2006) lays down rights of Minority Educational Institutions as under:- (Rights of Minority Educational Institutions, Updated On: 25/04/2016)

It has been held by the Supreme Court in *Case of P.A. Inamdar Vs. State of Maharashtra [2006 (6) SCC 537]* that:

1. The policy of reservation in admission (of students) cannot be made applicable to a minority institution.
2. The policy of reservation in employment cannot be made applicable to a minority institution.

A minority educational institution under Article 30(1) of the Constitution including a Madarsa is excused from the scope of the Right of Children to Free and Compulsory Education Act.

Objectives of the Study

Keeping the above background in mind, the objective of this paper is to analyze the issues and approach of the State with respect to management and admission of students of minority educational institutions.

Research Methodology

The present study was a doctrinal research. Doctrinal research is concerned with legal proposition and doctrines; it is research into the law and legal concepts; the sources of data were legal and appellate court decisions. The research methodology included an analysis of legal concepts and principles as mentioned in cases, statutes and rules. The main source of data was the Constitution of India (particularly Article 30), the legislative intent of the framers of the Constitution, the rulings of the Apex court of India in various cases dealing with minority educational institutions and their management and admission rights.

Findings

The Census data analysis shows a declining trend in the population growth rate of various religions in the last decade (2001-2011). The growth rate of population of Hindu fell down to 16.76 per cent compared to 19.92 per cent in 2001. Similarly the Muslim rate of growth sharply fell to 24.60 per cent (2001-2011) from the 29.52 per cent (1991-2001). The Christian population growth was at 15.5 per cent while Sikh population growth rate stood at 8.4 per cent. The most educated and wealthy community of Jains registered least growth rate in 2001-2011 with figure of just 5.4 per cent. (Census 2011, GoI)

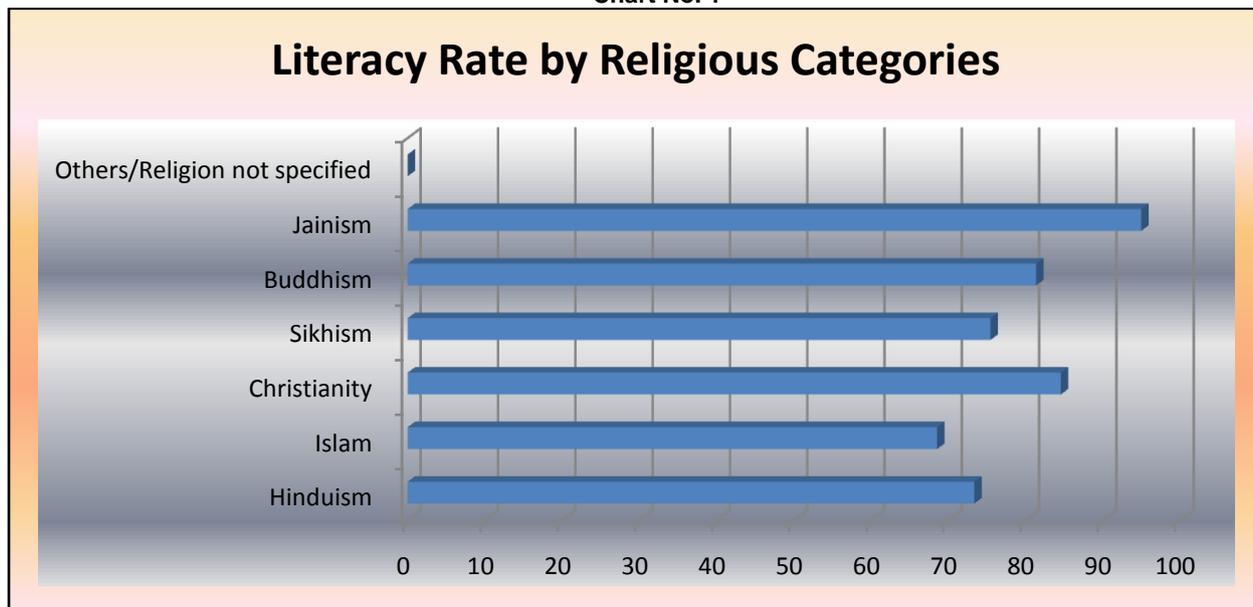
Charu Bhari (2016), studied education performance in India by religious categories and found that Muslims have the lowest rate of enrolment in higher education in India. Though the Muslim enrolment in higher education figures showed acceleration at the end of the decade 2010 – from 5.2 per cent to 13.8 per cent yet it remained way behind the national figure of 23.6 per cent and that of other backward classes (22.1 per cent) and scheduled castes (18.5 per cent). Scheduled tribes lagged Muslims by 0.5 per cent. Needless to say, the

enrolment rates in higher education symbolize the status of the community and its development. The study reiterates the status of the Muslim population in terms of education status that its status has even worsened compared to the scheduled castes and scheduled tribes.

Ironically the Muslims that statistically comprise the dominant section amongst the minority

population group (14 per cent) but accounts for 4.4 per cent of students enrolled in higher education as per the All India Survey on Higher Education, 2014-2015. The Sachar Committee also highlighted their plight citing that the situation has even worsened in the last half century.

Chart No. 1



Issues, Conflicts & Approach of State w.r.t. Management & Admission Rights of Minority Educational Institutions

This research paper details the rights guaranteed to the minority education institutions by the constitution of India and the safeguards under the Fundamental Rights and Directive Principles of the State Policy.

Clarifying the position that “A Society or Trust consisting of members of a minority community, or even a single member of a minority community, may establish an institution” the Supreme Court in State of Kerala vs. Mother Provincial AIR 1970 SC 2079, the Supreme Court has observed:

“Establishment means bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, institution or the community at large founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant to this right that in addition to the minority community, others from other minority communities or even from the majority community can take advantage of these institutions.”

It is a known and accepted fact that the members of the governing body have a decisive right to administer the educational institution. Thereby any rule which takes away this right of the management interferes and jeopardizes the rights guaranteed by Article 30(1) of the Constitution. The management may introduce renowned or proficient persons from other communities in the managing Committees/ Governing Bodies. It also may engage in induction of or sprinkling of non-minority members in the managing Committees/ Governing Bodies. It is to be noted that the induction of non-minority member into the Managing Committee/ Governing Body of the minority educational institution does not jeopardize the inherent minority character of the institution.

The Guidelines for Determination of Minority Status, Recognition, Affiliation and related matters in respect of Minority Educational Institutions under the Constitution of India clearly states in this respect that the managing committee/ Governing Body of the minority educational institution to conduct the affairs of the institution would be completely destructive of the fundamental right guaranteed by Article 30(1) of the Constitution and would reduce the management to a helpless entity having no real say in the matter and thus destroy the very personality and individuality of the institution which is fully protected by Article 30 of the Constitution. Autonomy in administration refers to the right the administration has to administer effectively and to manage and conduct the affairs of the institution. Under the disguise of adopting regulatory measures the State or any University/ Statutory authority cannot encroach upon the

autonomy of a minority educational institution or interfere with the administration of the management of the institution so as to render the right of the administration of the institution concerned nugatory or illusory. Regulation of procedure for appointment of Teachers/ Lecturers/ Headmasters/ Principals of a minority educational institution is unwarranted and that once a Teacher/ Lecturer/ Headmaster/ Principal possessing the required qualifications agreed by the State or the University has been selected by the management of the minority educational institution by adopting any rational procedure of selection, the State Government or the University would have no right to refusal of the selection.

Thus, any interference of the State Government or the University on the autonomy of the minority institutions in their selection of staff would be seen as an encroachment to the right of the minorities guaranteed under Article 30(1). Even the composition of the Selection Committee for appointment of teaching staff of a minority educational institution should not be reduced to the extent that the management becomes a rubber stamp helplessly having no say or jurisdiction in the selection procedures. The State Government or the University is also not sanctioned to necessitate a Minority Educational Institution to seek its approval in matters of selection/ appointment or initiation of disciplinary action against any member of its teaching or non-teaching staff and that its role is limited to the extent of ensuring that teachers/ lecturers/ Headmasters/ Principals selected by management of a minority educational institution fulfill the requisite qualifications of eligibility prescribed thereof.

From time to time the judiciary has guided the trajectory of the inherent legislative intent of the framers of the Constitution as a just State based on equality. In the 1958 *re Kerala Education Bill case* the Chief Justice of India, S. R. Das, defined that,

“So long as the Constitution stands as it is and is not altered, it is, we conceive the duty of this court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own.”

In *Azeez Basha vs. Union of India*²⁶¹ a Constitutional Bench of the Supreme Court, has held that the expression “establish and administer” used in Article 30(1) was to be read in conjunction, i.e. the two requirements have to be fulfilled under Article 30(1), namely,

1. That the institution was established by the community and
2. Its administration was vested in the community.

In the Aligarh Muslim University case decided in 1968 by H.M. Seervai. This was the “first case” that was followed by not a few in which the court cut down Article 30. In this historical judgment it ruled that

“The University was not established by Muslims”.

It is imperative here to understand the learning and interpretation of the judges mattered in

the outcome. On the contrary in the *Stephan’s Case* the court held that under Article 30(1), that

“The Minority aided Educational institutions are entitled to prefer their community candidates to maintain the minority character of their institutions subject to, of course, in conformity with the University standards. The State may regulate the intake, with due regards to the need of the community in the area which the institute is intended to serve. But in no case shall exceed 50 per cent of the annual admission to the members of the communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit”.

The analysis of the orders concludes that neither the Constitution nor the voluminous debates of the Constituent Assembly and not even the judicial interpretations and orders there have consistency. Rather the theory of reference of ‘Melting Pot theory’ is not about what the law says but how the Judges interpret the law. Supreme Court has from time to time in its judgments reflected that it refutes to base itself on theories.

In *P.A. Inamdar Vs. State of Maharashtra (2005) 6 SCC 537* the following questions were raised for judgment-

1. Whether a minority educational institution, though established by a minority, can cater to the needs of that minority only?
2. Can there be an inquiry to identify the person or persons who have really established the institution?
3. Can a minority institution provide cross border or inter-state educational facilities and yet retain the character of minority educational institution?

The judiciary in response held,

“The minority institutions are free to admit students of their own choice including students of non-minority community and also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational status is lost. If they do so, they lose the protection of Article 30 (1) of the Constitution”. (<https://indiankanoon.org/doc/1390531/>)

The Supreme Court in its landmark judgment one of its kind where the Apex Court ruled that the process of appointment of the Principal of the Minority institutions amenable to the judicial review. The judgment came in the civil appeal of *Ivy C.DA. Conceicao vs. State of Goa and Ors.* The bench comprised of Justices Adarsh Kumar Goel and Uday Umesh Lalit.

Mrs. Ivy C.DA. Conceicao filed an appeal against the Judgment of Bombay High Court at Goa that had declined her writ petition, challenging the appointment of the principal of Rosary Higher Secondary School managed by Diocesan Society. She contends that her juniors are being appointed as principals in the schools run by the Society. Adding up, she raised the concern that the minority institution should not act arbitrarily on unfair grounds considering the eligibility of the candidates and that the right conferred in the Article 30 of the constitution i.e. right of autonomy can be subjected to the judicial review. The management argued that it had autonomy in the selection process and that seniority alone cannot be the decisive criteria for the selection. As put by Vrinda Chauhan, (2017) the Court undertook the following major decisions in this respect.

1. Autonomy does not invite to act in an unfair or non transparent manner.
2. High Court entitled to examine the fairness of the selection procedure under Article 226 of the Constitution.
3. Minority institution has freedom and discretion to appoint the principal by not being bound only to the seniority criteria.

Conclusion and Recommendations

Thus, in keeping with the fundamental intent of the laws it is the need of the hour for the governments to proactively ensure that the rights conferred to the minorities with the intention of securing their status and pave their road to development with 'ALL'. Advocacy of tolerance, inclusion, justice and equity needs to be rooted. It is more than 6 decades of adoption of Constitution of India, yet we are in search for a concrete definition that defines 'minority'. Thus the entire analysis of legislative intent and judicial response to the issues of management and administration of educational institutions of minorities showcases that there is lack of consensus even at the constituent assembly, there was no uniformity that gives room to unbridled interpretations. There is need to harmoniously address the specific minority provisions in tandem with other contesting provision that are meant for other marginalized sections or the weaker sections.

Journey through the landmark cases show different Judicial trends in interpretation of Article 30. At times judgments reflect personal convictions of the judges; this has led to constant struggle between minorities and the State. Further it has been observed that there is a trend in gradual reduction of scope of rights under Article 30 leading to more regulation by State. If the Educational Institution is managed by the minority Community and is effectively contributing for the growth and development of minority community than taking into consideration the present factual situation the institution can be considered as minority Educational Institution.

The issues relating to minority rights of educational institutions are both intra and inter i.e. there are inherent issues that have been detailed with regard to the conflicts of rights guaranteed by the constitution to minorities and citizens as whole. For example the conflict of interests enshrined in Article

30 and Article 21. Not only this, the inter relationship between the legislative body and the judiciary also poses a question on the infringement and intent of the laws framed for safeguarding minorities of the nation. The various judicial orders from time to time have defined and redefined the scope and meaning of these rights of minorities. The icing of the cake lies on the fact that we are standing on a baseless foundation i.e. the concept of minority that we are stretching our debates on, remains ill or un-defined.

The Reservation Policy as provided in the Article 15(5) of the Constitution of India excuses an educational institution covered under Article 30(1) from the policy of reservation in admission. Juxtaposing it to the provisions of the Central Educational Institutions (Reservation in Admission) Act, 2006, it becomes evidently clear that it is inapplicable to an educational institution covered under Article 30(1).

P.A. Inamdar (Supra) remains an authoritative legal proposition that sanctions that neither can the policy of reservation be enforced by the State nor can any quota or percentage of admission be sliced out to be appropriated by the State in a minority educational institution. The State is not to act as a regulatory authority in matters of admissions in minority educational institutions obliging them to part with the share of the available seats to candidates selected by the State. T.M.A. Pai (Supra) disapproved the nationalization of seats as such appropriation of seats can also not be held to be a regulatory measure or a reasonable restriction within the connotation of Article 30 (1) of the Constitution.

Reiterating the issues raised above, it is important that apart from a clarity on the part of the legislative body that is responsible for framing the laws and rules of the land, there has to be clarity, transparency and uniformity in interpretation of the legal entitlements or rights ensured to the minorities in general and Minority Educational Institutions in particular.

Equipped with the Right to Information where accountability with transparency is guaranteed to the people the Minority Educational Institutions should reflect transparency with its various stakeholders like the students, staff, parents and the public in general so that there is little or no room for confusion and litigation.

As conclusions drawn from most of the judgments courts reflect that the MEIs have the rights and autonomy in administration but they surely do not have the rights to mal-administer defeating the inherent purpose of the institution. Thereby it should ensure transparency and non-whimsical functioning with respect to admissions and management matters.

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

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