

A Critical Analysis of the Autonomy of Minority Educational Institutions with Respect to Appointment of Staff



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Abstract

Education system of a country is its very foundation and therefore imperative to be equitable, just and inclusive. The framers of the Indian Constitution took due cognizance of the need for education for all and the role the minority educational institutions could play not only in the realization of this lofty goal but also to preserve the character of the minorities itself. 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 religion, namely, Islam (14.2 per cent) and other remaining religions 6 per cent include Christianity, Sikhism, Buddhism, Jainism and various indigenous ethnically-bound faiths. Thus, all religions, particularly the minority needs to be included in all developmental efforts and schemes, and above all education deserves inclusivity of all by the government to ensure best results. The contribution of the minority educational institutions in imparting education to their respective community along with other communities must be acknowledged. The NCMEI lays down the rights of Minority Educational Institutions. The Apex court held that the policy of reservation in admission cannot be made applicable to a minority institution and the policy of reservation in employment cannot be made applicable to a minority institution. 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. 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). 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 then taking into consideration the present factual situation the institution can be considered as minority Educational Institution.

Keywords: Minority Educational, Critical Analysis

Introduction

To ascertain the realization of the Education 2030 Goal it is necessary to "Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all".

With this strong foundation of the education system in India, it becomes imperative that the framers of the constitution take due cognizance of the need for education for all. 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, particularly with respect to autonomy of minority educational institutions. The state needs to act proactively to address the growing commercialization of education on one hand and need for access to

education for all. The role and contribution of the minority institutions needs to be recognized and appreciated.

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 religion, namely, 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.

Thus, all religions, particularly the minority needs to be included in all developmental efforts and schemes, and above all education deserves inclusivity of all by the government to ensure best results. The contribution of the minority educational institutions in imparting education to their respective community along with other communities must be acknowledged.

Review of Literature

The Motilal Nehru Report (1928), The Sapru Report (1945) and other tried to ensure protection to minorities but did not define the expression. Chief Justice S. R. Das (1958), held that a minority means an "community which is numerically less than 50 per cent" of the total population, thereby suggesting the technique of arithmetical tabulation in Kerala Education Bill, 1958. Justice V.S. Deshpande (1976), 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." Castellino and Redondo (2009), stressed that 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. Clause (1), Article 30 of the Constitution of India gives rights to all minorities based on religion or language the right to establish and administer educational institution of

their own 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. Massey (1999), the theory of reference of 'Melting Pot theory' is not about what the law says but how the Judges interprets / believe the law should have said.

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)

Jain (2006), observed that, 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 cannot be made applicable to a minority institution.
2. The policy of reservation in employment cannot be made applicable to a minority institution.

Prakash (1973), pointed out that, 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

The objective of this study was to analyze the management and administrative rights of minority educational institutions with respect to appointment of staff.

Research Methodology

Doctrinal method of research was used to achieve the above objective. Doctrinal research is concerned with legal proposition and doctrines; it is research into the law and legal concepts; the sources of data used in the present study 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 appointment rights.

Findings

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 with respect to appointment of staff

Issues with respect to Management and Admission Rights of Minority Educational Institutions

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 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.

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 perception of the judges mattered in the outcome of their judgments rather than the law of the land. 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 is consistency. Rather the theory of reference of 'Melting Pot theory' is not about what the law says but how the Judges interprets/believe the law should have said. 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, February 2, 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.

In 1935, the Permanent Court of International Justice, in its Advisory opinion on 'Minority school in Albania' defining the essence of International Protection of Minorities system held:

'The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peaceably alongside that population and co-operating amicably with it, while at

the same time preserving the characteristics which distinguish them from majority, and satisfying the ensuing special needs'.

{Minority Schools in Albania, Advisory Opinion, 1935 P.C.I.J. (ser. A/B) No. 64 (Apr. 6)}

The Court held that the International Protection of Minorities System was primarily designed to attain the twin objectives:

1. To complete equality between nationals of the State belonging to racial, religious or linguistic minorities and other nationals (related to majority) and
2. To ensure for the minority elements suitable means for preservation of their racial peculiarities, their traditions and their national characteristics.

The Court held that these twin objectives were closely interwoven, for there could be no true equality between the majority and a minority if the latter was deprived of the institutions enabling it to preserve its special characteristics. Minority Educational Institution has right to appoint teaching staff and also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees.

The path followed by the Supreme Court in Re Kerala Education Bill was first deviated by the court in W. Proost Vs. State of Bihar, where in Section 48A that provided that the affiliated colleges could make appointments of the teachers only on the recommendation of the University Service Commission and (H1 the approval of the Syndicate of the University of the Bihar Universities Act, 1960, as amended in 1961, was challenged.

The Supreme Court ordered that,

"The decision therefore cannot be regarded as an authority for the proposition that the requirement of approval of appointment from an external authority does not infringe Article 30(1)".

The outlook of the Supreme Court on interference with the minority's choice in matters of selection and appointment of staff is well reflected in St. Xavier College Vs. State of Gujarat. The SC held that Section 40, 41 and 33-A(I)(b) as inapplicable to minority institutions.

"A law which interferes with a minorities' choice of qualified teachers (or its disciplinary control over teachers and other members of the staff of the institution) is void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but (mums the teachers possessing the requisite qualifications are selected by the minorities... the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage and the minorities can plainly be not denied

such right of selection and the appointment without infringing Article 30(1).

A review of the cases considered above leads to the conclusion that, in the matter of appointment of teaching staff, the courts have endeavoured to protect the right of minority institutions free from arbitrary control of the authorities.

Issues With Respect To Autonomy and Emerging Conflicts and Obligations of Private Unaided Institutions Run By Minorities

Autonomy in administration refers to the rights of the institution to administer effectively and to manage and conduct the affairs of the institution on its own. The State or any University or Statutory authority cannot infringe upon the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution in the name of regulatory measures so as to render the right of the administration of the institution concerned nullified and illusive.

When it comes to resort to decisive judgments relating to Rights conferred to the Minority to Set Up and Govern their Educational Institutions, there are three basic judicial orders. The case for decision on 'Refusal to give recognition or affiliation by the statutory authority without just and adequate grounds is a breach of Article 30(1). In *Managing Board of the Milli Talimi Mission Bihar and Ors. vs State of Bihar and Ors.* 1984 (4) SCC 500 the SC categorically made it clear that functioning a minority education institution is a fundamental right guaranteed by the constitution of India.

In case the State Government or a University turns down to acknowledge affiliation to a minority educational institution without just and adequate grounds, the instantaneous result would be to defeat the very presence of the institution itself. Thus, refusal to recognize or to give affiliation by the statutory authority without just and adequate grounds is an infringement of the right ensured under Article 30(1) of the Constitution.

Issues With Respect To Appointment of Staff in Minority Institutions

In the State of Bihar vs Syed Raza, AIR 197 SC 2425 the SC held that for the formation of the post in a minority institution for appointment, prior sanction of the Vice-Chancellor is not imperative. The Clause (2) of Article 30 says that the State should not, in allowing aid to educational institutions, differentiate any educational institution on the ground that it is under the administration of a minority, regardless of whether it is based on religion or language.

Issues With Respect To Rights and Obligations of Private Unaided Institutions Run By Minorities

In the famous case of T.M.A. Pai Foundation vs the State of Karnataka, (2002) 8 SCC 481 AIR 2003 SC 355 – the SC was not concerned with the rights of the aided minority and non-minority institutions and limitations to be imposed by the States upon them. It was rather concerned with the rights and obligations of private unaided institutions run by minorities and non-minorities. The case and its outcomes have been discussed at length in various parts of the thesis in Chapters Two and Four.

The State Government or a University cannot regulate the method or procedure for appointment of Teachers, Lecturers, Headmasters, and Principals of a minority educational institution given that they poses the requisite qualifications prescribed by the State or the University. The unwavering the composition of the Selection Committee for appointment of teaching staff of a minority educational institution should not be such as would reduce the management as a rubber stamp in taking decisions on matters of selection and appointment of staff. The discretion and freedom of the institution in appointment of its staff is of paramount importance in the sense that it forms an integral fundamental right under Article 30. It is reported and accepted that tone and temper of an educational institution revolve around its staff, on whom, depends the continuity of its traditions, the maintenance of discipline and efficiency of its teaching. If the staff plays such a pivotal role in the life of an institution, their selection and appointment must invariably be the most important aspect of the right to administer an educational institution. The judiciary seems cognizant of this issue thereby firmly holding that the 'choice' of minority to select staff cannot be interfered with.

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 then taking into consideration the present factual situation the institution can be considered as minority Educational Institution.

Camouflaged Legislative Intent

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 very concept of minority the rights and obligations of which are being discussed with respect to educational institutions, remains ill or un-defined.

Issue of Accomplishment

The major hurdle that the Minority Educational Institutions having been facing from time to time has been infringement on their rights that are ensured to them by the Law of the Land. It is suggested that the MEIs should take on ways and means to keep away from legal action as far as feasible.

Legal Education

There is dearth of awareness amongst the minorities on their rights and the pile of cases and jurisdictions often misguide and are misleading. The deliberations and contentions of the minority issues often create a fear. It is thereby, suggested that the MEIs should form their legal cells fully equipped with members who are educated legally and know the details of the laws.

Transparency and Accountability

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 we expect the execution bodies to respond judiciously with non corrupt institutions. Even 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, appointments and all educational matters.

Serve the Inherent Cause

With growing commodification of education the basic purpose of education seems to be defeated. This is true regardless of the fact that if the institution is a minority or a non minority. With this have mushroomed lucrative opportunities of making education and its institutions a market where introduction of unaided establishments, self-financing courses, autonomous educational institutes,

whimsical fee structures, plethora of faculties with no regard for quality are coming up. It is merely becoming an opportunity to cash for economic profits. It is thereby suggested that the MEIs should refrain from following the path of general commodification of education and serve the cause of education and upliftment of the minorities in specific and society in general.

In absence of any ethical base the foundation of education of a developing nation like India is sure to fall. But the question remains are we ready to contain this denudation?

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.

With market orientation and India being a signatory to major global commitments one being unbridled commercialization (of education) a characteristic mandate of the WTO it is important that we understand the unwarranted advancement towards commercialization will ruin the basic structures of our society. This will create a rift in accessibility to education with an ever widening hiatus that never can be bridged. Poor will not be able to afford expensive education.

To conclude we reiterate our concern on importance of autonomy and freedom to be given to MEIs as ensured by the Constitution with respect to their management and administrative rights. It is pertinent to refer to a research conducted by Nilima Chandiramani, which got published in the Mainstream, VOL LIV No 45 New Delhi October 29, 2016 on the unwarranted infringements on the rights of minorities from time to time by the legislative as well as the executive to the judiciary bodies of the country.

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