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Right of Minorities in India

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ABSTRACT

The research paper objective is to understand the scope and extent of the term “minority” and about their rights mentioned under our constitution in Article 29 and Article 30.

The paper aims to answer the question of the extension of autonomy granted to minority education institutions to preserve and protect their culture, language, and religion. These rights are the results of uncertainty, insecurities and self doubt among minorities due to their susceptible position in the society. This eventually led to minorities to demand rights which were generally declined by our constituent assembly and as a substitute Article 30 was introduced which came without any restriction to minorities. Nevertheless, it was essential for minorities to understand that the right given under Article 30 was not above the laws which led to intervention of the Hon'ble Supreme Court in the interest of minorities.

The Hon'ble Supreme Court, in the course of interpreting Article 30 of the constitution, through many cases, has laid down the measure and extent of article 30 which is granting minority community the right to administer and establish educational institution for improvement of their community, the constituent assembly intention while providing Article 30 in the constitution is to preclude majority to enforce such laws which takes away minority rights. Thus interference of the Hon'ble Supreme Court was due to the vulnerable position of minorities in the society. The research paper also calls for attention that the right given to minorities is granted with the purpose of safeguarding secularism in the country which is the foundation of the Indian constitution. The author tried to answer the questions of autonomy to minority institutions and also shed light on the question which deals with Article 29 & 30, i.e., State Funding Religious Educational Institutions Consistent With the Constitution's Secular Scheme?

Keywords: Minorities, Rights of Minorities, Educational Institutions, Autonomy.

I. INTRODUCTION

India, the land is shelter to many scripts, minorities, language etc. due to the history of many heritages from different cultures. India embraced diversity and multiculturalism in its society which has given rise to many minorities calling it a home. However, there has always been a demand to safeguard the interest of those cultures (minorities) because of their unguarded

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position in the society. Due to the vulnerable position in the society among minorities certain rights have been granted to them. In order to maintain diversity and unity which eventually protect fraternity, the faith heartedness of minorities were settled when the constituent assembly granted Article 29 and 30 of the Constitution to preserve, protect their language, scripts, heritage, culture, religion and community. The basic aim of this article is not only to help achieve secularism in the true sense, but also to promote and provide a better structure of education for the minorities.

(A) Research Questions

- Whether State Funding Religious Educational Institutions Consistent With the Constitution's Secular Scheme? And;
- What is the extent of autonomy given to institutions (minority institution) under Article 30 of the Indian Constitution?

(B) Objectives

- To identify the relation between Article 29 & Article 30 of the Indian Constitution
- To understand the rights of minorities
- To understand who is a minority
- To examine the right of minorities to run minority educational institutions.
- To analyse whether State Funding Religious Educational Institutions Consistent with the Constitution's Secular Scheme
- To analyse the extent of autonomy given to minority institutions under Article 30

(C) Research Methodology

Instant research paper anticipates findings exclusively on secondary data collected through secondary sources. The paper follows a doctrinal method of research where the author tries to examine the rights of minorities and the extent of autonomy granted to minorities running educational institutions. Whereas, the term “minorities” not defined anywhere, thus the paper, with the help of various Hon’ble Supreme Court judgments attempt to analyse the extent of the term “minority”. With the intention of examining the research questions, Secondary data collected from multiple sources such as newspaper, published interviews, articles, thesis, websites, books, seminars and Conference papers, magazine, journals, published books and papers etc. The objective of the paper and study is to know whether State Funding Religious Educational Institutions Consistent with the Constitution's Secular Scheme and to analyse the

extent of autonomy given to minority institutions under Article 30.

(D) Significance of the Study

India over the years has experienced diverse culture; along with it various religions and freedom to practise whichever culture and religion one may choose to follow; Thus due to this practises India has become home to many minorities over the years. Further, along with the majority, there always has been an understanding and certain level of companionship which is one of the major reasons for India to consist and provide shelter to minorities till date. Though to maintain their status quo in the society and lessin their worry of as a nondominant section to some extent, arrangements had been made for them in order to preserve their culture, along with creatine rights granted to minorities to preserve religion, scripts, and language, etc. The particular rights though are not encouraging in nature instead these are tolerant in nature.

Members of Constituent assembly while framing the constitution considered the ratio of minorities, Since they account small in number compare to entire population, Thus it become cardinal function of the assembly to take extra measures to encourage the feeling of harmony with the majorities of the entire population and also they had a duty to protect their interest.

Author in this paper aims to understand the actions taken to guard the interests and rights of minorities in the country due to their sensitive position and examines the evolution of the same with the of various courts decided judgements. As discussed above, along with rights, constituent assembly also granted a certain degree of autonomy to stir up and increase the development of the minority communities as a whole. Minorities in this country covers a very small segment of the society, thus it becomes essential for lawmakers to vouch for safe options to them which certainly would bring a feeling of belonging, protection and it would also inculcate a certain positive attitude regarding their interest among the majority. Although, as stated there has been certain degree of autonomy granted to minorities with minimal interjection from the government, research show few more finds that religious minorities have a much narrower scope then compared to linguistic minorities, it has broader scope and the same scope has been discussed below.

(E) Limitations of the Study

Although all the genuine attempts were put forward for this research in order to collect the suitable data and information there are always some innate limitations for all the sources. Further, due to time and financial difficulty author was unable to collect First hand information. Further, the time span to complete paper is restricted, the author was unable to conduct the detailed study and the reach and information on the topic is limited. As already mentioned the

findings of this paper dependent on secondary data such as article, published paper and other secondary sources, there is certain ascerainty in defining the term “minorities” which has also led to limitation of the findings. Thus to clarify the the terminology and know the relevant information author has relied on various court landmark case laws in the concern field just to acquire and put on board understanding of the term “minorities” in the paper. Nevertheless, the decided cases judgements has their own limitation because various judges has different opinion and reflection and have variegated statements. Furthermore, the large sections is always influential position due to which minorities have to demand their rights and thereafter constituent assembly articulated it in our Constitution. Though the author in this paper aims at analysing and explaining the scope of minorities rights which certainly may not enfold all the aspects of the concerned topic.

(F) Review of Literature

Diya Raye (2020): In the article titled “Minorities in India: rights and legal status” the article author asserts that the manner in which a nation provided protection to their minorities provides much more information about the particular nation than any other information can reveal about the status of the country. Also Author highlights the need of protection to minorities as compared to majority sectio of the society, author states that due to non dominant position in the society minorities are in much more need of the certain reservation than any other in the society. Further, the author in the paper found that minorities being less in number compared to the large majority feel suppressed by the majority population of the country thus to strike a balance and to maintain the democratic rule in the country it is essential to provide certain exceptions and rights to the minorities in the country. Furthermore, the research paper also mentions that though the word “minorities” is not defined in the Indian Constitution still on the basis of the religion and language one can easily identify the minorities ratio in the country, thus protection can be granted to the people. Author mentions that fear of being left out and depressed in minorities is far more real than anything because of the present situation of the country. These issues are not only highlighted by various organizations in the country but also the United Nation in its eighth session also mention about the condition and issues faced by minorities in india.

Bansal Nitya (2020): In her research paper titled “Cultural and Education Rights (Article 29-20)”

Author tried to elucidate the given rights to minorities in our Indian Constitution. Further Author explained the distinction between Article 30(1) and Article 29(1); Thus author explains

Article 29(1) give assurance to every section of Society and citizens of this country who falls into the classification of minorities in this country, but to take advantage of this section one has to be the citizen of the country, Thus to be entitled of Article 29(1) requirement is citizenship. Although Article 30(1) is narrower in a sense that it gives guaranteed rights to only linguistic and religious minorities of the country. The objective of this paper is to highlight the different scenarios with the help of the cases of how the minority run education institution paved the way for development in India. Also research papers call attention to the real purpose of Article 29 and 30 which is to preserve the different types of people, their belief , languages and culture since one of the basic principles of our constitution is to preserve the essence of secularism in the country.

Kirti Mehata (2021): In this paper author tries to explore the limit and extinct of Article 29 and 30, where author finds that due to lack of definition in defining the term “minorities” there is room left to seek more clarity. Also, the author in the paper suggests that the extinction of linguistics is more limited compared to religion which is quite restricted in nature, which certainly gives a sense of insecurities among the communities of minorities section in the country. As author findings suggest the communities of minorities are in a sensitive position in country it become paramount duty to preserve, protect and provide security to the community. Further paper findings suggest there has been a greater development in order to keep minority community interest guarded though there is still a long way ahead to actually make the position of minorities in the society better in the country.

II. FINDINGS

(A) Who are Minorities?

According to Our Indian Constitution there are basically two types of minority communities in India which we can divide into Linguistic and Religious as per Article 30. Although the Constitution mentions two types of minorities but Constitution does not define the terminology “minorities” itself. Though, Article 29(1) in an sense lays down the particular instruction to determine minority communities, which we can identify this from this point; it states “anyone with a distant language, script or culture of its own”. Along with it in cases like *Islamic Academy of Education v. State of Karnataka*² in which Courts also have consider other aspects such as economic welfare to identify whether the particular community comes under the section of minorities or not.

² *Islamic Academy Of Education And ... vs State Of Karnataka And Others* on 14 August, 2003, <https://indiankanoon.org/doc/1978528/> (last visited Mar 21, 2022).

Furthermore in the case of *A.M Patroni v. Kesavan*³ the hon'ble high court held that “any linguistic or religious community is considered a “minority” if the community population of 50% of the total population.” Though while deciding the case judges didn't explicitly mention whether to consider that section as minority the whole country or state polpluraron has to be considered, However this concern was later clarified in the case of *TMA Pai Foundation v. State of Karnataka*⁴. In this case it was held while ascertaining any section as minority compared to majority, the ratio or sum total of that particular state has to be taken into consideration not of the entire nation. Thus this is the test to determine whether a section of citizens qualifies for minorities or not.

Also, In Minorities Act of 1992, Section 2(c) recognises Muslim, Zoroastrian, Christians, Sikhs and Buddhists as major five religious minorities in India. In addition to it in the case *Arya Samaj Education Trust, Delhi vs The Director Of Education*⁵, single judge bench mentioned that the scope to determine the minorities should be restricted, further he suggest to identify minorities we should observe closely whether their identity is non identical to hindus which are in majority section of entire community, such as Muslim, Zoroastrian, Christians, Sikhs and Buddhists etc.

(B) Rights of a Minority

Indian Constitution provides basic fundamental rights to the entire population of the country, though few are assertive and additional rights are given to the minorities section of the country. As per Article 29 of the Indian Constitution provide Citizen a right to perverse their language, culture, language script and further it also provide a right to education institution to discriminate on the basis of caste, race, greed and sex, futher these rights were to other similar institutions. However due this extra cushioning given to minorities many have argued that special provisiones and reservation is not healthy among the citizens. Though to support this special provision which is given to minorities *J. H Khanna, in St. Xavier's College v. State of Gujarat & Anr*⁶ case, held the given rights to the minorities are very much essential in order to escape the secrio where the minorities start feeling insecure and vulnerable as their second class citizen of the country and they were being exploited by first class citizens i.e majority within

³ Aldo Maria Patroni And Anr. vs E.C. Kesavan And Ors. on 1 October, 1964, <https://indiankanoon.org/doc/1393122/> (last visited Mar 21, 2022).

⁴ T.M.A.Pai Foundation & Ors vs State Of Karnataka & Ors on 31 October, 2002, <https://indiankanoon.org/doc/512761/> (last visited Mar 21, 2022).

⁵ Arya Samaj Education Trust, Delhi ... vs The Director Of Education, Delhi ... on 17 November, 1975, <https://indiankanoon.org/doc/1368983/> (last visited Mar 22, 2022).

⁶ Arya Samaj Education Trust, Delhi ... vs The Director Of Education, Delhi ... on 17 November, 1975, <https://indiankanoon.org/doc/1368983/> (last visited Mar 21, 2022).

the nation. Thus special provisions granted to minorities have an objective which is to uphold the peculiar identity of the society, further these provisions help the community to preserve, protect their distinct culture which differentiates them from the majority⁷.

(C) Relationship between Article 29 and 30

Indian constitution with the aid of Article 29 and 30 aims to protect the different culture, language, script and practises of education institution together. As mentioned above Article 29 aimed to secure the cultural rights and linguistic rights of the minorities community and also makes a effort to define and explain the term “minorities” by putting up some guidelines. Where as Article 30 on the other side focus on Right of minorities to establish and administer educational institutions. In *St. Xaviers College v. State of Gujarat & Anr*⁸ case, court held that as reading according to our Constitution we can conclude article 29 and article 30 are not mutually exclusive rather both the above mentioned article can be interpreted in the sense that both article are supplementing each other in the matter concerning cultural rights of the minorities section of the community. While Article 29 helps in understanding the scope of the undefined term minority in its own sense, Article 30 aim to provide access to right to education to the empower children with best available facilities and without discrimination.⁹

(D) Extent of Autonomy given to minority institutions under Article 30

The extent of autonomy given to educational institutions run by minority community has been examined with the help of the case *TMA Pai Foundation v. State of Karnataka*¹⁰. The case had an 11 judge's bench which answered many questions related to rights of minority community to establish and administer education institutions as well as the autonomy granted to them. The 5 rights that were laid down were:

1. Right to Admit
2. Right to appoint staff
3. Right to take disciplinary action
4. Right to constitute a governing body
5. Right to set up a free structure.

Along with these rights were certain restrictions that were imposed to explain the extent of autonomy given to Minority Educational Institutions. The right to admit students for schools

⁷ *T.M.A.Pai Foundation & Ors vs State Of Karnataka & Ors* on 31 October, 2002, supra note 3.

⁸ *The Ahmedabad St. Xaviers College ... vs State Of Gujarat & Anr* on 26 April, 1974, supra note 5.

⁹ *Id.*

¹⁰ *T.M.A.Pai Foundation & Ors vs State Of Karnataka & Ors* on 31 October, 2002, supra note 3.

and Under graduate differed from Higher Education. The criteria followed for selection was not based on merit for schools and under graduate, the institution is free to choose an admission procedure which is transparent. As far as higher education is concerned, admission of students is to be based on merit. These two criterions were laid down regarding the admission of students in minority education institutions.

The right to appoint the staff of an educational institution under the management of minorities has to fulfil guidelines laid down by the State. The institution is free to appoint any candidate subject to fulfilment of qualification laid down by the state. The third right to take disciplinary action is one which is complied by the principles of natural justice. The disciplinary action taken by the institutions is subject to restriction under the principles of natural justice. The fourth right granted is the right to constitute governing body, which is an absolute right. The Supreme court stated that this right being absolute in nature has no restriction on it and the governing body can be chosen by the discretion of the management. In the case of *St. Xaviers College v. State of Gujarat & Anr*¹¹, the Vice Chancellor's power to exercise this right was challenged. It was held that the right being absolute in nature, the Vice Chancellor had the right to appoint the members of the governing body without any restrictions.

The last right stated by the Supreme Court is the right to set up a fee structure. It was highlighted that the objective of an educational institution is that of charity and the fee charged should be an amount which is the amount of revenue required to carry out the expenses and costs involved in running the institutions. The educational institutions established by minorities is to ensure educational excellence to their community and encourage them to protect and preserve their language, culture, etc. In view of the same it was stated that minority educational institutions have the right to charge a reasonable fee and cannot charge capitation fee. The reason of the same was also highlighted as the objective is to enhance educational excellence with the way of charity and not profit making.

The Supreme Court also stated that Unaided religious Minority institutions had absolute autonomy of the institution as it is not dependent on the State for aid. However, aided minority institutions are subject to greater control by state provided there is no discrimination on the basis of race, caste, religion, language. The Supreme Court also highlighted that an aided minority educational institution has the freedom of appointing their own principle as receipt of state will not annihilate minority rights. It was held that merely receiving aid from the state does not sacrifice the rights of minority under Article 30.

¹¹ The Ahmedabad St. Xaviers College ... vs State Of Gujarat & Anr on 26 April, 1974, supra note 5.

The freedom on the choice of staff is an essential right conferred on the minority institutions and hence they are free to choose depending on outlook and philosophy of candidate. The choice of management is subject to only two restrictions which is that the procedure of selection of candidate should be transparent and the candidate should be qualified as per the qualifications laid down by the State. The dual test had to be taken into consideration which mentioned that the two aspects to be considered were reasonable regulation and regulation in the interest of minorities would be tested by State under Article 30. The regulations laid by the State had to fulfil the above two tests as an effective vehicle for minority educational Institutions.

In the case of *P.A. Inamdar v. State of Maharashtra*, it was held that the state cannot appropriate any seat or reservation for unaided minority institutions since they are not providing any aid to the institution. The Right to Education Act enacted by the parliament pursuant to the power conferred on it under Article 15(5) and Article 21A specifically provided that 25% of the seats have to be reserved in all unaided educational institutions for economically weaker sections and for disadvantaged sections of the community. The same was challenged in the Supreme Court. A 3-judge bench headed by Justice Kapadia, in the case of *Society for Un-Aided Public School of Rajasthan v. U.O.I & Anr*¹², held that the rule would apply to all institutions except unaided minority institutions. The same was challenged in the case *Pramati Educational Cultural Trust v. Union of India*¹³ and it was held that the rule of 25% reservation would be applicable to all institutions except for minority institutions whether aided or unaided. It was challenged that the decision was violative of Article 14 and Article 15(5) violated secularism which is the basic feature of the Constitution. The Supreme Court held that while secularism is the base for the Constitution, preference given to minorities under Article 30 gives effect to secularism and indeed promotes secularism.

III. SUGGESTIONS

While rights of minorities consist of religious and linguistic rights, many research papers, articles as well as cases highlight that the scope of interpretation regarding religious minorities has seen a reduced ambit of interpretation. Along with this many research papers have highlighted the reduced number of minorities working different sectors as well as discrimination faced by them in the workplace. There has been a constant increase in the

¹² *Society For Un-Aided P.School Of ... vs U.O.I & Anr* on 12 April, 2012, <https://indiankanoon.org/doc/154958944/> (last visited Mar 28, 2022).

¹³ *Pramati Educational & Cultural ... vs Union Of India & Ors* on 6 May, 2014, <https://indiankanoon.org/doc/32468867/> (last visited Apr 01, 2022).

amount of violence against minorities in the country. The political party as well as majority population of the state play a key role in determining the position and well-being of minorities in the State. It is therefore important to keep a constant check to safeguard and guarantee the rights conferred to minorities. Due to their vulnerability, the additional rights granted have to be conferred to fulfil the purpose.

Educational Institutions can enhance diversity in their institutions by encouraging a diversified population and increasing knowledge regarding various different languages and religion. Familiarisation of children with a diversified population at an early age can make them accustomed and create a holistic atmosphere. It is also important to take suggestions and recommendations of minority educational institutions into consideration to protect their interest under Article 29 & 30. Along with minorities, economically backward and disadvantageous sections of the society should be protected to encourage educational excellence in the community

IV. CONCLUSION

On the basis of research, it can be concluded that the Supreme Court has made sincere efforts in granting minorities the rights they deserve. An effort has been made to protect as well as preserve both religious as well as linguistic minorities. The research paper aimed at analysing the extent of autonomy granted to minority educational institutions and it can be concluded that the unaided institutions enjoy more autonomy and freedom as compared to aided minority educational institutions due to the aid received from the State. This enables the State to regulate the working of the institutions and reasonable restrictions can be made by the State however, the educational institution does enjoy a certain level of autonomy. Along there has been a development in the approach of minority rights, these developments are on case-to-case basis and hence greatly depends on the opinion of the judges. The lack of definition of the term “minority” has left room for question sue to lack of clarity. The research also suggests that the scope of religious minority cases is quite restricted as compared to linguistic minority cases which leaves a sense of insecurity. Since minorities are in a more vulnerable position in the society it is important to protect and preserve the community. Although the has been great development in this particular area there is stills cope for improvement and a long way ahead of us.
