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**MINORITY RIGHTS TO ADMINISTER AND ESTABLISH
EDUCATIONAL INSTITUTIONS UNDER THE INDIAN
CONSTITUTION**

“All of us do not have equal talent, but all of us should have an equal opportunity to develop our talent.” ~ John F. Kennedy.

India is a democratic country in which all citizens enjoy equal rights under the Constitution. All citizens' rights should be protected in a democracy. Thus, all marginalized groups, especially minorities, must be protected.

What is a Minority?

From a sociological standpoint, Minorities are defined as groups of people who do not have a proportionate share of social, economic, or political power in a society.

The Oxford Dictionary defines ‘Minority’ as “a smaller number or part, especially a number or part representing less than half of the whole; a relatively small group of people, differing from others in race, religion, language, or political persuasion.” A special Sub-committee on the Protection of Minority Rights, appointed by the United Nations Human Rights Commission in 1946, defined ‘minority’ as those “non-dominant groups in a population which possess a wish to preserve stable ethnic, religious, and linguistic traditions or characteristics markedly different from those of the rest of population.”

Minorities are not defined in India's Constitution. Articles 29, 30, 350A, and 350B, on the other hand, include the term “minorities.” Article 29 has the word “minorities” in its marginal header and states that every group of people existing in India's territory or any part of it who speak a

distinct language, have a different script, or culture has the right to preserve it. Religious and linguistic minorities are expressly mentioned in Article 30. Only linguistic minorities are mentioned in Articles 350A and 350B.

In India, there are two kinds of minorities: Religious Minorities and Linguistic Minorities. Muslim, Christian, Sikh, Buddhist, Parsi (Zoroastrian), and Jain are the current classifications of Religious Minorities. As there is no majority at the national level in the case of linguistic minorities, minority status must be decided primarily at the state/union territory level.

Any person belonging to any of the recognized religious minorities at the national level namely, Muslim, Christian, Sikh, Buddhist, Parsi (Zoroastrian), and Jain is said to be belonging to a minority group or considered a part of it.

According to the 2011 Census, the country's literacy rate is 74.04 percent, with Muslim 68.5 percent, Christian 84.5 percent, Sikh 75.4 percent, Buddhist 81.3 percent, and Jain 94.9 percent among the minority populations. The Census 2011 does not include a literacy rate for Zoroastrians (Parsis).

There are a lot of welfare measures taken for the welfare of all the minority communities. Almost all the welfare measures such as Infrastructure Development in Minority Institutes (IDMIs), National Minorities Development and Finance Corporation (NMDFC), Nai Roshni, etc. including schemes for promoting education undertaken by the Union as well as State Governments are available to all the notified minority communities. However, certain particular initiatives, such as the Scheme for Providing Quality Education for Madrasas (SPQEM) and Jiyo Parsi, have been created in light of variety in culture, tradition, and language, as well as to promote the educational empowerment of different minorities for specific requirements.

What is Article 30?

Article 30 of the Indian Constitution grants the following rights to minorities, whether religious or linguistic:

- (1) All minorities shall have the right to establish and administer educational institutions of their choice.

- (a) The state's compensation amount for the compulsory acquisition of a minority educational institution's property does not limit or abrogate the right granted to them. The 44th Amendment Act of 1978 included this clause to protect minorities' rights in this area. The Right to Property was removed from the list of Fundamental Rights by the Act (Article 31).
- (2) In granting aid, the State shall not discriminate against any educational institution managed by a minority.

As a result, Article 30's protection is limited to minorities (religious or linguistic) and does not apply to any other group of people (as under Article 29).

A minority's right to offer education to its children in its own language is likewise protected under Article 30.

Minority educational institutions are of three types:

- (a) Institutions that seek recognition as well as aid from the state
- (b) Institutions that seek only recognition from the state and do not aid
- (c) Institutions that neither seek recognition nor aid from the state.

In terms of curriculum prescription, academic standards, discipline, sanitation, and the hiring of teaching staff, the first and second types of institutions are subject to the state's regulatory jurisdiction. The third kind of institution is free to manage its affairs, but it is subject to general laws such as contract law, labor law, industrial law, tax law, economic regulations, and so on.

The Supreme Court outlined the fundamental principles pertaining to the formation and administration of minority educational institutions in its judgment in the **Secretary of Malankara Syrian Catholic College v. T. Jose & Ors.** The ruling granted them the authority to choose a governing council in whom the institution's founders have faith and confidence to administer and manage the institution's operations, to appoint teaching and non-teaching personnel, and to take action if any of its workers fail to perform their duties, the right to enroll suitable students of their choice and establish a reasonable fee structure, as well as the ability to use the institution's facilities and assets for its advantage.

The privilege granted to minorities under Article 30 is solely meant to ensure equality with the majority, not to put the minority in a better position than the majority. Minorities are not subjected to reverse discrimination. The general rules of the land, which apply to all, will apply

equally to minority institutions in terms of national interest, national security, social welfare, public order, morality, health, sanitation, and so on.

The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister.

Relevant Case laws:

D.A.V. College, Bathinda, Etc vs State of Punjab & Ors¹.

Facts: The numerous educational institutes associated with the Dayanand Anglo Vedic College Society, a Trust formed under the Society Registrations Act, were the Petitioners in this action.

The Punjab University was associated with the petitioner colleges. However, with the reorganization of Punjab, the State Legislature passed an Act in 1969 to construct a university to honor Shri Guru Nanak Dev's 500th birthday. The Petitioner colleges that were previously connected with the Punjab University were deemed to be affiliated with the new University as a result of the aforementioned Act. The Petitioners were concerned that Punjabi would be made the exclusive medium of instruction for imparting information in all of the affiliate colleges' disciplines. As a result, the Petitioners attempted to challenge the legislative Act.

Held: The Court held that Article 30 guarantees minorities the right to establish and administer educational institutions of their choice, including the right to instruct in their own language, and that the University Circular was directly violating their right to instruct in Hindi as their own language, thus infringing Article 30 (1). A university has the power to recommend academic staff qualifications, but the selection and employment of instructors are left to minority educational institutions.

St. Xavier's College v. the State of Gujarat².

Facts: St. Xavier's College, a religious denomination affiliated under the Gujarat University Act, 1949, provided education to not only Christians but students of other religions as well. They challenged sections 35-A, 40, 41, 51-A, and 52-A of the Gujarat University Act, 1972

¹ 1971 AIR 1731, 1971 SCR 677 (passed on 5 May 1971)

² AIR 1974 SC 1389

which dealt with the appointment of teachers and students of minority communities. They stated that the Act encroached on the autonomy of the universities.

Article 30(2), which says that the government shall not discriminate against any institution managed by a minority, was included in the Parties' contention.

According to the opposition, Articles 29 and 30 are mutually exclusive, and protection under both Acts cannot be invoked at the same time. They also declared that affiliation was not a Fundamental Right and that if a minority institution wanted to be affiliated, they had to follow the regulation. Another argument was that the Act should not be struck down unless there constituted an absolute infringement of minority rights under Article 30(1). They requested that the court hold off on pursuing the disputed sections until legislation and ordinances are established.

Held: Articles 29 and 30 were found not to be mutually exclusive. Although affiliation is not a fundamental right, it is required for the effective administration and establishment of such institutes.

The Act's sections 35-A, 40, 41, 51-A, and 52-A would not apply to minority institutions since they infringe on their Fundamental Right to establish and administer educational institutions of their choice.

Regarding the several disputed provisions of the Act, the majority of the bench agreed that minority-run institutions had the freedom to operate without government interference.

Conclusion

Minority educational institutions play an important role for the country as well as the state's minority. Making provisions for minorities to preserve their educational rights does not create inequity in favor of the privileged classes, but it does provide a sense of security to those in the minority class.

According to the census, India's minorities are not well-off when compared to the privileged class. As a result, it is critical to provide minorities with specific legal rights to assist them in improving their social standing. The constitutional clause permitting minorities to establish and run their own institution has shown to be helpful to the minority population in terms of

educational progress. For example, the majority of Jains are educated, making them the minority community with the greatest literacy rate.

Thus, in my opinion, if these minority institutions genuinely work to serve minorities, then the possibilities and potentialities of minorities and non-minorities alike would improve. In this way, people coming from the minorities background can assist the nation in serving the true minorities, such as the poor, women, people belonging to tribal areas, including those who are differently-abled or suffer from psychological disorders and issues, because, despite the additional regulations and restrictions, minorities should not be hesitant to establish aided nature of institutions, but rather go out and assist the poorer sections of the society.

*“Education is the most powerful weapon which you can use to change the world.” ~
Nelson Mandela.*

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