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# An Inquiry into the Rights of Minorities in Education: Reflections on Article 30 of the Constitution of India

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**ABSTRACT**

The paper unfolds a disappointing picture of the rights promised to the minorities through Article 30 and their implementation. The debates in the constituent assembly imply a tolerant rather than an encouraging approach of the state towards the minorities. This explains the stand of the Constitution-makers not to provide the promised fundamental rights automatically but to make the minorities assert their demands. As far as interpretation of Article 30 by the courts is concerned, one finds three trends. Firstly, the judgments are contextual, hence, many times; they are different, reflecting the personal convictions of the judges. This makes interpretation of the Article vague and subject to a constant struggle between the minorities and the state. Secondly, these judgments are more liberal with linguistic minorities than with the religious ones and, thirdly, they reflect a trend towards gradually reducing the scope of the Article, giving space to governmental regulations and control on the negative aspects on minorities rights for education.

## 1. Introduction

Modern societies are characterized by conflicting emotions and policies. On the one hand, the prevalence of homogenizing forces of the market economy is found, while on the other, values of differential tolerance and individual/collective freedom are advocated. Democracy, equality, and social justice are the same language used to promote both inclusion and exclusion of people in social categories. Citizenship ethos is lost in segregation of minority-majority groups. On reflection, in an atmosphere of uncertainty and collapse of supporting social structures, the modern individualized societies provide undue space for violent intolerance, self-centered consumerism and suspicion. In such circumstances, what is the significance of Article 30 in education, and its promise of minority rights? Can the Constitution protect minority rights in the face of adverse social reality? Is the reality of the market giving space for alternative cultures? In the light of court rulings on Article 30 the paper attempts to explore these questions. Attempts would be made to identify changes over the years in defining and allocating minority rights.

## 2. Constitutional Education Rights Granted To Minorities

The Constitution of India provides for the benefit of minorities in India certain fundamental rights (Articles 15-17, 25-30) and guidelines (Articles 330-339 and 350); However, only Article 30 will be deliberated upon in this paper. The Article is set out below for easy reference: Article 30 Right of minorities to set up and administer educational institutions:

(1) All minorities, whether religious or linguistic, are entitled to set up and administer educational institutions of their choice.

[(1A) In making any law should provide for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause

(1), the state shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. Importantly, these rights have safeguards against future maneuvering.

To quote Yaqin (1986:2-3) The rights are protected by a prohibition against their violation, and are backed by a promise of enforcement. They, being part of the Fundamental Rights, are invested with a sanctity and a status higher than that of the ordinary law and, consequently, every legal provision or executive action must conform to the mandates implied in them. The prohibition is contained in Article 13 which bars the state from making any law abridging or limiting any of these provisions and threatens to veto any law found inconsistent with.

The injunction runs against the whole state which term under Article 12 is defined to include government and Parliament of India and the government and the legislature of each of the states and all local and other authorities. The term 'law 'includes within its amplitude any ordinance, order, bye-law. Rule, regulation, notification, custom or usage having the force of law; and the prohibition binds all such instrumentalities within the state as have legal authority to formulate such law. The promise of enforcement is contained in Article 32 which, conferring practicability to the assertions contained in Article 13, declares that the right to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights is guaranteed and thus imposes a duty upon the highest court to afford protection against any violation and vests a corresponding right in the religious and linguistic minorities to seek remedy in case the rights are threatened with deprivation or infringement. A similar jurisdiction has been conferred upon the high courts under Article 226.

The rights are made justifiable before the courts for the double purpose of protecting them against arbitrary action of regulatory authorities, wielding the force of state and against excesses of elected legislatures dominated by transient numerical majorities and often swayed by passions and prejudices. The concern behind this solemn guarantee was to convince the minorities that their interests would be protected in the Indian nation. This need was felt in the context of the heightened minority-majority awareness in the British period. British policy on divide and rule had divided minorities.

Moreover, the affiliation of the Congress with the Hindu upper castes by a dominant minority stratum furthered the fear of subjugation among the same in post-independence India. Under these conditions, the constitutional guarantee of rights was seen as an successful way of dispelling apprehension and persuading minorities in the independent India to protect their interests. Partition and Mahatma Gandhi's assassination, however, were two moving forces that led to the confining of minority rights, particularly religious minorities, to socio-cultural fields such as education and language. As was stated earlier, the rights promised in the Constitution are binding on the state and these rights cannot be altered except by the legislative assembly. In addition, interference of some sort on these rights can be challenged in court. The language of Article 30 was left ambiguous, however, leaving everything to the interpretation of the judiciary, making room for changes in political and value systems.

To quote Yaqin (1986:45), while Article 23 of the Draft Constitution was being discussed in compliance with the present Article 30, reservations were also expressed in the Constituent Assembly about the advisability of leaving ambiguous justifiable rights to undefined minorities. The assembly decided to prevent further elaboration, and left it to the court's wisdom to provide this omission. A glance at the court cases shows both the high court and the Supreme Court to consistently and often interpret those rights. In the following parts of the paper, some important interpretations defining the consequences of Article 30, are discussed.

**3. Minority Definition**

The Indian Constitution failed to properly describe 'minority' as a term. Although the cultural characteristics of religion and language are listed, the Constitution does not include specifics of the concept's geographical and numerical specifications. There is no mention even of the nuances of language and religion. In the debate on Article 23 of the constituent assembly, B R Ambedkar (Constituent Assembly Debates, 1948-49: 922-923) noted that the term minority was not used therein in the technical context of the word 'minority,' as we were accustomed to using it for the purposes of such political protections, such as representation in the Legislature, representation in the Services, etc. The term is used not only to denote a minority in the technical meaning of the word, but also to refer to minorities which, in the cultural and linguistic meaning, are not minorities in the technical sense, but which are still minorities. For the purposes of Article 23, for example, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be cultural minorities, but not a minority in the technical sense .... In the matter of culture, language and script, the article aims to provide protection not only legally to a minority but also to a minority in the broader meaning of the words as I have just clarified.

As early as 1958, in 'In Re the Kerala Education Bill, 1957' (AIR 1958 SC 956) the Supreme Court suggested the technique of arithmetical tabulation of less than 50 per cent of population for identifying a minority. In accordance with the applicability of the law in question, the population was to be decided.

If an Act is applicable nationwide then the minority group would be decided on the national figures and in the case of the Act being applicable in a state, the minority group would be decided on the state figures. Nevertheless, in the recent case of the T M A Pai Foundation and Ors vs. the State of Karnataka and Ors (October 2002; now the case of Pai), the geographical body of the State for recognition of minority status was defined in Article 30. To quote from the judgment (Judgments Today, 2002(9) SC 2) Since reorganization of the states in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the state and not the whole of India. Religious and linguistic minorities, which have been put on par in Article 30, must also be treated as state-wise. One fails to understand how state organisations have a framework for the consideration of states on a linguistic basis as the fundamental unit for arithmetical calculation for the determination of religious minorities. Furthermore, it should be noted that the status of having less than 50 per cent of the population in a state, distinguishable in religious or linguistic terms, does not automatically entitle one to privileges. In Ambedkar 's words (Constituent Assembly Debates, 1948-49:923), I think another thing that must be taken into consideration when reading Article 23 is that it does not place any duty or responsibility on the State.

It does not say that, when, for example, the Madras come to Bombay, the government of Bombay will be required by law to fund any educational project, either in the Tamil language or in the Andhra language or in any other language ... The only restriction imposed by Article 23 is that if there is a cultural minority that wants to retain its language, its script and its culture, the State shall have it. This article is therefore really to be read in a much broader context and does not only refer to what I call the technical minorities in our Constitution as we use it. Succinctly, in order to take advantage of the advantages of Article 30 it is left to the minority to define its minority status.

In particular, the task is difficult since the definitions of 'religion' and 'language' were not properly defined in the article or the debates of the constituent assembly. Does the notion of language apply to languages that have sufficiently established grammar and script, or is only script sufficient to assert status, or is language spoken sufficient to gain minority status? The case of D A V College, Jullunder vs. State of Punjab (AIR 1971 SC 1737) is considered significant as far as language is concerned. In this case , the Court noted, for the purposes of Article 30(1), a linguistic minority is one that must have at least a separate spoken language. It is not mandatory for those who speak that language also to have a distinct script. As for the definition of faith, should a sect demand minority status? Will the article agree that the advantages can also be used only by big well-known religions or new religions? How can it be known in the above case that the religion is modern and is not merely a sect? A analysis of court cases shows a continuing fight between the state and minorities on these issues.

 

For example, Arya Samaj [Arya Pratinidhi Sabha vs State of Bihar (AIR 1958, Patna 359)], a minority distinct from the Hindus, was announced by the Patna high court. However, in 1976, the High Court of Delhi ruled against the granting of Article 30 benefits to denominations and sects. To quote Desai (1996:34) The most important case on this topic was decided by the Delhi High Court in 1976...It sets out the correct position in the name of the law that 'religiously related minorities' in Article 30(1) means only what we generally call the different religious groups such as Hindus, Muslims, Sikhs, Buddhists, Christians, Jains, etc. On such verdicts one becomes uncomfortable.

New religious movements and demands of new emerging religious communities for minority rights are not taken into account when recognising only ascriptive and well-recognized units as religious units. Bihar's Brahmo Samaj made the argument in 1962, which was admitted by the High Court [Dipendra Nath Sarkar vs Bihar State (AIR 1962 Patna 101)]. However, in the cases of Chaudhari Janki Prasad (AIR 1974 PAT 187), and S P Mittal (AIR 1983 SC 1), the court did not consider such a point. There is the potential for debate about the vague concept of faith. Unfortunately, in the Pai case, the bench comprising 11 judges did not deliberate on this important issue; thus leaving room for continuing uncertainty at both state and minority levels.

Article 30(1) grants linguistic and religious minorities a constitutional right to create and administer educational institutions of their choosing. In the case of St Stephan 's College (AIR 1992 SC 1630) it was reported, … the words " establish " and " administer "used in Article 30(1) are to be read conjunctively. The right held by a minority group to control the educational institution depends upon the proof of establishment of the institution. The evidence of establishment of the institution, is thus a prerequisite precedent for claiming the right to administer the institution. One gets shocked at this state. Why does a minority have to create an institution in order to manage it? Transfer of management in the private educational institutions is not an uncommon phenomenon in India. According to Desai, (1996:79) The reasoning behind this is somewhat incomprehensible. The only explanation given for this interpretation is that the word 'and' and not the word 'or' is used between the words 'establish' and 'administer'. To quote Desai again (1996:80) In my submission the term 'and' used in Article 30(1) of the Constitution should have been read in a disjunctive and not in a conjunctive context. There is need to follow ' purposive 'rather than ' literal' reading of the Constitution … The reason behind Article 30(1) is to offer security to minorities to run educational institution of their choosing. Why should it matter that the educational institution presently operated by the minority for the benefit of the minority was founded, may be a century ago, by persons not belonging to a minority community? ... The purpose of the Article seems to be that not only does a minority have the right to run an established institution but also to create educational institutions and vice versa. The conjunctive approach has put several organizations in the general category for minorities thus depriving them of the benefits of the Article. It is possible to provide an example of Aligarh Muslim University. Furthermore, the term 'create' has been translated in relation to Article 30(1) as 'to bring into being' (AIR 1968 SC 663). But what does that mean, exactly? Does this mean the minority group should take the initiative to get the institution started? Or, should the name and management represent the orientation of the minority? Or, should the institution be set up only for the benefit of the minority community? In State of Kerala vs Mother Provincial (AIR 1970 SC 2082), Supreme Court made the following interpretation, The first right is the initial right to establish institutions of the minority's choice. Establishment here means the establishment of an organisation and it must be by a group of minorities. It doesn't matter whether a single philanthropic person contributes the funds from his or her own means, establishing the organisation or the society at large. The mere establishment of a person from a minority group, however, does not entitle the institute to minority status. To quote from the case of the Rajershi Memorial Basic Training School (AIR 1973 Kerala 88), the mere fact that an individual belonging to a particular religious persuasion founded the school is in no way definitive on this matter. The organisation must be shown to be one created by or on behalf of the minority group in question. In the case of Fr. Mathew Munthiri Chinthyil Vicar, St. Mary 's Church Anikkampoil vs. Kerala State, the court held that when selecting a location for the establishment of a minority educational institution, the governmental master plan, which prescribes a permissible number of schools in a locality, must be followed. The Kerala High Court (AIR 1978 KER 227) dismissed the appeal for the establishment of a new school on the same site. It claimed that an extreme position entitling the minority to ask and be granted to educational institutions, wherever it wishes to set up, at any time when the cry is raised, is not the reach and substance of Art 30. Regulation of the right, both in time and in space, must be allowed. Desai notes (1996:87-88) that the Court dismissed the petition but held that the authority was bound to consider the conditions of the minority communities in the establishment of educational institutions of their choice in evaluating the needs of the locality. In this context, it is interesting to note that in the cases of Socio Legal Advancement Society vs State of Karnataka (AIR 1989 KER 217) and Mark Netto vs Government of Kerala (AIR 1979 SC 83) courts took a different view. It was claimed in these situations that it was not possible to stop a minority group from creating an educational institution.

**4. Objectives of the study**

The study has some of the main objectives which are illustrated below:

- The minority rights to education have been identified in this report.
- This study presents the disappointing picture of the rights promised by Article 30 to minorities and their implementation.

**Their option to teach**

As such, the protection of culture is not a necessary condition either for the acquisition of minority status or for the assertion of rights pursuant to Article 30. In Re the Kerala Education Bill 1957 (AIR 1958 SC 959), Chief Justice S R Das claimed that the secret to understanding the true sense of the article under consideration is the terms "of their own choosing." It is said that "option" is the dominant word and the content of that article is as diverse as it can be rendered by the option of the specific minority group. To quote him again (AIR 1958 SC 979), the subjects to be taught in such educational institutions

 

are not restricted. Since such minorities typically want their children to be educated properly and efficiently and to be qualified for higher university education and to go out completely prepared with academic achievements in the world that will make them fit, their choice of educational institutions will inevitably include institutions that also provide general secular education. This view is supported by a bench of nine court judges in the case of St Xavier 's College vs State of Gujarat (AIR 1974 SC 1389). The court, however, laid down general principles for deciding syllabus in the All Saint's High School (AIR 1980 SC 1043) It states that if a minority institution is affiliated with a university, it is not in violation of the freedom found in Article 30 of the Constitution that it is entitled to accept the courses of study or the syllabus or the existence of the books prescribed and to conduct an examination to assess the skill of the students of the institution concerned. A right to choose a medium of instruction (AIR 1954 SC 561) for their educational institutions was granted to minorities. The D A V College, Chandigarh (AIR 1971 SC 1746) made clear the court's point of view that neither the university nor the state can provide for the delivery of education in a language and script medium that stifles any portion of citizens' language and script. Such a path would breach the rights of those Citizens' Parts which have a distinct language or script and which are entitled to maintain in their own educational institutions. However, [Desai 1996:206] "the State can provide for the study of the State language as a compulsory second language." In this context , it is necessary to remember that even the aided educational institutions set up by the religious minorities can not impart religious education unless such provision is made in the institution's trust deed. Minority institutions that are unaided or partly assisted are free to impart religious guidance to students.

**5. Relation Among Articles 30 To 29**

In general, courts in India have taken together Articles 29(2) and 30. The application of the provisions of Article 30 is influenced by this. For easy reference Article 29 is quoted below: Article 29 – Security of minority interests:

(1) Any portion of the people residing in the territory of India or any part thereof having their own distinct language, script or culture shall have the right to preserve the same.

(2) No person shall be refused admission to, or receiving assistance from, any educational institution maintained by the State on the grounds of religion, race, caste, language or any of them.

A careful reading of the two Papers shows an inherent distinction. Whereas Article 30 gives the linguistic and religious minorities the exclusive right to create and administer educational institutions, Article 29(2) grants indiscriminate right of admission to the people of India in government-sponsored and administered educational institutions. A bench of nine judges was called in the case of St. Xavier 's College vs Gujarat State (AIR 1974 SC 1389) to assess the interrelationship between Articles 29 and 30. In their view, all nine judges were unanimous in that Articles 29(1) and 30(1) deal with different matters and can be considered to complement each other in the light of certain cultural rights of minorities. However, the relationship between Article 30's clause ( 1) and Article 29's clause (2) is paradoxically confusing; can minority educational institutions refuse admission on the basis of religion or language to any student? If privileges can be granted to minority students when admitted to minority education institutions, overruling the requirements of merit? In Ashu Gupta 's case (AIR 1987 P & H 227), the court held that unaided minority institutions had full freedom of choice for their students. It maintained that all minority organisations that do not obtain government support 'are completely outside the reach of Article 29(2).' In the case of Sidhrajbhai vs. Gujarat State (AIR 1963 SC 540), the court held that the government can neither nominate students nor reserve seats for backward classes in government-supported minority institutions. In the case of Sheetansu Srivastava (AIR 1989 ALL 117), the court held that neither the government could order the admission of specific students to a minority institution, nor could a minority institution refuse admission to students on the grounds that they were not part of the minority group. The St Stephan 's College case (AIR 1992 SC 1654) decided by a bench of five Supreme Court judges is a landmark case in relation to the relationship between Article 29(2) and Article 30(1). Tackling the issue of admission, the court claimed that St Stephan's College's right to admit students belonging to the Christian community would also be denied in the present case by the challenged university directives to select students on the uniform basis of marks secured in the qualifying exams. It has been the college's experience as seen from the selection chart provided in the case that unless some concession is made to Christian students they will have no chance to enter college. They will not even be brought into the field of consideration for the interview if they are put into competition with the generality of students belonging to other groups. And if the waiver was given to a certain degree, only a limited number of minority applicants would be eligible for entry. Beyond the pale of debate, this is. However, in the same case (AIR 1992 SC 1659), in view of the nation's ever-increasing collective environment, the court supported the melting pot principle and sought to strike a balance between the two Articles. It claimed that in the nation-building of sectarian schools or colleges with a secular character, segregated faculties or universities are undesirable to impart general secular education and could undermine secular democracy. They will be compatible with the Constitutionally ingrained core principle of secularism and equality. Each educational institution in our national life is a 'melting pot' regardless of the culture to which it belongs. The essential ingredients are the students and the teachers. There they establish respect and empathy towards other people's cultures and beliefs. It is important, therefore, that all educational institutions should have a proper mix of students from different communities. It further states (AIR 1992 SC 1663) In view of all these values and considerations and in view of the importance that the Constitution attaches to safeguarding steps for minorities pursuant to Article 30(1), minority-aided educational institutions are entitled to prefer their group candidates to preserve the minority character of those institutions subject, of course, to compliance with the provisions of Article 30(1). The State may control the intake in this category, taking due account of the community's need in the area the institution intends to serve. But such intake shall not in any case exceed 50% of the annual admission. Minority organisations shall make available to members of communities other than the minority community at least 50 per cent of annual enrollment. Other group applicants shall be accepted

 

solely on merit. In the judgement Desai (1996:192-3) reported his reservation. He thinks that "the Supreme Court took a realistic view rather than a rational one." Furthermore, "There is no whisper of the 'melting pot' principle or anything close to it in the Constitution, or in the voluminous debates of the Constituent Assembly or in any of the early decisions of the Supreme Court." The principle of the 'melting pot' is not about what the law says, but about what the judges think the law should have meant. The Supreme Court itself has consistently acknowledged that decisions should not be founded on hypotheses of this nature. According to him, it was called upon to determine whether or not Article 29(2) overrides Article 30(1) ... Whether or not a minority institution was authorised to run solely for the benefit of its own group was needed to respond. If the response was in the negative, the inference should have been that minority group students should not be favoured at all and the entire admission would be by merit. If the response was in the affirmative, the inference should have been that minority organizations should operate solely for the benefit of their own community and reserve 100% seats for their own community members. The case of Pai (Judgments Today, 2002(9) SC 3) also occupies a very similar position to that of the case of St Stephan. ... Admission to unassisted institutions cannot be governed by the state or university, with the exception of the requirement of credentials and minimum eligibility requirements. As long as the admissions to such institutions are on a clear basis and due consideration is taken of the merit, no intervention can occur. A minority institution does not cease to be so when grants are obtained for assistance. Such an aided institution would be entitled to a right of admission belonging to a minority party, but the admission of non-minority students to a fair degree would be necessary. State government will inform nonminority admission to such percentages. The ratio set out in St Stephan 's College vs University of Delhi (Judgments Today, 1991 (4) SC 548) is right, but it is impossible to stipulate a rigid percentage. Authorities may stipulate a fair percentage according to minority institution form, population, and educational needs.

## 6. Conclusion

The debates in the constituent assembly suggest a welcoming approach to minorities rather than an enabling approach by the state. This explains the stance of the Constitution-makers not to immediately have the constitutional rights promised but to make their demands proclaimed by the minorities. In order to encourage the daily interpretation of rights by the courts of India, taking into account the historical and spatial requirements of the country, the wording of the article was held vague. Judges are informed by the principle of 'melting pot' which works to construct uniformity in practise and law. Putting Articles 29(2) and 30(1) together further decreases the benefits under Article 30 offered to minorities, writes Ravi Agrawal. It is unnecessary to say that this policy has deprived many minority groups of the value of rights because of them, he adds. He says the article is ambiguous and subject to a continuous battle between the minorities and the state.

In turn, Article 29(2) makes it a constitutional right given to individuals and, thus, not a great deal of space for the fixing of quotas. The strict fixing of a 50:50 ratio is frustrating the spirit of Article 30, as it affects the minority group members' enrolment. Ravi Agrawal writes the provision is to the detriment of those community members, who come from a backward socio-economic and educational background. However, in the Pai situation, the 'authorities' were given the power to settle the ratio in accordance with the area's educational needs, he adds. The need for a cosmopolitan atmosphere in institution of minority education is the specified reason to juxtapose the two posts. In principle, the court judgments agree with the court judgments that if s / he meets the eligibility requirements set by the institution, admission should not be denied to any person, he says. Although, one thinks, such an unspecific decision will accentuate tension between the government and minorities.

Although the merit of the above claims against minority institutions is acknowledged, one would like to state that these fears are embedded in the framework of Indian society and can not be applied solely to minority institutions. For example, one finds pre-eminence of group-based management in India's private institutions, resulting in the supremacy of a particular community within the institution, thus creating room for all the above-mentioned fears to surface regardless of the institution belonging to the minority or majority community. One assumes that community resources and dedication to advancing the cause of education be brought in by minority education institutions, a necessity that the Indian state can not afford to ignore. One feels that instead of treating with skepticism any minority educational Endeavour, they need to be supported. However, care should be taken in the country's present political environment to check the impact of fundamentalist powers within institutions, whether formed by the minority or majority party.

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