

Judiciary on Educational Rights of Minorities – The Constitutional Perspectives

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Introduction :

The expression “minority” has been used in Articles 29 and 30 of the Constitution but it has no-where been defined. The Preamble to the Constitution proclaims to guarantee to every citizen “liberty of thought, expression, belief, faith and worship”. The group of Articles 25 to 30 guarantees protection of religious, cultural and educational rights to both majority and minority communities. It appears that keeping in view the constitutional guarantees for protection cultural, educational and religious rights of all citizens, it was not felt necessary to define “minority”. Minority as understood from the constitutional scheme signifies an identifiable group of people or community who were seen as deserving protection from likely deprivation of their religion, cultural and educational rights by other communities who happen to be in majority and likely to gain political power in a democratic form of Government based on election¹. Even in the National Commission for Minorities Act, 1992, the term “minority” is not defined². Literally, it means “a non-dominant” group. However, ‘minority’ has been derived from the Latin word ‘minor’ and the suffix ‘ity’ means ‘small in number’. According to Encyclopedia Britannica ‘minorities’ means ‘groups held together by ties of common descent, language or religious faith and feeling different in these respects from the majority of the inhabitants

of a given political entity’. In the Yearbook on Human Rights, U.N. Publication, 1950 Edn. Minority has been described as non-dominant groups having different religious or linguistic traditions than the majority population,³ according to Dr. B.R. Ambedkar, regarding amendment to Draft Article 23,⁴ related to religious and linguistic minorities, the term ‘minority’ was used therein not in the technical sense of the word minority as we have been accustomed to use it for purposes of certain political safeguards, such as representation in the Legislature, representation in the services and so on. For instance, for the purposes of this Article 23.... if a certain number of Maharashtrians went from Maharashtra and settled in Bengal, though they may not be minorities in technical sense, they would be cultural and linguistic minorities in Bengal⁵. India, a multi – religious, multi – linguistic and multi – cultural nation, is governed by the Constitution. India, the largest democracy in the world with secure character, is governed by the Constitution. The founding fathers of our Constitution, in order to give a sense of security and confidence to the minorities have conferred certain special rights. The expression ‘education’ in the Articles of Constitution means and includes education at all levels from primary school level to the University level including professional education. Education in Entry 25 List III of the Seventh Schedule to the Constitution includes technical education,

1. *Bal Patil v. Union of India*, (2005) 6 SCC 691

2. Section 20 of the Act defines minority as “minority”, for the purposes of this Act, means a community notified as such by the Central Government”. See also, *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481.

3. *TMA Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481 at 592

4. Corresponding to Articles 29 and 30 of the Constitution.

5. *Supra* note 2 at 593 (Sec. Constitutional Assembly Debate)

medical education and Universities... Vocational and technical training of labour,⁶ recognition of cultural and educational rights of minorities is evident from Constitutional provisions contained in Part III, particularly, in Articles 29 and 30 as Cultural and Educational Rights which read as follows :

29. Protection of interests of minorities (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the grounds of religion, race, caste, language or nay of them.

30. Right of minorities to establish and administer educational institutions (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1-A)⁷ In making any law providing 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.

By a catena of decision various High Courts and Supreme Court interpreted the law contained in Articles 29 and 30, and their interrelation without any unanimity. In some cases the judicial interpretation is that minority institutions which are receiving Government aid are bound by Article 29(2). Other interpretation is that minority institutions which are receiving Government aid while admitting students from their own communities in the institutions established by them are free to admit students from other communities. These other communities may belong to the majority and such admission of students in the institution does not destroy the minority character of the institution. In few cases the Court held that under Article 30(1) fundamental right declared in terms is absolute although the inebriation between Articles 29(2) and 30(1) was not decided. Another interpretation given by the Judiciary is that there can be no communal reservation for admission in Government or Government aided institutions.

In *State of Bombay v. Bombay Education Society*,⁸ an order was issued by the Bombay Government banning admission of those whose language was not English to a school using English as a medium of instruction. One of the members of the Christian community sought admission in the school on the premise that his mother tongue was English. He was refused admission in view of the Government order, as the student was neither an Anglo – Indian whose mother tongue was English nor a citizen of non – Asiatic descent. This was challenged. The Apex Court held “Article 29(1) gives protection to any section of the citizens having a distinct language, script or culture by guaranteeing their right to conserve the same. Article 30(1) secures to all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice... Article 29(2) is not designed for the protection of this citizens for admission

6. Education has been transferred from List II to List III of VII Schedule to the Constitution by 42nd Amendment to the Constitution.

7. Inserted by the Constitution (44th Amendment) Act 1978. *Vide* Section 4.

8. (1955) 1 SCR 568

into educational institutions maintained or aided by the State. To limit this right only to citizens belonging to minority groups will be to provide a double protection for such citizens and to hold that the citizens of the majority group have no special educational rights in the nature of a right to be admitted into an educational institution for the maintenance of which they make contributions by way of taxes. We see no cogent reason for such discrimination.

In *St. Stephen's College v. University of Delhi*,⁹ the right of minorities to administer educational institutions and the applicability of Article 29(2) to an institution to which Article 30(1) was applicable came up for consideration before the Apex Court. The Court held "the fact that Article 29(2) applies to minorities as well as non-minorities does not mean that it was intended to nullify the special right guaranteed to minorities in Article 30(1)". The rule that comes out from these decisions is that Article 30(1) is subject to Article 29(2).

The decision is *State of Madras v. Champakam Dorairajan*¹⁰. Here the Supreme Court held that "this Court in the context of communal reservation of seats in medical colleges run by the Government was of the view that the intention of the Constitution was not to introduce communal consideration in matters of admission into any educational institution maintained by the State or receiving aid out of State funds." However in the above mentioned categories of decisions, there is no uniformity of views taken by the Judiciary. This fluctuation of views is also seen in some decisions concerned with professional and technical education cases of minority institutions. Professional and technical education is the new growth sector in Indian education. This development has paved the way to make money under the guise of capitation fee. The expression

"Capitation fee" does not have any fixed meaning. The Legislature of some of the States, however, have defined capitation fee.

Conclusion

In a plural society all cultures and languages must be allowed to flourish. The opening of a medical or engineering college has no relation with preservation of culture. Non-religious and non-cultural education cannot be segmented into majority and minority. India, which is a secular State cannot grow and develop as truly SECULAR until the divisive anti-national activities are abolished. The duality (minority and majority) be permitted only in the area of religion and language and not to other areas. Here it is germane to quote Dr. B.R. Ambedkar what he said in the Constituent Assembly,¹¹ that, "it is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with. It will also be such that it will enable majorities and minorities to merge some day into one". Pandit Nebru also spoke in the same vein¹². I do not think it will be a right thing to go the way this country has gone in the past by creating barriers and by calling for protection. As a matter of fact nothing can protect such a minority or a group less than a barrier which separates it from the majority. It makes it a permanently isolated group and it prevents it from any kind of tendency to bring it closer to the other groups in the country.

After almost sixty years of independence, it is high time to think. Where are we ? Could we (Government) able to achieve the very soul of our Constitution's Preamble, which *inter alia* provides for unity and integrity

9. (1992) 1 SCC 558

10. AIR 1951 SC 226

11. The Constitution and the Constituent Assembly, Lok Sabha (1990) p.131

12. Introduction to the Constitution of India, Dr. DURGA DAS BASU 28th Edition 2008.

of the Nation ? Every citizen has got the fundamental rights under the Constitution and one of the fundamental rights is right to education. This right is available to all either minority or majority, then why to make a distinction to divide the citizenry leading to confusion and chaos ? Where is education today in the field of various positive discriminations ? We are bogged down by acrimonious controversies dividing the nation, and baffling litigations. Isn't it that we wait for what is next by the Court/and we have to follow that. Allahabad High Court has

maintained "*status quo*" on the majority status of Aligarh Muslim University issue. However the Division Bench of the Apex Court has referred the matter to a five judge Constitution Bench. Aren't we like the hollow men of *T.S. Eliot*, a great poet, "Shape without form, shade without colour, paralysed force, gesture without animation. Therefore, the time has come where we have to rethink for a united and integrated BHARAT in terms of Constitutional Preamble. The double standards one for majority and other for minority must go.

E-CONTRACTS AND JURISDICTION

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Introductions :

Contract means an enforceable agreement entered into by and between the parties agreeing to perform their respective part of contract within the four corners of the terms and conditions stipulated therein. It is well settled law that mutual assent is essential to the formation of a contract. The assent must be manifested. Therefore absence of acceptance, there cannot be a contract. Offer and acceptance together constitute the contract. Law of contracts is the most important branch of business law. It plays an important role in regulating daily trade, commerce and industry. The Contracts Act creates an obligation between the parties in personam and not against in rem.

Information Technology has brought tremendous change in living standard of

people. Communication and information has become part of our life and spread over every nook and corner of the world. Likewise, e-commerce had no boundaries because just click of a mouse, one can enter into contract with anyone and anywhere across the globe. Virtually there is no boundaries for e-contracts.

Before adverting to the provisions of Information Technology Act 2000, with regard to e-contracts, let us see what Indian Contract Act says; Section 2(h) of the Contract Act defined contract as : *An agreement enforceable by law is a contract.*

Essential Ingredients of a Contract :

It is needless to say that two competent persons are required to make an enforceable agreement. The following are the essential ingredients of a valid contract :