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Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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RIGHTS OF MINORITIES TO ESTABLISH EDUCATIONAL INSTITUTIONS IN INDIA

AUTHORED BY: HARIKA CHERUKURI
(B.B.A., LL.B)
MAHINDRA UNIVERSITY

Abstract

The majority of the post-colonial nation States have incorporated minority rights into their constitutions as well as the canons of international human rights law. Religious, linguistic, and ethnic minorities all over the world have been constitutionally recognised as groups in need of specific safeguards and protection from majoritarian attitudes or policies that discriminate against their legitimate interests. The Indian Constitution made provisions for minorities to give them the benefit of establishing and governing their own educational institution (Article 30) where they can assist the student from their community to give some privilege and support their education. This was done in consideration of the factor of education and its need. Article 30 of the Indian Constitution explains the right of minorities to establish and run educational institutions. Article 30 grants any ethnic, linguistic, or religious minorities the right to found and operate educational institutions, selecting the requirements for both teachers and students. Additionally, it forbids the state from acting unfairly when providing funding to minority institutions. Articles 29 and 30 address the cultural and educational rights of Indian citizens. The purpose of this study is to present a systematic review of the available evidence based literature concerning the research question. The research question being investigated on is as follows, What are the rights available to minorities to set up a minority educational institution in India. The major flaw in this paper is that the word "minority" is not defined. Despite these issues, the paper makes the case that Article 30 gives minorities a significant amount of freedom to customise their educational environment in accordance with their preferences and should be supported because it aids the State in addressing the cultural elements that contribute to their educational underachievement.

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Serial Number	Word
1	<i>Minorities</i>
2	<i>Ethnic Minorities</i>
3	<i>Religious Minorities</i>
4	<i>Lingustic Minorties</i>
5	<i>Educational Institutions</i>
6	<i>Educational Rights</i>
7	<i>Cultural Rights</i>
8	<i>Educational Underachievement</i>

Purpose of Research

This particular Paper is a qualitative investigation on minorities' constitutional rights to form educational institutions and to find out the various provisions available for minorities.

Research Objective

The study's objectives are to examine the numerous minority rights protections provided by the Constitution and to discuss the many rulings on minority rights that have been issued over time.

Research Methodology

This work depends on secondary data for its analysis of the literature and research. The work is written in a descriptive and inquisitive manner.

Introduction

"Minority" as it is used in the constitution, most specifically in Article 30 has no clear definition of the term. However, the Indian judiciary has acted proactively by taking the Kerala Education Bill, 1957¹ into consideration. However, the Supreme Court remarked and ruled on the basis that any community that constitutes numerically less than 50% of the total population of a particular state shall be referred to as a state for the purposes of any statute established to address minority rights. In addition, the court has stated that a group would not be recognised as a minority for the purposes of Article 30 of the Indian constitution if it is a majority throughout the state but may be a minority in a particular locality.²

In the case of *Society for Unaided Schools of Rajasthan v. Union of India*³, the court used a different strategy. According to the court, a minority could be decided in relation to the entire population of the country, just like general laws that apply to the entire country, such as the Right of Children to Free and Compulsory Education Act of 2009.

Similar to this, the court ruled in the case of *D.A.V. College v. State of Punjab*⁴, that if the statute at issue is a state law, the status of minorities must be determined in relation to that state's population.

In the case of *S.K Patro v. State of Bihar*⁵, the court said that a minority requesting benefits under Article 30 must be a minority of Indian citizens. Article 30 does not apply to non-natives who do not reside in India. As a result, people who make up India's "well-characterized linguistic and religious minorities" are no longer covered by the protection provided by Article 30.

In the case of *T.M.A Pai Foundation v. State of Karnataka*⁶, an eleven judge bench made it plain that states were divided along linguistic lines, and that decisions on minority status may affect

¹ Kerala Education Bill, 1957, No.6, Acts of parliament, 1957 (India).

² INDIA CONST. Art. 30.

³ *Society for Unaided Schools of Rajasthan v. Union of India*, A.I.R 2012 S.C. 95 (India).

⁴ *D.A.V. College v. State of Punjab*, A.I.R. 1971 S.C 1737 (India).

⁵ *S.K Patro v. State of Bihar*, A.I.R. 1970 S.C 259 (India).

⁶ *T.M.A Pai Foundation v. State of Karnataka*, A.I.R. 2002 S.C 317 (India).

specific states rather than all of India. This statement applies to both linguistic and religious minorities.

But in the case of *St. Stephen's College v. University of Delhi*⁷, more precise explanation was provided. The court noted that those who make up a specific, distinct, and recognisable group of Indian citizens must be considered the minority under Article 30 of the Indian constitution.

Although the Indian Constitution has several phrasings buried beneath it, it has sadly failed to define any of them, including the phrase "Minority Educational Institution" (hereafter, MEI). According to Section 2(g) of the National Commission for Minority Educational Institution Act of 2004⁸, the aforementioned phrase is really mentioned. According to the aforementioned section, a MEI is a university or other educational institution that was founded and is run by a minority group. To put it plainly, minorities run and control everything.

It is frequently argued that because the equality clause and other fundamental rights in a democracy apply equally to the majority and minority communities, there is no need for specific protection for minority rights. The Supreme Court of India's response to these claims is as follows: "the minority do not stand to gain much more from the general Bill of Fundamental Rights which is available only to the individuals. The minorities require positive safeguard to preserve their minority interests which are also termed as group rights. The safeguards and group right have been part of our constitution making"⁹ Additionally, the Honourable Courts have periodically emphasised that the equality provision only applies to equals and not to those who are unequal.

Further, This essay examines minorities' constitutionally protected freedoms to form and run educational institutions. The paper examines the discussions around Article 30 of the Indian Constitution in the constituent assembly. Further, paper looks into the various Supreme Court decisions on the subject in order to better understand the jurisprudence of this fundamental right.

⁷ *St. Stephen's College v. University of Delhi*, A.I.R. 1992 S.C 1630 (India).

⁸ The National Commission for Minority Educational Institution Act, 2004, No. 2, Acts of parliament, 2004 (India).

⁹ *supra note 7*.

Literature Review

India's enormous diversity makes it in some ways a microcosm of the entire planet. India could serve as a great example of a multicultural society since it is the arrival of several dialects and other religions. The Indian government identified six distinct religious minorities: Zoroastrians (0.006%), Jains (0.41%), Sikhs (2%), Buddhists (0.77%), and Muslims (11%), who make up the majority of the country's population. Hindus make up the majority (82%). Hindus make up the majority of the population in terms of numbers, whereas the other religious groups are considered to be "religious minorities".

The Indian Constitution's Articles 29¹⁰ and 30¹¹ provide forth minorities' rights to cultural and educational freedom. These organisations were founded to safeguard and promote the unique customs and cultures of India's minority populations. A significant portion of the population is made up of minorities.

The following are the main goals of the protection of minority rights:

1. To integrate minorities into the national life of the state, which is characterised by the ethos and fascinated by the greater portion,
2. To give them a sense of belonging so that they will never be overpowered by the majority, and to inspire confidence in them.

Discussion

Article 30(1) of the constitution mentions the protection given to minority educational institutions.

The following rights for minorities, whether religious or linguistic, are guaranteed by Article 30:¹²

1. All minorities must explicitly be allowed to create, establish, and control the educational institutions of their choosing.

¹⁰ INDIA CONST. Art. 29.

¹¹ *supra note 2.*

¹² *supra note 2.*

2. The state-set compensation amount for the required security of any property owned by minority educational institutions is not intended to limit or cancel the rights guaranteed to those institutions.
3. The state is prohibited from discriminating against educational institutions run or overseen by minorities while providing help.

The application of Article 30 is based on the fact that no other group, other than linguistic or religious minorities, is guaranteed the freedom to establish and control educational institutions of their choice. Prior to that, Article 30(1) grants linguistic minority the right regardless of their religion¹³. As a result, the court stated in *Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shrirur Mutt*¹⁴ that it is inconceivable to forbid secular education under the purview of Article 30. A minority's right to provide education to its/their children in its/their dialect or language is also included in the right under Article 30.

There are primarily three different types of educational institutions:

1. An organisation that seeks state recognition and assistance, sometimes in the form of funding.
2. An organisation that seeks recognition/acknowledgement solely—not assistance from the government.
3. A group or organisation that doesn't seek government support or attention (It is independent or free to conduct its own affairs, but is nonetheless bound by national laws including those governing contracts, taxes, and labour).

Political minorities that are determined by their numerical quality or amount are not protected by Article 30. Instead, it provides protection to isolated groups within society whose votes may have an impact on legislative matters but are not infallible or unambiguous in and of themselves.

In the case of, *Bramchari Sidheswar Bhai v. State of West Bengal*¹⁵, the court held that Ramakrishna's mission is not a minority because it is a part of Hindu religion and therefore is not eligible for protections under Article 30 of the Indian constitution.

¹³ INDIA CONST. Art. 29, cl. 1.

¹⁴ *Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shrirur Mutt*, A.I.R. 1954 S.C 282 (India).

¹⁵ *Bramchari Sidheswar Bhai v. State of West Bengal*, A.I.R. 1995 S.C 2089 (India).

In the case of, *SP Mittal v. Union of India*¹⁶, the Supreme Court stated that any group wishing to claim benefits under Article 30(1) of the Indian Constitution must demonstrate that they have built it and are administering it, or that they are a minority in terms of religion or language.

The establishment of educational institutions of one's choosing is a privilege granted to minorities. It does not state that minority based on language or religion should have the right to establish educational institutions for the purpose of, as it were, educating their own languages. The article discusses their decision to establish educational institutions that will serve both the purpose of providing their children with an intensive standard education as outlined in the Kerala Education Bill of 1957¹⁷ and the purpose of conserving the religion, dialect, or culture.

The court notably ruled in *TMA Pai Foundation v. The State of Karnataka*¹⁸, that minorities have the right and authority to create educational institutions of any kind, including technical and professional institutions as well as schools and colleges.

More explanations, however, were provided in the case of *St. Stephen's College v. University of Delhi*¹⁹. The court pointed out that until they had no support or recognition from the State, these minority institutions could not benefit from these rights under Article 30.

According to the ruling in *TMA Pai Foundation v. State of Karnataka*²⁰, minorities have the right to construct their own educational institution and have the authority to run it.

When any other community or sector is admitted, a facility founded by minorities and supported by the state will retain its minority identity. As stated in the Kerala Education Bill, 1957²¹, Article 30 must be harmonised with Article 29(2)²², which guarantees that no person will be denied entrance to any educational institution.

¹⁶ *SP Mittal v. Union of India*, A.I.R. 1982 S.C 729 (India).

¹⁷ *supra note 1*.

¹⁸ *supra note 6*.

¹⁹ *supra note 7*.

²⁰ *supra note 6*

²¹ *supra note 1*.

²² INDIA CONST. Art. 29, cl. 2.

In the case of *St. Stephen's College v. University of Delhi*²³, the court held that the educational institution's minority management could reserve 50% of the seats for its community. Although the situation was later rejected in the TMA Pai Foundation case, the court noted that the "right percentage could not be stipulated" and held that it should be left to the authorities to decide on the basis of population, institution type, and the educational needs of minorities.

Current scenario of the establishment of minority institutions

Recently, the supreme court ruled that the state has the power to enact a regulatory framework or administrative administration to provide minority educational institutions with highly educated teachers in order to achieve excellence in education. This decision falls under the umbrella of national interest. According to the Supreme Court, the new regulatory framework must ensure a balance between excellence in education and the establishment and administration of minorities' rights.

The Supreme Court further split education in the aforementioned case into two groups, namely:

1. Secular education is a universal right, (or)
2. Education aims to conserve, defend, and preserve the history, culture, etc., of a particular religion or language group.

The Supreme Court endorsed the dictum "Maximum latitude" when discussing minority education, therefore management or administration shall be given the authority to pick instructors or teachers.

Additionally, the Indian central government submitted a unique case to the Supreme Court in 2016 asking for the revocation of the minority status of central universities. The National Commission for Minority Education Institution (NCMEI) status of Jamia Millia Islamia has thus been suggested to be revoked by the law ministry (in 2011). The Aligarh Muslim University's status as

²³ *supra note 7.*

a minority institution was terminated even in 2006.

Therefore, these institutions or universities must be given more autonomy, and the Supreme Court must consider exempting all minority institutions from the RTE Act. All administrative irregularities must also be eliminated.

Conclusion

In India, minority institutions are crucial to achieving both the state's and minorities' goals. Minority institutions, regrettably, fall severely short of expectations. However, it is the right time or opportunity for minority institutions to review and analyse the RTE Act and its Amendments in order to be informed and up to date. Additionally, it will serve the state's goal of providing minorities with high-quality instruction and education.

The rights guaranteed to the minority under Article 30 are meant to assure equality with those of the majority; they are not meant to put the minority in a better or more advantageous position than the majority.

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10. INDIA CONST. Art. 29.
11. *supra note 2.*

12. *supra note 2.*

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15. Bramchari Sidheswar Bhai v. State of West Bengal, A.I.R. 1995 S.C 2089 (India).

16. SP Mittal v. Union of India, A.I.R. 1982 S.C 729 (India).

17. *supra note 1.*

18. *supra note 6.*

19. *supra note 7.*

20. *supra note 6*

21. *supra note 1.*

22. INDIA CONST. Art. 29, cl. 2.

23. *supra note 7.*

