

Right of Minorities to Form Educational Institutions

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Abstract: *India has always been a habitat for many religions from earlier ages and this has given a rise to specific collective identity and basis for group cohesion. According to Indian Constitution, every citizen of India has a right to education and therefore, the minorities also has a right to education. Thus, Educational rights of minorities are very important and essential tool for the upliftment of the minorities. Special rights for minorities were also created so that there should be no inequality in the country but to bring equality by ensuring the preservation of the minority institutions. Thus. This article throws an ample light on the right of minorities to form educational institutions and also highlights various statutes that deal with minority rights.*

Keywords: minorities, habitat, educational institutions

1. Introduction

Since time immemorial people from distance land came to India and made it their home, be it Aryans, the Moguls and so on making India is a habitat for many religions. Religion is a social phenomenon, unique of its kind. This gives rise to specific collective identity and basis for group cohesion. The character and right of religious observance depends upon the membership of social group. Educational rights of minorities are very important and essential tool for the upliftment of the minorities. It is praiseworthy that our Constitution of India has afforded protection to the minorities in the country. The framers of the Constitution were quite conscious of the importance of these provisions. So, they try to satisfy the desire of the minorities by conferred certain rights to them. At the fifth session off the constituent assembly of India, the Chairmen (The Honorable DR. Rajendra Prasad) assured that;

“ To all the minorities in India we give the assurance that they will receive fair and just treatment and there will be no all the right and privileges of citizenship, and will be expected in their turn to render loyalty to the country in which they live and its constitution .To all we give the assurance that it will be our endeavor to end poverty and squalor and companions, hunger and, disease to abolish distinction and exploitation and to ensure decent condition of living” They very well understood that, in pluralistic society rights of minorities and weaker sections need to be safeguarded. The idea of giving some special right to the minorities is not to treat them as privileged section of the population but to give to the minorities a sense of security.¹ Special rights for minorities were designed not to create inequalities but to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing autonomy in the matter of administration of these institutions.

In India, the safeguards for minorities under the constitution of India are in the form of fundamental rights.² Firstly the

Constitution nowhere discriminates among the citizens of India on the grounds of religion, race, caste, etc. and secondly, the rights conferred under Articles 25 to 30 are fundamental rights. The State as duty bound to protect the fundamental rights. If fundamental rights are infringed the remedy lies under Articles 32 and 226. A person can directly approach the Supreme Court or the High Court in case of violation of fundamental rights. So, the true spirit and intention of the Constitution is to provide a very formal and water tight arrangement for safeguarding the interest of minorities.

1.1 Concept of Minority

The expression “minority” has been derived from the Latin word “minor” and suffix “ity” which means “small in number”. Thus, minority can be considered as, a numerically smaller group as against the majority in an area.

According to English Language Dictionary, “minority” means: “The Minority of people or things is many them that form less than half of the large group, used especially when the number is much less than half of the large group”

The U.N Sub Commission on Prevention of Discrimination of Minorities has defined minority as under:

- 1) The term “minority” includes only those nondocument groups of the population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristic markedly different from those of the rest of the population
- 2) Such minorities should properly include the number of persons sufficient by themselves to preserve such traditions or characteristic; and
- 3) Such minorities should be loyal to the state of which they nationals

Under Indian constitution there are certain articles which exclusively safeguard the rights of minorities and there certain more articles which through not specifically meant for minorities but strengthen their rights

¹ Bakshi P. M., *The Constitutional Law of India* p. 58 (Universal Law Publishing Company, 8th edition. Delhi, 2001).

² Basu Durga Das Dr, *Commentary on the Constitution of India* p132 (Lexis Nexis Butterworths Wadhwa- Nagpur, 8th Edition 2008).

1.2 Indian Constitutional Provisions Regarding Minorities

1.2.1 Protection of interests of minorities³

- 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 grounds only of religion, race, caste, language or any of them.

1.2.2 Right of minorities to establish and administer educational institutions⁴. -

- 1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- 2) [(1A) In making any law providing for the compulsory acquisition of any property of any 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.
- 3) The State shall not, in granting aid to educational institutions, discriminate against any educational institution because at as under the management of a minority, whether based on religion or language

Beside this there are certain more article which safeguard the interest of minorities like:

1.2.3 Language to be used in representations for redress of grievances⁵

Every person shall be entitled to submit a representation for the redressal of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be

1.2.4 Facilities for instruction in mother tongue at primary stage⁶.

It shall be the endeavor of every State and of every local authority within the State to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such direction to any state as he considers necessary or proper for securing the provision of such facilities.

1.2.5 Special Officer for Linguistic Minorities⁷.

- 1) There shall be a special officer for linguistic minorities to be appointed by the President.
- 2) It shall be the duty of the special officer to investigate all matters relating to the safeguards provided for linguistic minorities under this constitution and report to the President upon those matters at such intervals as the

President may direct, and the President shall cause all such reports to be laid before each House of President and sent to the governments of States concerned.

In re Education Bill⁸ the Supreme Court, through S.R. das C.J. held that the minority means a “community, which is numerically less than 50 percent” of the total population. This statistical criterion prevails with the Kerala High Court. Thus, considering ‘minority’, a numerically smaller group, as against the majority in a definite area. In this sense the term covers “racial, religious or linguistic sections of the population within a State which differ in these respects from the majority of the population.

In the case of D.A.V College, Bhatinda vs State of Punjab and others⁹,

the Supreme Court held that “what constitute a linguistic or religious minority must be judge in relation to the State inasmuch as the impugned Act was a State Act and not in relation to whole of India”.

1.3 Classification of Minority Educational Institution

- a) Recognized educational institutes
- b) Unrecognized educational institutes

Recognized educational institution are those which provide secular education and generally recognized by the government, where as informal centers of education like Madras’s, Bible colleges, etc are unrecognized. Recognized schools and colleges are of two kinds Via: Aided and Unaided. Aid schools and colleges means financial assistance is granted to the said schools or colleges by the Central government, State government or any funding agency established by the government. Unaided schools and colleges are the one which do not receive any funds from the government and they manage the institutions by the funds generated by them.

Recognized – means an institution recognized by an appropriate authority where ‘appropriate authority’ can be defined as administrator or any other officer authorized by Central or State government.

Aided schools or colleges – means a recognized school or college which is receiving aid in the form of maintenance grant from the central government, administrator or local authority or any other authority designated by the central government, administrator or a local authority.

Unaided schools or colleges – means a recognized school or college, which does not receive any aid.

In terms of government regulations also, there is difference between aided and unaided institutions

- a) State can’t impose its reservation policy on minority and non-minority on unaided private colleges including professional colleges.
- b) Up to the level of undergraduate education, the minority unaided educational institution enjoys total freedom.

³ INDIAN CONSTITUTION. Art29.

⁴ INDIAN CONSTITUTION. Art30

⁵ INDIAN CONSTITUTION Art350.

⁶ INDIAN CONSTITUTION Art350.A

⁷ INDIAN CONSTITUTION Art350B.

⁸ AIR 1958 SC 956 (India).

⁹ AIR 1971 SC 1737(India).

c) However, different considerations would apply for graduate and postgraduate level of education as also for technical and professional educational institution i.e. such education cannot be impacted by any institution unless recognized or affiliated by any competent authority created by law such as university, board, central or state government or alike.

1.4 Various Statutes that Deals with Minority Rights

The first Statutory National Commission was set up on 17th May 1993, vide a Gazette notification issued on 23rd October 1993 by Ministry of Welfare, Government of India, five religious communities viz; the Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) were notified as minority communities. On 17th May 1992, Parliament of India passed the National Commission for Minority Act, 1992 ordering center government to form National Commission for Minorities. In 2004 National Commission for Minority Act was enacted to ensure that rights given to minorities were effectively and efficiently working and later further amendments were made in 2006 and 2010 which marked upon certain changing in working of minority educational institutes.

1.4.1 National Commission for Minority Act, 1992¹⁰

With a view to evaluating progress and development of minorities, monitoring the working of safeguards provided to them under the Constitution and laws, etc. The Central Government had constituted a non-statutory Minorities Commission in 1978. In 1992, the National Commission for Minorities Act was enacted to provide for constitution of a statutory Commission. The National Commission for Minorities was set up under the Act in 1993

1.4.2 National Commission for Minority Educational Institutions Act, 2004¹¹

The National Commission for Minority Educational Institutions Act, 2004 was enacted to constitute a Commission charged with the responsibilities of advising the Central Government or any State Government on any matter relating to education of minorities that may be referred to it, looking into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice, deciding on any dispute relating to affiliation to a scheduled University and reporting its findings to the Central Government for implementation. The Act was extensively amended in 2006 (Act 18 of 2006), inter alia, empowering the Commission to enquire suo moto or on a petition presented to it by any minority educational institution (or any persons on its behalf) into complaints regarding deprivation or violation of rights of minorities to establish and administer an educational institution of its choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation. The Act also provides that if any dispute arises between a minority educational institution and a University relating to its affiliation to such University, the

decision of the Commission thereon shall be final. The Commission is mandated to look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice. Protection of rights of minorities are enshrined in Article 30 of the Constitution which states that "all minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice". Thus, the Commission can look into any complaints relating to violation and deprivation of rights of minorities to establish and administer educational institutions of their choice. This is the first time that a specific Commission has been established for protecting and safeguarding the rights of minorities to establish and administer educational institutions of their choice. This Commission is a quasi-judicial body and has been endowed with the powers of a Civil Court. It is headed by a Chairman who has been a Judge of the Supreme Court and two members to be nominated by Central Government. The Commission has 3 roles namely adjudicatory function, advisory function and recommendatory powers. So far as affiliation of a minority educational institution to a university is concerned, the decision of the Commission would be final. The Commission has powers to advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it. The Commission can make recommendations to the Central Government and the State Governments regarding any matter which directly or indirectly deprives the minority community of their educational rights enshrined in Article 30.

1.4.3 National Commission for Minorities Educational institution (AMENDMENT) Act, 2006¹²

On the basis of the suggestions received from various quarters for making the Commission more proactive and its functioning more specific, recommendations were made by the Commission to the Government for carrying out amendments to the Act. The Government introduced the National Commission for Minority Educational Institutions (Amendment) Bill 2005 in Parliament. However, in the wake of 93rd constitutional amendment passed by the Parliament incorporating Article 15 (5) to the Constitution making specific provision for educational advancement of the Scheduled Castes, Scheduled Tribes and socially and educationally backward classes of the citizens, it became expedient to bring out the amendments to the NCMEI Act through an Ordinance. Accordingly, an Ordinance was notified by the Government on 23rd January, 2006 which was later on replaced by the National Commission for Minority Educational Institutions (Amendment) Act, 2006 passed by the Parliament and notified on 29th March, 2006

The National Commission for Minority Educational Institutions Act 2004 (2 of 2005) as amended by the NCMEI (Amendment Act 2006) lays down rights of Minority Educational Institutions as under:-

- 1) Any person who desires to establish a Minority Institution may apply to the competent authority for the grant of no objection certificate for the said purpose.

¹⁰National Commission for Minority Act, 1992, Act XIX of 1992.

¹¹ National Commission for Minority Educational Institutions Act, 2004.

¹² National Commission for Minority Educational Institutions (AMENDMENT) Act, 2006.

- 2) The Competent authority shall:-
 - a) On perusal of documents, affidavits or other evidence, if any; and
 - b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be: Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.
- 3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate:-
 - a) The Competent authority does not grant such certificate; or
 - b) Where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the competent authority has granted a no objection certificate to the applicant.

1.4.4 National Commission for Minorities Educational institution (AMENDMENT) Act, 2010¹³

Subsequently, various suggestions were received about the provision in Section 12B (4) of the NCMEI Act suggesting deletion of the provision of consultation with the State Government. Many suggestions were received about the need to make amendment in Section 2(g) regarding the definition of minority educational institutions where universities were excluded. Suggestions were also made relating to the need to remove the ambiguity in the provision of Section 10 concerning grant of 'No Objection Certificate' for establishment of a minority educational institution. The suggestions were examined in the Commission. It was felt that the requirement of consultation with the State Government for deciding an appeal by the Commission as per Section 12B of the Act is against the principles of natural justice. It was viewed that the consultation with the State Government took away the substantive right of appeal created in favor of an aggrieved party. Mere reading of the provision in Section 10(1) of the Act gave an impression that 'No Objection Certificate' was required for establishment of a minority educational institution in all cases. However, as per the provisions of various laws regulating the establishment of such institutions especially relating to technical and professional colleges, it was not mandatory to get the 'No Objection Certificate' from the competent authority under the State Government. Therefore, necessary amendment of Section 10(1) was felt necessary. Considering the steady increase in the workload of the Commission and to make the Commission more representatives, a provision for an additional Member over and above existing two Members was also felt necessary. Accordingly, on the recommendations of the Commission, the NCMEI Act, 2004 was amended to provide for the same. To make the Commission more representatives, the Government amended National Commission for Minority Educational Institutions Act by Act 2010 increasing the number of members in the Commission from two to three.

¹³ National Commission for Minorities Educational institution (AMENDMENT) Act, 2010

2. Conclusion

As Nelson Mandela quoted that "education is the most powerful weapon which you can use to change the world." Education is a national wealth which must be distributed equally and widely in creating an egalitarian society keeping in view social, economical and political justice.

Article 30 of the Constitution of India confers a special right to minorities to establish educational institutions of their own choice. The idea of giving some special rights to the minorities is not to have a kind of special privilege or a pampered section of population, but to give to the minorities a sense of security and feeling of confidence. Giving these special rights to the minorities was designed not to create inequality but the real objective was to bring about equality by ensuring the reservation of minority's institutions and by guaranteeing to the minorities autonomy in the matter of their administration of those institution. Since the question as to who is a religious minority or what conditions must be satisfied by a group for being entitled to be recognized as minority is neither clear nor uniform, it is high time for the judiciary to answer the said questions in unequivocal terms. Otherwise, an amendment to Article 30 is required defining the term minority in the light of the intention of the framers of the Constitution of India. Since the subject of education having been placed in the Concurrent List by the Constitution 42nd Amendment Act, 1976. It is suggested that where a minority is a minority in the historical or national context and its claim is based on religion it must be defined and ascertained in terms of the population of the whole country irrespective of its being a numerical majority in any particular State and the minority status. Of linguistic group has to be ascertained in terms of the population of any particular State irrespective of its being a numerical minority in terms of the population of the whole country. It is desirable that the State has to constitute an authority preferably the Minorities Commission, with proper guidelines to issue a minority certificate to all the groups which claim to be entitled to the right under Article 30(1) of the Constitution. While issuing such certificates the concerned authority is advised to look into certain factors such as the name of the institutions, the persons involved in the establishment, the source of funds, subjection of institution, legal provisions, the expression of intention, the strength of the students and staff belonging to that particular community in determining whether such an institution is intended to be for the welfare of the particular minority.

References

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