

A study of Government Aided Minority Educational Institutions: Provision, Protection & Perversion

Dr. B.S.Selvakumar*

Assistant Professor & HOD, Department of Political Science, Voorhees College, Vellore.

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Abstract : The Rights to Education is a Human Rights and is provided as a fundamental rights in Article - 21 A of the Indian Constitution. The right to Education Act of Parliament of India enacted on 4 august 2009, underlines the right to free and compulsory education to every child between the ages of 6 to 14 years. The State as such has the obligation to provide Education. As Government alone cannot bear the burden of Education the voluntary sector is profitably associated in the task of educating the masses. Article 30 provides of the Indian Constitution provides that the minority community, the right to establish and administer educational Institutions of its choice. In this context the Minority Institutions have been playing a significant role. Nevertheless, Over the years the Minority Educational Institutions, especially Aided minority Educational Institutions have undergone an obvious change in their objective and management. Thus, perversion is observed and the higher judiciary namely the High Courts and Supreme Courts have been resorted to provide the anti-dote through their judgments in relevant cases. These Judgments regulate and affirm the Minority Institutions obligations

Key Words: Human Rights, Constitution, Education, Minority Institution, Judiciary, Perversion.

Introduction

The National Commission for minority Education Institution Act 2004 means an Institution established and administered by the minorities under Clause (I) of Article 30 of the Constitution and so declared by an act of parliament or by the central government or declared as a minority Institution under the National Commission for Minority Education Act 2004. Though it is Central law, it shall prevail over the State.

Article 19 (g) of the constitution provides the right to practice any profession, or to carry on any occupation, trade or business under fundamental rights. This right as well applies

to minorities. However, for the minorities Article 19 (I) provide that the state shall not impose upon it any culture other than the community's own culture, and Article 30 provides that such community shall have the right to "Establish and Administer" educational Institutions of its choice. Therefore, Minority Educational Institutions are expected to protect the interest, welfare and development of the community by imparting education and it can be from the level of primary to higher Education. This paper makes an attempt to unravel the protective provisions of the Indian Constitution for the Minority Educational

Institutions and the anti-dote provided by the judiciary in cases for the perversions.

Methodology

The purpose of the study to ascertain the provisions for the Aided Minority Educational Institution in the Constitution of India and to relate the same to apprehensions elicited from the organization and management of such aided educational institutions in India. Data is collected from secondary sources. In these contexts, the thesis and anti-thesis are discussed and analyzed. The synthesis is brought forth in the conclusion

Provision and Protection

Article 30 (1) of the Constitution deals with rights of minority educational Institutions. It provides “All minorities whether based on religion or language shall have the right to establish and administer educational institution of their choice. This was held by the 11 judge Bench of the Supreme Court in *T.M.A. Pai Foundation Vs State of Karnataka, 2002, 8 SCC 481*, that a minority, whether linguistic or religious, is determined only by reference to demography of the **State** and not by taking into consideration the population of the country as a whole.

In *Azeez Basha Vs Union of India, AIR 1968, SC 662*, a Constitutional Bench of the

Supreme Court has held that the expression “establish and administer” used in Article 30 (I) was to be read **conjunctively**. Thus the two requirements have to be fulfilled under the Article 30 (I). The Institution has to be established by minority and is a pre-requisite. A Society or Trust consisting of members of a minority community or a single member of a minority community may establish an Institution. This was clarified by the Supreme Court in *State of Kerala Vs Mother Provincial, AIR 1970, S C 2079*. Article 30 (1) of the Constitution meant to benefit the minorities by protecting and promoting their interests. This right is not conferred on Individuals but on religious denominations or section of such denominations.

Minority Educational Institutions could be classified into two broad types based on funding namely Aided Minority and Un-aided Minority institutions. Aided Institutions are funded by governmental while the un-aided is self-funded. As the former gets aid from government is open to the State to impose restrictions in the matter of administration and management of the institution. Rules and Regulations which promote good administration and prevent maladministration can be formulated to promote efficiency of teachers, discipline of staff and fairness in administration. The Apex Court has ruled that

the Right to Administer does not include the Right to Mal Administration. A balance has to be kept between the twin objective to ensure standard of excellence of the Institution and to preserve the right of the minority to establish and administer an educational institution.

Perversion and Antidote

The establishment of an Institution by minorities is a condition precedes to claim the right to administer. The right to administer includes right to admit students, recruitment of staff, disciplinary action on staff, office management and Governing body. The right to administer is not absolute. The state government or the central government as the case may be can intervene when the institution violate mandatory rules and regulations. In other words, the aided institutions are subject to government control and intervention whenever they pervert in managing the institution, which results in maladministration.

A minority institution can neither be corrupt nor be parochial. There exist wide spread allegation that deserving minority students are denied admission and admissions were sold and given to whims and fancies. The right to admit students is clarified by the Supreme Court in the case of *St. Stephen's College Vs University of Delhi 1992, SCC 558*. The Apex Court held that the minority institutions are

entitled to admit candidates who belong to their community up to **50%** of the total intake and the remaining equal percentage of students should be filled by candidates who belong to other religious community. In the former a merit list of minority candidates to be made and in the later state governmental directive or the reservation system need to be followed, thus underlining the principle of social justice. The Supreme Court balances the Article 30 (I) with Article 29 (2) of the constitution. Article 29 (2) provides that no citizen shall be denied admission into any educational institutions maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any other. Furthermore, aided minority institutions have to follow the fee structure fixed by the government. Thus the National interests, minority interests and fairness are taken into due consideration.

Staff appointment is another vulnerable area for corruption and it negates the right to appointment of the deserving minority ones. Bogus certificate, false information and religious conversion for the sake of appointment are in galore. The right to appoint Teachers/ Head Masters or Assistant Professors / Principals of their choice were expounded in *St. Xavier's College Vs State of Gujarat, 1974 (I), S CC 717*. It was upon the

Principal and Teachers of a College that the tone and temper of an educational institution depend on, and so as the reputation, discipline and efficiency in teaching. The right to choose Principal, and Teachers appointing by the management must be after an overall assessment of their outlook, qualification and philosophy are perhaps the most important facets of the right to administer. The educational institution is subject to the eligibility conditions prescribed by the State or the regulating Authority and to a **rational procedure** of selection. The disciplinary action on erring staff member as well comes under the ambit of right to administration. Establishing statutory committees and principles like the 'rule of law' and 'Natural justice' need to be followed.

Minority Institutions have the right to constitute a Governing Body with its own Chairman and Members, and also have the right to administer the property and assets of the institution. All laws made by the State to regulate the administration of educational Institutions and grants-in-aid will apply to the minority institution as well. However, such law or regulations should not interfere with the administrative control by the management. Autonomy in management is meant to administer, to manage and conduct the affairs of the institution effectively. If the minority

institution is run by a trust or by a registered society, the majority of the trustees of the trust or members of the society must be from minority community only. The Trust deed /Articles of Association or any other document duly executed in this regard must reflect the objective of sub-serving the interest of the minority community. It is on the standard and expertise of the Governing Board an institution's administration depends on. Governing board is policy making body ensures the execution and realization of 'vision and mission' of the founders of the institution. Unfortunately, the educational qualification of the members of the body is not fixed in many higher educational institutions and this result in incorporation of members who are misfit to be in such an elite and intellectual body. Hence, the governing body's standard gets diluted and scope for power politics and nepotism infiltrates. The management can induct eminent or competent persons from other communities in the managing committees or governing bodies. That is to say, the management can induct a sprinkling of non-minority members in the governing body without losing its character and majority. Governing body is head of the body, the institution. Due care need to be taken in view of the fact that a good administration and educational excellence of a minority educational institution are directly

proportional to its quality and standard of the governing body.

Conclusion

The Provisions of Article 30 is often presumed absolute by minority institutions and acted there upon. This invites the intervention of governmental bodies and Judiciary to clarify and to desist from perversion. Minority institutions are expected to reciprocate the rights claimed to the members of the community in letter and spirit of the Constitution. Article 30 does not expressly provide for any restriction on the right to the minorities to establish and administer. Nevertheless, reasonable restrictions in the interest of the minorities and educational excellence can be imposed by the government.

The minority Status certificate granted can be cancelled under **Section 12 C** of the Minority Education Institution Act 2004 on violation of any condition enumerated therein namely (a) If, the Constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflect the purpose or character of a minority educational institution and (b) if, on verification of records, found to have failed to admit students belonging to the minority community in the institution as per the rules and prescribed percentage governing admissions during any academic year.

Minority Educational Institutions' contribution to the process of National Building is so significant that it got started right from the colonial period, undergoing various obscured changes and ramifications, of late. It is needless to say that the 'vision and mission' of

missionaries and philanthropists, who have started the minority institutions, in tune with constitutional aspirations and scriptures has been realized comparably to a lesser extent while the same was fractured by contemporary religious leaders to a larger extent. It is evident that the motto 'service' is replaced by 'profit' and the headship 'academicians' replaced by 'religious heads'. A minority of minorities spear heading a crusade to save the perverted institutions. The evidence is the piling of cases is the court of law and this warrants necessary amendments to the Tamilnadu Private Colleges (Regulation) Act. 1976. Thus, it is inevitable for the State government to intervene and fulfill its obligation to protect interest of minorities under Article 30 (1) and the interest of general public under Article 19 (6) of the Constitution. It is just as water, the elixir of life, quality education is an elixir of civilized life, need to be made available to all the minorities.

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