SAFEGUARDING THE LINGUISTIC MINORITIES IN INDIA: DEEP-ROOTED LEGAL AND EDUCATIONAL BARRIERS TO EQUALITY

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ABSTRACT

The cultural and educational rights of the minority are very important and essential to function as a tool for the development of the minority. Preservation of culture, language, and religion is important because Culture has a significant impact in the healthy development of children who belong to a small number of communities. Without education, community development is impossible, and social change depends on education. It has become clear that there is a large gap between minority and large populations worldwide. A good connection between equality and the community requires a few specific privileges. The Universal Human Rights Document also recognized the cultural & educational rights of minorities. Articles 29-30 of the Indian Constitution stipulate the cultural & educational rights of the minorities. These institutions were created to secure and promote the specific culture and conventions of minorities in India. Minority groups form an important part of the population.

Keywords: - Cultural and educational rights, Minority, Culture, Language, Religion, communities, Large gap, Rights, Conventions

Introduction

India, born in 1947, was created not only by words, but also by deeds. The unbridled imaginations of major political leaders vision of modern India expressed from their writings. India, born in 1947, was created not just in words, but in deeds. Just as their writings set forth a vision for modern India, so too was the intense imagination of those leading political actors. In a sense, India represents the world for its vast diversity. India is the arrival of many dialects and various religions, and it can be an excellent example of a pluralistic society. The Indian government has identified six distinctive religious minorities. Islam (11%), Christianity (2.32%), Jainism (0.41%), Sikhism (2%), Buddhism (0.77%), Zoroastrianism (0.006%). Most are Hindu (82%). Due to its anomalous numerical properties, Hinduism constitutes its greatest role, while the rest of the religious community is known as the "religious minority."

The most important goals of human rights protection for minorities are: To form a sense of belonging that they will never be overwhelmed by the majority. The integration of similar minorities into the national life of the State is characterized by characteristics and attractiveness of those who are partially older.

International perspective regarding Cultural Rights

According to UNESCO, culture in general is: Apprehend as an art. “Culture in relation to human behaviour in terms of moral values and attitudes that are considered useful for the society's or a certain social group's benefit. We mean living standards, housing...
and clothing, physical culture, language, thinking, work..."

**Cultural Rights under International Covenant on Economic, Social and Cultural Rights**

Article 15 of the covenant\(^1\) says:

1. “The present covenant’s signatories acknowledge that everyone has a right.
   a. To participate in cultural activities.
   b. To gain from scientific advancement and its applications.
   c. To have his moral and material interests protected as a result of any scientific, literary, or artistic output of which he is the creator”.

2. “State parties to the current covenant must take all necessary actions to fully realise this right, including those for the conservation, development, and dissemination of science and culture”.

3. “The States Parties to this Covenant agree to respect the freedom required for scientific research and creative activities. Aside from that, Clause 48 states that the states parties to the current covenant appreciate the importance of encouraging and developing international relations and cooperation in scientific and cultural domains”.

**Right to Culture under Universal Declaration of Human Rights**

Article 27 of the Universal Declaration of Human Rights says:

“Everyone has the right to freely engage in the community's cultural life, to enjoy the arts, and to benefit from scientific advances”.

“Everyone has the right to have his moral and material interests protected as a result of any scientific, literary, or creative work of which he is the creator”.

The expression “everyone has the right freely to participate in the cultural life of the community” implies that it is duty of governments not merely to respect the right of everyone to participate in the cultural life of the community but also to provide everyone with the effective means of participating in the cultural life\(^2\).

Article 27 of the Universal Declaration of Human Rights and Article 15 of the International Covenant on Civil and Political Rights both underline that everyone has the right to culture, regardless of religion, ethnicity, caste, creed, or sex. However, minority rights were underlined in Article 27 of the International Covenant on Civil and Political Rights.

**International perspective regarding Educational Rights**

According to Black’s Dictionary of Law, Education means: “Comprehends not merely the instruction received at school or college, but the whole course of training, moral, religious, vocational, intellectual and physical. Education can focus on the mental, moral, or physical powers and faculties, but in its broadest and finest definition, it refers to the training and development of the individual”.

The Planning Commission of India\(^3\) regarding education says: “Education is an important input for both the growth of the individual as well as the society. A well-planned input of education can contribute to

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\(^1\) International Covenant on Economic, Social and Cultural Rights

\(^2\) Dr. U. Chandra, Human Rights, 7th Ed. 2007, p-228.

\(^3\) “India – Vision 2020” published by the Planning Commission of India, p-250.
gross domestic product (GDP), increased cultural affluence, building a positive attitude towards technology, and improving the efficiency and effectiveness of governance. Education opens new horizons for individuals, provides new aspirations, and develops new value. Strengthen capabilities and develop commitments. Education creates a critical perspective on the social and political reality of the individual, and self-reflection reduces self-monitoring and self-criticism”.

**Educational Right under UDHR**

Article 26(1) of the Universal Declaration of Human Rights says that “Education is a right that everyone has. At the very least, education should be free at the primary and fundamental levels. Elementary education will be required of all students. Technical and professional education must be widely available, and higher education must be open to everybody on a merit-based basis”.

Beside these sub clauses 2 says that “Education must be geared toward the complete development of the human personality as well as the reinforcement of human rights and fundamental freedoms. It will foster understanding, tolerance, and friendliness among all nations, races, and religious groups, as well as support the United Nations' efforts to keep the peace. Furthermore clause 3 of this article says that parents have the right to choose the type of education their children will receive”.

**Right to Education under International Covenant on Economic Social and Cultural Rights**

4 Article 26(3) of the Universal Declaration of Human Rights

The “International Covenant on Economic Social and Cultural Rights” is also sound for education. Regarding the value of education, it says:

“The Present Covenant's State Parties recognise that everyone has the right to education. They agree that education should focus on the entire development of a person's individuality and feeling of dignity, as well as the promotion of human rights and fundamental freedoms. They also agree that education should enable all people to engage successfully in a free society, promote understanding, tolerance, and friendliness among all nations and racial, ethnic, and religious groups”:

With a view to achieving full relation of right to education, the State Parties to the “International Covenant on Economic, Social and Cultural Rights” recognize that:

5 Article 13(1) of the International Covenant on Economic, Social and Cultural Rights

6 Ibid. Article 13(2)
Article 5 of the “International Covenant on the Elimination of All Forms of Racial Discrimination” guarantees the right of education to everyone without distinction as to the race, colour and national or ethnic origin.

**Ethnic and educational rights of ethnic minorities and the perspective of the Constitution of India**

The attached Policy of Fundamental Rights makes special reference to the rights of minorities for the peculiar relationship of the present situation in India. But in fact, they are the duty of the majority to foster tolerance and equal respect for the life, thinking and worship of the sister community, no matter how different they may be from them, and not the conversion of the minority, but a safeguard for the minority.

The Founding Fathers sought to satisfy the hopes, aspirations and desires of minorities by protecting their cultural and educational rights. In the 5th session of the Constituent Assembly of India, the chairman (Emeritus Dr. Rajendra prasad) was guaranteed to a minority that

“We assure all ethnic minorities in India that they will be treated fairly and without discrimination in any form. Religions, their culture and their language are safe, will enjoy all the rights and privileges of citizens, and it is expected that they will in turn be loyal to the country in which they live and its constitution. With everything we offer, we guarantee that we will do our best to end poverty and its companions, hunger and disease, eliminate discrimination and exploitation, and ensure good living conditions”.

When the issue concerning minorities was being debated in the Constituent Assembly, Dr. Ambedkar declared that “To perpetuate, it is unacceptable for the majority to deny the presence of minority. It is necessary to find a solution that will serve both purposes. To begin, it must acknowledge the presence of minorities. It will also be such that majorities will be able to combine into one at some point.”

The development and administration of educational institutions and cultural centres are undeniably efficient methods of preserving minorities' culture and languages. As a result, the framers appear to have taken special care to give substance to the right to create and run educational institutions, including institutions for providing general education through distance learning.

**Minority Provisions in the Indian Constitution**

**Article 29 Protection of interest 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.

No citizens shall be denied admission into any educational institution maintained by the state or receiving aid out of state fund on ground only of religion, race, caste, language or any of them”

**Article 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 of their choice”.

[(1A) “In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a majority, 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 the clause”] 20

(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 majority, whether based on religion or language.”

Article 350 A: Facilities for instruction in mother tongue at primary stage.

“It shall be the endeavour 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”.

Article 350 B: Special Officer for Linguistic Minorities.

(1) “There shall be a special officer for linguistic minorities to be appointed by the President”

“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”

What is Minority?

Constitution uses this term but not defined it. In the Re Kerala Education Bill7 the Supreme Court approved via SR Das CJ to recommend the use of arithmetic tabulation techniques, holding that minority groups mean “communities, which are less than 50% of the total population in numbers”, in A. M. Patroniv v/s Kesavan8, a district court of the High Court of Kerala held that “minorities” in the world are not defined in the Constitution, and in the absence of special definitions, any religious or linguistic community is quantitative Less than 50% of the country’s population enjoys the basic rights guaranteed by Article 30 of the Constitution. In D. A. V College, Bhatinda v/s State of Punjab9 and other cases, the Supreme Court held that “What constitute a linguistic or religious minority must be judged in relation to the State inasmuch as the impugned Act was a State Act and not in relation to the whole of India”

The court decided in St. Stephen’s College vs. University of Delhi10 that the minority under Article 30 must necessarily include people who form a distinct or recognisable group of Indian citizens. The Supreme Court has ruled

7 AIR 1958 SC 956.
8 AIR 1965 Ker. 75 at p-76.
9 1971 (Supp) SCR 677.
10 AIR 1992 SC 1630.
that the Ram Krishna Mission, founded by Swami Vivekananda to spread Vedanta values as expounded by Ram Krishna, is not a minority religion distinct from Hinduism, but a religious sect or denomination of Hinduism, and thus is not entitled to claim the fundamental right of establishing and administering educational institution under Article 30(1) of the constitution.

Chief Justice Kirpal in *T. M. A Pai Foundation v/s State of Karnataka*\(^\text{11}\) held:

“A linguistic and religious minority are covered by the expression minority under Article 30 of the constitution. As a result, for the purposes of identifying minority, the unit will be the state rather than India as a whole. As a result, religious and linguistic minorities, who are protected by Article 30, must be considered by the state”.

The Ambit of Minority Rights

The Constitution of India grants legitimate rights to minorities. The ambit of minority rights is very wide. It is to protect the interests of minorities. According to the constitution, minorities enjoy a special status. Legal positions on minority rights are governed by state power. It should be noted that a minority in a state should be counted by religion or primary language and that S.C. and S.T are not minorities. The synergy effect of article 29 & 30 as follows:

In general, it can be said that the scope of minority right are:

1. To preserve the language, script or culture.
2. To establish educational institution.
3. To administer educational institution.
4. To administer according to their choice.

**To preserve the language, script or culture**

Article 29(1) “guarantees to any section of the citizen residing in any part of India having a distinct language, script or culture of its own, the right to conserve the same, i.e. language script or culture”. A minority community can preserve its language, script or culture by and through educational institution

**Right to Establish**

Clause 30(1) gives all minorities, whether based on religion or language the right:

(i) To establish, and
(ii) To administer educational institutions of their choice.

In case of *Azeez Basha v/s Union of India*\(^\text{12}\), According to the Supreme Court, the word "establish" means "to bring into existence," hence the minority's right under article 30(1) is to establish an educational institution and, if they do, to run it. In this case The Supreme Court debated whether the Muslim Minority was responsible for the construction of Aligarh Muslim University. Before the constitution took effect, it was decided that the Muslim Community may create a university. The University Grants Commission Act now makes it illegal for any educational institution to establish a university unless it has been legally established.

It was also argued in this case, that even though this University may not be said to be a minority institution but it will still be open to Muslim to have a right to administer. But


\(^{12}\) AIR 1968 SC 662.
the SC also answered in negative. Justice Wanchoo said, “The article plainly demonstrates that minorities will have the right to run educational institutions of their choice if they have founded them; otherwise, they will not. The clause cannot be interpreted to suggest that, even if the educational institution had been established by someone else, any religious minority will have the right to administer it, because it may have been doing so before the constitution came into effect for any reason. Hence the word “establish & administer” be read together as complementary”. In the recent case of *Naresh Agarwal v/s Bharat*13 According to the Allahabad High Court “AMU is not a minority institution. The court struck down the addition to the AMU legislation that provided for Muslim students' reservation”. The Court, followed the *Azeez Bashe v/s Union of India*14 case ruling. In the case of *S. K Patro v/s State of Bihar*15 The Supreme Court ruled that “simply because of the fact that the funds were obtained from outside India to assist the Indian minorities in establishing and developing a school, or its management is sometimes carried out by non-Indian-born people, it cannot be used to deny you the Article 30(1) Protection”. In the case of *State of Kerala v/s Mother Provincial*16 the court said the following points:

“*It makes no difference whether the institution was founded by a single charitable man with his own assets or the funds were contributed by the entire community. In both cases, the goal must be to establish an institution for the benefit of a minority group by a member of that group*.”

In the case of *T. M. A Pai Foundation v/s State of Karnataka*17, “Is there a fundamental right to establish educational institutions, and if so, under what provision?” was posed.

The answering of the court was: “*Three sections of the constitution came into play when it came to the founding of educational institutions. Article 19(1)(g) gives all citizens the freedom to practise any profession or engage in any occupation, trade, or business; nevertheless, this right is subject to constraints imposed by Article 19(1)(g) (6)). Every religious denomination has the right under Article 26 to establish and maintain a religious institution, which could include an educational institution. As a result, all citizens and religious denominations have the right to create and maintain educational institutions under Article 19(1) (g) and Article 26. There was no real disagreement that the dominant population, as well as the linguistic and religious minorities, would have the freedom to establish educational institutions under Article 19(1)(g) and Article 26. Furthermore, Article 30(1) expressly grants religious and linguistic minorities the right to create and run educational institutions of their choice*”.

**Right to administer education institution**

The term "right to administer" refers to the institution's internal affairs being managed, maintained, moulded, organised, and planned. In a broad sense, the right to govern a minority education institution denotes the authority to appoint teaching and non-

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13 Civil Misc. Writ petition No. 15504 of 2005
14 Supra note at 12
15 AIR 1970 SC 259.
16 AIR 1970 SC 2079.
17 AIR 2003 SC 355 at p-379.
teaching staff, to admit students, and to
determine the medium of instruction, etc.

In *Kerala Education Bill*\(^{18}\), the Supreme
Court has observed: “The privilege granted
to religious and linguistic minorities to run
educational institutions of their choosing is
not absolute”.

In *St. Xavier College v/s State of Gujarat*\(^{19}\)
According to the court, "the right to
administer an institution" entails "the right to
efficiently manage and conduct the
institute's affairs." The management must
be free of control so that the community's
founders can shape the institution as they see
fit in accordance with the needs of the
community. The court went on to say that the
right of administration includes day-to-day
management. Personal management
decisions are made as part of the
administrative process. The University will
always have the right to inspect for any signs
of mismanagement. If there is any
mismanagement, the University will take
efforts to correct it.”.

There are no restrictions on the subjects that
can be taught in such an institution, and they
are not prohibited from providing general
education. It is not necessary for article
30(1) protection that the majority of students
in the institution belong to the religion of the
minority in question. As a result, the
character and purpose of the institution are
fully in the hands of the discretion of the
community\(^{20}\). This view was upheld by the
Supreme Court in *Bombay v/s Bombay Education Society*\(^{21}\). Das C. J
Observed: “There are no restrictions on the
subjects taught in the aforementioned
educational institutions. As such a minority
group, they usually hope that their children
will receive proper and effective education,
be qualified to receive higher education, and
go to the world with sufficient intellectual
achievements to enable them to enter public
services and educational institutions that
provide general education, educate. The
same is true for secular education. In other
words, this article allows you to choose to
establish such an educational institution, in
addition to serving two purposes, namely,
the purpose of protecting your religion,
language or culture, and the purpose of
providing much general education for your
children”.

**Right to administer according to their choice**

Article 30(1) provides minorities the right
to establish and administer educational
institution of their choice.

Their decision must inevitably include a
decision on the language of instruction at
such an institution.

In *State of Bombay v/s Bombay Education
Society*\(^{22}\) the Supreme Court held.

“Among them ... Minorities such as the
Anglo-Indian community, inter alia, based
on religion and language, have the basic
right to protect their language, script and
culture under article 29, paragraph 1, and

\(^{18}\) Supra note at 7.
\(^{19}\) St. Xavier College v/s State of Gujarat, ARI 1974 SC 1389.
\(^{20}\) Akhlaq Ahmad, “Safeguard to Minority Educational
institution: Judicial Attitude and Administrative

\(^{21}\) (1954) I SCR 568
\(^{22}\) Ibid.
have the right to establish and administer education. The institutions they choose under Article 30 (1) must, of course, be implicit in the basic rights, that is, the right to provide education in their own institutions to the children of their own communities in their own language ... This is the basic right of the police. The power of the State to determine the language of instruction must be granted to basic rights within the necessary scope, and must not violate basic rights”.

In Srikrishna v/s Gujarat23, the court observed:
“The essence of Article 29(1) and 30(1)’s protection for minorities is to prevent the majority from imposing its language and to defend the minority's freedom to choose its own medium of instruction, which must be and is part of the right to establish and run its own or educational instruction. Any legislative interference with or impediment to such a right would be considered unconstitutional”.

**Admission procedure**

In St. Stephen’s College v/s University of Delhi24, the court observed:

“The court decided that the annual admissions of minority educational institutions should be divided into two categories, namely:
(a) Category I, (accounting for 50% of seats): for candidates belonging to minority communities established and managed by the institution .

(b) The second category, (the remaining 50%) all candidates are filled based only on their scores / Merit”

In T. M. A. Pai Foundation25, in relation to the admission the argument has been raised as to whether a minority's right to create and operate an educational institution of their choice includes the technique and manner of student admission and selection. According to the court:

“A minority institution may have its own admissions and selection procedures and methods, but they must be fair and transparent and students in professional and higher education institutes should be selected on the basis of merit. The approach used or the choices taken should not be construed as poor administration. Even an unaided minority institution should not overlook the merit of the students admitted to the aforementioned colleges, since this will prevent the institution from achieving success”.

The court also overturned the St. Stephens ruling, which said that "minority educational institutions are free to reserve seats for up to 50% of minority students." The state now has the authority to set quotas for minority students based on the type of institution, population, and educational needs of minorities, according to the court”.

In Islamic Academy26, the court held: “The phrase "common admission test" implies that each institute cannot conduct its own test. Thus, we hold that the management could select students for their quota either on the basis of a common entrance test to

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23 AIR 1962 Guj. 88.
24 AIR 1992 SC 1630.
26 Islamic Academy of Education v/s State of Karnataka, AIR 2003 SC 3724 at p-377 to 3745.
be conducted by an association of all colleges of a particular type in that state, e.g., medical, engineering, or technical college.

The court further observed\textsuperscript{27}:

“The individual state governments select a permanent committee to oversee the fairness and transparency of the test administered by the association of colleges. A different committee will be constituted for each state. The committee would be led by a retired High Court judge”.

In the case of \textit{P. A. Inamdar}\textsuperscript{28} the observation of the court is that:

Six months before the start of the school year, the government will take into account the local needs of the country and set the proportion of students admitted to minority professional colleges (religion/language) (except engineering) as religion. As a minority. In practice, setting a percentage for each institution individually will be a huge and tedious task, while setting a fair and reasonable fixed percentage for the entire minority institution will be a pragmatic approach.

A practical solution to the problem would be to set a very specific percentage for the minority institution, say 50%, so that even if the minority institution's candidates are only 25%, they would still be able to choose non-minority students to fill the remaining 50% of the course from CET held by the government.

**Conclusion**

The history of fighting is fertile ground for active community violence, which makes it vulnerable to the influence of ethnic minorities in India due to different reasons and opportunities. Therefore, it is necessary to safeguard their identities and protect the rights of minorities in social, economic and political terms. The Indian Constitution provides many ways to protect the rights of ethnic minorities. In addition, it also provides special rights and freedoms to minority communities to maintain their democratic characteristics. But in reality, ethnic minorities will have various problems. For example, India has declared itself a secular state. Therefore, the spirit of our constitution is secular. All Indian political parties claim to be secular, but none actually follow. In India, political parties play an important role in voting for banks to politicize religious issues. Although there are many of these problems, the solution must be approached with understanding. It is a pleasant surprise that on the shoulder of the minorities, the non-minorities are benefited. It would be better to carry forward the unutilized seats for the minorities on the notion of the justice and equality.

\textsuperscript{27} P. A. Inamdar \textit{v/s} State of Maharashtra (2005) CSCC 537.

\textsuperscript{28} Ibid.