



Educational rights of minorities: A constitutional conundrum

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Abstract

Taking a clue from The Objective Resolution, moved by Jawahar Lal Nehru at the first sitting of the Constituent Assembly which contained a pledge that adequate safeguards shall be provided for minorities, Article 30 (1) of the Constitution has enshrined a guarantee to all minorities, whether based on religion or on language, the right to establish and administer educational institution of their choice. The state was prohibited from discriminating against any educational institution on the ground that it was under the management of a religious or linguistic minority (Article 30 (2)).

Several questions have been raised before the Courts in India, especially the High Courts and the Supreme Court, whenever the state failed to provide adequate protection to minorities including the Article 30 of the Constitution. As a matter of chance, the pronouncement of the Courts have not been consistent in this regard. Sometimes the protection under Art. 30 (1) was declared as "Special Right" and other times the principle of "Equal Rights" was upheld. Similarly, the distinction between "State-aided" minority educational institutions and "unaided" ones also cost differing judgments. Even in case of Right to Education (Article 21-A), varying views were expressed by the courts regarding minority safeguards.

At present, there persists a state of confusion regarding interpretation of Article 30 which needs to be clarified by a larger bench of the Supreme Court. This paper deals with such and other related issues and tries to find a few answers within the ambit of the Constitution.

Keywords: minority protection, educational rights, interpretation of article 30

Introduction

India is a land of religious and cultural diversity where people profess different religions and follow varied cultural traditions. There are so many languages and dialects which add to India's rich cultural legacy. Borrowing the words of Justice H.R. Khanna, "Despite the diversity of religion and language, there runs through the fabric of the nation the golden thread of a basic innate unity. It is a mosaic of different religions, languages and cultures. Each of them has made a mark on the Indian polity and India today represents a synthesis of them all." [1] The Founding Fathers of Indian Constitution endeavoured to integrate the different sections of society. They tried their best to inculcate the spirit of fusion among them. As a consequence, they introduced a system of Joint Electorate thereby doing away with separate electorates. Minorities were guaranteed special safeguards. In the words of Justice H.R. Khanna, "These provisions were a kind of a Charter of Rights for the minorities so that none might have a feeling that any section of the population consisted of first class citizens and the others of second class citizens." [2]

Jawahar Lal Nehru moved the Objective Resolution of the first sitting of the constituent Assembly on 13 December 1946. This contained a pledge that "in the constitution adequate safeguards shall be provided for minorities, backward and tribal areas and other backward classes" [3]. As a consequence, Articles 25 to 30 were introduced in the Indian constitution with the object to

preserve the rights of religious and linguistic minorities providing them a solid and secure bedrock. Further, Article 30 (1) of our Constitution guarantees the right to establish and administer educational institutions of their choice to all minorities based on religion or on language. Article 30 (2) prohibited the State from discriminating against any educational institution on the ground of its being under the management of a religious or linguistic minority. By the 44th Constitutional Amendment of 1978, 'Property was deleted from the Chapter on Fundamental Rights'. However, an exception was made in favour of minority educational institutions in this Amendments. Further, Article 30 (1-A), instituted by the Constitution (Forty-fourth Amendment Act, 1978), clearly states that in making any law providing for the compulsory acquisition of any property of an educational institution administered by a minority, the amount fixed or determined for the acquisition of such property would be such as would not restrict or abrogate the right guaranteed under that clause (Article 30 (1)).

However, in spite of the presence of above mentioned constitutional safeguards enshrined in our Constitution, the minorities need protection of courts in case of failure of the system to provide them adequate safeguards. Minorities have needed the protection of courts in all countries from time to time. In famous American case United States Vs. Caroline Products [4], which included in its Judgment "Footnote four", the Chief Justice Harlan Fiske Stone's footnote suggested " that there might be situations in which this presumption of constitutionality should be less stringently applied, as, for

¹ Ahmedabad Sh. Xavier's College Society Vs. State of Gujarat (1974) ISCC717; cited in H.R. Khanna, Making of India's Constitution, Eastern Book Company, Lucknow, 2013 edition, p. 69-70.

² H.R. Khanna, Making of India's Constitution, p. 70-71.

³ Constituent Assembly Debates, official series, Vol.- I Reprinted by Lok Sabha Secretariat, Sixth Reprint, 2014, p. 57-70.

⁴ 304 US 144 (1938), cited in Fali S. Nariman, The State of the Nation, Hay House India, New Delhi, 2013, p. 49-50

instance, where laws affected 'discrete and insular minorities'- i.e, powerless group hated or feared by the majority is society. This was because prejudice against religious, national or racial minorities would distort the functioning the political process."^[5] Fali S. Nariman further states that "The footnote provided a theoretical basis for future judicial activism in defence of powerless minorities."^[6] In Indian context, Article 30 has been most contested minority right in courts. Here, it would be worthwhile to explore the approach of higher Judiciary in post-independence era till now in the light of Indian constitution.

Constitutional Experience vis-a-vis Article 30

In *Bombay Vs. Bombay Education Society*^[7], the Supreme Court Considered an Order of State of Bombay, issued in Jan. 1954 in light of Arts. 29, 30 (1) and 337. The Order stated that no primary or secondary school should admit to a school where medium of instruction was English language, any pupil belonging to Anglo-Indians and citizens of non-Asiatic descent whose language was English. The Apex Court held that the right to establish and administer educational institution by minorities may be subjected to State's regulatory power. But such power did not encompass the right to prescribe a particular language as a medium of instruction. Therefore the circular was held void as violating Article 30 (1) and Art. 337 both.

The President's Reference under Art. 143 (1) in *In re the Kerala Education Bill, 1957*^[8] was the first landmark case regarding exclusive right for minority educational institutions. In this case, a few significant issues were raised before the Apex Court. The Reference was made due to raising of serious questions regarding the various provisions of the said Bill. The Bill aimed at regulating the organisation of primary schools established by both the minorities and non-minorities groups. The Bill provided that no tuition fee from students in primary classes could be charged by either government schools or private schools. The State's defence was based on Article 45 of the Directive Principles of State Policy which provides for free and compulsory education for all children until the age of 14 years. The Court, first of all rejected the contention that Article 30 (1) applied only to institutions established after the Constitution was adopted Secondly, the Court rejected the plea that the right of admission under Article 29 (2) was limited to that any particular community for whom the schools were established. The Court observed: "..... The real import of Article 29 (2) and Article 30 (1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non- member into it the minority institution does not shed its character and cease to be a minority institution."^[9] Making grants-in-aid was also provided in the impugned Bill. The State's contention that conditions could be imposed for the grants-in-aid was rejected by the Court. Similarly, the Schools' contention that no conditions of any kind could be imposed was also discarded by the Court. The Court opined that making grants-in-aid amounted to a government function which must be discharged in a reasonable manner. "The right under Art 30 was a right to

establish and to *administrator* educational institutions of their choice and *the right to administer effectively did not include a right to mal-administer*. The Govt. therefore could impose reasonable regulations to secure proper administration as a condition for giving aid or recognition."^[10] SR Das J., speaking for the majority, declared clauses 14 and 15 of the Bill totally destructive of the rights guaranteed under Article 30(1), hence violative of Article 30 (1). In his dissenting opinion, Venkatrama Aiyar J. by having recourse to reverse discrimination approach held that 'there is no justification for putting on Article 30 (1) a construction which would put the minorities in a more favoured position than the majority communities.'^[11]

Mr. K. Vivek Reddy, in his essay *Minority Educational Institutions*^[12], has stated that the view taken by both majority and minority appears erroneous. He further says that the provision mandating that a private entity, either it be a minority or majority institution is to provide free education was violative of Art 19 (1) (g), and not of the right of the minorities. Art 19 (1) (g) is available to all citizens. According to him, the constitution doesnot confer power on the State to interfere with the autonomy of educational institutions and mandate how they should administer the colleges, irrespective of their being minority or majority institutions. This view of the author is not correct. In the name of the autonomy of the institution and conferment of almost absolute right to administer the educational institutions, one should not forget that there is no guarantee that the persons who are in the saddle of administrative wing will run the same in the spirit of angels! that is why the Apex Court in the aforementioned Judgment held that the right to administer effectively did not include a right to mal-administer. Governments issue directions for better running of such institutions. Though sometimes, some of such provisions do not stand the test of Fairness and Reasonableness, yet such directions are necessary because nobody or any group of persons may be allowed to run any institution like their personal fiefdom! We can never overlook the fact that ultimately the students welfare is supreme. The Courts have always stepped forward to strike down such directions which are violative of constitutional mandate.

The issues raised before the Supreme Court in the Kerala Education Bill case were once more considered by the Apex Court in *Sidhrajibhai Vs. Gujarat*^[13]. In this case, the petitioners were Christians. They belonged to the United Church of Northern India who had formed a Society to run several educational institutions including a training college for teachers. The Government issued an order to the effect that 80 per cent of the seats in the Teachers Training College should be reserved for Govt. nominees, failing which recognition of the Training Colleges would be withdrawn. With reference to the opinion of the Supreme Court in the Kerala Education Bill Case upholding certain restrictions contained in the Bill, the Supreme Court said that the Kerala Opinion had held that notwithstanding the absolute terms of Article 30 (1), it was open to the State by legislation or by executive direction to impose reasonable regulations^[14]. The Court stated the

⁵ Fali S. Nariman, *The State of the Nation*, p. 50

⁶ *Ibid*.

⁷ (1955)1 SCR 568, cited in H.M. Seervai, *Constitutional Law of India*, vol. 2, Universal Law Publishing Co., New Delhi, Reprinted 2012, p. 1309-1310.

⁸ (1959) S.C.R. 995

⁹ *Ibid*, p. 1052

¹⁰ H.M. Seervai, *Constitutional Law of India*, Vol. 2, p. 1313

¹¹ (1959) S.C.R. 995

¹² *The Oxford Handbook of the Indian Constitution*, Oxford University Press, New Delhi, Reprinted 2016.

¹³ (1963) 3 S.C.R. 837

¹⁴ H.M. Seervai, *Constitutional Law of India*, Vol. 2, p. 1316.

position under Art 30 thus "The right established by Art 30 (1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Art 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority education institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution, the right guaranteed by Art 30 (1) will be but a 'teasing illusion', a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution."^[15] The Court further laid-down the test of reasonableness and held that: "Such regulation must satisfy a dual test-the test of reasonableness and the test that it is regulative of the educational character of the institution and is conducive to making the institute an effective vehicle of education for the minority community or other persons who resort to it."^[16]

The scope of the term 'minorities' was extended by judicial interpretation. Arya Samaj, a reformed Hindu sect were held to be entitled under Article 30 (1) to establish and administer educational institutions of their choice in the State of Punjab.

In *D.A.V. College, Jullundur Vs. Punjab*^[17], important questions concerning Arts 29 and 30 came up for consideration before the Apex Court. In the said case, the Dayanand Anglovedic College, Jullundur was originally affiliated to the Punjab University. Later on, the College was affiliated compulsorily to the Guru Nanak University under the Guru Nanak University, Amritsar, Act 1961. Section 4 (2) and (3) of the Act, and clauses 2 (1) (a) and 17 and 18 of the University Statutes were challenged by the College on the ground of contravention of Article 29 and 30 of the Constitution. The main contention of the college was that the purpose of the University and the Act amounted to propagation of Sikh religion, Punjabi language and Gurumukhi script. Since College was a minority institution on account of their adherence to Arya Samaj Sect and denomination, the compulsory affiliation of the college to the University was clear violation of Articles 29 (1) and 30 (1).

The Court after due deliberation found section 4 (3) and 4(2) as not violating the Article 29 (1). But it was held that clauses 2 (1) (a) and 17 of Chapter V of the Statutes were tantamount to interference with the rights of management of the College. Those provisions could not be made a condition precedent for affiliation. Therefore, they were declared void by the Court being violative of Art. 30 (1). Here, it is noteworthy that clause 18 was not found to be violative of Art 30 (1) as it prescribed by regulation the conditions which governed the service and conduct of teachers. It was held to be in the larger interests of

educational institutions which was meant to ensure efficiency and professional excellence. Further, in *Sree Jain Swetamber Terapanthi Vidyalaya Vs. State*^[18], the petitioner Jain Swetamber Terapanthi Vidyalaya stated before the Court that the Vidyalaya was established by the funds contributed by the minority community belonging to the said sect. The vidyalaya challenged the order of the West Bengal Board of Secondary Education dated 19 March, 1977 which ordained the election of members of the Managing Committee from the Guardians Constituency not valid and further directed to appoint an ad-hoc committee or an Administrator. It also rejected the prayer of the College for Special Constitution regarding the reconstitution of the School's Managing Committee. The Court held that the petitioner was entitled to the benefit of Art. 30 (1) and relying on *Lily Kurian Vs. Sr. Lewina*^[19] held that the impugned order rejecting the prayer for special constitution for reconstruction of the Managing Committee 'wholly illegal and bad'. The Court further held that R.8 of the Rules framed for Management of Recognised Non-government Institutions (Aided or Unaided), 1969 purports to interfere with the fundamental freedom guaranteed to the religious minority to administer their educational institutions according to their choice.

The Apex Court had to consider this issue once again in *St. Xavier's College Vs. Gujarat*^[20]. In this case the St. Xavier's College society and the St. Xavier's College Challenged the validity of Sec. 33 A (1) (a), Ss. 40 and 41 and Ss. 51A and 52A of the Gujarat University (Amendment) Act, 1972, mainly on the ground that these sections were violative of Art. 30. The case was referred to a bench of 9 Judges by the existing Constitution Bench when the counsel for Teachers Association (interveners) invited the Court's attention to the opinion expressed by a former Chief Justice of India, Dr. P.B. Gajendragadkar to the effect that the Supreme Court decisions on Arts. 29 and 30 required re-consideration. Here, It is to be noted that section 33A (1) (a) provided for the constitution of the Governing Body and Selection Committee, Sections 40 and 41 converted affiliated Colleges into Constituent College and Ss. 51A and 52A provided for the dismissal, removal and termination of the services and members of the staff of Colleges, and the reference of disputes to arbitration. The larger Bench was to determine the following questions:^[21]

- a. Whether the rights conferred on religious and linguistic minorities by Art. 30 (1) were confined to the purposes set-out in Art. 29 (1), namely, the preservation of the language, script or culture of the said minorities, or whether those rights extended also to establishing educational institutions imparting general 'secular' education?
- b. Whether the grant, recognition or affiliation of an educational institution to which Art. 30 (1) applied, could be made dependent on the religious and linguistic minorities accepting conditions which would involve the surrender by such minorities of the rights conferred on them by Art. 30 (1).

¹⁵ (1963) 3 S.C.R. 837, pp. 856-7, cited in H.M. Seervai, Constitutional Law of India, Vol. 2, p. 1317.

¹⁶ *Ebid.*

¹⁷ (1971) *supp.* S.C.R. 688, cited in H.M. Seervai, Constitutional Law of India, Vol.2, p. 1328.

¹⁸ (82) A.Cal. 101, cited in H.M. Seervai, Constitutional Law of India, Vol.2, p. 1331-32

¹⁹ (1979) I S.C.R. 820, cited in H.M. Seervai, Constitutional Law of India, Vol. 2, p. 1331.

²⁰ (1974) 1 S.C.C. 717.

²¹ H.M. Seervai, Constitutional Law of India, Vol. 2, p. 1333-34

- c. Whether the right to establish and administer education institutions carried with it a right to grant-in-aid, and/or recognition and/or affiliation.

As regards the first issue (a), the Court unanimously held that Art. 30 (1) was not limited by Art. 29 (1) and the right of religious and linguistic minorities was not limited to establish and administer educational institution based solely or significantly to preserve the language, script and culture of such minorities, but the right extended to establishing educational institutions imparting general 'secular' education. In regard to question of affiliation or recognition, the Court opined that affiliation or recognition cannot be offered on such terms as would amount to surrendering of the rights conferred by Art. 30 (1). Thereby the Court held that Ss. 40 and 41 which provided for conversion of affiliated Colleges into Constituent Colleges violated Art 30 (1) and the section could not be compulsorily applied to colleges established and administered by religious and linguistic minorities. Similarly, section 33-A (1) (a) which provided that every college is to run under the management of a governing body which must have representatives of the University, Teachers and the non-teaching staff and students of the College, was held to be violative of Art. 30 (1) and the section could not be applied to minority institution. Lastly, Section 51-A (1) (a) and (2) (a) dealing with the conduct of disciplinary proceedings against the Teaching, other academic and non-teaching staff was again held to be violative of Art. 30 (1) as the provisions were considered to be reasonable. However, Sec. 51-A (1) b and 2 (b) were held to be violative of Art. 30(1). Section 52-A stipulating the referral of disputed service matters of the teaching and other staff of the college to a Tribunal of Arbitration was also held to be violative of Art. 30 (1) and could not be applied to minority institutions. In this case, Khanna J. referred to an Advisory Opinion of the Permanent Court of International Justice on Minority Schools in Albania.²² In this case, Albania was admitted to the League of Nations. After that, Albania signed a declaration about the minorities. As per Art. 4 of this declaration, all nationals were subjected to equality before the law and the same civil and political rights without distinction of race, language or religion. An amendment to Arts. 206 and 207 of the Albanian Constitution provided that private schools of all categories in operation will be closed and the instruction and education of Albanian subjects are reserved to the State and will be given in State schools. On receiving the complaint against these amendments, the league of Nations referred the matter to the Permanent Court of International Justice in the form of Advisory opinion. The Court held that the plea of the Albanian Court lacked justification. The Court said: ".....It is easy to imagine cases in which equality of treatment of the majority and of the minority whose situation and requirements are different, would result in inequality.....The equality between members of the majority and of the minority must be effective, genuine equality.....".

Whereas in *St. Xavier's College Case*, Ray C.J. categorically stated that rights contained in Art. 30 (1) are only limited to linguistic and religious minorities and these rights are 'exclusive' in nature which can be justified on the ground that the majority who can always have their rights by having proper

legislation do not pass a legislation prohibiting the minorities to establish and administer educational institutions of their choice, Khanna J. differing slightly by holding Art 30 (1) as a 'special right' to the minorities to give them a sense of security and a feeling of confidence.'^[23]

The exclusive nature of the right under Article 30 (1) was once again in contention before the Supreme Court in *TMA Pai Foundation Vs. State of Karnataka*.²⁴ According to K. Vivek Reddi^[25], *TMA Pai* was a momentous decision, completely changing the legal landscape for educational institutions. For the first time, the Supreme Court gave a Constitutional basis for a person to run an educational institution. Prior to this ruling, the Court had held that non-minorities did not have a right to establish and administer educational institutions. However, *TMA Pai* held that even minorities have the right to establish and administer educational institutions. The Court traced this right to the freedom to carry on an occupation of one's choice under Article 19 (1) (g) and the right of a religious denomination to maintain an institution for charitable purposes under Article 26, by asserting that education was a charitable activity.

Thus, a constitutional basis was furnished by the court to establish and administer educational satisfaction for every citizen. Furthermore, the Court put both minority and non-minority institution on the same bracket. Court's view was articulated by B.N. Kirpal, C.J. who held that 'principles of equality must necessarily apply to the enjoyment of.....rights [under Article 30(1)]'.^[26] He further observed that no law can discriminate against the minority and at the same time, there also cannot be any reverse discrimination. This was the first time the Court introduced the concept of reverse discrimination while discussing the rights of minority educational institutions^[27]. Kirpal C.J., relying on Khanna J's opinion in the *St. Xavier's case*, held that: "The essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type of category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including roles and regulations, must apply equally to the majority institution as well as to the minority institutions."

Variava and Bhan JJ also concurred with the B.N. Kirpal, C.J., by rejecting the exclusive right theory. According to them Article 30 was framed only for the purpose of ensuring that the politically powerful majority did not prevent the minority from having their educational institutions. It was not framed to create a special or privileged class of citizens. They further held that no interpretation of Article 30 should create further divide between citizen and citizen. However, in dissenting opinion, Quadri J. observed that the right under Article 30 (1) was an 'additional right' to establish and administer educational institutions. Ruma Pal J. also observed that Article 30 (1) creates 'special class in the field of educational institutions' and minority as a class is entitled to special protection in the matters of setting up educational institutions of their choice. She further stated that there is no violation of equality clause

²³ (1974) 1 SCC 717

²⁴ (2002) 8 SCC 481.

²⁵ *Minority Educational Institutions*, The Oxford Handbook of the Indian Constitution, p.925

²⁶ (2002) 8 SCC 481.

²⁷ K. Vivek Reddy, "Minority Educational Institutions ; The Oxford Handbook of The Indian Constitutions", p. 925.

²² Publication of the Court, Series A/B No. 64, cited in H.M. Seervai, *Constitutional Law of India*, Vol. 2, p. 1336.

by the favoured treatment to minority educational institution. Constitution permits special provisions for various groups. In *Islamic Academy of Education Vs. State of Karnataka* ^[28]. The special claim of minority educational institution was again came up before consideration before a bench of five Judges in the Supreme Court. Khare C.J. speaking for the majority, held, that the majority ruling in *TMA Pai* only meant that the law cannot favour majority institutions over minority institutions. He further stated that the meaning of *T.M.A. Pai* was not that "non-minority educational institutions would have the same right as those conferred on minority educational institutions by Article 30....." ^[29]. He further stated that the special right under Article 30 does confer 'certain advantages' on minority educational Institutions. In his dissenting opinion, Sinha J. held that it would be 'constitutionally immoral' to perpetuate inequality among the majority of people of the country in the guise of protecting the constitutional rights of minorities. He opined that Article 30 was only an additional protection to bring the minorities onto the same platform vis-a-vis non-minorities for establishing and administering educational institutions.

The issues raised in *Islamic Academy Case* were referred to a larger bench of seven Judges in *PA Inamdar Vs. State of Maharashtra* ^[30] in the Apex Court. Lahoti CJ, echoing unanimous opinion held that Article 30 (1) was only intended to instill confidence in minorities against any executive or legislative encroachment on their rights to establish and administrator educational institutions of their choice. He further state that though Article 30 (1) was styled as a right, yet more in the native of protection of minorities. The Court in this case reasserted the equal rights view. In this case, the Apex Court also held that State- mandate quotas cannot be imposed in unaided in unaided minority and non-minority educational institutions both. Parliament enacted the Constitution (Ninety-third) Amendment Act 2005 to undo the effect of the above ruling of the Supreme Court in *PA Inamdar's* case. The said Amendment introduced Article 15 (5) in the Constitution which was purported to enable the State to make provision for reservation for Backward Classes, Scheduled Castes and Scheduled Tribes in government, as well as private unaided educational institutions. Here, the minority educational institutions were exempted from the ambit of the said Amendment. Once again the special nature of minority educational institution was emphasized although its reach was confined to reservations in admissions.

The Constitutional validity of the 93rd Amendment Act, 2005 came into consideration before the Supreme Court in *Ashoka Kumar Thakur Vs. Union of India* ^[31]. A Bench comprising five Judges held four opinions. Three Judges was silent on the issue of constitutional validity of the exclusion of minority educational institutions from Article 15 (5) ^[32]. Balakrishnan, C.J. upheld the exclusion of minority on the ground of special treatment given to minorities institutions in Article 30 of the Constitution. It is obvious that the majority opinion in *TMA*

Pai or *Inamdar* was not considered prior to deciding on this issue.

Article 15 (5) and the Right of Children to Free and Compulsory Education Act, 2009

In the said Act, 25 percent of the strength of the primary school to children belonging to disadvantaged groups were reserved for free and compulsory elementary education in all unaided schools including unaided minority schools. The validity of this provision was challenged before a three Judge bench of the Supreme Court in *Society for Unaided Private Schools of Rajasthan Vs. Union of India* ^[33]. Kapadia pronouncing the majority decision upheld the quota for non-minority schools. For unaided minority schools this provision was held to be unconstitutional because of Article 30 (1). The exemption for minority educational institutions was again raised before a five-Judges Bench of the Supreme Court in *Pramati Educational and Cultural Trust Union of India* ^[34]. In this case, the Supreme Court for the first time dealt with the constitutional validity of Art. 15(5). Patnaik J. speaking for the Court, upheld the Constitutional Amendment. The Court held that minority educational institutions are a 'separate class' and their rights are protected under Article 30. It was further opined that the minority character of an educational institution may be affected by admitting socially and educationally backward class citizens.

The Court's ruling in the *Pramati Case* overlooked the progress of law on the exclusive rights of minority educational institutions. By giving such exemption, the social justice obligations of minority educational institutions were put in jeopardy which they have towards students of weaker and disadvantaged sections of the minority community itself. The conflict between *Inamdar* and *Pramati Cases* has been noticed in *Ashwini Thanappan Vs. Directorate of Education* and the matter has been referred to the Chief Justice ^[35].

On June 10, 2016, the Kerala High Court, in *Sobha George Vs. State of Kerala* ^[36] has pronounced that section 16 of the RTE Act is applicable to minority educational institutions. Section 16 mandates schools to not detain any child before he or she completes elementary education. In this remarkable verdict, the High Court located this obligation not in the Act but under Article 21 of the Constitution which guarantees right to life and liberty. It ruled that no- detention policy is in the 'best interest' of the child and could independently be considered a fundamental right.

Conclusion

Thus, it is obvious that as regards the minority educational institutions the constitutional position lacks clarity. On the one hand there are the larger bench of the Supreme Court rulings like *TMA Pai* and *Inamdar* where the 'equal rights' view was applied and contrarily, the rulings of the subsequent small benches upheld the right of minority educational institutions as 'special rights'. In a subsequent case after *TMA Pai Case*, it was held by the Court that right and Article 30 (1) cannot put minority educational institutions in a more advantageous position than non-minority educational institutions, leading to

²⁸ (2003) 6 SCC 697, cited in K. Vivek Reddy, "Minority Educational Institutions", *The Oxford Handbook of the Indian Constitution*. p. 926.

²⁹ (2003) 6 SCC 697.

³⁰ (2005) 6 SCC 537

³¹ (2008) 6 SCC 1.

³² K. Vivek Reddy, "Minority Educational Institutions", *The Oxford Handbook of the Indian Constitution*. p. 927

³³ (2012) 6 SCC 1.

³⁴ (2014) 8 SCC 1.

³⁵ (2014) 8 SCC 272, cited in K. Vivek Reddy, "Minority Educational Institutions", *The Oxford Handbook of the Indian Constitution*. p. 928.

³⁶ *Agey Sangai, Harmonising RTE with minority Schools, The Hindu*

'reverse discrimination' ^[37]. Here, is noteworthy that minority educational institutions are not bound to implement quotas which the State mandate in the admission process. Appears that this is the only matter which can boast of a 'clean position' regarding the minority educational institutions.

On going through various Judgments of the Apex Court especially, one comes across a peculiar scenario who is directly related to Article 145(3) of the Constitution. It categorically mandates that 'the minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of the Constitution.....shall be five. Fali S. Nariman. has rightly questioned: ^[38] 'could two Justices (in a bench of three Judges) ^[39] have legitimately said that a unanimous decision of a bench of seven Justices ^[40] was no longer good law? It is submitted that both as a matter of Judicial discipline and propriety that they could not.' Here, the seven Judges bench of the Supreme Court and the three Judges (two Judges unanimously and one dissenting bench refer to P.A. Inamdar Vs. State of Maharashtra (2000) and society for unaided Private schools of Rajasthan Vs. Union of India & Another (2012). This position is just illustrative, and not exhaustive.

As mentioned above, in Sobha George Vs. State of Kerala, the Kerala High Court overruling the Supreme Court's ruling in Pramati Case, ruled that 'no detention policy' is in the 'best interest' of the child and this policy is applicable to the minority institutions under the RTE Act. There are other issues like medium of instruction, the admission process, the admission of non-minority students, fee and profit, to name a few, which requires a clear verdict of the Apex Court. Regulations for maintaining academic standards, ensuring proper infrastructure, health and sanitation, etc. could be imposed on minority schools as well. There are grey areas regarding application of rights under Article 30 (1) to unaided minority education institution also. Therefore, the need of the hour is a fresh verdict of larger Constitutional bench of the Supreme Court in this regard.

From the bare perusal of significant Judgments of the Apex Court in particular, it is clear that the State has tried from time to time to impose different kind of regulations to put fetters on the minority rights guarantee under Art 30(1) as regard to establish and administer educational institutions; at the same time, the Courts have always come up and declared many such regulations as violative of Art. 30 (1). But the Courts have given green signal to a few regulations which are good for the health of such minority educational institutions. The moral of such Judgments is very clear. Whether aided by State or unaided, minority institutions are not a proverbial 'black holes' where no ray of light can enter! These institutions must prosper and grow like majority- owned educational institutions. Though there must not be unwarranted interference in their day-to-day activities of the administrative nature, yet the State cannot be thwarted from its duty to regulate the affairs of educational institutions as a whole so that no exploitation of

students or their parents could take place at the hands of college/ school administration. One should always put the students at the centre of any policy decision. This is true in case of the Courts also. The well-being of the students is first and foremost. If the State intervenes in this spirit, the logic of 'special rights' or 'exclusive rights' becomes meaningless. Minority students have every right to grow exponentially like their majority counterparts. Our Courts and lawmakers should start thinking in this direction only. Only then, we will be able to do justice not only with minority educational institutions but to the ultimate beneficiary- the minority student also.

Reference

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³⁸ Fali S.Nariman, The State of The Nation, Hay House India, New Delhi, 2013.p.57

³⁹ Society for Unaided Private Schools of Rajasthan vs Union of India & Another (2012).

⁴⁰ P.A.Inamdar vs State of Maharashtra (2005).