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EXTENT THE STATE CAN REGULATE THE RIGHT OF MINORITIES UNDER ARTICLE 30 OF THE CONSTITUTION

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ABSTRACT

Article 30(1) of the Constitution of India confers on minorities, whether based on religion or language, a right to establish and administer educational institutions of their choice. Unlike other fundamental rights enshrined in Part III of the Constitution, this Article does not stipulate any limitation on this right. The special right conferred on minorities by this Article is however not intended to give them any preferential treatment but only to ensure their effective enjoyment of substantive equality with the majority. The right to administer however does not incorporate within its ambit the right to mal-administer educational institutions and therefore any regulations intended to promote the excellence of the educational institution does not impair the right under Article 30(1) but rather promotes it and is therefore permissible. Any regulation not intended to promote educational standards or excellence of the educational institution on the other hand will infringe the right of minorities under this Article and would not be a permissible regulation even if such a regulation is needed in the general societal interest or arises out of State necessity. The true scope of right conferred under this Article has been a subject matter of controversy in many landmark cases before the Supreme Court of India. This article, based on the judgments of the Supreme Court, deliberates on the content and dimensions of the right conferred on minorities under this Article, the purpose of conferring such right on minorities and the permissible extent to which the State can regulate the educational institutions established and administered by them without infringing the right granted under this Article. The article also incorporates an illustrative list of the regulations that have been held to be permissible as also a list of those held impermissible.

INTRODUCTION

The minorities debilitated by their size of their population often lack capacity to influence body politic and policy making which in turn impairs their capacity to live as equal citizens with the majority in a nation State and broods a feeling of isolation and separatism in them. Existence of such a feeling amongst minorities runs counter to the very concept of nationhood and poses a challenge to the unity and integrity of the nation. Modern nations therefore, with a view to promote, nourish and strengthen the feeling of nationalism amongst minorities in their countries, have in their Constitutions incorporated special provisions to
protect and safeguard interests of the minorities and to enable them to live as equal citizens with majority. Realising the need for making such provisions by the nation States, Article 27 of the International Covenant on Civil and Political Rights of 16 December, 1966 and UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities put an obligation on the State parties to ensure minorities the right to enjoy their own culture, to profess and practice their own religion and to use their own language in private and in public, freely and without interference or any form of discrimination. An important principal of Jurisprudence for ensuring effective and genuine equality between the minorities and majority was postulated by the Permanent Court of International Justice in its advisory opinion to the League of Nations in the matter of Minorities Schools in Albania way back in 1935 wherein it observed that there would be no true equality between a majority and a minority if the latter were deprived of its own institutions and were consequently compelled to renounce that which constitutes the very essence of its being a minority. It also noted that equality of minorities in fact necessitates different treatment to minorities in order to attain a result which establishes equilibrium between different situations.\textsuperscript{72} Our Constitution makers conscious of the need for providing effective and real equality to minorities in their wisdom incorporated Articles 19 (1) (g), 26, 29, 30 in the Constitution as constitutional guarantees to minorities that their interests are fully protected and safeguarded. The onus of protecting and safeguarding these constitutional guarantees lies on the Supreme Court of India which has the onerous responsibility of shielding and rejuvenating these constitutional guarantees against possible onslaught by the majority or other forces inimical to the interests of the minorities so as to achieve the objectives behind these salutary constitutional provisions.

**CONTENT AND DIMENSIONS**

Article 30(1) of the Constitution provides that “all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice”. There is now a general and broad consensus that the right guaranteed to religious and linguistic minorities by Article 30(1) is twofold, to establish and to administer educational institutions of their choice.\textsuperscript{73} The key to decipher the extent of right conferred by this Article lies in the words "of their own choice" occurring in the Article. These words indicate that the extent of the right is to be determined, not with reference to any concept of State necessity and general societal interest but with reference to the educational institutions


\textsuperscript{73} See Frank Anthony P.S.E Association vs. Union of India (1986) 4 SCC 707 (India).
themselves, that is, with reference to the goal of making the institutions "effective vehicles of education for the minority community or other persons who resort to them". The right available under this Article to administer an educational institution by minorities can be invoked only in case the Institution has been established by them and not otherwise. No benefit under this Article can be claimed if the Institution is not established by minorities in the first place.

The Supreme Court of India has clarified that administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institutions.' This management must be free from control so that the founder or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. The right to administer however does not include the right to mal administrate. It has been clarified by the apex Court that though Article 30(1) is couched in absolute terms in marked contrast with other fundamental rights in Part III of the Constitution; it has to be read subject to the power of the State to regulate education, educational standards and allied matters. Regulations which will serve the interest of the students, regulations which will serve the interests of the teachers have been held to be of paramount importance in good administration and therefore permissible. The Supreme Court of India has not only consistently held that it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education.

The general principles relating to establishment and administration of educational institution by minorities have been summarized by the Supreme Court of India as under:

“The right of minorities to establish and administer educational institutions of their choice comprises the following rights:

i) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution

ii) To appoint teaching staff (Teachers/Lecturers and Head-masters/Principals) as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees; (It has been however held by the Supreme Court of India

74 St. Stephen’s College v. University of Delhi, (1992) 1 SCC 558 (India).
75 Ibid.
76 Ibid.
77 The Secretary, Malankara Syrian Catholic College v. V.T. Jose and Ors., AIR 2007 SC 570(India).
that a rational procedure for the selection of teaching staff and for taking
disciplinary action has to be evolved by the management itself. Further, in the
case the apex Court has held that autonomy of a minority institution does not
dispense with the requirement to act fairly and in a transparent manner and the
High Court in exercise of its power of judicial review is entitled to examine
fairness of selection process. Grievance of a citizen that he was treated unfairly
cannot be ignored on the ground that a minority institution has autonomy or right
of choice. Exercise of right of choice has to be fair, non-discriminatory and
rational.)

iii) To admit eligible students of their choice and to set up a reasonable fee structure;
iv) To use its properties and assets for the benefit of the institution;
b) The right conferred on minorities under Article 30 is only to ensure equality with the
majority and not intended to place the minorities in a more advantageous position vis-
avis the majority. There is no reverse discrimination in favour of minorities. The
general laws of the land relating to national interest, national security, social welfare,
public order, morality, health, sanitation, taxation etc. applicable to all, will equally
apply to minority institutions also.
c) The right to establish and administer educational institutions is not absolute. Nor does
it include the right to mal administrate. There can be regulatory measures for ensuring
educational character and standards and maintaining academic excellence. There can
be checks on administration as are necessary to ensure that the administration is
efficient and sound, so as to serve the academic needs of the institution. Regulations
made by the State concerning generally the welfare of students and teachers,
regulations laying down eligibility criteria and qualifications for appointment, as also
conditions of service of employees (both teaching and non-teaching), regulations to
prevent exploitation or oppression of employees, and regulations prescribing syllabus
and curriculum of study fall under this category. Such regulations do not in any
manner interfere with the right under Article 30(1).
d) Subject to the eligibility conditions/qualifications prescribed by the State being met,
the unaided minority educational institutions will have the freedom to appoint
teachers/Lecturers by adopting any rational procedure of selection.

e) Extension of aid by the State does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under Article 30(1).”

PURPOSE
The purpose of conferring exclusive rights under Article 30(1) to minorities is to enable them to maintain, strengthen and promote their separate identity and character and to facilitate it retain its individuality as a matter of right. It is also intended to aid in developing and strengthening the feeling of nationality and oneness amongst all citizens and to discourage brooding of any feeling of separatism or isolation amongst minorities. It provides constitutional assurance to the minorities that their individuality shall not get submerged with the identity of majority and they can co-exist with majority retaining their own character and individuality. The purpose of the right given by the Article to minorities is by no stretch of imagination is to give minorities any preferential treatment over majority but only to ensure equality with the majority as has been observed by the Supreme Court in the case of V. T. Jose quoted above. The right conferred by this Article is not unfettered and is amenable of being regulated by regulations but regulations must promote the purpose for which these rights have been conferred by the Constitution and must not thwart it. Thus, only those regulatory measures which are intended to advance the excellence of the educational institution as a vehicle for education to the minority community and others who take admissions in such institutions ought to survive the test of constitutionality. The observations made by the Khanna J. in the case of St. Stephen’s College quoted below aptly define the contours of such regulations.

“The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. The regulations have necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as to make it an effective vehicle for imparting education. The right to administer educational institutions can plainly not include the right to mal administer. Regulations can be made to prevent the housing of an educational institution in unhealthy surroundings as also to prevent the setting up or continuation of an educational institution without qualified teachers. The State can prescribe regulations to ensure the excellence of the institution. Prescription of standards for educational institutions does not militate against the right of the minority to
administer the institutions. Regulations made in the true interest of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed: they secure the proper functioning of the institution, in matters educational.”

Mathew, J. in the same case also held that the only permissible regulations are those which secure the effectiveness of the purpose of the facility, namely, the excellence of the educational institutions in respect of their educational standards in the following words:

“In every case when the reasonableness of a regulation comes up for consideration before the court, the question to be asked and answered is whether the regulation is calculated to sub serve or will in effect sub serve the purpose of recognition or affiliation, namely the excellence of the institution as a vehicle for general secular education to the minority community and to other persons who resort to it. The question whether a regulation is in the general interest of the public has no relevance, if it does not advance the excellence of the institution as a vehicle for general secular education as, ex-hypothesis, the only permissible regulations are those which secure the effectiveness of the purpose of the facility, namely, the excellence of the educational institutions in respect of their educational standards. This is the reason why this Court has time and again said that the question whether a particular regulation is calculated to advance the general public interest is of no consequences if it is not conducive to the interest of the minority community and those persons who resort to it.”

PERMISSIBLE EXTENT OF REGULATION

The Supreme Court of India has held that the right conferred by Article 30(1) of the Constitution is subject to the regulatory power of the State and the Article is not a charter for maladministration and any regulation for better exercise of the right to administer was permissible. In other words, the regulatory measures intended at making the minority educational institutions effective instruments for imparting education do not infringe the right conferred by the Article 30(1) of the Constitution and are not only permissible but in fact desirable. It has further been held by the apex Court that the moment a regulation goes beyond that and imposes what is in truth not a mere regulation but an impairment of the right to administer, the Article comes into play and the interference cannot be justified by pleading

79 St. Stephen’s College v. University of Delhi, (supra).
80 Ibid.
the interest of the general public; the interests justifying the interference can only be the interests of the minority concerned.\textsuperscript{81}

The standards of education are not part of the management but fall in the realms of body politic and are governed by the considerations of advancement of the society and the country. Therefore, regulations meant for enhancing or maintaining the standards of education and for matters connected therewith or incidental thereto are permissible. The State has a right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of other institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management should be left to them, they may be compelled to keep in step with others.\textsuperscript{82}

The minority and non-minority institutions alike have to adhere to the conditions of affiliation upon being affiliated to a University and ensure the required standard of education and no minority institution can claim total immunity from regulations by the legislature or University if it wants affiliation or recognition; but the character of the permissible regulations must depend upon their purpose and only those regulations shall be legally sustainable as are relevant to the purpose of securing or promoting the object of affiliation or recognition.\textsuperscript{83}

As government aided educational institution cannot provide religious instructions, any minority institution receiving aid from the Government, give instructions either in secular education or professional education and the standard of education must necessarily be comparable with non-minority educational institutions. Such standards can be attained and maintained only by having well qualified professional teachers. An institution can have the services of well qualified professional teachers only if the conditions of service ensure security, contentment and decent living standards. That is why the State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Consequently, any law intended to regulate the service conditions of the employees of educational institutions will apply to minority institutions also, provided that

\textsuperscript{81} Ibid.
\textsuperscript{82} See St. Stephen’s College v. University Of Delhi, (1992) 1 SCC 558 (India); State of Bombay Education Society, 1955 (1) SCR 568, (India); Kerala Education Bill, 1957, Re 1959 SCR 995 (India); Sidhrajibhai Sabhaj v. State of Bombay 1963 (3) SCR 837 (India); Rev. Father Proost v. State of Bihar, 1969 (2) SCR 73 (India); and State of Kerala v. Mother Provincial 1970 (2) SCC 417 (India).
\textsuperscript{83} See St. Stephen’s College v. University of Delhi, (supra).
such law does not interfere with the overall administrative control of the management over
the staff.\textsuperscript{84}

**PERMISSIBLE REGULATIONS**

The Supreme Court in Islamic Academy case has summarized as under some of the
regulations held permissible for minority educational institutions in its earlier decisions:\textsuperscript{85}

a. Guidelines for the efficiency and excellence of educational standards;\textsuperscript{86}

b. Regulations ensuring the security of the services of the teachers or other employees;\textsuperscript{87}

c. Introduction of an outside authority or controlling voice in the matter of service
conditions of employees.\textsuperscript{88} (Such authority should not be thrust so as to have a
controlling voice in the matter and thus overshadow the powers of the managing
committee.);

d. Framing Rules and Regulations governing the conditions of service of teachers and
employees and their pay and allowances;\textsuperscript{89}

e. Appointing a high official with authority and guidance to oversee, that Rules
regarding conditions of service are not violated, but however such an authority should
not be given blanket, uncanalised and arbitrary powers;\textsuperscript{90}

f. Prescribing courses of study or syllabi or the nature of books;\textsuperscript{91}

g. Regulation in the interest of efficiency of instruction, discipline, health sanitation,
morality, public order and the like.\textsuperscript{92}

In respect of conditions of service of teaching and non-teaching employees of the minority
institutions, the following regulations have been held to be legally sustainable:

a. Prescribing qualifications of the teaching staff and their training;\textsuperscript{93}

b. Regulating the method of selection and appointment of teachers after prescribing
requisite qualification for the same. Independence for the selection of teachers among

\textsuperscript{84} The Secretary, Malankara Syrian Catholic College v. V.T. Jose and Ors., AIR 2007 SC 570 (India).
\textsuperscript{86} See Sidhrajbai v. State of Gujarat, 1963 AIR 540 (India); State of Kerala v. Mother Provincial,
\textsuperscript{87} See in Re Kerala Education Bill, and All Saints High School v. Government of A.P. (supra)
\textsuperscript{88} See All Saints High School v. Government of A.P. (supra)
\textsuperscript{89} See State of Kerala v. Mother Provincial (supra) and All Saints High School v. Government of A.P. (supra).
\textsuperscript{90} See All Saints High School v. Government of Andhra Pradesh. (supra)
\textsuperscript{91} See State of Kerala v. Mother Provincial (supra) and All Saints High School v. Government of A.P. (supra)
\textsuperscript{92} See Sidhrajbai v. State of Gujarat (supra).
the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution; ⁹⁴
c. Regulating their pay scales, their entitlement to other benefits of service; ⁹⁵
d. Laying down of safeguards which must be observed before they are removed or dismissed from service or their services are terminated. ⁹⁶

IMPERMISSIBLE REGULATIONS

Some of the regulations held impermissible by the Supreme Court in its earlier judgments are listed below:

a. Refusal to affiliation without sufficient reasons; ⁹⁷

b. Such conditions as would completely destroy the autonomous administration of the educational institution; ⁹⁸

c. Introduction of an outside authority either directly or through its nominees in the governing body or the managing committee of minority institution to conduct the affairs of the institution; ⁹⁹

d. Provision of an appeal or revision against an order of dismissal or removal by an aggrieved member of staff or provisions for Arbitral Tribunal; ¹⁰⁰

e. Imposing seat sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats; ¹⁰¹

f. Enabling the Government to take over the management of the institution ¹⁰² (But Article 31(1) is not infringed in case

i. unconditional offer is made by the management to the government to take over the management; ¹⁰³ and

⁹⁵ Ibid.
⁹⁶ Ibid.
⁹⁷ Ibid.
⁹⁸ Ibid.
⁹⁹ Ibid.
¹⁰² In Re: The Kerala Education Bill, 1957, AIR 1958 SC 956 (India).
ii. where the running of minority institution is found to be against National Interest or permissible limits of regulations, though only in extreme cases. The Government may also order closure of the minority institution in such a case.\textsuperscript{104}

g. Providing that appointments\textsuperscript{105} and dismissals\textsuperscript{106} by the Govt. Body were to be subject to absolute veto or uncanalised power of approval for the State or the university or some other specified authority;\textsuperscript{107}

h. Compelling the institution to refer to a Government nominated arbitrator all disputes between the governing body and its staff.\textsuperscript{108} (But regulations prescribing fair procedure in the matter of disciplinary proceedings are valid\textsuperscript{109}. Likewise, a provision for approval of Director of education in case of suspension of an employee also does not violate this Article\textsuperscript{110}.)

In respect of conditions of service of teaching and non-teaching employees the following regulations have been held to be invalid:

a. Laying down that management should seek prior approval of the Govt. or the university regarding the appointment of teacher\textsuperscript{111}

b. To confer in disciplinary matters, a right of appeal to an outside authority e.g., the Vice Chancellor and to empower him to veto the decisions of the managing authority of the minority institution in matter of penalty.\textsuperscript{112}

c. Requiring the prior approval of State or University authorities in matter of dismissal, removal or reduction in rank or other disciplinary action against teachers.\textsuperscript{113} (But while prescribing conditions of service it may require that both teaching and non-teaching staff may not be dismissed, removed or reduced in rank except after an enquiry in which the delinquent member of the staff has been informed of the charges and allowed to make representation on any penalty proposed to be inflicted on him.

The government which grants recognition or affiliation can insist on a fair procedure
being observed when disciplinary action is taken against such member. If the regulations require the approval of the competent authority for safeguarding the rights of the teachers and for securing the procedure, there could be no objection. Such authority can also interfere with the decision of the private institution where the punishment is awarded mala fide or by way of victimization or for similar causes.\footnote{114}

d. Requiring any dispute regarding service condition between the governing body and the member of the State shall be determined by compulsory arbitration by persons other than the members of minority institution.\footnote{115}

CONCLUSION

The Supreme Court has on several occasions constituted the Constitutional benches far exceeding the minimum number of five judges prescribed by the Article 145(3) of the Constitution to decide the constitutional issues involving rights of minorities under Article 30(1) keeping in view of the sensitivity and complicated nature of such issues and in order that these issues are decided and settled in the most objective and fairest possible manner. As a result, there is a fair degree of certainty on certain aspects of the right conferred by this Article but there are still grey areas in respect of several others. It is now well settled that the rights conferred by the Article 30(1) are not absolute but are subject to the regulations by the State. The regulations however have to satisfy the dual test viz. the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.\footnote{116} It is also settled that the right cannot be whittled down by the regulative measures if these are not in the interest of the minority educational institution. It is impermissible to impose any regulation which is sought to be imposed on ground of general public interest or on grounds of State necessity if such a regulation is not in the interest of minority institution itself. It is further settled that conditions may be imposed on a minority institution for grant of aid by the Government or for its affiliation to a University or Board or for recognition but these conditions cannot be such as would amount to surrendering the rights conferred by the Article 30(1).\footnote{117} The Article 30(1) however is not a charter for maladministration and there is no right to minorities to mal administer the educational

\footnote{114} All Saints High School v. Government of A.P. (1980) 2 SCC 478 (India)
\footnote{117} St. Xaviers College v. State of Gujrat, AIR 1974 SC 1389 (India).
institutions established by them.\textsuperscript{118} Further the right to administer is permissible to minorities under this Article only in respect of educational institutions established by them, though it is immaterial whether the institution was established before the coming into force of the Constitution or on or after its enforcement.

The jurisprudence on minority rights conferred by Article 30(1) of Constitution is however still evolving. There seems to be divergence of views even on such basic issues as to whether rights granted to minorities under this Article are exclusive or special rights of minorities or minority institutions cannot claim any superior rights over non-minority institutions and that there cannot be any reverse discrimination.\textsuperscript{119} Further the ambit of ‘what is in the interest of minority institution’ and therefore capable of being regulated by the State has progressively been enlarged by the Judgments of the Supreme Court of India and such enlargement has to some extent blurred the difference between what is in the interest of society at large and what can be said to be in the interest of the minority institution itself. Judgments on validity of a particular regulation especially when it is a borderline case have in some cases been contextual reflecting the personal convictions of the Judges as was seen recently in Judgment the Supreme Court holding that the provision of admission in minority institutions in medical courses on the basis of NEET examination was violative of the rights of minorities under Article 30 (1) but subsequently that Judgment was recalled paving the way for admission in medical courses through the said examination even in minority unaided institutions.

The confusion over exclusive rights v. principles of equality can possibly be resolved by appreciating that exclusive right given by the Article 30(1) are intended to ensure effective enjoyment of the right to equality by the minority vis-a-vis majority. Further, while expanding the ambit of regulatory control over minority educational institutions by judicial pronouncements in the context of preventing mal-administration, care should be taken that Constitutional guarantees given by the Constitution to minorities are not trampled to an extent so as to become a ‘teasing illusion’ for them. A multicultural country like India can ill afford to alienate minorities and must strive to foster a sense of security and a feeling of confidence in them for the greater good of the nation.

\textsuperscript{119} See the Judgments of the Supreme Court in St. Xavier’s College case (supra) and in TMA Pai Foundation case (supra).
Thanking Note

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Amit Singhal
Editor-in-Chief

On behalf of the esteemed members of the Editorial Board, Honourable Members of the Advisory Council & the members of the Publishing Unit