

CULTURAL AND EDUCATIONAL RIGHTS OF MINORITIES: A HUMAN RIGHT PERSPECTIVE

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The term minority has been derived from the Latin word “minor” and suffix “ity” which means small in numbers. According to Encyclopaedia Britannica minorities means group held together by ties of common decent, language or religious faith and feeling different in these respects from the inhabitant of a given political entity. Cultural and educational rights of the minorities are very important and essential which work as a tool for the upliftment of the minorities. Culture plays a vital role for the congenial development of children who belong to the community of minorities and that are why the preservation of culture, language and religion are important. Without education the progress of a community is not possible and the transformation of a society depends on education. All over the world it has been found that there is a huge gap between the minority and majority communities. For the sake of equality and a healthy relationship between the communities there need some special right of the minority. The world human right documents also give importance to the cultural and educational right of minorities. An important report prepared for the UN Human Rights Commissions Sub-Commission on Prevention of Discrimination and the Protection of Minorities describe Minority as: “A group numerically inferior to do the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show if not implicitly, a sense of solidarity directed towards preserving their culture, traditions, religion or language.”

This paper deal with the various rights of the minorities which is recognised by the international documents and constitution of India which are recognised as the basic right of the individual without which individual cannot live as a human being.

The Planning Commission of India regarding education says “Education is an important input both for the growth of the society as well as for the individual. Properly planned educational input can contribute to increase in the gross national product, cultural richness, build positive attitudes towards technology and increase efficiency and effectiveness of the governance. Education opens new horizons for an individual, provides new aspirations and develops new values. It strengthens competencies and develops commitment. Education generates in an

individual a critical outlook on social and political realities and sharpness the ability to self examination, self-monitoring and self-criticism.”¹

Protection of Cultural and educational right of minorities under UDHR

The Universal Declaration of Human Rights tells about the right to culture under article 27 .As per the article 27of the Universal Declaration of Human Rights

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is author.²

The expression “everyone has the right freely to participate in the cultural life of the community” means that it is not only the duty of governments to respect the right of everyone to participate in the cultural life of the community but also to give everyone an opportunity of participating in the cultural life.

Article 26(1) of the Universal Declaration of Human Rights says that everyone has the right to education. Education shall be free, at least is the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basic of merit.

Article 26(2) says that education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups and shall further the activities of the United Nations for maintenance of peace.³

Protection of Cultural and educational right of minorities under International Covenant on Economic, Social and Cultural Rights.

¹ Planning Commission of India, Report: “*India – Vision 2020*” p-250.

² Article 27 of the Universal Declaration of Human Rights.

³ Article 26 of the Universal Declaration of Human Rights.

Article 15 of the covenant provide that

1. The State parties to the present covenant recognize the right of everyone.
 - (a) To take part in cultural life.
 - (b) To enjoy the benefits of scientific progress and its applications.
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific literary or artistic production, of which he is the author.
2. The steps to be taken by the State parties to the present covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The State Parties to the present covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The state parties to the present covenant recognize benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.⁴

Both documents give importance to all people Right to irrespective of religion, race, caste, creed and sex. But Article 27 of the International Covenant on Civil and Political Rights emphasized on minority rights.

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

The International Covenant on Economic Social and Cultural Rights also provide for education. Regarding education it says: “The State Parties to the Present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of dignity, and shall strengthen the respect for human rights and fundamental freedoms.

They further agree that education shall enable all person to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial

⁴ Article 15 of the International Covenant on Economic, Social and Cultural Rights.

ethnic or religious groups and further the activities of the United Nations for the maintenance of peace”⁵

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 the education at Primary level shall be compulsory and free to all.

(b) Secondary education which shall include technical and vocational education shall be made available and accessible by every means.

(c) Higher education shall be made equally accessible to all.

(d) The fellowship system shall be established and the material conditions of teaching staff shall be continuously improved.

Article 5 of the International Covenant on the Elimination of All Forms of Racial Discrimination guaranties the right of education to everyone without distinction as to the race, colour and national or ethnic origin.⁶

Indian Constitutional Provisions Regarding Minorities

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.

(2) 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.⁷

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.

⁵ Article 13 of the International Covenant on Economic, Social and Cultural Rights.

⁶ Article 5 of the International Covenant on the Elimination of All Forms of Racial Discrimination.

⁷ M. C. Jain Kagsi, The Constitution of India (vol-2) 6th Ed. 2001, p-1189.

(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.

(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.⁸

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.⁹

Article 350 B: Special Officer for Linguistic Minorities.

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

(2) it shall be the duty of the special officer to investigate all matters relating to the safeguards provided for linguistic minorities under this constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of President, and sent to the governments of States concerned.¹⁰

The term minority which is not defined in the constitution.

⁸ *Ibid.*

⁹ M.P.Jain, Indian Constitutional Law 98 (Kamal Law House, Calcutta, 5th edn., 1998).

¹⁰ *Ibid.*

In *Re Kerala Education Bill* where the Supreme Court, through S. R. Das C.J, suggesting the techniques of arithmetic tabulation, held that the minority means a “community, which is numerically less than 50 percent” of the total population.¹¹

In *A. M. Patroniv v/s Kesavan*, a Division Bench of the Kerala High Court held that the word “Minority” is not defined in the constitution, and in the absence of the special definition, any community religious or linguistic – which is numerically less than 50% of the population of the State concerned, is entitled to fundamental right guaranteed by Article 30 of the constitution.¹²

In the case of *D. A. V College, Bhatinda v/s State of Punjab and others*, the Supreme Court held: “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”.¹³

In *St. Stephen’s College v/s University of Delhi*, the court held that the minority under Article 30 must necessarily mean those who form a distinct or identifiable group of citizen of India.¹⁴

In *Bramchari Sidheswari v/s State of West Bengal*, the Supreme Court has held that the Ram Krishna Mission establish by Swami Vivekananda to propagate Vedanta values as expounded by Ram Krishna is not a minority religion separated and distinct from Hindu religion, but a religious sect or denomination of Hindu religion and therefore not entitled to claim the fundamental right under Article 30(1) of the constitution of establishing and administering educational institutions of their choice.¹⁵

Chief Justice Kirpal in *T. M. A Pai Foundation v/s State of Karnataka* held: “A linguistic and religious minority are covered by the expression „minority” under Article 30 of the constitution. Linguistic lines, therefore for the purpose of determining minority, the unit will

¹¹ AIR 1958 SC 956.

¹² AIR 1965 Ker. 75 .

¹³ 1971 (Supp) SCR 677

¹⁴ AIR 1992 SC 1630.

¹⁵ AIR 1995 4 SCC 464.

be the state and not the whole of India. Thus religious and linguistic minorities, who have been put at per Article 30 have to be consider State wise”.¹⁶

In Bal Patil v/s Union of India, the court held that the central government has to exercise its power for identification of minority group not merely on the recommendation of the commission but on consideration of the social, cultural and religious conditions of the community in such state. Statistical data produced to show that a community is numerically a minority cannot be the sole criterion. If it is found that a majority of the members of the community belong to the affluent class of industrialists, businessman, professionals and propertied class, it may not be necessary to notify than as minority under the Act and extend any special treatment or protection to them as minority under the Act and extend any special treatment or protection to them as minority.¹⁷

Conclusion

The minority institutions which receive grant in aid are subject to tight regulations including those on admission. It is emphasised, that keeping in view the present political scenario, some states may arbitrarily impose restriction on aided minority educational institutions which frustrate the basic purpose of Article 30(1) and in the absence of any guidelines from the Supreme Court which is the highest authority in the matter of aided minority educational institutions some states may impose restrictions on such institution arbitrarily which may hamper the interest of minority education institution. The possibility of greater restrictions on aided minority institutions and unfettered freedom of unaided minority institutions may encourage management of many aided institution to convert them to unaided institutions.

¹⁶ AIR 2003 Sc 355 at p-418.

¹⁷ AIR 2005 SC 3172.