

THE ROLE OF JUDICIARY IN SAFEGUARDING THE RIGHTS OF RELIGIOUS MINORITIES IN INDIA- A CRITICAL STUDY.

*This article is part of the Ph.D research on the topic “Protection of Rights of Religious Minorities: A study with reference to U.S.A, U.K and India, under the guidance/supervision of Prof. (Dr.) V.Sudesh, Former Vice-Chancellor, Professor, Chairperson and Dean, P.G. Department of Studies and Research in Law, Bangalore University, jnanabharathi Campus, Bangalore.

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ABSTRACT:

The unique feature of India is Unity in diversity with different religious beliefs and practices. Religious freedom is considered a fundamental human right guaranteed under Article 25 of the Constitution. It states that every citizen of India has the right practice and any religion. As per 2011 census report of India, Hindus represent nearly 80% of the total population.

On the other hand, Islam, Christianity, Buddhism, Jainism, Sikhism, and Zoroastrianism together recognized as religious minorities, which represent nearly 20% of the total population. Indeed, there are some special Constitutional provisions provided to religious minorities under Article 29 and 30 of the Indian Constitution to protect their culture, language and educational rights. Though the Minorities have granted exclusive rights, they have been facing a lot of issues. For instances the feeling of insecurity, communal rights and conflicts, attacks in the name of cow slaughtering, lack of proper representation in politics, lack of basic amenities etc. Perhaps, Judiciary plays a vital role in case of violation of their fundamental rights, and they can approach the Supreme Court and High Courts under Articles 32 and Article 226. Besides, the National Commission for Minorities, the National Human Rights Commission and State Human Rights Commissions have empowered to protect their rights.

Keywords: Indian Constitution, Judiciary, Religious Minorities, & Rights.

1. INTRODUCTION:

With the impact of globalisation people of different religious groups settled across the world. Since there is no uniformity of religious minorities across the world, but they are different from one country to another country. Due to the minority, they have faced various problems. Now, the protection of minority right is an essential part of international laws on human rights prescribed by the United Nations. The term minority is

not used in the Universal Declaration of Human Rights but at very first the term minority used in International Covenant on Civil and Political Rights as follows.

"In those states persons belonging to ethnic, religious or linguistic minorities exist shall not be denied the right to enjoy culture, religion, or to use their language".¹

Then, to enforce the provisions of Article 27 of the ICCPR, The Declaration on the Rights of persons to National or Ethnic, Religious and Linguistic Minorities adopted by the General Assembly of the UNO in 1992. The Government of India has taken all most steps to implement the provisions of the international arrangements and they as follows.

The Constitution of India one side guarantees the general rights to religious minorities under fundamental rights to enjoy the same rights which are available to others. On the other hand, special provisions also to be made under Articles 29 and 30, which guarantees to the religious minorities to access their religious, cultural, language and educational rights. Perhaps, since independence, a lot of changes have been taken place, and as per changes we have to analyse the conditions and protection of rights of religious minorities. Indeed, India is a secular country; it must treat all religions equally without any distinctions based on religion. Religious freedom is considered a fundamental right guaranteed under Article 25 of the Constitution. Religious conversion is permitted without any force and coercion. Based on the provisions of Clause (c) of Section 2 of the National Commission for Minorities Act 1992, the Government of India notified Muslims, Christians, Sikhs, Buddhists, Zoroastrians, and Jains as the religious minorities in India.²

Indeed, India is a democratic and republican society with multiple political parties to administer the country. Their agenda is different from one to another, some parties support to major religious groups and some other encourages to minority groups. By having political and official power, legislative and administrative, measures may violate the rights of religious minorities. Therefore, the purpose of the article is to find out the role of the Indian judiciary how it promotes and protects the rights of religious minorities to access their rights guaranteed by the Constitution.

In this research paper, the researcher followed the doctrinal method, which is based on statutes, case laws and principles of justice, equity and good conscience. In this doctrinal research, the researcher has confined to study the reasons for the existence of religious minorities based on Historical and Analytical methods and comparative study of a decision of the Judiciary and interpretation of the decisions.

¹ Article 27 of the I.C.C.P.R. 1966.

² Section 3 © of the National Commission for Minorities Act, 1992.

To pursue any research, literature is essential, and the review of literature provides an excellent beginning point to any new area focusing on the issues that are left untouched. To carry out this research work, the researcher has referred relevant literature such as books and journals, reports of various commissions and the decision the Supreme Court and High Courts.

2. THE ROLE OF JUDICIARY IN SAFEGUARDING THE RIGHTS OF RELIGIOUS MINORITIES IN INDIA:

The vast diversity nature of developing country like India, there is a gross violation of the fundamental rights of people by the state through its agencies. Indeed, the independent Judiciary acts as a guardian and custodian of the people's rights and upholds the Constitutional protection ensured to the citizens. The Supreme Judiciary in the land called as Supreme Court plays a vital role to win the soul of citizens, because of its impartiality in delivering justice and independent from all kinds of influences. Besides, High Courts also have empowered to exercise the judicial review power over legislative and executive functions in India.

Under Article 50 of the Indian constitution, the Indian Judiciary is an Independent Judiciary, which is entirely separate from the Legislature and Executive. As per Article 13 of the Constitution, the Supreme Court and High courts have judicial review power over the Legislative and Executive actions to protect the fundamental rights of citizens and to uphold the constitution. Further, Article 32 of the Constitution speaks about the Constitutional remedies in case of violation of fundamental rights of the citizens and to seek remedies before the Supreme Court and under Article 226 before High Courts.³ Therefore, the Supreme Court and High courts have been considered as guaranteed of citizens' fundamental rights and mainly linguistic and Religious Minorities.

(3) DETERMINATION OF RELIGIOUS MINORITIES:

The Constitution of India nowhere defined the term Minority, but it referred only Minority under Articles 29 and 30. In several circumstances, the issue of representing minority came before several High Courts and the Supreme Court, for the interpretation and application of Articles 29 and 30 of the Constitution. Perhaps, at very first in there **Kerala Education Bill** case,⁴ Specific questions of great importance raised under Articles 29 and 30 in the president's reference under the provision of Article 143 (1) in the opinion with the challenge under Article 14. The reference was made because of several doubts had arisen about the validity of provisions contained in the Bill having regard to Articles 29 and 30.

³ P.M.Bakhi, the Constitution of India, Universal Law Publication.

⁴ A.I.R. 1958 SC 956.

In this case, the state of Kerala contended that to constitute a minority and claim the fundamental rights guaranteed under Articles 29 (1) and 30 (1), the person must numerically be a minority in the particular region of the state. The Court disagreed with the State and stated that the minority is determined by reference to the entire population of the state only. Subsequently, Christians, Muslims and Anglo-Indians were recognized as minorities in the state of Kerala.⁵ The Court refers to the application of law made by the legislature applies not only to the particular locality, but it applies to the entire state. Therefore, the Bill extends to the whole of the state.

Further, in **D.A.V.Colleg-Jullunder v. the State of Punjab**,⁶ in the instant case, the Punjabi University's circular declaring Punjabi to be the sole medium of instruction and examination. The Supreme Court stated that Arya Samajis being Hindu constitute a religious minority in Punjab. The Court explained the meaning of linguistic minority and declared that linguistic minority for Article 30(1), that the community one which must at least have a separate spoken language. It is not necessary that the language should also have a distinct script for those who speak it to be a linguistic minority and entitled to the protection of Article 30 (1). The Court declared the provisions of Punjabi University's circular saying Punjabi to be the sole medium of instruction and examination beyond the preview of the University Act and in violation of Article 29 (1) and 30 (1). In the instant case, the court categorically rejected the contention of the state and held that minority should not be determined by reference to the population of the whole of India, but the people of the state only.

In **T.M.A. Pai Foundation v. the State of Karnataka**,⁷ in this petition, the Supreme Court's 11 Judges Constitutional bench by a majority view held that the expression minority covers linguistic and religious minorities under Article 30 of the Constitution. Since the reorganization of states, language is one of the parameters to determine State. Therefore, the determination of the minority is also a state and not the whole of India. Thus, religious and linguistic minorities have put at par in Article 30 have to be considered State wise.⁸

Therefore, it states that the religious minority means any religious or linguistic group, which is below 50% of the population of the state and no need of the people of a particular region or the whole of India.

⁵ Ibid Para 21.

⁶ AIR 1971 SC 1737.

⁷ AIR 2003 SC 355.

⁸ Ibid Para 162.

(4) THE RIGHT OF MINORITIES TO CONSERVE DISTINCT LANGUAGE, SCRIPT OR CULTURE:

Articles 29 (1) protects any section of the people residing in the territory, who have a different language, script or culture of its own shall have the right to conserve them. Article 30(1) provides the religious and linguistic minorities with the right to establish and administer the educational institution of their choice. The minority institution has the right to admit students of their community and to teach their language. While interpreting the scope of Articles 29(1) and 30(1) of the Constitution, it was held by the Supreme Court in **the State of Bombay v. Bombay Education Society**;⁹ in this case, the Bombay State Government passed an order stating that Anglo-Indians could maintain their schools and teach in English to Anglo-Indian students only. If they admit other Indians, they will forfeit their aid unless they switched to Hindi as the medium of instruction. The Court stated that the State could not prescribe the medium of instruction in respect of the minority institutions and it will deprive of rights provided in Articles of 29 and 30. Thus, the order was struck down as unconstitutional and void on the ground that an MEI has the right to admit students of its choice, even if it receives government aid also.

(5) THE SCOPE OF THE RIGHT TO ESTABLISH AND ADMINISTERS EDUCATIONAL INSTITUTIONS BY MINORITIES:

Article 30 (1) of the Constitution guarantees to religious and linguistic minorities the right to establish and administer educational institutions of their choice. Clause (2) provides that the state shall not discriminate in grant aid to educational institutions on the ground of the management of a minority, whether based on religion or language. In **State of Kerala v. Mother Provincial**,¹⁰ in the instant case, the Supreme Court stated that the Right to administer an educational institution includes the right to constitute the governing body also. It consists of the composition of the managing authority, appoints teaching and non-teaching staff, initiates disciplinary action against the staff, determines the salary of the staff and admits students. In this regard, even a single member of a minority community can establish an Educational Institution.

Again in **Patroni v. E.C.Kesavan**,¹¹ in this case, a Roman Catholic High School appointed a junior member of the staff as the Headmaster in preference to another teacher, who was senior to him. Based on complaints, the Director of the Public Institution, holding that there was no justification for departing from the rule of seniority contained in r.44, Kerala Education Rules and directed the senior teacher to be appointed. Further, the Court held that the right to choose the headmaster was an essential facet of the right

⁹ AIR 1954 SC 561.

¹⁰ AIR 1970 SC 2079.

¹¹ AIR, 1965 Ker 75 (FB)

to administer the school. The imposition of any restrictions thereon will be considered as the violation of Article 30(1) and accordingly the order was declared to be void.

Further, in **Ahmedabad St. Xavier's College Society and another etc. v. the State of Gujarat**,¹² Majority judges of the Supreme Court opined that sections 33-A, 40, 41, 51-A 1(b), 51-A (2) (b) and 52 –A of the Gujarat University Act, 1949 as amended in 1973, do not apply to institutions established and administered by linguistic and religious minorities. The intention of Article 30 is to enable the children of minorities to go out in the world fully equipped.¹³

However, the Court stated that the right conferred to the religious and linguistic minorities under Article 30 (1) to administer educational institutions of their choice is not an absolute right. This right is not free from regulation, and minority institutions are necessary for ensuring orderly, efficient and sound administration. The right of minorities to administer is not the right to mal-administer. The right of minority institutions to manage institution implies that the obligation and duty of the minority institutions to render the best services to the students of their community. In an administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of excellent teachers and their service.¹⁴

(6) THE SCOPE OF RIGHT OF ADMISSION INTO EDUCATIONAL INSTITUTIONS BY MINORITIES:

In **St. Stephens College v. University of Delhi**,¹⁵ In the instant case St. Stephen's College (aided college) was founded on 1st February 1881 at New Delhi. It was affiliated to Delhi University to impart general B.A, B.Sc/ B.A, B.Sc. (Hons), M.A., and M.Sc, education for the Academic year 1980-81. The college published "Admission Prospectus" on May 25, 1980, providing that applications for admissions for the first-year course to be received in the college office on or before June 20, 1980. Further, the order stated that there would be an interview before the final selection of students for admission to the college.

After the college circular, the Delhi University issued two more circulars on June 5, 1980, and June 9, 1980, to all affiliated colleges. The first circular prescribed the last date for applications as on June 30, 1980. The second circular should be based on the merit of the students in the qualifying examination. In the contravention of these two circulars, the Delhi Student's Union made a complaint to the Vice-Chancellor against the college.

¹² AIR 1974 S.C. 1389.

¹³ Ibid Para 305.

¹⁴ Ibid Para 20.

¹⁵ AIR 1992, SC 1630.

In the instant case, the Supreme Court stated that St. Stephen's College is a minority institution entitled to enjoy protection under Article 30(1). If Delhi University imposes such conditions, it will lose its minority character. The Court declared that the State or any instrumentality of the State could not deprive the nature of the institution founded by a minority community under Article 30 (1). The reason embodied in Article 30 (1) of the Constitution is the conscience of the nation that the religious, as well as linguistic minorities not prohibited from establishing and administering educational institutions of their choice. It helps for giving their children the best general education to make them complete men and women of the country. The right to choose or select students for admission is a part of the administration of minority institution, and it is an essential facet of administration also.

But, the standards of education are not part of the management and the state has the right to frame rules to regulate the standard of education and allied matters. The Court also cautioned that Article 30(1) is not a character for mal-administration. Therefore, minority aided educational institutions are entitled to prefer candidates from their community to maintain the minority character of the institutions subject to conformity with the university standard. The state may regulate the intake of the students of the institution. The minority institutions shall provide at least 50 per cent of the annual admissions to members of the non-minority community purely based on merit only.

In **Unni Krishnan.J.P .v. State of A.P.**,¹⁶ in the instant case, five judges of the Supreme Court bench held that private aided educational institutions have to abide by all rules and regulations framed by the government. Particularly, in the matter of admission of students, they have to follow the rule of merit and merit alone subject to any reservations made under Art.15. They shall not be entitled to charge any fees higher than charged in governmental institutions for similar courses. The element of public character necessarily means good conduct in all respects consistent with the Constitutional mandate of Articles 14 and 15. The Supreme Court directed the Governments, and all other authorities grant in aid to impose such conditions immediately if not already imposed.¹⁷

(7) RIGHT TO ADMINISTER IS SUBJECT TO REGULATION:

The right of the minority under Article 30 (1) of the Constitution is subject to regulations, but such regulations shall not abridge the right of the minority community. The permissible regulations are those that subserve the excellence of the institution. An educational institution established and managed by a religious or linguistic minority was bound by the provisions of ordinance 32(4) framed under the Kerala University Act, 1957. The appellant had appointed as Principal of St. Joseph's Training College for Women,

¹⁶ A.I.R.1993 S.C.2178.

¹⁷ Ibid Para 162.

Ernakulam, in 1957. The college established by a religious society of Nuns belonging to the Roman Catholic Church and administered by a Managing Board. As a result of a particular incident a disciplinary inquiry was held against the Appellant, and she was dismissed. Then, she preferred an appeal before the Vice-Chancellor under ordinance 32(4), and the Vice-Chancellor held that the dismissal was unjustified and ordered that the Appellant be reinstated. When the matter reached the Kerala High Court, it held that the Vice-Chancellor had no power to reinstate the Appellant. The Supreme Court held that ordinance 32(4) conferred broad unfettered power on the Vice-Chancellor to interfere in disciplinary matters which directly affected the administration of the institution. Consequently, ordinance 32(4) violated Article 30(1) and did not apply to minority educational institutions.

Again, in **All Saints High School v. the State of AP**,¹⁸ The Court upheld the validity of the conditions providing for inspection in respect of school buildings, laboratories and also for furnishing returns by the minority institution to the competent authority. The minority has no unrestricted right to establish and administer educational institution. The terms and conditions for grant of recognition of the minority schools as regulatory, which seeks to secure excellence in education and efficiency in the management of schools.¹⁹

In **T.M.A. Pai Foundation v. the State of Karnataka**,²⁰ the Court stated that the right of the minorities to establish educational institutions under Article 30 (1) is not an absolute right. The state can frame regulation in the national interest, which must necessarily apply to all educational institutions whether they run by majority or minority.

Again, In **P.A. Inamdar&ors. v. State of Maharashtra &others**,²¹ The Supreme Court delivered a unanimous judgment by seven judges on August 12, 2005, and declared that the State couldn't impose its reservation policy on minority colleges, including professional colleges. The minority educational institution has a right to admit students of its own choice and includes admit students of the non-minority community. However, non-minority students cannot be forced to join.²²

This judgment was attempted to bring clarity on two previous decisions by the Supreme Court in the case of **T.M.A. Pai Foundation &ors. v. State of Karnataka & Ors**²³ and in the case of **Islamic Academy of Edn. &Anr. v. State of Karnataka & Ors.**

¹⁸ AIR 1980 SC 1042.

¹⁹ All Bihar Christian School v. the State of Bihar.

²⁰ AIR 2003 SC 355

²¹ AIR 2005 SC 3226.

²² Ibid Para 96.

²³ Supra note 22

(8) THE MEDIUM OF INSTRUCTION IN MINORITY EDUCATIONAL INSTITUTIONS:

The right under Article 30 (1) extends to both religious and linguistic minorities, and the minorities have the right to adopt the medium of instruction of their own choice. The state cannot force the minority institution to choose the language prescribed by them as a medium of instruction. **In D.A.V. College, Bhatinda v. the State of Punjab**,²⁴ The petitioners impugned sections 4(2) and 5 of the Punjab University Act, 1971 and certain circulars and notifications as unconstitutional and void. The Supreme Court held that Arya Samajists were a part of the Hindu community, in Punjab. It was a religious minority with a distinct script of their own and were entitled to claim the protection of Articles 29 (1) and 30(1). The Court observed that a minority community based on religion or language has the right to preserve its language, script and culture. In case of forcing the minorities to adopt the language and script which was not their mother tongue in the institution run by them would interfere with the right of the minorities under Article 30 (1) of the Constitution.

Again, in **State of Bombay v. Bombay Education Society**,²⁵ Similarly, Gujarati or Hindi cannot consider as the medium of instructions for the schools run by the minority whose mother tongue was English. The minority has the right to choose their medium of instruction and any restriction imposed on such right would be violative of Article 30 (1) of the Constitution.

(9) THE APPLICATION AND VALIDITY OF RESERVATION OF SEATS IN MINORITY EDUCATIONAL INSTITUTIONS:

The Supreme Court again considered the questions in the **Kerala Education Bill** case by way of the opinion in **Sidhrajibhai Sabhai and others v. the State of Gujarat**,²⁶ in the instant case, the petitioners were Christians belonging to the United Church of Northern India and they were members of the Gujarat and Kathiawar Presbyterian joint Board Society. The society had been running several educational institutions including a Training College for Teachers. The Government of Bombay by an order directing the concerned institutions to reserve 80 per cent of the seats in the training College run by it for government nominees. Then, the Government of Bombay threatened if the orders have not followed grants and recognition to the institutions to be withdrawn. The Court said that the Government order made severe inroads on the rights vested in the society to administer the Training College. Article 30 provides that all minorities have the right to establish and manage educational institutions of their choice.

²⁴ AIR 1971 SC 1731.

²⁵ AIR 1954 SC 561.

²⁶ AIR. 1963, S.C.540.

The Court held that the order of the government of Bombay led to infringement of the rights vested in the society to administer the training college and such a specific order violates Article 30 (1). The order was not a reasonable regulation; the regulations must be in the interest of the institution and the attention of outsiders. Therefore, the Supreme Court struck down the order of the Bombay Government as being violative of Article 30(1). The Court summarized the effect of the Kerala opinion and the decision in Siddarajbhai's case in the following propositions.²⁷

- (i) Any school established by a minority, whether before or after the Constitution is within the ambit of Article 30 (1).
- (ii) The right guaranteed by Article 30 (1) is an absolute right, and any law or executive direction infringes the substance of that right is void to the extent of the infringement.
- (iii) The perfect character of the right does not preclude regulations in the instructions of health, morality, public order and the like. Any such provisions are no restrictions on the substance of the right guaranteed by the Constitution under Article 30 of the Constitution.
- (iv) The intention of Article 30(1) should not be whittled down by any regulative measures.

(10) THE SCOPE AND APPLICATION OF RTE ACT TO MINORITY EDUCATIONAL INSTITUTIONS:

The Right to Education Act, 2009 and its Amendment provision extended the socially, educationally, and economically backward classes to seek admissions in private educational institutions. But, minority educational institutions denied these provisions to provide seats for them.

In Pramati Educational & Cultural Trust. v. Union of India & Ors,²⁸ Hon'ble Supreme Court on 6 May 2014, had exempted minority schools from the purview of the RTE Act. The RTE Act will not apply to aided or unaided minority schools. Though the RTE Act is constitutionally valid, minority schools cannot be obligated to reserve 25 per cent seats for students of socially and economically weaker sections of the society. The constitution bench also upheld the reservation for scheduled castes/scheduled tribes and other backward classes for admissions in educational institutions.

The Court held that in case RTE Act, 2009, applies to minority schools, either aided or unaided, the right of the minorities covered under clause (1) of Article 30 of the Constitution will be abrogated. Therefore, the

²⁷ H.M.Seervai, Constitutional Law of India: A critical Commentary, Fourth Edition, Volume -2, Tripathi Private LTD, Bombay, 1993. Pages 1317-1318.

²⁸ AIR 2014 SC 2114.

2009 Act is in so far it is made applicable to minority schools referred under clause (1) of Article 30, is ultra vires the Constitution.²⁹

Further, the court stated that exclusion of minority aided and unaided institutions from the purview of Clause (5) of Article 15 not discriminatory. The minority educational institutions are a separate class. Besides, their rights are protected under clause (1) of Article 30 and exclusion of minority institutions from the purview of the RTE does not destroy the concept of Secularism.³⁰

(11) SUPREME COURT JUDGMENT ON PRE-CONSTITUTIONAL ESTABLISHMENT INSTITUTIONS:

In re **Kerala Education Bill** case, the Supreme Court stated that the language employed in Article 30 (1) is broad scope to cover both pre-Constitutional and post-Constitutional institutions. The right to administer educational institutions covers pre-Constitution schools just as Article 26 includes the right to maintain Pre-Constitution religious institutions.³¹

In **Fr.W.Proost v. the State of Bihar**,³² the Supreme Court held that St. Xavier's College is a minority institution established by a Catholic minority community. Therefore, it must enjoy the protection of Article 30 (1). The Court also observed that the Pre-constitutional establishment of an institution does not disqualify it from claiming the protection under Article 30(1).

12. CRITICISM:

In India, the judicial interpretation to determine minority groups is based on state consideration only. On the other hand, the Central Government under the provisions of the National Commission for Minorities recognized religious minorities based on the whole country. This is the contradiction between the Legislature and Judiciary about the determination of minority, which is to be continued. Besides, the Hon'ble Supreme Court has made different interpretations in different cases to determine religious minorities, and it is overruled its earlier decisions also. The determination of minority below 50% of the total population is not correct. If the religious minority group is well developed in socially, educationally, economically and politically dominant, it is futile further to strengthen such a religious group. The Supreme Court verdict in St. Stephen's College Case v/s State of Karnataka, the ceiling limit of admissions to

²⁹ Ibid Para 46.

³⁰ Ibid Para 27.

³¹ AIR 1958 SC 956, Para 22.

³² AIR 1969 SC 465.

minority students in minority educational institution up to 50% was also bad. Anyhow it was also overruled in the T.M.A. Pai Foundations v/s State of Karnataka. Thus, still today there is no appropriate definition on religious minorities in India.

13. CONCLUSION:

Therefore, the Indian Judiciary plays an active and vital role to promote and protect the rights of religious minorities if any crisis existed. It always upholds and supports to protect the rights of religious minorities guaranteed and protected under the Indian Constitution. In case of violation of the fundamental rights of minorities, the Supreme Court and High Courts have empowered to review the decisions of either legislative or executive. Perhaps judiciary only in all times, again and again, upholds and highlights the vital importance of safeguarding the rights of minorities conferred upon them by exercising judicial review power.

