Minority Educational Institutions : A Need for Prudential Regulation

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India is a vast country teeming with a population that comprises of a variety of religious, cultural and linguistic groups. At the time of independence, our aim was to achieve unity in diversity - to preserve these individual identities and yet to remain a united, secular nation. Keeping these lofty ideals in mind, the framers of our Constitution set about drafting the supreme law of the land in the hope that it would aim at realising this utopian dream.

In order to achieve unity and integrity of the country and to allay any fears of the minority communities, Article 30(1) was provided as a shield to protect them against the sword of the dominant majority groups. This article examines the Supreme Court's construction of the protection given to minorities under Art. 30(1). It is submitted that this construction by the court is far too lenient, as regards admission procedures and reservations for students belonging to minorities. Such a wide interpretation may not have been contemplated by the Constitution makers nor justified by the letter and spirit of the Constitution.

The issue came up before the Supreme Court in the recent case of *T.M.A. Pai Foundation v. Sate of Karnataka*[1] which has been referred to a larger bench.

This issue has essentially two facets (1) whether minority institutions have the right to have their own method of selection of students and (2) whether at all minority educational institutions have a right to reserve seats for students of their own communities.

The question as to whether or not minorities have the right to have their own method of selection was addressed by the Supreme Court in *St. Stephens College v. University of Delhi.*[2] The contention raised by the Delhi University and the students union was that admission based on the merit determined by the marks obtained by the applicants in the qualifying examination would exclude arbitrariness in the selection and would assure fairness to all applicants. It was also submitted that the circulars issued by the University with regard to the selection procedure are regulative in character and do not infringe upon the fundamental right guaranteed to St. Stephens College as a minority institution under Article

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1. A.I.R. 1994 S.C.1521.

2. A.I.R. 1992 SC 1630.

30(1). The court held that the right to select students for admission is a part of administration. The court apparently came to this conclusion on the basis of the contention urged by the St. Stephens College that it had been the experience of the college that if the students were admitted purely on the basis of their marks in the qualifying examination, then the students who belonged to the minority Christian community will not stand a chance. The contention of the college was that inspite of giving these concessions only a few students from the minority community apply; now if they were to select students on the basis of their marks in the qualifying examination, then the college would not be able to admit students belonging to the minority community at all.[3]

The second contention urged on behalf of the St. Stephens College was with respect to the fact that since students seeking admission came from different boards with different levels of difficulty in their syllabi, the selection of students through the college's own selection procedure served as a method of equalizing all these inconsistencies.

As regards the first submission of the college, it is submitted that the court overlooked the fact that if the minorities could reserve upto 50% of the seats for the students of their own community, then the problem of their students getting left behind does not arise.[4] The apparent paradox which has been overlooked by the Supreme court is that if the stand taken by the minority institution is that their students will not stand a chance if selections are conducted on the basis of a common entrance test and therefore the minorities should have their own selection procedure, then such a premise would be justified only if the minority did not have any reservation at all. But if the minority institution as held by the court can reserve upto 50% of the seats for students of its own community,. then the above fear is unjustified. It is submitted that the Supreme Court may have opened the floodgates of backdoor entry by giving the minority educational institutions not only the power to have their own admission procedure but also to fill upto 50% of the seats for students of their own communities. It may so happen that the marks of the candidates in their qualifying examination would be of no consequence as the minorities may fill the seats in whatever manner on the basis of their own admission procedure thus providing a scope for students with political and economic clout to influence admissions with deserving students not standing a chance.

In some minority institutions it may so happen that not only are most of the seats reserved but also some of the questions asked in the oral interview are closely

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3. In *Director of School Education, Govt. of Tamil Nadu v. Rev. Brother Arogiaswamy* A.I.R. 1971 Mad 440 the question related to the validity of uniform admission procedures prescribed by the government. The court held that this method placed serious restrictions on the freedom of the minority community and was therefore not valid.

4. According to *St. Stephens v. University of Delhi* A.I.R. 1992 S.C.1630 all minorities have a right under Article 30(1) to have their own selection procedures and all minorities also have a right to reserve upto 50% of the seats available in the institution for students of their own community.

linked to the tenets of the minority religion, which a student belonging to any other religion may not have adequate knowledge about. This may amount to discrimination solely on the basis of religion which is violative of Art. 29(2).

The second contention raised was that since students seeking admission are from different boards with variations in the syllabi and standards of correction, having of their own selection procedures by a minority institutions, is an equalizing principle.With respect to this stand there are two criticisms.

First, the University itself can conduct an objective entrance test for the minority institution thus equalizing the differences. This would in no way harm the interests of the minority community since either way they can reserve upto 50% of the seats for candidates of their own community who have written the University conducted examination.

Secondly, if the minority educational institutions are entitled to have their own entrance procedures because of their interest in uniformity in selection, then since this is a general attitude which aids the promotion of educational standards, why don't majority educational institutions also have a right to their own admission procedures in order to achieve uniformity? Promotion of educational standards cannot be the exclusive right of minority educational institutions.

Therefore, it is submitted that the Supreme Court has been extremly liberal towards minority institutions by permitting them to have their own admission procedures.

The second question which is to be addressed here is whether or not reservation for minorities can be read into Art. 30(1). The Supreme Court has held that Art.29(2) is subject to Art.30(1) and therefore, minorities can reserve seats for candidates of their own community but there lurks another more plausible point of view. According to this view, the rights conferred by Arts. 29(1) and 30(1) are enabling ones while clause(2) of Art. 29 is a mandate that in any educational institution maintained by or receiving aid from the state, all citizens would be treated equally in matters of admission and no citizen could be denied admission on grounds only of religion, race, caste, language or any of them. The right guaranteed under Art.29(2) would prevail over the right guaranteed to minorities under Art.30(1). This can be justified by the fact that it is a well known principle of harmonious construction that the *special law* [Art. 29(1)] would prevail over the general law [Art.30(1)]. It may also be noted that while interpreting a provision of the Constitution, no words can be imported or added. If the contention raised on behalf of the minority institutions is to be accepted, it would necessarily involve the importation of the words "for their own community" in Article 30(1). Art 29(2) does not make any exception to any educational institution established by minorities and it clearly provides in unmistakable terms that it applies to any educational institution maintained by the state or receiving aid out of state funds.

In *St. Xaviers College v. State of Gujarat,*[5] Justice Dunivedi held :

> "A glance at the context and scheme of part III of the Constitution would show that the Constitution makers did not intend to confer absolute rights on minorities to establish and administer educational institutions. Art. 29(2) imposes a restriction on Art.30(1)".

This view was reiterated in *In re Kerala Education Bill*[6] where the court held that "The aim of the Constitution is unity in diversity. It is to enrich the unity by enabling it to assimilate the diversities and not by encouraging fissiparous tendencies. It would be rather in the interest of the minorities to admit students of other communities and to disseminate their own culture in a wider range of community."

It would be very useful to refer to the Constituent Assembly debates where Dr. B.R.Ambedkar viewed that "once an institution, whether it is maintained by the community or not, is given a grant, the condition is that it shall keep the school open to all communities".

Also if we look at the scheme of part III, we see that Arts.15(4), 28(3) and 29(2) place express limitations on the rights given to minorities under Art.30(1). This when read with the Constituent Assembly debates makes it amply clear that the Constituent maker did not intend the right under Art.30(1) to be absolute. The Article must be read in its ordinary, natural and grammatical meaning. Hence, it is humbly submitted that Art. 30(1) does not confer upon minorities the right to reserve seats for their own community in institutions which are aided by the state.

It is felt that institutions of general education established by minorities enjoy a much more privileged position than others in terms of supervision by the state. The Supreme Court has given a very generous interpretation to Art.30(1). While strict supervision can be imposed upon majority institutions, the same cannot be done as regards minority institutions and the affairs of such institutions can be regulated only within very narrow limits. This it is submitted was not envisaged by the Constitution makers.

It is urged that the Honourable Supreme Court must read down the scope of Article 30(1) as this will serve the interests of both the minority communities as well as the interests of the student population in India, as a whole.

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5. AIR 1994 SC 1389.
6. AIR 1958 SC 956.