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CONSTITUTIONAL MANDATE AND RIGHTS OF LINGUISTIC MINORITIES

THE PROBLEM of national integration in India had been posing grave difficulties after independence. Nation building is a dynamic process of integrating a plurality of social groups into a common framework of identity and loyalty in a political community. There were a number of divisive forces in India based on race, religion and language at work threatening to blow up the unity of the country. Religious conflicts in India led ultimately to the partition of the country, leaving behind a legacy of communal hatred and unsolved political problems. The problem of language was more challenging and was putting to test India's quest for national unity, compelling constitutional makers to find out a solution because the emotional integration of linguistic minorities with the majority language groups could play a major role in bringing about national unity in the country.

The Constitution-makers had anticipated some such problem and had accordingly made provisions to meet the situation in articles 29 & 30 but the problem as it emerged after 1956 was much bigger than what the existing constitutional provisions could adequately cope with. Consequently, two more articles 350-A and 350-B were added to the Constitution specifically with a view to protect the interest of the linguistic minorities.

The Indian Constitution provides certain rights to the minorities to preserve their language, religion and culture on the one hand and enjoins upon the government under special directives on the other, to use minority languages in education and administration and safeguard the interest of linguistic minorities in matters of education administration and employment.

The purpose of article 29 is to facilitate migration of people.¹ If, for example, a few people from Madras were to come and settle down in Mumbai, they would constitute a cultural and linguistic minority in Maharashtra and article 29 would protect their culture, language and

1. Art. 29. Protection of interest of minorities – (1) any section of the citizens residing in the territory of India or any part there of having a distinct language, script or culture of its own shall have the right to conserve the same; (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of the State funds on grounds only of religion, race, caste, language or any of them.

script. Article 29 does not impose any positive obligation on the state to take any action to conserve any culture or language as it merely says that there is a cultural or linguistic minority desiring to preserve its own culture or language, and that the state shall not impose on it any other language or culture.

Before discussing the constitutional provisions, the term 'minority' has to be defined. The Indian Constitution neither defines the term nor provides the criteria for determining a minority. Linguistic minorities can be described as those minorities residing in the territory of India, or any part thereof, which have a distinct language or script of their own. A group will be declared a linguistic minority if its mother tongue is different from the principal language of the country and at the state level different from the principal language of the state. However, several principles and guidelines can be formulated for deciding about the minority status of a community on the basis of language and religion and the specific cases that have come up before the Supreme Court. *In re The Kerala Education Bill, 1957*,² which involved religious minorities, the question was posed as to what constitutes a 'minority'. In the opinion of the court while minority could be easily defined as a group which was numerically less than 50 percent. But it remains unanswered as to 50 percent of what! Should it be of the entire population of India or a state or a part thereof! It may be that a community may be concentrated in a part of a state and thus form a majority in that region, though in the context of the whole of the state population, it may be in a minority. If a part of a state is taken, what is the unit to be taken into consideration – a district, a *taluk*, town or a municipality or its wards! Though the court did not express a final opinion on this question, it did decide that when an Act of a state legislature is applicable to the whole of the state, the minority must be determined by reference to the entire state and any group, linguistic or religious which is numerically less than 50 percent of the entire state population may be considered as a minority for purposes of constitutional guarantees in relation to that state. This test has been approved and reiterated by the court in *D.A.V. College, Jullundur v. State of Punjab*.³ The question in this case was whether the *Arya Samajis*, founder of the D.A.V. College Trust, who managed and administered the petitioner college formed religious as well as linguistic minority in the State of Punjab. The petitioner contended *inter alia*, that the statutes framed under the Guru Nanak University, Amritsar, Act, 1969 had violated their fundamental right under article 30(1) in that they interfered with the management of minority educational institutions. The court, in determining what constitutes a minority,

2. AIR 1958 SC 956.

3. (1971) 2 SCC 269.

approved the test enunciated earlier in *re The Kerala Education Bill* case and reaffirmed that minorities 'are to be determined in relation to the particular legislation which is sought to be impugned, namely, that if it is the state legislature these minorities have to be determined in relation to the population of the state.'⁴ Adopting this test, the court found that *Arya Samajis* a sect of Hindus, is a religious minority in the State of Punjab and entitled to the constitutional guarantee under article 30. Having thus held, the court thought it unnecessary to consider whether *Arya Samajis* are a linguistic minority. Nevertheless, the court laid down certain principles to determine linguistic minorities. P. Jaganmohan Reddy J-defined linguistic minorities as:

[A] linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language

It may be pointed out that though the Constitution mentions in the eighth schedule twenty-two languages, it is not necessary that the language of the minority group be one of the twenty-two languages recognized by the Constitution. Further it is also not necessary that linguistic and religious groups must also be identical. Moreover, it is not necessary that the language should also have a distinct script for those who speak it to be a linguistic minority. There are in this country some languages which have no script of their own but nonetheless those sections of the people who speak that language will be a linguistic minority.⁵ Thus a linguistic minority is a group of people having mother tongue different from that of the majority in a state or part thereof. These observations are of decisive significance for the formulation and implementation of safeguards for all linguistic minorities in general and for those linguistic groups which have no distinct script of their own in particular.⁶

In *Jagdeo Singh Sindhanti v. Pratap Singh Daulta*,⁷ the Supreme Court observed that:

[R]ight to conserve the language of the citizens includes the right to agitate for the protection of the language. Political agitation for conservation of the language of a section of the citizens cannot therefore be regarded as a corrupt practice within the meaning of Section 123(3) of the Representation of the People Act, 1951... unlike Article 19(1), Article 29(2) is not subject to any restrictions.

4. *Id.* at 274.

5. *Id.* at 275.

6. Alice Jacob, *Linguistic Minorities in India: Problems and safeguards*, Indian Law Institute, 1972, 369-71.

7. AIR 1965 SC 183.

In *B.R. Rama Rao v. Telgu Desham*,⁸ Andhra Pradesh High Court ruled that appeal on the basis of the language during the election campaign is protected under article 29(1). Only those language appeals are objectionable, under section 123(3) of the Representation of the People Act which endanger the integrity of the country.

Article 29(2) prohibits discrimination on the ground of religion in the educational institution. In *State of Bombay v. Bombay Education Society*,⁹ a circular order issued by the Govt. of Bombay directing the school with English medium to admit only Anglo-Indian and citizen of non-Asiatic descent in the classes taught in English was declared *ultra vires*, since it denied all pupils whose mother tongue was not English admission into any school where the medium of instruction was English. The Supreme Court made it clear that the order would not be sustained even if the object for issuing it were the promotion of the national language. Supreme Court observed :¹⁰

[W]hatever the object, the immediate ground and direct causes for the denial is that the mother tongue of the pupils is not English. Adopting the language of Lord Thankerton, it may be said that the laudable object of the impugned order does not obviate the prohibition of Article 29(2) because the effect of the order involves infringement of this fundamental right and that effect is brought about by denying admission only on the ground of language.

But in *Hindi Samiti v. Union of India*,¹¹ it was observed that not to hold an admission test in a particular language would not constitute denial of admission on the ground only of language. In *Jagateshwar Singh Banga v. State of Orissa*,¹² Orissa High Court ruled that denial of admission in a medical college on the ground that the pupil did not have knowledge of speaking, reading and writing Oriya amounted to violation of article 29(2).

Article 29 and 30 do not simply provide certain rights to linguistic minorities, but also make provision as to how these rights can be best safeguarded and realized. According to the article 29(1) any group having distinct language, script or culture of its own has the right to conserve the same. This right can be realized under article 30 (1) which accords right on the minorities to establish and administer educational institutions of their choice. Thus it makes provision for the display of group initiative

8. AIR 1983 AP 96.

9. AIR 1954 SC 561.

10. *Ibid.*

11. AIR 1990 SC 851.

12. AIR 1977 Ori 30.

and freedom and tacitly recognize the role of educational institutions in preserving language and culture. In order to make it operative and effective, article 30(2) debars the state government for discriminating against minority institution in according recognition or sanctioning grant for their maintenance on the ground that they are under the management of linguistic or religious minority groups.

Both the articles 29 and 30 not only recognize the multilingual character of Indian situation, but also the aspirations of the minority community. In consonant with the multilingual, multi-ethnic and multi-cultural situation it is recognized that the character of the minority institutions does not change when students from other communities are admitted into such institutions. According to article 29(2) neither a state aided educational institution run by the minority nor any other institution maintained by the state or receiving aid out of state funds can deny admission to any citizen on the grounds of religion, race, caste, language or any of them. As regards the aspirations of the minority community, a minority institution can claim protection under article 30 not only when it is exclusively engaged in the conservation of minority language, script or culture, but also when it imparts general education. This is implied by the words '*of their choice*'.

The right of the minorities under article 30(1) is different from other fundamental rights in article 19 in that it is not subject to reasonable restriction that may be imposed by the state *inter alia* in the interest of general public. Nevertheless, the state has the power to regulate educational institutions of the minorities in order to ensure the excellence of the institutions as regards educational standards and to check mal-practices since the right to administer cannot include the right to mal-administer. In exercise of regulatory power the state can prescribe conditions of employment of teachers and their qualifications, facilities for students, teaching methods and educational standards, for grant-in-aid and recognition etc. However, the regulatory power of the state does not include the right to prescribe medium of instruction and to lay down patterns of admission, management and administration under the label of public interest. The regulation of the minority institutions by the state must not only be reasonable but also conducive to making the institution an effective vehicle of education for minority community or other persons who resort to it. In various cases that have come up before the Supreme Court where the state or university has tried to impose medium of instruction or administration requirements uncongenial to the minority institutions, the court has maintained the spirit and the contents of the constitutional rights of the minorities.

While article 30(1) provides for the initiative and dynamism of the minority community to establish and administer educational institutions of their choice, the special directives under articles 347, 350, 350-A and

350-B enjoin upon the state governments to safeguard the interests of the linguistic minorities. Article 350-A says: 'It shall be the endeavour of every state and 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 directions to any State as he considers necessary for securing the provision of such facilities. This places a heavy burden and an enormous task of planning and development of minority languages. The practical problems of implementation of constitutional provisions are taken into account under article 350-B which makes provisions for the appointment of a commissioner for linguistic minorities who may supervise and 'investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution.¹³

As in the field of education, there are adequate provisions for the use of minority language for official purposes. Under article 347 the President can direct in appropriate cases that the minority language be officially recognized for use in administration throughout a state or any part thereof for such purposes as he may specify. In this respect it has been suggested that the important government notices, rules and regulations be issued in minority language if the minority language speakers constitute 15-20% population at *tehsil* or municipality level. The minority language must also be recognized as an additional official language of the district if 60% population of the district speak this.

The constitutional safeguards can neither be exhaustive and comprehensive enough to protect the interests of linguistic minorities nor adequate enough in themselves without requisite socio-linguistic conditions. For instance, constitutional safeguards only are not enough as the protection of linguistic minorities also involves economic and social issues. The resolution of these issues depends on the distribution of power and resources between the majority and minority groups, inter-group relationships and attitudes and the defining characteristics of socio-linguistic. However, there is no doubt that constitutional protection can certainly alter the position of linguistic minorities and contribute to better relationships between the majority and minority communities.

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13. Hans R. Dua, *Language Planning in India* 263-65 (1985).

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