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# Empowering Pluralism: Examining the Right of Minorities to Establish and Manage Educational Institution

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## ABSTRACT

*In this research paper, we claw into the fascinating content of the right of minorities to establish and govern their own educational institutions. We take a near look at the legal frame and constitutional provisions that guard this essential right. Specifically, we examine the significance of Article 30 (1) of the Indian Constitution, which explicitly protects the rights of minorities to establish and administer educational institutions of their choice.*

*To gain a deeper understanding, we assay corner court cases that have played a vital part in shaping the interpretation and perpetration of this right. For case, the Supreme Court of India's decision in the T.M.A. Pai Foundation case (2002) clarified the compass and limitations of the right to establish and administer educational institutions by minorities. also, the sire Inamdar case (2005) addressed the issue of admissions and reservations in minority educational institutions.*

*likewise, we explore the broader impact of this right on minority communities and the educational geography. By allowing minorities to establish their own educational institutions, this right foster diversity, inclusivity, and artistic preservation. It provides a platform for minority groups to conduct education that aligns with their unique artistic, verbal, and religious backgrounds.*

*Throughout this research paper, we highlight the significance of this right in promoting equal access to education and empowering minority communities. By examining the legal frame, court cases, and societal impact, we aim to exfoliate light on the significance of upholding and guarding the right of minorities to establish and govern their own educational institutions.*

**Keywords:** *minorities, educational institution, pluralism, inclusivity, cultural preservation, article 30, rights of minorities.*

## I. INTRODUCTION

In this research paper, we are going to dive into an intriguing content the right of minorities to

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set up and run their own educational institutions. It is each about icing that minority communities have the freedom to establish seminaries and sodalities that reflect their unique cultural, linguistic, and religious identities.

Now, you might be wondering why this is such an important issue. Well, education plays a pivotal part in shaping individualities and communities. It is not just about gaining knowledge and chops; it is also about conserving and celebrating different societies and individualities. That is where the right of minorities to establish and govern their own educational institutions comes into play.<sup>3</sup>

India, the largest republic of the world is a land of religious, artistic, and verbal diversity but its topmost strength has been its celebrated vision of "Unity in diversity". Indian sodality is pluralistic in nature when it comes to religion and is multilingual. Minority constitutes important member of population. The introductory ideal of protection of minority rights is to produce a feeling of belongingness and that they will no way be overrun by the maturity, to integrate minorities inversely into the public life of the state characterized by the morality and interest of maturity and to instil confidence in them.<sup>4</sup>

Article 30(1) holds a veritably special position for the fact that through education alone minorities can conserve their language, script, and cultural heritage. Can the Constitution be suitable to guard minority rights in an adverse social reality?<sup>5</sup>

Although minorities are granted the freedom to establish and manage educational institutions under article 30, this right is not unqualified. The management of the establishments made by minority communities is subject to official regulation. However, the "right to administer" does not include the "right to maladminister," as this would defeat the purpose of article 30, which is to advance the academic excellence of minority schools.<sup>6</sup>

The Constitution made provisions for minorities to give them the benefit of establishing and governing their own educational institution (Article 30) where they can help the pupil from their community to give some honour and support their education. This was done in consideration of the factor of education and its need.<sup>7</sup>

Throughout this research paper, we will explore the legal frame girding this right, including corner court cases that have shaped its interpretation and perpetration. We will also claw into

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<sup>3</sup> Azeez Basha vs. Union of India (AIR 1968 SC 662)

<sup>4</sup> S.P. Mittal vs. Union of India (AIR 1983 SC 1)

<sup>5</sup> State of Bihar vs Syed Raza, AIR 197 SC 2425

<sup>6</sup> T.M.A. Pai Foundation vs State of Karnataka, (2002) 8 SCC 481 AIR 2003 SC 355

<sup>7</sup> National Commission for Minority Educational Institution Act, 2004 (2 of 2005)

the broader impact of this right on minority communities and the educational geography. By understanding the significance of this right, we can more appreciate the significance of diversity, inclusivity, and equal access to education.

**(A) Meaning of Minority institution:**

Our Constitution does not define the word "minority." Its root is the Latin word "minor," which means in little number, with the suffix "ity." The Supreme Court noted that although it was not delicate to say that the minority refers to a population that's numerically less than half (50) in respect to the entire legislation, this was not the case with the Kerala Education Bill. However, the description of a minority would be grounded on the total population or citizens of the State, if it is a state enactment. The description of a minority under Articles 29 and 30 would depend on the state's population. thus, it was decided that Christians, Muslims, and Anglo Indians would be minority groups in the State of Kerala when it came to the Kerala Education Bill.<sup>8</sup>

According to Article 30(1), a "linguist minority" is defined as those who speak a language other than English and who do not use a unique jotting system. There are numerous languages spoken in India, yet none of them have a unique script. still, they are still said by the people themselves. Article 30(1) of the Indian Constitution was included to guard them. A linguistic minority should be considered grounded on the language they speak, not the language they wish their children to learn.<sup>9</sup>

"That the main basis of the minority should be in commitment to one of the numerous arguments and not a field or aspect of the religion" is what the phrase "religious minority" demonstrates. It has been determined that Jains and Sikhs in Delhi's Union Territory are minorities according to Article 30(1) because of their religious beliefs.<sup>10</sup>

According to the National Commission for Minority Educational Institution Act of 2004, a "minority institution" is an educational establishment that is managed and established by members of the minority and a "minority" is a community as defined by the civil government.<sup>11</sup>

## **II. CONSTITUTIONAL PROVISIONS**

Article 30-Right of minorities to establish and administer educational institutions

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<sup>8</sup> P.A. Inamdar v. State of Maharashtra [2006 (6) SCC 537]

<sup>9</sup> AICTE guidelines on Minority and Non-minority educational institution, Handbook 2018-19 - Guidelines established by the All-India Council for Technical Education. (2018-19)

<sup>10</sup> *ibid*

<sup>11</sup> T.M.A. Pai Foundation vs State of Karnataka, (2002) 8 SCC 481 AIR 2003 SC 355

- 1) All minorities, whether grounded on religion or language, shall have the right to establish and administer educational institutions of their choice.<sup>12</sup>( (1A) In making any law furnishing for the mandatory accession of any property of an educational institution established and administered by a minority, appertained to in clause( 1), the state shall insure that the quantum fixed by or determined under similar law for the accession of similar property is similar as would not circumscribe or vacate the right guaranteed under that clause.)
- 2) The state shall not, in granting aid to educational institutions, distinguish against any educational institution on the ground that it is under the operation of a minority, whether grounded on religion or language.<sup>13</sup>

The article confers introductory two rights (1) right to establish an institution; and (2) right to administer it. The former means the right to produce an institution, and the ultimate means the operation of the affairs of the institution must be free of external control.<sup>14</sup>

In the case of *Azeez Basha vs. Union of India*, “a constitutional Bench of the Supreme Court has held that the expression “establish and administer” used in Article 30(1) was to be read conjunctively that is to say, two requisites must be fulfilled under Article 30(1), videlicet, that the institution was established by the community and its administration was vested in the community.”<sup>15</sup>

In *S.P. Mittal vs. Union of India*, the Supreme Court had held that “in order to claim the benefit of composition 30(1), the community must show; (a) that it's a religious/ linguistic minority, (b) that the institution was established and administered by it.”<sup>16</sup> Article 350B-Special officer for linguistic minorities (1) There shall be special officer for linguistic minorities to be appointed by the President.

(2) It shall be the duty of the special officer to probe all matters relating to the safeguards handed for linguistic minorities under this constitution and report to the President upon those matters at similar intervals as the President may direct, and the President shall beget all similar reports to be laid before each House of Parliament, and transferred to the Governments of the States concerned.<sup>17</sup>

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<sup>12</sup> National Commission for Minority Educational Institution Act, 2004

<sup>13</sup> *P.A. Inamdar v. State of Maharashtra* [2006 (6) SCC 537]

<sup>14</sup> AICTE guidelines on Minority and Non-minority educational institution, Handbook 2018-19 - Guidelines established by the All-India Council for Technical Education. (2018-19)

<sup>15</sup> *ibid*

<sup>16</sup> *ibid*

<sup>17</sup> *T.M.A. Pai Foundation vs State of Karnataka*, (2002) 8 SCC 481 AIR 2003 SC 355

**(A) Protection of Interests of Minorities (Article 29):**

1. All Indian citizens who live in the country or any of its regions and who have a unique script, language, and culture of their own should have the right to save it.

2. A citizen shall not be barred from any state- run educational institution or denied help or support because of their race, religion, estate, language, or any combination of these reasons.<sup>18</sup>

**(B) Rights of Minorities to establish and administer Educational Institutions (Article 30):**

1. The freedom to establish and manage educational institutions in agreement with their own preferences should belong to all minorities.

2. The government should flash back that if it is copping any real estate from a minority- possessed educational institution, the price should be determined in a way that does not violate the rights of the minority.

3. The State is not allowed to treat any educational institution else because it is run by a minority, whether that minority is represented by a minority in terms of language or religion.<sup>19</sup>

**III. TOP 3 JUDGMENTS ON THE RIGHT GIVEN TO MINORITY TO SET UP AND GOVERN THEIR EDUCATIONAL INSTITUTIONS****(A) Refusal to give recognition or cooperation by the statutory authority without just and acceptable grounds is a breach of Article 30(1)**

In 1984(4) SCC 500, Managing Board of the Milli Talimi Mission Bihar, and Ors. vs. State of Bihar and Ors. The right to manage a minority institution is an abecedarian one, just as vital as other rights granted to citizens of the country, as the Supreme Court has made abundantly straight. The immediate result is the destruction of the institution itself if the State Government refuses to admit it or if a university refuses to grant cooperation to a minority educational institution without reasonable and sufficient defence. In this sense, the right guaranteed by Article 30(1) of the Constitution<sup>20</sup> is violated when the statutory authority refuses to grant recognition or cooperation without furnishing reasonable and sufficient defence.

**(B) Appointment of Staff in Minority Institutions**

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<sup>18</sup> National Commission for Minority Educational Institution Act, 2004

<sup>19</sup> P.A. Inamdar v. State of Maharashtra [2006 (6) SCC 537]

<sup>20</sup> Azeez Basha vs. Union of India (AIR 1968 SC 662)

In **State of Bihar vs Syed Raza**, AIR 197 SC 2425 –According to a ruling, the Vice-Chancellor's prior consent is not necessary for the creation of a job at a minority institution, and those appointed would be eligible to assist under Article 30(1) of the Constitution. According to Article 30's Proviso (2), the State is prohibited from favouring any educational institution over another based only on the fact that it is run by a minority, regardless of the minority's language or religion.<sup>21</sup>

### **(C) Rights and commitments of private unaided educate run by minorities**

In the case of **T.M.A. Pai Foundation vs the State of Karnataka**, (2002) 8 SCC 481 AIR 2003 SC 355 - The rights and obligations of private, unaided organizations controlled by minorities and non-minorities were the only things that the Supreme Court considered, ignoring the limitations placed on minority and non-minority institutions by the states.<sup>22</sup>

## **IV. NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTION**

- It was created on November 11, 2004, and on December 11, 2004, a new legislation was approved to replace it. Its primary duty is to safeguard minority interests about minority-owned educational institutions. The National Commission for Minority Education Institution's functions include:
- Advising the federal and state governments on any issue pertaining to minority education;
- Interfering in any court case involving the denial or infringement of minorities' right to an education.
- It recommends to the government that program for minority educational institutions be implemented;
- It takes action to safeguard the institution's minority status and character;
- It makes decisions about all issues pertaining to the status of any minority educational institution.<sup>23</sup>

### **(A) The National Commission for Minorities Educational Institutions Act, 2004**

- This lays out specific guidelines for the creation and management of the minority education institution.

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<sup>21</sup> **State of Bihar vs Syed Raza**, AIR 197 SC 2425

<sup>22</sup> **T.M.A. Pai Foundation vs State of Karnataka**, (2002) 8 SCC 481 AIR 2003 SC 355

<sup>23</sup> National Commission for Minority Educational Institution Act, 2004

**a. How to set up minority instructive institution in India – Compliance to take after**

- To obtain a no objection certificate, an individual seeking to establish a Minority Institution may apply to the Competent Authority (which is defined as the authority to provide NOCs for this purpose under Subclause (ca) of the 2, NCMEI). The application must follow the approved format.
  - NOTE: An application must be completed in accordance with the required form before being submitted to the Commission.
1. After reviewing the necessary papers, affidavits, and other evidence, if any, the Commission ought to:
    - The applicant's minority institution needs to be registered under the Societies Regulation Act of 1860 as a society, or as a trust under the Public Trust Act of 1950.
    - Should it be registered with a society, a copy of the certificate of society registration must be sent with the application. The trust deed, association note or memo, rules, and regulations with all the modifications, and registration paperwork should all be attached if the trust is registered.
    - Attached should be an affidavit signed by the society's president or trust secretary.
    - In the case of an individual-run institution, the applicant is required to submit an affidavit along with a copy of it to the educational authority in charge of overseeing the minority educational institution. The applicant's community must comprise most of the trust members on the managing committee of the application institution.
    - An application needs to be unique and comprehensive in every way. It must be presented together with five additional sets of applications and copies of all pertinent documentation. In accordance with NCMEI Section 10(2), promptly choose each application submitted under Section 10(1) and grant or deny the application, as appropriate, after providing the petitioner with an opportunity to be heard.
    - Considering that the candidate should be informed by the competent expert if their application is denied.
  2. If the competent authority or commission does not provide a certificate stating that there is no objection within the ninety days after the application is received, as per Section 10 (1), or
    - When a rejection of an application occurs and the applicant for the certificate is not notified of the decision.

- It is to be assumed that the applicant has received a certificate of no objection from the competent authority.
- b. After obtaining minority status certificate**
  1. It has the authority to choose the members of its governing body, who the institution's founders trust, believe, and know will guide and manage the organization's operations.
  2. Both teaching and non-teaching staff can be assigned.
  3. To give in to the local student body. Students who are not minorities cannot be restricted on it. The State is not competent to implement the policy of reservation on student admission, nor can it determine what proportion of admissions at a minority educational institution should be reserved. On the other hand, Subclause (2) of Article 29 of the Constitution requires the administration to admit a non-minority student to a reasonable degree if the institution is receiving any financial support from the State at that point.
  4. It can create an appropriate pricing structure on its own.
  5. It responds to inappropriate behaviour or actions directed towards any employee.

In *P.A. Inamdar v. State of Maharashtra* [2006 (6) SCC 537], the Supreme Court ruled that:

- A minority institution is not subject to the policy of reservation for admission of students; and
- A minority institution is not subject to the policy of reservation for employment.

**c. If the Competent Authority is rejecting your lawful request to establish a minority educational institution, where may you file a complaint?**

1. Any applicant may file an appeal against the Competent Authority's order issued under Section 12A (1) if he is dissatisfied with the order under Section 10(2) of rejection.
2. Within 30 days of the date on which the applicant receives notification of an order from the appropriate authority, an appeal under Section 12A (1) must be lodged.

**(B) AICTE guidelines on Minority and Non-minority educational institution, Handbook 2018-19**

The AICTE has established several guidelines. All AICTE-accredited colleges, whether they are minority or non-minority, must abide by these rules. All AICTE-accredited colleges are required to abide by several rules that the organization has established for its institutions, which include as follows

**a. List of Minority Educational Institutions affiliated by AICTE**

There are a few 37-minorities instructive institution which comes beneath the AICTE and those colleges are recorded.

#### **b. Benefits available to Minority Institutions**

Overall, a minority educational institution has three benefits that other institutions do not have:

1. Minority educational institutions are exempt from the requirement that other educational institutions maintain a reservation in work or affirmations for SCs, STs, and OBCs.
2. Minority educational institutions have a significantly greater prominent authority than other institutions when it comes to control over legislators. For instance, the minority educational institution may have a choice advisory board that does not include members from the universities in the appointment of teachers and principals. As a result, minority administrations are free to select the headmaster of their choosing, but traditional school systems typically require headmaster appointments to be made based on seniority.
3. Minority educational institutions may reserve up to 50% of a student's space upon acceptance if the student is from their own community.<sup>24</sup>

## **V. CONCLUSION**

Although it does not discriminate against the privileged classes, the idea of allowing minorities to defend their right to an education can instil a sense of security in those who belong to the minority class.

The census makes it abundantly evident that minorities in India are less wealthy than the privileged class. Consequently, it is critical to grant minorities specific legal rights to improve their standing in society. The rationale behind enforcing article 30 of the Indian Constitution is to grant minority groups the Fundamental Right to form and oversee their own educational establishment, thereby benefiting the local populace.

It has been demonstrated that the constitutional provision permitting minorities to form and operate their own institutions is advantageous to the minority community in terms of educational advancement, for example The majority of Jains is educated, making them the minority group with the greatest literacy rate.

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<sup>24</sup> AICTE guidelines on Minority and Non-minority educational institution, Handbook 2018-19 - Guidelines established by the All-India Council for Technical Education.

**VI. REFERENCES****(A) Cases:**

- 1984 (4) SCC 500, Managing Board of the Milli Talimi Mission Bihar, and Ors. vs. State of Bihar and Ors.
- State of Bihar vs Syed Raza, AIR 197 SC 2425
- T.M.A. Pai Foundation vs the State of Karnataka, (2002) 8 SCC 481 AIR 2003 SC 355
- P.A. Inamdar v. State of Maharashtra [2006 (6) SCC 537]

**(B) Books referred:**

- P.M. Bakshi, The Constitution Of India
- Ujjwal Kumar Singh, Minority Rights In India

**(C) List of articles referred:**

- “Minority rights in education- Reflection on Article 30 of the Indian Constitution” by Ranu Jain
- “Right of minority educational institutions” by Venu Nanavaty
- “Minority Educational Institutions: A Critical Analysis” by Molishree
- “Minority rights & Educational Institutions: Latest Developments” by M.P. Raju
- “Some Clarity on Minority Institutions” by Gerald D’Souza SJ
- “Rights of Minority Educational Institutions” by Dr. Rasheed Shaikh

**(D) List of statutes referred:**

- The Constitution Of India (Bare Act)
- The National Commission For Minority Educational Institutions (Amendment) Bill, 2009
- Societies Regulation Act Of 1860
- Public Trust Act Of 1950
- The Kerala Education Act of 1959

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