



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CULTURAL AND EDUCATIONAL RIGHTS **(ARTICLE 29 AND 30)**

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Introduction

The Constitution's Article 30 discusses the two categories of minority communities: religious and linguistic. However, although it delineates the classifications of minority communities, the government has not issued an official definition for the term.

The numerous articles in our Constitution as well as government reports provide some guidance. Minority communities' rights are protected by Article 29(1), which also stipulates that anyone possessing "a distinct language, script, or culture of its own" has the right to protect it.

We can infer from the text's language that groups with distinct scripts, languages, or cultures are classified as minority communities.

Is article 29 only for minority?

The various principles given in the preamble in the form of dignity, equality, liberty, justice, fraternity given in the preamble are called preambular percepts.

If there is a conflict between the marginal heading and the operative part of provision then the operative part will prevail.

In article 29(1) the operative part uses the words 'any section of citizens' which implies that the said article may be majority or minority articles it is here that there is an apparent conflict between the operative part of the section and the marginal heading but as per the rule of interpretation the operative part will prevail.

Right to conserve and how to conserve?

Article 29(1) is talking about educational right. These sections have right to conserve their distinct language, script, or culture of its own, which includes their dress, food, folk songs, agricultural pattern etc. In article 29(1) it is not provided as to how these sections will conserve the distinct language culture or script. Article is silent about it. It was expected by the framers that these group will devise their own mechanisms for conservation within the domain of law.

To promote a culture anyone can practice different method like opening college of his local language. For example -Opening Maithili college to promote my Maithili's.

Prohibited discrimination on education

Article 29(2) is talking about education institution maintain by State Government schools and colleges or receiving aid out of state funds.

Grounds on which discrimination is prohibited is religion, race, caste, language.

In article 29(2) The words mentioned are 'only of' and 'any of them', 'Only of' implies that there cannot be discrimination on these 4 grounds or any three or two grounds combined and 'any of them' implies there cannot be a discrimination or any one of these grounds.

Institutions only recognized by the state not maintained or added by the state such institution can also does not do the discrimination it will be implied deemed under 29(2).

The institutions which are recognized by the state out are not receiving any aid out of a state fund do not explicitly write and an article 29(2). However, by implication in this institution also discrimination on the ground of religion, race, caste, and language cannot be done as that would be a violation of principle of equality and justice.

Purpose of Article 30(1)

The purpose of article 30(1) cannot be to promote linguistic or religious interest of the community. It is not related to religious or linguistic education. Religious education is taken care of by article 26

and linguistic education is taken care by article 29(1). So we don't need to put it again in article 30(1). Thus the purpose of article 30 (1) cannot be the same. Article 30(1) rather takes care of the educational interest of the religious and linguistic minorities it is about normal secular education of these minority community it is about educating the children of these community. So as to enable them to come into the mainstream of the society article 30(1) has been created to do away with the fear of the religious and linguistic minorities about the educational interest- The fear that they will be sidelined in their educational interest because they are in minority.

The words 'of their choice' does not suggest distinct or religious choice, rather it suggest that choice or type of education institutions.

In Article 30, it is written 'Establish and administer' here the word 'and' is conjunctive they both have to go together. Here establish means established by minority community and administer means minimum interference by the state. Administer educational institutions means you are free to manage in whatever manner you want to, the government will not interfere. Excepting some regulations.

In order to take the right to administer, the minority community will also have to prove that it is them who had established that institution. If that community has not established that institution then it cannot claim the right to administer.

Aruna Roy v. Union of India (2002 SC)

It was held at the various chapters added in the NCERT textbook are not about anyone religion alone rather they are about various reason and the philosophers of various religion are taught to the children. This is quite enlign with secularism. This chapter would help the children understand the philosophies of the various religious and thus would help in promoting secularism and hence NCERT chapters are not unconstitutional. What is prohibited is religious instruction and not religious educations. If it is religious education about various religions and their beliefs.

St. Stephen college v. University of Delhi (1992 SC)

It was held that in order to claim the right to administer, the community also has to prove that the said institution has to be developed by that minority community. 'Establish' and 'Administer' have to go together. The word 'and' plays a conjunctive role.

S. Azeez Basha v. Union of India (1967 SC)

It was held at the Aligarh Muslim as such was not established by Muslim minority community rather it was established by special parliamentary enactment. Only the Anglo Oriental College was established by Sir Syed Ahmed Khan and therefore the Muslim minority community cannot claim the right to administer the Aligarh Muslim University.

Same point was reiterated in the case *Naresh Agarwal vs UOI & Others (Allahabd H.C 2005)*.

Do these Institutions have a fundamental right to affiliation?

Yes, these institutions have a fundamental right to affiliation but that fundamental right is not absolute. It is subject to the effective regulatory majors of the state.

T.M.A Pai Foundation vs State of Karnataka (11JB) (2002 SC) BN Kripal Justice

Logical speaking if the minorities communities have the right to establish and administer educational institution of their choice. Then it is implicit that they have right to be recognized by the concerned board or university i.e., they have also the right to get affiliated. However, this right is not absolute as at the time of giving affiliation these institutions need to fulfill certain requirements. These requirements can be imposed by the state as a pre-condition for affiliation. These requirements are such as necessary to make these institutions and effective vehicle of education.

For example: -

- i) The requirement of a good infrastructure.
- ii) good hygiene.
- iii) basic minimum salary to the staff
- iv) basic minimum educational qualification to the teachers, reasonable and fair for appointment and removal.

However, the state cannot put the condition that a staff or teacher cannot be appointment or removed without consent of the state. Because this will take away their right to administer and will be unconstitutional.

Subject to the above regulatory and restriction the minority institution to have a fundamental right to

affiliation.

Quantum of Reservations

St. Stephens college v. University of Delhi (1992 SC)

It was held that 100% reservation for minority children would not be proper rather it would be against secularism. Therefore, the maximum reservation should be 50%.

However, in *TMA Pai foundation case*, it was held at the quantum of reservation would depend upon the level of backwardness of that community. In case the level of backwardness is high the reservation can be beyond 50% also.

The same point was reiterated in *P.A Inamdar v Maharashtra (2005 SC) 7 JB R.C Lahoti, CJI.*

Minority character level

A religious or linguistic group is a minority or not that will be seen at what level National or state?

In *TMA Pie foundation*, it has been held at the minority character of the community will be examine at the state population level.

The same point was held in *Bal Patil v Union of India and others (2005 SC).*

In *TMA Pie foundation case*, it was held at the students who will get reservations in the minority established institution should be domiciled in that state where that institution is established. The court also held that however some sprinkler effect possible and permissible. Most of the students should be domiciled in that state. But some students from the other states may also be given admission.

The minority character of the community has to be examined at the state level.

Under Article 30(1) there are two types of educational institutions are there-

- i) Aided Minority Educational Institution which gets help from government, these institutions cannot earn unreasonable profits.

- ii) Unaided Minority educational Institution these institute don't get help from government. These institutions cannot take unreasonable benefits or profits.

Quantum of benefits of funds by these Institutions

T Verghese George v. Kara George (2012 SC)

Institutions established under article 19(1)(g) can make profit but institutions established under article 26(a) cannot earn profit or institutions under article 30(1) cannot earn unreasonable profits.

Unni Krishnan v. Andhra Pradesh (1993 SC)

It was held in this case that an unaided minority educational institution does have the right to devise its own mechanism to raise its funds. It can charge capitation fee from the student to raise its funds. Charging of capitation fee is not unconstitutional.

After this judgement there was a huge charge in the name of capitation fee by this institution and the institution started exploiting the student in the name of capitation fee this matter was then referred to be for the supreme court in ***TMA Pie foundation v. state of Karnataka 2002 SC***. The court held that article 30(1) is a welfare provision unlike article 19 (1)(g) the institution established under 30(1) cannot charge make excessive profit and like article 19(1)(g). In article 30(1) the benefit that these institutions derive is minimum state interference as it is a welfare provision. Therefore, exorbitant fee cannot be earned in the name of capitation fee. The court held that reasonable fee can be charged in such Institutions.

So, the question rises that who will monitor the reasonable fee?

Islamic academy of education v state of Karnataka (2003 SC) 5JB V.N Khare, C.J

In this case it was held that there has to be a committee consisting of a retired High court judge, a chartered accountant representative of the state and representative of the institution. This committee will determine the quantum of the fees.

TMA Pie foundation vs state of Karnataka(11JB) (2002 SC)

The court in this case also held that education is a natural resource therefore it is the duty of the state to ensure that it should be equitably distributed. In article 30(1) and 26(a) huge profit making cannot

be done in the name of education. As article 30(1) is a welfare provision and 26(1) is for charitable purpose. Under article 19(1)(g) huge profit can be done as their it is in the form of trade and business but there also in the matters of education exploitative profits cannot be earn. Education is a means to attain larger goals of the Constitution and therefore the state shall be vigilant in the matters of education.

Society for Unaided Private schools of Rajasthan v, Union of India (2002 SC)

Right of children to free and compulsory education act,2009 scheme was in question. The court held that the above scheme for EWS category will not apply upon the Institution established under article 30(1).

Article 30(1A)-Government should not acquire excessive land and pay them reasonable compensation to the educational institution established and administered by a minority. Their right to establish and administer should not be affected by excessive land acquisition and unreasonable compensation.

Article 30(2)- State shall not discriminate in granting aid to the educational institution be it majority and minority, if they are fulfilling the criteria. They cannot discriminate because that Institute is established by a minority.

Recommendation and Conclusion

We have attempted to comprehend not only who the government regards as a minority through this article, but also the reasoning behind the government's recent revisions to the reservation policies for minority colleges. Important questions like "who can be considered a minority" and "whether affiliation is a Fundamental Right" have been subjected to a laborious process that we have witnessed. We appear to have a long way to go in the area of cultural and educational minority rights, even though it is evident that our judiciary has worked extensively in this area. In summary, the primary significance of Articles 29 and 30 is the defence of cultural and educational rights. There is a sincere attempt to be inclusive, but it seems like there is still confusion about what constitutes a "minority." Indian students are entitled to a mother tongue education while maintaining their cultural identity. This right is guaranteed by Article 29 of the Indian Constitution, while Article 30 safeguards minorities' rights to create and run the educational institutions of their choosing. All students must

have access to high-quality instruction in a language they can understand, and the government is required to protect these rights. In order to guarantee that every student in India has the opportunity to reach their greatest potential, these constitutional provisions are essential.



W H I T E B L A C K
L E G A L