

CULTURAL AND EDUCATIONAL RIGHTS: A NECESSITY IN INDIA

Written by *Devi Das*

*4th year, BALLB (H), SOA National Institute of Law (SNIL), Siksha 'O' Anusandhan
University, Bhubaneswar, Odisha, India*

INTRODUCTION

A big script of rules and regulations, which is the largest among world, constituted by adding the various rules and regulations of various countries. It is not also a book, but also an important body part of our country named, “**Bharatiya Sambidhan**” (Constitution of India).

Constitution of India is that provides various rights to its citizens, it respects as well as takes care of it. According to Pandit Dr Radhakrishnan, “*poor people who wander about, find no work, no wages and starve, whose lives are a continual round of sore affliction and pinching poverty, cannot be proud of the Constitution and its law.*”

In short, the Indian Constitution promises not only *political*, but also *social* democracy, as explained by ‘Dr Ambedkar’ in his concluding speech in the Constituent Assembly.

“Political democracy cannot last unless there lies at the base of it, social democracy. It means a way of life which recognises liberty, equality and fraternity which are not to be treated as separate items in trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. *Liberty cannot be divorced from equality and equality cannot be divorced from democracy. Nor can the liberty and equality be divorced from fraternity.*”

WHAT IS RIGHT? WHAT IS THE MEANING OF “FUNDAMENTAL RIGHT”?

To evaluate the answer of the question, we have to know that Fundamental rights are the rights which are essential for intellectual, moral and spiritual development of the people of India. As the rights are fundamental and essential for existence and all-round development of individuals, they are called “Fundamental Rights”.

Fundamental Rights apply universally to all citizens irrespective of race, birthplace, religion, caste, sexual orientation, gender and gender identity. And to say about our Constitution of India, the provisions of Part III of our Constitution of India which enumerates the Fundamental Rights are more elaborated than those of any other existing written constitution relating to fundamental rights and cover the wide range of the topic.

Article 12-35 of Indian Constitution deal with Fundamental Rights. These human rights are conferred upon the citizens of India for the Constitution tells that these rights are inviolable. The Constitution itself classifies the Fundamental Rights under seven groups as follows:

- a) Right to equality. (Article 14-18)
- b) Rights to particular freedoms. (Article 19-22)
- c) Right to against exploitation. (Article 23-24)
- d) Right to freedom of religion. (Article 25-28)
- e) Cultural and educational rights. (Article 29-30)
- f) Rights to property. (eliminated)
- g) Right to constitutional remedies. (Article 32-35)

Of these rights, the Right to Property has been eliminated by 44th Amendment Act. This was because this right proved to be a hindrance towards attaining the goal of socialism and redistributing wealth or property equitably among the people.

So, now **six fundamental rights** are provided under 44th amendment of Constitution of India.

The following list of fundamental rights that are available **only to Indian Citizens** (not to foreigners):

1. Prohibition of discrimination on grounds of race, religion, caste, gender or place of birth. (Article 15)
2. Equality of opportunity in matter of public employment. (Article 16)
3. Protection of freedom: (Article 19)
 - Speech and expression
 - Association
 - Movement
 - Residence
 - Profession
4. Protection of the culture, language, and script of minorities. (Article 29)
5. Right of minorities to establish and administer educational institutes. (Article 30)

Cultural and educational rights in India

India is a dynamic constitutional democracy with a feature of accommodating pluralism in thought and language so as to preserve the cohesiveness and unity of diversity. The meaning of diversity has different connotations such as geographical, religious, linguistic, racial and cultural. To say India is linguistically diverse is not an exaggeration or any subjective thing.

As we know, India is a country of Culture and a place of brotherhood. In India there are many people of different cultures, caste, sex as well as different colours, stay in a common spirit that is “We are Indians”. There is a common brotherhood of each and one, and India is so called “The Biggest Sovereign Country” of the world. A linguistic or religious minority community can conserve its language and culture through educational institutions but “no citizen shall be denied admission into any educational institutions maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them”.

In India there are many people of many cultures. A lot of people of a lot of different cultures live in India. Everyone having the right of having their own culture. Besides the cultural rights, the education is also important to everyone. As well as the cultural rights needed, there should be the educational rights too. Each and every one has the right to education and rights to learn of his own. Each and every one has the right to make himself/herself educated. Everyone has the right to gain knowledge and having right of gain constructive ideas.

As India is a developing country, it should have developed education and culture in it. The Constitution of India supports and gives importance to the rights of culture and education to the citizens of India. It should be given emphasis to different culture in India and also a developed education system to every citizen of India. Each and every Indian should be educated and know the idea of it.

LEGISLATIVE PROVISIONS

Let's talk about the legislative provisions of **Cultural and Educational Rights** of the Constitution of India. Article 29 and 30 of the Constitution of India defines the Educational and Cultural Rights of the citizens of India. Constitution of India provides the rights to its citizens to have the rights of own culture and education.

Both article 29 and 30 of the Constitution of India guarantee certain right to the minorities. Article 29 protects the interests of the minorities by making a provision that any citizen/ section of citizen having distinct languages, script or culture have the right to conserve the same.

Article 29 says about, "***Protection of interests of minorities-*** (1) *any section of citizen residing in the territory of India or in any part thereof 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 state funds on grounds only of religion, race, caste, language or any of them.*"

Article 29 specifically mandates that no discrimination would be done on the ground of religion, race, caste, language or any of them.

Article 30 tells about, "***Right of minorities to establish and to administer educational institutions-*** (1) *all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their own choice. (2) the state shall not, in granting, aid to educational institutions, discriminate against any educational institution on the ground that is under the management of a minority, whether based on the religion or language.*"

Article 30 provides an absolute right to the minorities that they can establish their own linguistic and religious institutions and at the same time can also claim for grant-in-aid without any discrimination.

The object behind article 29 and 30 is the recognition and preservation of the different type of people, with diverse languages and beliefs which constitutes the essence of secularism in India. Article 29 and 30 do not more than seek to preserve the differences that exist, and at the same time, unit the people to form one strong nation.

To claim this right, the following conditions must be satisfied:

1. The right can be claimed any section of citizens. The right thus belongs to citizens and not to others.
2. That section of citizens must be residing in the territory of India or any part thereof.
3. That section of citizens must have a distinct language, script or culture of its own

The right content in Article 29(1) may be exercised by setting up educational institutions and by imparting instructions to the children of their own community in their own language.

To preserve language, script and culture-

Article 29(1) extends to all citizens irrespective of fact whether they are in majority or minority, the only condition being that such section must have a distinct language, script or culture of its own. It is an absolute right for the minorities to preserve its language and culture through educational institutions and cannot be subject to reasonable restrictions in the interest of the general public.

Article 29 (2) is an individual right given to citizen and not to any community. The present clause gives an aggrieved person, who has been denied admission on the ground of his religion. If a person has the academic qualification but is refused admission only on the grounds of religion, race, caste, language or any of them, then there is a clear breach of fundamental right under this section.

Right to Establish and Administer Educational Institutions-

Article 30 gives protection to religious and linguistic minorities. Article 30(1) provides that all minorities shall have the right to establish and administer educational institutions of their choice. The word “Establish” indicates the rights to bring into existence, while the right to “administer” means the right to effectively manage and conduct the affairs of institutions.

Article 30(1)A provides that in case of property of an educational property of an educational institution established and administered by the minority being acquired by the state., the state shall ensure that the amount fixed for such acquired for the property should be such as would not restrict or abrogate the rights of that minority. This provision was added by the 44th Amendment Act of 1978 to protect the rights of minorities of this regard. The Act deleted the right to property as the fundamental right.

To claim the benefit under article 30(1), it is not necessary-

1. That the institution must seek to conserve the language, script and culture of the minority community; what is necessary is its establishment by the minority community, it may impart religious or secular education wholly connected with language, script and culture.
2. That admission into such institution must be confined exclusively to members of the minority community and not a single member of the majority community or other minority communities should have its advantage.

Article 30(2) further prohibits the state from discriminating in the granting aid to educational institutions managed by the religious and linguistic minorities.

Thus, the protection under article 30 is confined only to minorities, religious or linguistic and does not extend to any section of citizen (as under article 29). Minority educational institutions are of three types-

1. Institutions that seek recognition as well as aid from the state.
2. Institutions that seek only recognition from the state and not aid.
3. Institutions that neither seek the recognition not aid from the state.

The institutions of first and second kind are subject to the regulatory power of the state with regard to syllabus description, academic standards, discipline, sanitation, employment of teaching staff etc. whereas the institutions of third type are free to administer their affairs but they are subject to the operations of general laws like contract law, labour law, industrial law, tax law, economic regulation etc.

Right to Administer-

The word, “administer” under article 30(1) of the Constitution means the right to manage and conduct the affairs of the institutions. It is open to a university to impose reasonable conditions upon a minority institution for maintaining the requisite educational standard and efficiency like-

1. Qualifications of teachers to be appointed in the institutions.
2. Conditions of service, e.g. the age of superannuation of teachers.
3. Qualification of entry of students.
4. Courses of study (subject to special subject which the institution may seek to teach)
5. Hygiene and physical training of students.

JUDICIAL PROVISIONS

The Constitution guarantees every single citizen of India both rights to education and cultures. The Constitution also provides special measures, to protect the right of minorities. Any community that has a language and a script of its own has the right to conserve and develop it. No citizen can be discriminated against for admission in the state or state-aided institutions.

All minorities, religious or linguistics can set up their own educational institutions to preserve and develop their own culture. In granting aid to the institutions, the state cannot discriminate against any institution on the basis of the fact that it is administered by a minority institution. The right to administer does not mean that the state cannot interfere in the case of maladministration.

In a precedent-setting judgement in 1980, the Supreme Court held that the state can take regulatory measures to promote the efficiency and excellence of education standards. It can also issue guidelines for ensuring the security of the service of the teachers or other employees of the institution. In another judgement delivered on 31st October 2002, the Supreme Court ruled that in case of aided minority institutions offering professional courses, admission could be only through a common entrance test conducted by a state or a university. Even an unaided minority institution ought not to ignore the merit of the student for the admission.

Cases related in case of minority-

S.P. Mittal vs. Union of India, AIR1983 SC 1

Facts:

Sri Aurobindo was only an excellent academist and administrator, but he was also engaged in political work. Later on, he gave it all up for a life meditation and moved to Pondicherry, Tamil Nadu. It was there where he met Madam M. Alfassa, who became his disciple. Later on, his disciples and the Mother established The Aurobindo Society to propagate and practice the ideals and briefs of Aurobindo.

Through this society, the founding president, the Mother, set up a township called Auroville which was meant for people to come and engage in various pursuits. Later on, The United Nations Education, Scientific, and Cultural Organization (UNESCO) took it upon themselves to fund provisions to help with the development of Auroville.

When the Mother passed away, many problems such as mismanagement of the project and misuse of the funds cropped up which made it impossible for the townships functioning and growth. Thus, keeping in mind, the international character of Auroville due to the agreement with UNESCO, the Government of Tamil Nadu took management in their own hand and filed a presidential ordinance which later on became The Auroville (Emergency Provisions) Act, 1980.

Seeing that the government took control of a 'religious' enterprise, the Constitutional validity of the Act was challenged on 4 grounds. One of the grounds was that it was violative of Article 29 and 30.

Issue Raised:

Does the Act violet the Article 29 and 30?

Decision/Judgement:

It was held that the bench that the foresaid Act does not violate Article 29 and 30. The court was held that it, in no way curtailed their right or prevented any citizen from conserving its own language, script or culture and thus was not violative of article 29.

Also, in this case, in order, to seek protection under Article 30, one must prove that they are a linguistic or religious minority and institution in question was established by them. Considering that Auroville was not religious and was found on the ideology of Sri Aurobindo, they could not seek protection under these Articles.

Rights of Minorities:

Certain rights are laid down to safeguard the right of minority communities. Article 29 ensures that anyone residing in India has the right to preserve a distinct language, script or culture and no State Educational Institution or any institute receiving aid from the state shall discriminate against anyone based on race, caste, creed etc. Article 30 ensures the rights of minority communities in educational institutions and prohibits discriminations against them. With regard to the reservation and special provisions for minority communities, many have brought up the argument that such provisions are 'cushioning'.

But in the case of *The Ahmedabad St. Xavier College vs. State of Gujarat and Anr*, Khanna J. stated that such provisions are necessary so that "none might have the feeling that any section of the population constituted of first-class citizens and the other of second-class citizens". He

also stated that majority of Fundamental Rights of the Constitution protect majority rights as it protects minority rights.

In *TMA Pai* case, the judge considered the opinion of the Permanent Court of International Justice in the *Minority Schools in Albania*, advisory opinion was that there is a need for a provision that help minority groups preserve the uniqueness of their distinct culture and script and minority religion to uphold the uniqueness of their culture. Khanna J. stated that “the object of protection is to enable minority communities to preserve the characteristics which distinguish themselves from the minority”.

In the *Kerala Education Bill* case, with regard to educational institution handled by minority communities, Hidayatullah C.J stated that while Article 30(1) might be general protection over distinct languages and scripts, it is also right to establish educational questions of choice. Thus, this Act is not diminished if the institution’s primary function is not protecting minority, it is also for institutions that are established and managed by minority communities and they accept other students as well.

Right of Minorities to Establish and Manage Educational Institutions:

Under article 30, the Constitution provides provisions for minority community to establish and manage educational institutions and protect themselves from discriminations of granting aid by the Government. Article 29(1) gives any citizen the right to conserve a distinct language, script or culture of its own. While Article 29(2) also protects them, it is more for every citizen and is not specially tailored for minority groups.

One of the biggest debates in judicial history has been whether minority communities have the right to have autonomy while managing these institutions. Such questions gave birth to the famous *TMA Pai Foundation vs. State of Karnataka* case which had a massive 11 judge bench. In present times, the common consensus is that government are allowed to regulate such institutes so long as such regulations is in pursuit of ensuring academic excellence and it does not harm the charter of minority institute.

Power of Government to regulate minority-run Educational Institutions:

Such case related to the power is given below-

St. Xavier College vs. The State of Gujarat, AIR 1974 SC 1389

Facts:

St. Xavier College, a religious denomination affiliated under the Gujarat University Act, 1949, provided education to not only Christian but students of other religion and creeds. They had challenged sections 35-A, 40, 41, 51-A and 52-A of Gujarat University Act, 1972 which dealt with the appointment of teachers and students of minority communities. They stated that the Act encroached on the autonomy of the universities.

Contention of parties:

- Article 19(1) of the Constitution safeguards a citizen's rights to preserve his or her own language, script or culture and Article 30(1) states that minority communities have the right to establish and manage their own institutions.
- Article 30(2) also states that the Government should not discriminate against any institutions under minority management.
- Under Article 32, they had a right to not only establish and administer institutes of their choice but they also had the right to affiliation (to operate independently, but also has a formal collaborative agreement with the state).

The opposition stated that Article 29 and 30 were mutually exclusive and protection under these acts cannot be brought up at the same time. They also stated that affiliation was not a Fundamental Right and that a minority institution must abide by the provision if they wished to be affiliated. Another argument was unless the law was an absolute violation of minority rights under Article 30(1), then there was no reason for the Act to be struck down.

They pleaded that the court wait until statutes and ordinances are issued in pursuit of the disputed section.

Issues Raised:

- Are Article 29 and 30 mutually exclusive?
- Is affiliation a fundamental Right?
- Does section 35-A, 40, 41, 51-A and 52-A of the Act tamper with the institutes Fundamental Right?

Decision/judgement:

- Article 29 and 30 were not mutually exclusive.
- While affiliation is not a Fundamental Right, it is necessary for the meaningful management and establishment of such institutes.
- Section 35-A, 40, 41, 51-A and 52-A of the Act would not apply to minority institutions as they tamper with their Fundamental Right to establish and manage educational institutions of their choice.

Ray C.J. and Palekar, J. stated that it would be wrong to limit their rights to only institutes that administer language script and culture. This would make the Act redundant. It is also wrong to believe that Article 29 and 30 are mutually exclusive because while Article 29 is for all citizens, Article 30 was placed to safeguard the rights of minority communities. Thus Article 30 must be treated as an extension of Article 29.

Jaganmohan Reddy, J. stated that while affiliation is not a Fundamental Right, the state cannot use it as a tool to force an institution to abide by certain rules. The institution has the right to establish their institutions, lay down their own syllabi, provide instructions in the subjects of their choice, conduct examinations and award degrees or diplomas, seek recognition to their degree and diplomas and ask for aid where aid is given to other educational institutions. The state can only discriminate on the basis of excellence of the institution.

With regard to the various disputed sections of the Act, the general consensus of the bench was that minority managed the institutions had the right to function without government intrusion of such nature.

The Importance of the Cultural and Educational Rights in India:

The Constitution guarantees every single citizen of India both rights to education and cultures. The Constitution also provides special measures to protect the rights of the minorities. Any community that has a language and script of its own, has the right to conserve and develop it. No citizen can be discriminated against for admission in the state or state-aided institutions.

All minorities, religious or linguistic, can set up their own educational institutions to preserve and develop their own culture. In granting aid to institution, the state cannot discriminate against any institution on the basis of the fact that it is administered by a minority institution. The right to administer does not mean that the state cannot interfere in the case of maladministration.

In a precedent-setting judgement in 1980, the Supreme Court held that the state can take regulatory measures to promote the efficiency and excellence of educational standards. It can also issue guidelines for ensuring the security of services of the teachers or other employees of the institution. In another judgement delivered on 31st October 2002, the Supreme Court aided that in the case of aided minority institutions offering professional courses, admission could be only through a common entrance test conducted by state or by a university. Even an unaided minority institution ought not to ignore the merit of the students for admission.

The cultural and educational rights preserve the right of citizen to conserve their culture, language or script and right of minorities to establish and administer educational institutions of their choice. The right to constitutional remedies is present for enforcement of fundamental rights.

APPRAISAL AND SUGGESTIONS

Suggestions to make the educational and cultural rights effective:

To make the educational right effective, the suggestion or advice may be taken:

1. The Right to Education act should not be limited to the age of 14 years it should be up to the secondary level. The government should make some changes like introducing diplomas/degrees with specialization in IT, mobile communication, media, entertainment, telecommunication, automobile, construction.
2. CSS (Common School System) was an indispensable step for achieving equality decades ago however now it should be changed into MSS (Model school system) based on the wants and demands of the society where education should be provided free of cost and on private institute patterns.
3. Parents need to play a significant role to make RTE the main success in India. It can be done only by motivating them through counselling and they must be made aware about the RTE Act through media, pamphlets campaigns, hoardings, rallies etc. only then we can expect that our future generation will be well educated.
4. Schemes like mid-day meal, SSA, RMSA along with world organization UNICEF are playing an important role in increasing the enrolment ratio. By providing initial and basic education to Indian children. However, these national and international agencies should aim weaker sections of the society, economically backward, females and highly populated states of India, these states and these societies should be the top priority to improve efficacy of this act.
5. Most importantly local governing bodies should get involved so as to enrol the new born babies and their record should be sent to nearby school. After that school authorities should follow up the child and sent the info for registration and admission to his/her parents without any biasness.
6. Provision for severe punishment regarding the abuse of this Act should be made and the responsibilities of state government, central government, parents, teachers, and administrators, Owners of the school, should be fixed. It should be made compulsory for all the government employees; whether state or centre or person working under centre or

state funded agency, to send their children in government or in government aided institutes so as to promote these schools.

Cultural rights are qualified as an 'underdeveloped category' of human rights. This term was chosen as the title of the seminar organized in 1991 at Fribourg University and was then broadly accepted. It suggests that, in comparison with other categories of civil, political, economic and social, cultural rights are the least developed as far as their scope, legal content and enforceability are concerned. Indeed, they need further elucidation, classification and strengthening. However, the term 'development' suggests the process of the creation of new rights. This point of view may be challenged as the existing list of cultural rights is relatively exhaustive. Therefore, the problem is linked rather to the fact that these rights are neglected or underestimated and that they are treated as 'poor relatives' of other human rights.

Suggestions to improve and to make the cultural right effective, it may be added or suggested:

- To identify best practices of promoting and protecting cultural rights at local, national, regional and international levels;
- To identify obstacles to the promotion and protection of cultural rights, and submit recommendations to the Council on ways to overcome them;
- To work with States to foster the adoption of measures—at local, national, regional and international levels—to promote and safeguard cultural rights, and make concrete proposals to enhance cooperation at all levels in that regard;
- To collaborate closely with States and other relevant actors like the United Nations Educational, Scientific and Cultural Organization, to study the relationship between cultural rights and cultural diversity, with the aim of further promoting cultural rights;
- To integrate a gender and a disability perspective into this work;

- To coordinate with intergovernmental and non-governmental organizations, other special procedures, the Committee on Economic, Social and Cultural Rights, the United Nations Educational, Scientific and Cultural Organization, and relevant actors, representing the broadest possible range of interests and experiences, including by attending relevant conferences and events.

CONCLUSION

India is a vast land where we have different races, languages, castes and cultures. Indian people are united by race, language and literature, geographical proximity, by history, religion, economic interest and identities of the minority in such a country. In India the cultural and educational right means the right of all sections of society that saves their culture, script or language. The right to constitutional remedies is present for enforcement of fundamental rights.

In our Indian Constitution, right to Culture and Educational Rights preserve under Article 29 and 30. The state shall not discriminate on the grounds of religion or language in providing aid to educational institutes. This Article also states that no countrymen shall be deprived of admission into any state-run or aided educational institution on grounds of race, religion, caste, creed, language etc.

Taking the rights guaranteed under religious, educational and cultural fields as a whole, it will be noted that these are couched in the most comprehensive language and the maximum possible freedom is guaranteed to the minorities, linguistic and religious.

The Constitution then may be branded as an instrument for the furtherance of the majority community and the language of the majority. Naturally, resentment against such a position would manifest all over the country, as religious minorities live in states of India linguistic minorities total less than 800 million.

Moreover, such a position would have discredited the foundation of national movement against foreign rule, in which every linguistic and religious minority in India was represented and

solemnly promises had been made by the representatives by the majority community to safeguard the legitimate interests of the minorities against all forms of tyranny of a free India.

Cultural and educational rights of the minorities are very important and essential which work as a tool for the upliftment of the minorities. Culture plays a vital role for the congenial development of children who belong to the community of minorities and that is why the preservation of culture, language and religion are important. Without education the progress of a community is not possible and the transformation of a society depends on education. All over the world it has been found that there is a huge gap between the minority and majority communities. For the sake of equality and a healthy relationship between the communities there need some special right of the minority. The world human right documents also recognized the cultural and educational rights of the minorities.

The ability to claim and enjoy the rights of an informed and responsible citizen rests squarely on a child's access to a good basic education. A quality education - that encourages children's participation and critical thinking, and is infused with the values of peace and human dignity - has the power to transform societies. This must be available to all children - including those with disabilities and from minority groups. The fulfilment of a child's right to education offers protection from a multitude of hazards, such as a life consigned to poverty, bonded labour in agriculture or industry, domestic labour, commercial sexual exploitation or recruitment into armed conflict.

Furthermore, the ability of children to play and participate in cultural activities is also vital to their development, quality of life and sense of community spirit. This is particularly important for children of ethnic minorities, including indigenous populations.

Rights of education is considered most important for the success of democracy and democratic institutions. This right also assumes importance because every nation is very keen to preserve its cultural heritage. The right provides that all shall have a right to develop composite Indian culture but at the same time no culture or language will be imposed on any section of the society. All shall be free to develop culture of their choice and also be free to get the type of education they like.

Since the state will have no religion of its own, the minorities shall have full right to establish their own trusts and propagate their own religion. But the state shall interfere only when there is need for making regulations for the exercise or this freedom in the interests of public Safety, peace, comfort or convenience or for the prevention of fraud etc. The state can also take steps to eradicate such practices or dogmas, which stand in the way of country's progress as a whole without attacking basic principles of religion.



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