

EDUCATION RIGHTS OF MINORITIES

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Minority Education

[Home](#) » [Overview](#) » [Minority Education](#)

Educational Development of Minorities

Overview

1. "Education is the single most important instrument for social and economic transformation. A well educated population, adequately equipped with knowledge and skill is not only essential to support economic growth, but is also a precondition for growth to be inclusive since it is the educated and skilled person who can stand to benefit most from the employment opportunities which growth will provide." (Para 10.1 of the Approach to the XIIth Five Year Plan). The Ministry of Human Resource Development has focused on an inclusive agenda, with a vision of realizing India's human resource potential to its fullest, with equity and excellence.

2. "All minorities...shall have the right to establish and administer education institutions of their own"____ is the mandate, as per Article 30(1) of the Constitution. Government is committed to address the existing backwardness in education of minorities, especially the Muslims, constituting the major chunk of the minorities. Therefore, the Prime Minister's New 15 Point Programme, inter-alia, aims to enhance opportunities for education of minorities ensuring an equitable share in economic activities and employment. ([Link to Ministry of Minority Affairs \(MOMA\)](#))

3. As per the Census Report 2001, the percentages of minority population, viz. Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) and their literacy rates are, as under:

Communities	Percentage population	of	Percentage of literacy
Muslims	12.4		59.1
Christians	2.3		80.3
Sikhs	1.9		69.4

Buddhists	0.8	72.7
Zoroastrians (Parsis)	0.007	97.9

4. According to 'Sachar Committee Report' "one-fourth of Muslim children in the age group of 6-14 years have either never attended school or are drop-outs. For children above the age of 17 years, the educational attainment of Muslims at matriculation is 17%, as against national average at 26%. Only 50% of Muslims who complete middle school are likely to complete secondary education, compared to 62% at national level". The Report has also drawn attention to the low levels of educational attainment among Muslim women, Muslims in rural areas as well as in technical and higher education. The High Level Committee under the Chairmanship of Justice Rajinder Sachar has also made a number of recommendations for improvement of the educational status of the Muslim communities. ([Link to Sachar Committee Report](#)). Further, the High Level Committee under the Chairmanship of Shri Mohd. A.A. Fatmi, the then Minister of State in the Ministry of HRD has also formulated a plan of action on the findings of the report of the Justice Sachar Committee.

[Link to Findings of the Report](#) - (80 KB)

5. Ministry of Human Resource Development has also constituted a National Monitoring Committee on Minorities' Education (NMCME) under the Chairmanship of Hon'ble Minister of Human Resource Development. A Standing Committee under the chairmanship of Shri Siraj Hussain, IAS, Additional Secretary, Government of India and former Vice-Chancellor, Jamia Hamdard has also been constituted to address issues relating to educational empowerment of minorities. The objective of the Standing Committee and its Sub-Committees are, as under:-

- To monitor the minority related schemes/programs being implemented by the Ministry of Human Resource Development;
- To suggest modifications, if required, in the schemes of the Ministry of Human Resource Development with a view to cater to the specific needs and requirements of the minority community;
- To study report of previous Committees which have gone into the issues of minority education and welfare and suggest ways and means to implement the recommendations/conclusions of those Committees;
- To advise the Committee on setting up a monitoring mechanism for minority related schemes/programs being run by the Ministry of HRD and
- Any other issues relating to minority education which the Committee may want to bring to the notice of the Government and NMCME.

6. Ministry of HRD has taken several significant initiatives, as detailed below, during XIth Five Year Plan and the momentum of which are being continued/accelerated during the XIIth Five Year Plan:-

- Scheme for Providing Quality Education in Madrasas (SPQEM)
- Scheme for Infrastructure Development of Private Aided/Unaided Minority Institutions (IDMI)
- Sarva Shiksha Abhiyan (SSA)
- Kasturba Gandhi Balika Vidyalayas (KGBVs)
- Extension of Mid-Day-Meals (MDM) Scheme to Madarsas/Maqtabs
- 'Saakshar Bharat'
- Rashtriya Madhyamik Shiksha Abhiyan (RMSA)
- Strengthening of the National Council for Promotion of Urdu Language (NCPUL)
- Establishment of the National Commission for Minority Educational Institutions (NCMEI)
- List of Minority Concentration Districts
- Sub-Mission on Polytechniques under the coordinated Action for skill development
- Girls Hostel Scheme
- Setting up model schools

7. In addition, Scholarship/Fellowship Schemes and Multi-Sectoral Development Programmes (MSDP) are being implemented by Ministry of Minority Affairs.

What Constitution Says

Article 46 of the Constitution states that, "The State shall promote, with special care, the education and economic interests of the weaker sections of the people, and, in particular of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of social exploitation." Articles 330, 332, 335, 338 to 342 and the entire Fifth and Sixth Schedules of the Constitution deal with special provisions for implementation of the objectives set forth in Article 46. Similarly, Article 30 (1) provides for the rights of the Minorities to establish and administer educational institutions of their choice. These provisions need to be fully utilized for the benefit of these weaker sections in our society.

National Monitoring Committee for Minorities' Education (NMCME)

The National Monitoring Committee for Minorities' Education (NMCME) has been reconstituted via Ministry's Resolution No. 6-4/2010-MC (Pt.) dated 23.12.2011. The first meeting of the reconstituted Committee was held on March 5, 2012 at New Delhi. At this meeting, a decision was taken to constitute a Standing Committee of NMCME and five sub-Committees of NMCME as under:

- Implementation of Schemes Aimed at Minorities
- Mapping of Educational Requirements of Minorities - Region & District-wise
- Vocational Education & Skill Development of Minorities
- Girls' Education
- Promotion of Urdu Language and enhance compatibility amongst minorities through knowledge of English.

The Government is also running the following Schemes for the improvement of Educational and Economic lot of the Minorities:

- Central Sponsored Scheme for Providing Quality Education in Madrasa (SPQEM)
- Scheme for Infrastructure Development Private Aided/Unaided Minority Institutes (IDMI) - (Elementary Secondary/Senior Secondary Schools)

The following material will help you understand better the work done for granting equal opportunities to the Minorities in the country:-

- Prime Minister's 15-Point Programme for Minorities' Welfare (Including Status Report)
- Major Initiatives for Educational Advancement of Minorities
- Government Decisions on Sachar Committee Recommendations (Including Monitoring of Action Taken)
- Findings of Research Conducted by NUEPA - Participation of Muslims in Higher Education

Educational Rights Of Minorities – By Kamaluddin Khan

http://twocircles.net/legal_circle/educational_rights_minorities_kamaluddin_khan.html



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By Kamaluddin Khan,

Treating unequals as equal is as bad as treating equals as unequals. Our Constitution provides for equality for equality of opportunity to all but meting out equal treatment to those who did not start off equally in the first place means treating unequals as equals. Minorities in India have had to face adverse discrimination and, therefore, do not stand on equal footing with others, which made the framers of the Constitution, through Article 29 and Article 30, accord special rights to the people who form religious or linguistic minority in India.

The idea of giving some special right to the minorities is not to hurt a privileged section of the population but to give to the minorities a sense of security. Special rights for minorities were designed not to create inequalities but to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing autonomy in the matter of administration of these institution.

Article 29 and 30 of the Indian Constitution lay down the provision relating to “Cultural and Educational Rights of Minorities”. Article 29 and 30, which provide for the protection of interests of minorities and Right to establish and administer educational institutions respectively read as follows:

Article 29:- Protection of Interests of Minorities:-

1. Any section of the citizens residing in the territory of India or 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 30: Rights of Minorities to establish and administer Educational Institutions:-

1. All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
2. In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in Clause (1), the State shall ensure that the amount fixed by or determined under such as would not restrict or abrogate the right guaranteed under that clause. (Clause 1A to Art. 30 was inserted by the Constitution (Forty-fourth Amendment) Act, 1978).
3. The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language.

The term 'minority' is not defined in the Constitution. In re the Kerela Education Bill, the Supreme Court observed that while it was easy to say that the minority meant a community which was numerically less than 50% is not in relation to the entire legislation. If it is a State law, a minority would be determined in relation to the population of the State. Where a law passed by the purpose of Article 29 and 30 would be determined by reference to the entire population of that State. Accordingly, it was held in re Kerela Education Bill, that Christians, Muslims and Anglo Indians would be minorities in the State of Kerela.

The expression 'linguistic minority' from the purpose of Art. 30(1) is one which must have separate spoken language and that language need not have a distinct script. In India, a number of languages are spoken having no script of their own. But people speaking such a language having no script of their own. But people speaking such a language having no script of its own constitute a linguistic minority for the purposes of Article 30(1). A linguistic minority is to be determined with reference to the language spoken by the community and not with reference to any other language which the community wants its children to study.

The expression 'religion minority' means 'that the only and principal basis of the minority must be adherence to one of the many religions and not a sect or part of the religion. Jains and Sikhs have been held to be minorities based on religion within the meaning of Article 30(1) in the Union Territory of Delhi.

Right to conserve language, script or culture (Article 29(1)):- Clause (1) of Article 29 provides: "Any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same".

The "right to conserve" means the right to preserve and the right to maintain. The right to conserve one's own language, script or culture, thus, means and includes the right to preserve and to maintain own language, script or culture. It includes the right to preserve and maintain own language, script or culture. It includes the right to work for one's own language, script or culture and to agitate for the same.

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

In *D.A.V. College, Bhatindala v. State of Punjab*, AIR 1971 SC 1731 – The Punjab University was established at Patiala under the Punjab University Act, 1961. After the reorganization of the State of Punjab in 1969, the Punjab Government issued a Notification providing for the compulsory affiliation of all the colleges situated within the area under the jurisdiction of the Punjab University, Patiala. Thereafter, the University issued the impugned circular to all the affiliated colleges requiring them to introduce Punjab in Gurmukhi script as the Court struck down the circular as well as examinations. The Supreme Court struck down the circular as violative of the right of the petitioner to conserve their script and language and to administer their institutions in their own way.

Right of Minorities to establish and manage Educational Institutions:- Article 30(1) guarantees to all linguistic and religious minorities the 'right to establish' and the 'right to administer' educational institutions of their own choice. The word 'establish' indicates the right to bring into existence, while the right to administer an institution means the right to effectively manage and conduct the affairs of the institution. Thus, it leaves it to the choice of the minority to establish such educational institution as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving through general education to their children in their own language.

Clause (2) of Article 30 prohibits the State from making discrimination in the matter of grant of aid to any educational institution on the ground that it is managed by a religious minority or linguistic minority.

In *State of Bihar v. Syed Raza*, AIR 1971 SC 2425 – It has been held that for creation of post in a minority institution for appointment prior approval of the Vice-Chancellor is not necessary and the persons so appointed would be entitled to grant in aid in view of Art. 30(1) of the Constitution. Clause (2) of Art. 30 provides that the State shall not, in granting

aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority., whether based on religion or language.

Consequent upon the delivery of the judgment of the eleven judges bench in T.M.A. Pai Foundation) the Union of India, various state government and perspectives. The state governments framed different statues / regulations to implement the judgment. The respective state governments enforced the said statutes in respect of self – financing private institutions, minority or otherwise. The UGC, AICTE and Medical Council of India also issued provisional / adhoc guidelines covering the same subject purported to be in terms of the provisions. This led to litigations in several courts and the orders passed therein were assailed before the Supreme Court. When these matters came up before a bench of the Supreme Court, the parties to the write petitions and special leave petitions interpreted the majority decision in T.M.A. Pai Foundation in way which suited them and, therefore, at the request of all, these matters were placed before a bench of live judges in Islamic Academy of Education v. State of Karnatak. 151 In this case the constitution bench was constituted so that doubts/anomalies, if any, in the T.M.A. Pai Foundation could be clarified.

Most of the petitioners/applicants were unaided professional educational institutions (both minority and non – minority). It was submitted on their behalf that (a) fixation of percentage of seats that could be filled in unaided professional colleges (both minority and non – minority) by the management was impermissible; (b) private unaided professional institutions had been given complete autonomy not only as regards the admission of students but also as regards the determination of their own fee structure and there could be no interference by the government; and (c) the right to admit students was an essential facet of the right to administer, and so long as admission to unaided educational institutions was on a fair and transparent basis and on the basis of merit the government had no right to interfere. On behalf of non-minority institutions it was contended that they had a fundamental right to establish and administer educational institutions and that the majority judgment in T.M.A. Pai Foundations put them on a par with the minority in T.M.A. Pai Foundations put them on a par with the minority institutes.

On the other hand, the Union of India, various state government and some students submitted that (a) the right to set up and administer an educational institution was not an absolute right. This was subject to reasonable restrictions and national interest; (b) The Union of India, the states and the universities had statutory rights to fix the fees and to regulate the admission of students in order to ensure that (i) there was no profiteering (ii) capitation fee was not charged; (iii) admission was based on the principle of merit, and (iv) persons from backward classes and poorer sections of the society also had an opportunity to receive education, particularly professional education. (c) Unless it was ensured that colleges admitted students strictly on the basis of merit at a common entrance test, it would be impossible to ensure that capitation fees were not charged and there was no profiteering; and (d) minority educational institutions could not claim any higher or better rights than those enjoyed by non- minority educational institutions.

In view of the rival submissions by the parties before the court the following core questions arose for consideration before the Supreme Court:152

1. Whether educational institutions are entitled to fix their own fee structure;
2. Whether minority non-minority educational institutions stand on the same footing and have the same rights;
3. Whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100%, and if not, to what; and
4. Whether private unaided professional colleges are entitled to admit students by evolving their own method of admission.

Before proceeding further it must be noted that in the present case the constitution bench confined itself to the interpretation of the judgment in T.M.A. Pai Foundation leaving other questions open for consideration by appropriate benches. In these matters the Supreme Court was not at all concerned with the rights of aided minority and non-minority institutions and restrictions imposed by the states upon them but was concerned only with

the rights and obligations of private unaided institutions run by minorities and non-minorities.

With regard to the first question, namely, whether educational institutions were entitled to fix their own fee structure, Khare C.J, delivering the majority judgment observed that in view of para 56 of T.M.A. Pai Foundation there could be no fixing of rigid fee structure by the government. Each institute must have the freedom to fix its own fee structure taking into consideration their need to generate funds to run the institution and to provide facilities necessary for the benefits of the students. They must also be able to generate surplus, to be used for the betterment and growth of those educational institutions. Profit surplus could not be diverted for any other use of purpose.

With regard to statues and regulation governing the fixation of fees it was observed that the respective state governments/authority concerned shall set up, in each state, committee headed by a retired high court judge who shall be nominated by the chief justice of that state. He shall nominate the other specified members as well. The committee should be free to nominate /co-opt another independent person of repute. Each educational institution must place before this committee its proposed fee structure well in advance of the academic year. The fee fixed by the committee shall be binding for a period of three years, at the end of which period the institution would be liberty to apply for revision. If it was found that the institution was charging fee more than that fixed by the committee then the said could be appropriately penalized and also face the prospect of losing affiliation. The court clarified that this direction for setting up of a committee was given under article 142 of the Constitution and it shall remain in force till appropriate legislation was enacted by Parliament.

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