

Minority Educational Institutions

A Critical Analysis

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Abstract

The research project is entitled "A critical analysis of educational institutions in India." It explains the meaning of the word "Minority" and different categories of minorities – religious and linguistic. It also shows the redundancy of Article 29, and 30 that are supposed to be the constitutions safeguards for minorities. It tries to analyse various rulings of the Supreme Court regarding minority educational institutions. The paper deals with various instances showing how the affluent minorities have an edge over the needy minorities. It also examines the controversy regarding the minority status of Aligarh Muslim University.

Introduction

It would be proper at the outset, to pose a question as to who are the inheritors or scions of right under Article 30¹ of the Indian Constitution. It is a sad commentary on our constitution that it nowhere defines minority nor does it prescribe sufficient guidelines to determine a group as minority. Perhaps the founding fathers of our constitution and member of Constituent Assembly presumably left it to the wisdom of the cauldron of Courts of Law to supply the omission. It was believed that, in the claptrap of the democracy, if we don't solve a problem it will go away. Indeed it has been the practice to ignore the problem if we do not solve it. The next step is to create division so as to sow the confusion and hope that the problem will be forgotten. If the problem remains and the majority refuses to sell their dreams for peaces of silver or get lost in the maze, then the negotiations start and a trade-off is set up. Why it cannot be done in the first, the answer lies in the escapism that we all feel is a valid exercise.

That expression 'minority' needs to be discussed in details in order to pierce the miasma of confusion and misunderstanding. The expression "minority" has been derived from the Latin word "minor" and the suffix 'ity', which means "small in number". According to Encyclopedia Britannica minorities means "group held together by ties of common descent, language or religious faith and feeling different in these respects from the inhabitants of a given political entity". J.A Laponce in his book "the protection to minority" describes "minority" as a group of persons having different race, language, or religion from that of majority of inhabitants. In the Year Book of Human Rights (U.N Publication 1950 edition) minority has been described as non-dominant group having different religious or linguistic traditions than the majority population². The U.N Sub commission on Prevention of discrimination of minorities has defined minority as under:

- 1) The term 'minority' includes only those non-documents group of the population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;

¹ related to rights of minorities. Dealt later in the paper

² Shivhare, Varun – minority rights, the judicial approach. <http://www.legalservicesindia.com/articles/judi.htm>

³ Swamy, Dr. N Maheshwar, *Supreme Court Judgement on reservation and admission in educational institutions.*

- 2) Such minorities should properly include the number of persons sufficient by themselves to preserve such traditions or characteristics; and
- 3) Such minorities should be loyal to the state of which they nationals

Before making further attempt at giving answers to the questions, it is desirable to delineate article 29 & 30 of the Constitution of India, which are relevant subject matter for the purpose of this paper. The purpose of creating minorities stems from Article 29 and 30 which guarantees minorities the following privileges.

Article 29

(1) - any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of his own shall have 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 any of religion, race, caste, language or any of them.

Article 30

(1) All minorities whether based on religion or language shall have the right to establish and administer educational institution of their choice.

1(a) 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 insure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that is under the management of a minority whether based on religion or language.

From the thorough perusal of the Constitution of India it was found that the expression "minorities" has been employed only at four places in the constitution of India. Head note of Article 29 uses the word minorities. . Then again the expression minorities or minority has been employed in head note of article 30 and Sub- clauses (1) & (2) of article 30. At this stage it may be noted that the expression" minorities" has been used in Article 30 in two senses- one based on religion and other on the basis of language.

But the question arises regarding what is the test to determine minority status base4d on religion or language of a group of persons residing in state or union territory. The

question on definition of minorities arose for the first time in the case of Kerala Education Bill case 1959 SCR at page 995 held " the existence of a minority community should in all circumstances and for purposes of all law of that state be determined on the basis of the population of the whole state or whether it should be determined on the state basis only when the validity of law extending to whole state is in question or it should be determined on the basis of the population of a particular locality, for the bill in practice before us extends to the whole of state of Kerala and consequently the minority must be determined by reference to the entire state. By this test Christians, Muslims and Anglo-Indians will certainly be minorities in the state of Kerala." In addition to the Kerala Education Bill (supra) it has been settled by catena of decisions of the Hon'ble Supreme Court in Rev Sidhajibhai & Others vs. State of Bombay & Others [(1963) (3) SCR 837], the Ahmedabad St Xavier's college society and others vs. state of Gujarat [1975(1) SCR 1973] and St Stephens college [1992(1) SCC 558]; that a minority means a non dominant group. It is a relative term and is referred to, to represent the smaller of the two numbers; section or group called majority. In that sense there may be political minority, religious minority or linguistic minority.

Categories of Minorities

In India minorities can be broadly classified as:

1) Religious Minorities

According to the Central government there are 5 noted religious minorities viz Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis).¹⁰ These 5 communities constitute 17%³ of the country's population. At this juncture it's imperative to question the basis of this division. Just because our Constitution makers were of the opinion that Hindus are in majority therefore other religions should be labelled as minorities or it was the policy of appeasing the Muslims who were left in India after the creation of Pakistan, and because other communities would not have kept silent so this pacification process started.

This lack of proper base has extended its arms in today's scenario that also can be glanced with the statement of MR.A.R.Antulay, Minister for minority affairs that Jains should also be given status of minority. But in Jain community though opinion is quite

³ <http://socialjustice.nic.in/obes/minority.htm>

divided among various sects⁴, but by a large community leaders think that the centre is acting in haste and they call it a political ploy. "We are a separate as believers of a religion but as a community we are Hindus only. This is a ploy to divide hindus and jains and nothing else". Others give the argument as "Hindus are not in minority and thus there is no question of jains accepting the minority status"

History always repeats itself, the player's change but the essence remains the same. Way back in 1952, it was the policy of pacification and establishment of congress party as the dominant one that triggered the debate and today it is the policy of vote bank initiated by a newly created ministry that is trying hard to include Jainism also as one of the minority community.

2) Linguistic Minority

According to the 38th report of National Commission of linguistic Minority (NCLM) "In each state there is a language which is spoken by the majority of the residents of that state. All others who do not speak that language belong to linguistic minority." According to Kerela education Case referred earlier minority has to be defined on the basis of state. Considering this fact Bengali, Punjabi, Malayalam, Sindhi, Tamil, Telgu and Marathi are linguistic minority in the union territory of Delhi. ⁵

There is anachronism in the definition of linguistic minority also. To put it simply, if five Maharastrians get together and start a Marathi medium school in Mumbai it will not be treated as a minority institution. But if five gujratis get together and start a Marathi medium school in Mumbai it will be treated as a minority school!

Constitutional Safeguards

In addition to Constitutional safeguards of Article 29 and 30 mentioned earlier, following the reorganization of the states on the linguistic basis, there emerged some safeguards on consensual basis for linguistic minorities. These were called consensual safe guards and were as listed under:

- 1) Translation and publication of important rules, regulations, notes etc into all languages, which are spoken by at least 15% of the total population at district or sub district level.

⁴ There are 3 sects in Jainism – Svetambars, Digambars, Tertanthis

⁵ www.nclm.nic.in

- 2) Declaration of minority languages as second official language in district where persons speaking such languages constitute at least 60% of the population.
- 3) Receipt of and reply to, representations in minority languages.
- 4) Institution through mother tongue of minority languages at the primary age of education;
- 5) Institution through secondary languages the secondary stage of education.
- 6) Linguistic minority pupils, and inter-school adjustments.
- 7) Provision for textbooks and teachers in minority languages.
- 8) Implementation of three languages formula.
- 9) No insistence upon knowledge of state's official language at the time of recruitment.
- 10) Issue of pamphlets in minority languages detailing safeguards available to linguistic minorities.
- 11) Setting up of proper machinery at the state and district levels.

A more meticulous perusal of Article 30 makes it clear that it is the progeny of pseudo secularists and a deliberately designed legal contraption to appease the minority, underneath, which flows vicious current of divisive politics of vote bank. A more pertinent question is what prevents the minority from establishing their educational institutions. The Constitution is unambiguous about it. The futility of Article 30 becomes obvious when we take into consideration article 14, 15, 16 and Article 19. It says the state shall not deny equality before the laws or the equal protection of laws within the territory of India. Article 15 explains this fundamental guarantee. It lays the state shall not discriminate against on groups only on religion, race, class, sex, place of birth or any of them." Article 16 further adds "There is opportunity for all citizens in matter relating to employment or appointment, to any office under the state and there will be no discrimination in this respect. Article 19 gives a fundamental right to establish educational institutions and unions. Are not minorities included in "all"? Do they not form association of educational institutions? Where is the obstacle? Where is the hindrance? Where is the constraint? In short Article 30 in our Constitution is unnecessary because ample guarantees are given to all in different articles of our Constitution.

Minority Educational Institutions

Minority educational institution means an institution established and administered by a minority having the right to do so under clause of article 30 of the constitution. Following conditions are laid down for grant of recognition to minority educational institutions:

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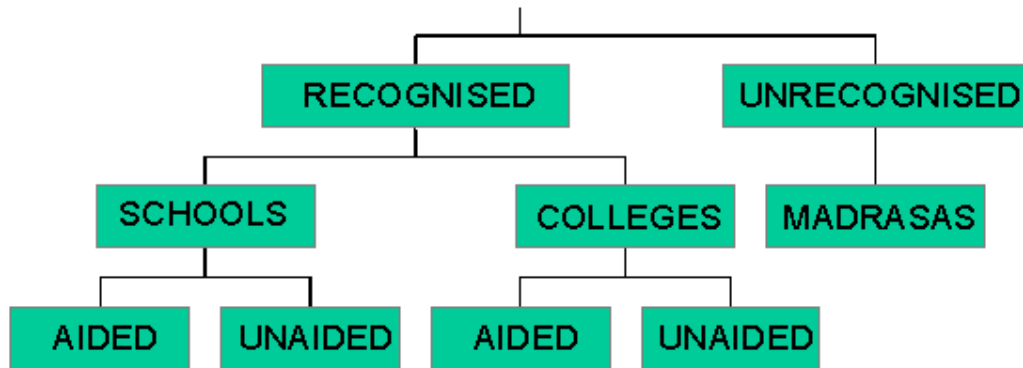
- i. The aims and objectives of the educational agency incorporated in its bylaws should be clearly specified that it is meant to primarily serve the interests of the minority community to which it belongs.
- ii. The minority educational institution shall not compel any of its religious activities.
- iii. The minority educational institution shall observe general laws of the land relating to educational institutions.
- iv. The minority educational institution will not use its privilege as minority institution for any pecuniary benefit.
- v. The minority educational institution shall charge the fees as prescribed by competent authority.
- vi. The minority educational institution shall appoint teachers as per qualifications laid down by the authority concerned but it will be advisable for them to select teachers and other employees through employment exchange or open advertisement.
- vii. In all academic, administrative and financial matters rules and regulations laid down by respective statutory authorities from time to time shall be wholly applicable to these institutions.
- viii. The minority educational institution shall do nothing, which may come in the way of communal and social harmony.
- ix. Fifty percent of seats permitted to be filled up from minority communities shall be equally distributed between free and payment seats.

There are separate rules for recognition of linguistic minority institutions the criteria being:⁷

⁶ <http://tte.delhigovt.nic.in/minor.html>

- 1) Institutes conducting definable and verifiable activity for promotion of minorities
- 2) Minority language is taught as a language subject of study
- 3) Minority language is the medium of instruction

CLASSIFICATION OF MINORITY EDUCATIONAL INSTITUTIONS



It would be pertinent to define terminologies used here for understanding the clear meaning of the following terms⁸:

Recognized – means an institution recognized by an appropriate authority where ‘appropriate authority’ can be defined as administrator or any other officer authorized by central or state government.

Aid – means any aid granted to a recognized school by the central government, administrator, a local authority or any other authority designated by the central government or administrator of a local authority.

Aided schools or colleges – means a recognized school or college which is receiving aid in the form of maintenance grant from the central government, administrator or local authority or any other authority designated by the central government, administrator or a local authority.

⁷ National Council of Linguistic Minorities, 38th Report

⁸ Delhi School Education Act, 1973 (Act Number 18)

Unaided schools or colleges – means a recognized school or college, which does not receive any aid.

In terms of government regulations also, there is **difference between aided and unaided institutions**⁹:

- 1) State can't impose its reservation policy on minority and non-minority on unaided private colleges including professional colleges.
- 2) Up to the level of undergraduate education, the minority unaided educational institution enjoys total freedom.
- 3) However, different considerations would apply for graduate and postgraduate level of education as also for technical and professional educational institution i.e. such education cannot be imparted by any institution unless recognized or affiliated by any competent authority created by law such as university, board, central or state government or alike.

Regulatory Bodies Involved

National Commission for Minority Educational Institution.

An ordinance was promulgated on 11 November 2004, to enable setting up of a National Commission for minority educational institutions to advise the central government or any state government on any question regarding the regarding the education of minorities, to look into the complaints regarding violation of the rights of the minorities, to establish and administer educational institution of their choice.

Functions of the Commission¹⁰

- (a) Advised the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;
- (b) Look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating affiliation to a Scheduled University and report its findings to the Central Government for its implementation; and
- (c) To do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

⁹ P.A. Inamdar and Others Vs State of Maharashtra and Others (Judgement)

¹⁰ [Hppt://www.education.nic.in/htmlweb/ncmei.htm](http://www.education.nic.in/htmlweb/ncmei.htm)

This commission also decides on all questions relating to the status of any institution as a minority educational institution.

Procedure for Establishing a Minority Educational Institution

To establish an educational institution by minorities first a society needs to be formed under Societies Registration Act, 1860 comprising minimum of 3 members, designating within themselves posts of Chairman, Director, Treasurer etc. They contribute their own funds or funds through 'chanda'¹¹ process to establish an educational institution after which comes process of recognition. Talking about schools, through the application form attached (Annexure-1) the school applies to the Directorate of Education of the particular state.

Conditions for recognition—No private school shall be recognized, or continue to be recognized, by the appropriate authority unless the school fulfills the following conditions:

- 1) The school is run by a society registered under the Societies Registration Act, 1860 (21 of 1860), or a public trust constituted under any law for the time being force and is managed in accordance with a scheme of management made under these rules;
- 2) Subject to the provisions of clause (1) of article 30 of the Constitution of India, the school serves a real need of the locality and is not likely to affect adversely the enrolment in a nearby school which has already been recognized by the appropriate authority;
- 3) The school follows approved courses of instruction as provided elsewhere in these rules;
- 4) The school is not run for profit to any individual, group of association of individual or any other person;
- 5) Admission to the school is open to all without any discrimination based on religion, caste, race, place of birth or any of them;
- 6) The managing committee observes the provisions of the Act and the rules made there under;

¹¹ Money collected from the public

GRANT IN-AID

Institutions can choose to be self financed and those who want aid can fill up a form as seen in Annexure-2. Aid is given after inspection by the inspector for authorized infrastructure and satisfactory report about infrastructure, buildings, and libraries of these schools. Aid generally comprise of 95% of the teaching staff's salary. The conditions for grant in-aid are following:

- 1) A permanent income, whether from endowments or other sources (excluding fees and the Pupils Funds) which, when supplemented by grant in aid, shall be adequate to discharge it's obligations under the act and enable it to carry on it's work efficiently;
- 2) A reserve fund of an amount which shall not be less than the amount indicating in the Table below or the amount specified by rules and regulations of the Affiliating Board, which ever is higher:

Provided that the amount specified in the Table below shall be subject to review, every five years, by the Advisory Board;

- 3) The reserve fund shall be the property of the school, shall be maintained in its name and shall be kept deposited in a scheduled bank or a nationalized bank or a post office and such account shall ordinarily be operated jointly by the Director or any officer authorized by him in this behalf and the manager of the school;

Provided that where it is urgently necessary to draw any money from the reserve fund to meet any emergent expenditure or to meet the salary and allowance of the employees of the school in the event of the omission or failure of the managing committee to discharge the obligations imposed upon it by sub-section (2) of section 10, the account may be operated by the Director alone.

Up to this, procedure is same for both the minority as well as the non-minority institution. In order to get minority status, government in Southern States Kerela, Karnataka etc. issue an application form related to minority status also. After filling up of this form and inspection by the govt., the state govt. issues certificate of recognition as minority institution. This process may happen simultaneously with the process of recognition. But in Delhi this process does not exist. According to ADE Delhi miss. Abha Joshi "govt. does not recognize any institution as minority institution" but she failed to provide information that in other states it does exist, giving one the impression as if minority institutions are nowhere certified as minority institution in India. Certificate of

minority institute needs to be issued within 30 days of making an application, otherwise reason for non-compliance have to be cited.

Regulations

It is necessary to analyse the Supreme Court pronouncements on regulations on reservation and admissions in educational institutions

In view of the 42nd amendment to the constitution, the subject of education was transferred to the concurrent list from the state list under the 7th schedule of the constitution, the question of who would be regarded as minority was required to be considered. It was urgent because the earlier case law related to the pre amendment period, when education was in the state list.

The latest exercise is the judgment of 11-member bench of Supreme Court on October 31st in the T.M.A PAI Foundation vs. State of Karnataka¹² [2002 SCC (8) 481], which inter alia laid down that:

- 1) Religious and linguistic minorities under article 30 have to be considered state wise
- 2) Article 30 (1) include the right to establish and administer even professional educational institutions
- 3) There would be minimal regulatory measures to ensure educational standards and to maintain excellence of minority educational institutions
- 4) That the procedure and method of admissions as well as selection of students must be fair and transparent.
- 5) That minority educational institution should be able o raise reasonable surplus to meet the cost of expansion and augmentation of facilities without resorting to capitation fee or profiteering.
- 6) And that al citizens have the right to establish and administer educational under article 19(1) g and 26, but the right is subject to the provisions of article 19 (6) and 26 a whereas the right of minority educational institution stems from article 30(1)

¹² T.M.A PAI Foundation Vs State of Karnataka (2002) SCC 481

The effect of the judgment by the 11-member bench is that a centralized counseling and single window system will no longer do admissions, and the government for all types of colleges would fix the fee structure. As government puts it, the following shall be applicable for admissions to minority educational institutions

Following guidelines shall be applicable for admission to minority educational institutions¹³:

- i. Admissions shall be made by merit on the basis of Common Entrance Test to be conducted by competent authority.
- ii. Fifty percent of the total sanctioned seats in a course shall be filled from the candidates of other communities.
- iii. The remaining 50% seats shall be filled from candidates belonging to minority community by merit on the basis of Common Entrance Test.
- iv. Fifty percent seats earmarked for minority community and other communities shall be distributed equally in free seats and payment seats and will be filled by merit.
- v. All reservations of seats as prescribed by competent authority shall also be applicable to free seats available to minority communities.
- vi. Any seat remaining unfilled in the minority quota shall be filled from candidates of other communities.
- vii. All admissions shall be made on the basis of merit as per the Common Entrance Test held by competent authority. No admission outside the merit list shall be allowed until and unless competent authority allows doing so.

Privileges offered to the Minority Educational Institutions¹⁴

Privileges to minority institutions also stems from the judgment delivered from the Supreme Court:

- 1) A minority educational institution would continue to be so whether the government declared it as such or not (n.ammad vs. manager, emjay high school and others)
- 2) Minority educational institutions do not have to reserve seats for SCs, ST's or OBCs, as required to be done by other educational institutions.

¹³ <http://tte.delhigovt.nic.in/minor.html>

¹⁴ 1998 6 SCC 674

- 3) Minority educational institutions can reserve up to 50% of the seats for students of their own community.
- 4) In term of control over employees, minority educational institutions have much greater powers than other institutions. For instance, in the selection of teachers and principles the minority educational institution can have a selection committee, which does not include the university representative. Similarly, while in ordinary schools the headmasters normally have to be appointed on the basis of seniority; minority managements can select a headmaster of their choice.
- 5) NCMEI amendment bill provides for the right to establish a minority educational institution and also provides that wherever 'no objection certificate' for establishing a minority educational institution is either not granted within a period of 60 days or where a decision in this regard is not communicated within such a period, the MEI would proceed with the establishment of the institution as if the 'no objection certificate' has been granted to it.
- 6) MEI can seek affiliation to any of six universities listed in the schedule. (Annexure 4)

Financial Assistance:

As mentioned earlier a minority institution can be self-financed as well as government aided. There are other organizations also which provide financial assistance to minority institution.

National Minorities Development Finance Corporation (NMDFC)¹⁵ was set up by the Government of India to provide a "special focus to economic development of minorities". The people belonging to five communities i.e. Muslims, Christians, Sikhs, Buddhists & Parsis have been notified as minorities under the National Commission for Minorities Act, 1992. The prime mandate of NMDFC has been to provide concessional finance to the minorities living below double the poverty line for self-employment. NMDFC functions under the administrative control of the Ministry of Social Justice & Empowerment, Government of India.

The authorized share capital of NMDFC is Rs. 500 crores. The paid up share capital (till 31/03/2003) was Rs. 318.21 crores, of which Rs. 258.42 crores has been contributed

¹⁵ <http://socialjustics.nic.in/obcs/minority.html>. *Schemes for Welfare of Minorities*

by the Government of India and Rs. 59.79 crores by various state governments as well as union territory administrations.

Maulana Azad Education Foundation

Maulana Azad Education Foundation is a voluntary, non-political, non-profit making organisation established to promote education amongst the educationally backward minorities. The Maulana Azad Education Foundation was established in July, 1989 as a society under the Societies Registration Act, 1960 and it is fully funded by the Ministry of Social Justice & Empowerment, Government of India. Presently the Foundation has a Corpus Fund of Rs.70.01 crore. The Hon'ble Minister for Social Justice & Empowerment is ex-officio President of the Foundation. The aim of the Foundation is to formulate and implement educational schemes and plans for the benefit of the educationally backward minorities in particular and weaker sections in general. The Foundation is providing financial assistance to NGOs for various educational activities. At present, the Maulana Azad Education Foundation is providing grant-in-aid to NGOs under following Schemes:

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- i. Financial assistance for establishment/expansion of schools/residential schools/colleges,
- ii. Financial assistance for purchase of lab equipments and furniture etc.
- iii. Financial assistance for setting-up/ strengthening of Vocational/Technical Training Centres/Institutes,
- iv. Financial assistance for construction of hostel buildings,
- v. Financial assistance for Remedial Coaching,

Achievements:

Up to 31st March 2003, the Foundation has assisted 474 NGOs with a grant of Rs.64.68 crore, since inception. Apart from this, the Foundation arranges training programme for teachers of the Institutions assisted by the Foundation. The Foundation has provided free training to more than 3000 girls, till now, at the Vocational Training Centres run by the Foundation in collaboration with South Delhi Polytechnic at Ajmeri Gate, Delhi in the following trades: Cutting & Tailoring, Textile Designing, Beauty Culture, Arts & Crafts & Computers.

WAKF BOARD¹⁶

The grant-in-aid received by the Central Wakf Council is forwarded to the loanee Wakf in the form of interest free loans for the Development of Urban Wakf Properties while the Council bears the entire expenditure on the staff working in the Scheme as well as other expenses on paper, postage etc. Against this service rendered by the Council, it puts two conditions on the loanee Wakf institutions i.e.

- (i) they would pay 6% donation on the outstanding loan to the Education Fund for the Educational Scheme of the Council meant for educational upliftment of the poor Muslims;
- (ii) after the repayment of the loan, they would spend 40% of their enhanced income on the education of the Muslims particularly on the technical educations.

The 6% donation received from loanee Wakfs on the outstanding, as well as the interest accrued on the Bank deposits of the Revolving Fund form the Education Fund of the Council. This Fund is utilized for implementing the following programmes:

- i) Scholarship to the poor student pursuing Technical/Professional Degree Courses @ Rs. 8,000/- per annum, during the course period.
- ii) Adhoc grant to poor and needy students of General degree courses @ Rs. 3,500/-
- iii) Matching Grant to the State Wakf Boards for providing scholarship in their respective States to the School students, Madrasa students and to the students doing Technical/Professional Diploma Courses.
- iv) Grant for the establishment of I.T.Is. in the Muslim concentrated areas.
- v) Financial assistance to Voluntary Organizations for Vocational Training Centres.
- vi) Financial assistance to Libraries for developing Book Bank.

Up to Jan 31, 2006, the Council has issued a total of 10,802 scholarships to the students of Technical Degree courses like MBBS, BUMS, BAMS, B.Tech and B.Sc. (Ag) etc. Similarly in 3766 cases "Ad-hoc" grant have been given under the scheme of Ad-

¹⁶ <http://www.wbmdfc.org/wakf/properties.html>

hoc Grant to Poor and Needy Students. 600 Voluntary Organizations/Technical Institutes have been assisted for technical training/vocational training. Under the scheme for setting of I.T.Is., up to Jan 31, 2006 the Central Wakf Council has approved eleven I.T.Is. in the Muslim concentrated areas.

EXEPTION TO MINORITY INSTITUTIONS

Aligarh Muslim University

The case of Aligarh Muslim University is a very good example of an exception to the common rule applied to minority institutions . The AMU was set up through an act of the legislature. It is primarily because of this fact that there is such a big controversy regarding the status of AMU though it was already settled by the Hon'ble Supreme Court in the case of Azeez Basha vs Union of India (AIR 1986 S.C. 663)¹⁷ that as the university was set up by a Central legislation and hence it could not be said to be established by the minority community and hence on this core it was not declared and given minority status. But the controversial decision of the Aligarh Muslim University (AMU) authorities in ministry of human resource and development (MHRD) to reserve 50% of the seats in post graduate courses in the university for Muslims, resulted in the filing of the Writ petition in the Hon'ble High Court of Allahabad and later special leave petition in the Hon'ble Supreme Court.

The AMU authorities in their honest or dishonest belief applied the decisions given in the T.M.A PAI Foundation Case judgment that allowed for reservation of seats for minorities in minority institutions. In fact that verdict referred only to schools, colleges and professional institutions owned by religious minorities. Now, where did it refer to reservations in universities.

It is for the first time since 1920 that reservation on the basis of religion is being given or at least tried to be given by the AMU. Even after the 1981 amendment to the AMU Act that harped on promoting "especially the educational and cultural advancement of

¹⁷ Civil Miscellaneous Writ Petition 15504 of 2005 of Allahabad High Court

the Muslims of India". No reservation based on religion was ever made during the last 25 years.

That it is unfortunate to say that the Central Government succumbed to the pressure of all affluent minorities within the minority communities. The Minority Education Commission Act, passed by the Central Government is an instance in this regard. The provisions of the act are such that they benefit minorities by legalizing the commercial interest of managements. There has been a spectacular increase in the number of institutions seeking minority status in the recent past. In all of 2005, the National Commission for minority educational institution received just 380 applications from institutions seeking minority status.¹⁸ This year with the government decision to reserve an additional 27% of the seats for OBCs in all centrally funded educational institutions, the number of applications received by the Commission is already more than 2,000. As Mahajan said "It is time to recognize that steady increase in reservation quotas is likely to trigger a process of desecularisation along with the consideration of majority community identity which will have serious implication for the future of secular India."

MUSLIMS/MINORITY AND MADRASA

In the archival records of the British colonial state, the indigenous school of North India is referred to by the generic term 'Madrasa'. There is no exclusive implication of this institution as Islamic. This is close to the literal meaning of 'Madrasa' that is the Place of 'dars' , dars being teaching institutions a lesson or lecture.

Today the terms 'madrasa' stands for Islam. It does so, moreover, not in a neutral state like 'masjid'. Still means place of congregation, but rather in a heavily loaded sense of a place of biased and distorted learning. The madrasas in India are heterogeneous in their character-Madrasas belong to a certain sect each, such as Barelwi, Deobandis or Ahl-e-hadis. For some including among the madrasa administrators, the differences between the sects is of utmost importance for others it is trivia verging on inconsequential. Any one who walks around to observe classes in

¹⁸ M.R. Gurpreet Mahajan. 2006. *Secularism Under Attack*. The Times of India. New Delhi Edition

say, madrasa Hamidia, Madrasa Dar-ul-islam are madrasa Umahul-ul-uloom each of a different sect cannot distinguishes how the sectarian, differences play themselves out. By definition, the equitable education is open to all. Where there is the necessity of opening separate schools for Muslim children? It is no argument to say that madrasas are meant to inculcate the true spirit of Islam in the minds of Muslim children. One can understand a handful of schools strictly intended to train young Muslims to become mullahs and to conduct religious rites. We have Christians Seminaries and even Sanskrit¹⁹ 'Pathshalas' that are meant to keep society well supplied with priests. But to set up madrasas to teach children right from childhood how to be Muslims, is to keep them deliberately out of mainstream.

According to 'The economic and political weekly' "The Hamdard Education Society has tried to do a survey of madrasa's but has not succeeded. That is indeed remarkable, one estimate is that there are around 60,000 madrasas in the country. A small number is affiliated to the madrasas boards are State Boards of Education. The exact figures are not indicated.

As a part of primary research, it was found that area comprising of Jama Masjid, Chandini Chowk, Balli Maran have a variety of madrasas in Delhi. As there is no registration required for starting of madrasas, there is no authentic and convert recorded number of madrasas. It can be started in a masjid or nearby or just in one room building. Those by one rough estimate there are as many as 1,000²⁰ or more than that madrasas in Delhi, which are not registered under any authority and majority also, function from local mosque. While doing a primary research to find out the number of madrasas in Delhi and the method of teaching and the curricula, I visited a madrasa called Nasuritul-Islam. People there were quite co-operative and patiently satisfied my inquisitive enquiries. Due to parental pressures a large number of madrasas have been converted into school whose curricula are similar to other schools, which impart lessons in Mathematics, English, Science.

¹⁹ Hindi word which means school

²⁰ Kamath. M.V. *Minorities and Madrasas*

Nasurutal-Islam is one of them, which has been converted into a primary school where all courses related to mainstream as well as Quran and Urdu are taught till class 5th. Madrasa receive financial aid from Wakf board, NGOs, Masjids and through voluntary organization. The state government in Delhi has also decided to regulate the functioning of over 1,000 madrasas through the State Board.

Now National Policy on Education has adopted the concept of National System of Education, which implies that up to a certain level all students irrespective of caste, creed, location or sex have access to education of comparable quality. From the tenth five year plan the scheme has been renamed with the title "Area Intensive and madrasa modernization programme by clubbing two competent in it. In the revised scheme there will be two components:

- 1) Financial assistance for modernization of madrasa organizations requesting for financial assistance will apply on the prescribed application form²¹ (Annexure-V) (Enclosed).
- 2) Area intensive programme for education of backward minorities.

The application will be addressed to the Education Secretary in the state/UT, who will be the Chairperson of Grant-in-aid committee in the state. In Delhi, no financial assistance under this scheme has been given to madrasa. According to official many madrasa are NGOs run who need not want meager government find as assistance.

²¹ J K Jain. Incharge Linguistic Bureau. Ministry of HRD

Growth of Minority Institution

To track down the growth of minority institutions it was pertinent to give details regarding the number of minority institutions presently running in Delhi as well as to know the number in the past.

Through my primary research it came as an utter surprise that no list regarding the number of minority institutions exist in Delhi. I went to old secretariat to meet the directorate of education, Mrs. Gitanjali Kundra, but her pa told me as the madam is an IAS officer so it is not easy to meet her. And she asked me the purpose of my visit to her. After being acquainted with my purpose, she directed me to contact the computer cell for the required information. At the computer cell, I was asked to prepare an application duly signed by in charge of computer cell Mr. B.S Gandhra, further I was directed to meet Mrs. Abha Joshi. The lunchtime extends from 1.30 to 2.30, which extended to 3 o'clock that day. When I finally contacted her, I was told, "government does not recognize any school or college as a I minority institution and therefore no list is available for Delhi. It would have been easier to me as a shuttle cock to note down the comment of NCLM which was given 4 years back which regarded Delhi as "the directorate of education is urged to prepare a consolidated list of schools for his own and for inclusion in the report.

Through the website of government of India, the list of recognized schools in Delhi with their contact numbers were acquired and those schools which were guesstimated to be minority institutions were listed. Table 1 gives the following break up of those 526 schools²²:

Schools in Delhi	Number
Schools in Central Delhi	84
Schools in West Delhi	173
Schools in North Delhi	85
Schools in South Delhi	136
Schools in East Delhi	48

²² Available at www.delhigovt.nic.in/newdelhi/schoolsinw.html. Accessed on June 1, 2006

Total Schools	526
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Source: delhigovt.nic.in/newdelhi/schoolsinw.html

Out of which 117 schools were noted which were thought to be minorities. Contacting these schools many schools answered in negativity and others who confirmed themselves in minority were near about 20 in number. They were:

- 1) Convent of Jesus and marry school
- 2) St.Francis senior secondary school
- 3) Guru Harkrishan public school
- 4) N.P. Bengali girls senior secondary school
- 5) Sardar Patel Vidyalaya
- 6) Sister nivedita school
- 7) Somerville school
- 8) St.Anne school
9. St. Columba's School
10. G.N. Koalas Sr.Sec. School
11. St.Francis de- Sales schools
12. Guru Nanak Public School
13. Jaspal Kaur Public School
14. Monlfort Public School
15. Don Bosco School
16. Holy Child Axiluim Junior School
17. St. Anthony Senior Secondary School
18. St. Pauls School
19. Telugu Primary School
20. Raisina Bengali Primary School

Therefore, 20 schools claiming minority status were noted, which has a margin of error in it.

CONCLUSION

From the sunshine of the facts that emerged out of research, I came to the upshot that every successive government since Independence has paid lip service to the causes of the amelioration of the fate of the minority. The enactment of Article 29 and 30 was also designed and contrived as a part of electoral politics and minority appeasement. Behind the facade of minority upliftment flows the subterranean current of divisive politics and a desire to perch oneself as the cockpit of power.

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