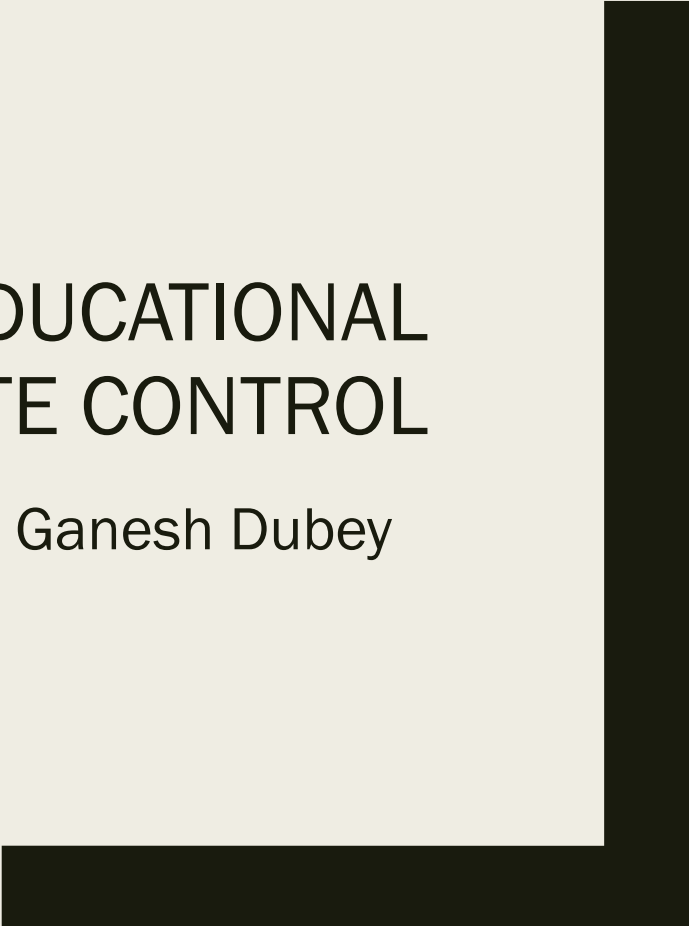




# RIGHT OF MINORITIES: EDUCATIONAL INSTITUTION AND STATE CONTROL

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# Article Involved

- Article 29: Protection of interest of minorities
  - (1) Any section of citizens residing in the territory of India or any part thereof having a distinct language, script or culture of his 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: Right 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) 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.

# Relationship between Art. 29(2) and Art. 30(1)

- The extent and scope of Art.30(1) and its relationship with Art.29(1) was dealt by supreme court in the case St. Xaviers College V State of Gujrat (AIR 1974 SC 1389).It was held that Art 30(1) covers institutions imparting general secular education. The object of this Article is to enable children of minorites in the world fully equipped.
- It was also held that conservation of language, script or culture under Art. 29(1) may be by means wholly unconnected with the educational institutions and similarly establishments and administration of educational institutions under Art 30(1) may be unconnected with the motive to conserve language, script or culture. It is also to be noted that Art. 30(1) does not say that minorities based on religion should establish institutions preaching religion or that linguistic minorities should establish institutions for preaching their own language alone.

# Whether Minority Institutions have a Fundamental Right to Affiliation

- In *St. Xavier's College V State of Gujarat* (AIR 1974 SC 1389), held, there is no fundamental right to affiliation, but to deny affiliation except upon certain terms and conditions amount to the surrender of their right to administration under Art 30(1). When a minority institution applies to a University for affiliation, it expresses its choice to participate in the system of general education. Affiliation is for regulating the educational character and content of minority institutions. These regulations are not only reasonable in interest of general secular education but also improve the strength of minority institution. Therefore measures which regulate the course of study, qualifications and appointment of teachers, conditions of employment of teachers etc. are all germane to affiliation of minority institution.

# State control over minority Institutions

- The right conferred by Art. 30(1) is not an absolute right. The state may step in to maintain the standard of education. It can give security and protection to teachers and other staff (by laying down terms and conditions of service).
- An institution established for commercial purpose can lay no claim for being protected under Art. 30(1).
- But at the same time regulatory measures should not abridge the right to administration. The minority has the right to choose the members of the governing council and the teachers. The regulations imposed must be reasonable and must regulate the educative character of the institution. The power of the government to take over the management of an institution which has failed to carry out the directions of the government was declared void on the ground that it robbed the minority of its right.

# Right to Administer

- Under Art. 30(1), the right to administer is the right to conduct and manage the affairs of institution. The right to administer is said to consist of 4 principle matters:
  1. Right to choose its managing or governing body
  2. Right to choose its teachers, who have compatibility with the aim and aspirations of institutions
  3. Right to admit students of their choice subject to reasonable regulations about academic qualifications
  4. Right to use its property and assets for benefit of institutions.
- However, right to administer is not an absolute right. Just as regulatory measures are necessary for maintaining educational character and content of minority institutions, similarly regulations are necessary for ensuring efficient and sound administration. The right to administer is not right to maladministration (vide re Kerala Case)

# Judicial Decisions

- **Frank Anthony Public School Employees Association v Union of India:** It was held that the statutory measures regulating terms and conditions of service of teachers and other employees of minority educational institutions, for maintaining educational standards and excellence, are not violative of rights of minorities under Art. 30(1). The management of minority institution cannot be permitted under the guise of Art. 30(1) to oppress or exploit its employees which would bound to lead to discontent and adversely affect the object of making the institution and effective vehicle of education for minorities or other persons.
- **TMA Pai Foundation v State of Karnataka:** It was held that right to establish and administer educational institution is guaranteed to all citizens under Art. 19(1)(g) and Art. 26 and to minorities specifically under Art 30. The right of minorities under Art 30 cover professional institutions. Minority communities have and untrammelled right to establish and administer unaided educational institutions, while the institutions which receive state aid could be subject to Government rules and regulations.



# Conclusion

- Mature nations are deriving strength by promoting the “melting pot” phenomenon and encouraging minorities to join the mainstream. In **Bal Patil v Union of India**, Dharmadhikari J. has said “ We have to develop such enlightened citizenship where each citizen of whatever religion or language is more concerned about his duties and responsibilities to protect right of the other group than asserting his own rights. He added a warning note that differential treatment to linguistic minorities based on language within the state is understandable but if the same concept for minorities on the basis of religion is encouraged, the whole country, which is already under class and social conflicts due to various divisive forces, will further face division on the basis of religions diversities.