Chapter 9
Multiculturalism Institutionalised: Perspectives on Article 30 of the Indian Constitution

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Abstract

Multiculturalism acknowledges cultural diversity and difference and provides for institutional and at times, Constitutional accommodation of this diversity and difference. However, this process is not devoid of challenges. India has been one of the few countries that have sought to accommodate cultural pluralism in both the Constitution and its institutions. More so, this accommodation has been facilitated by granting fundamental rights. One such set of rights are the Cultural and Educational Rights embodied in Articles 29 and 30 of the Indian Constitution. This paper seeks to highlight multicultural accommodation in India through the lens of these cultural and educational rights, Article 30 in particular. In doing so, the paper attempts to bring out the contestations that arise in the exercise of these rights.

Introduction

In October 2023, the Press reported objections by the UP (Uttar Pradesh) Madarsa Board of undue interference amounting to the nature of 'illegal' notices being served by the Basic Education Department of the State Government of Uttar Pradesh to madarsas in the state (TOI, 2023)[14]. For the uninitiated, madarsas are centres of traditional learning for members of the Muslim community. They engage mostly in religious education/instruction but also impart

14 https://www.newindianexpress.com/nation/2023/Oct/25/unregistered-madrasas-in-uttar-pradesh-to-be-penalised-rs-10000-per-day-2626941.html

education in subjects like mathematics, science and social sciences. However, the said State government appointed Special Investigation Teams to carry out the task and the outcome of these surveys is not shared with the Madarsas. Ifthikar Ahmed Javed, Chairperson, UP Board of Madarsa Education said these probes, surveys and investigations appear arbitrary since the outcomes are left ambiguous.

In the same month, the Karnataka High Court dismissed the appeal of the Rajarajeshwari Dental College and hospital seeking autonomy to employ and dismiss workers as they are an unaided linguistic minority educational institution. Based on this, the Court upheld the right of the employee - dismissed in July 2021 - security of tenure in the College.

Another set of articles covered reports on the National Commission of Minority Educational Institutions (NCMEI). As a body committed to upholding the Constitutional right of minorities, the NCMEI has been known to have an underrepresented team membership, with currently only one member out of the mandated four in the Commission. This goes to demonstrate that not all communities are represented in the Commission. Nevertheless, it has not deterred the Commission from directing states like Tamil Nadu, Karnataka, Telengana & Andhra Pradesh, which threatened withdrawal of minority status certificates if the respective educational institutions did not admit students of their community up to a percentage decided by the states i.e. 50, 30, and 25 per cent by Tamil Nadu, Andhra Pradesh & Telengana and Karnataka, respectively, to revoke their Order. The setting of a limit is not new and was decided by the Supreme Court in one of its cases.

The above cases are by way of illustrating the nuances of institutionalizing multiculturalism in India. Indian society has been home to numerous religions, cultures, tribes and languages. Despite a majority Hindu population, its history has witnessed the advent of different cultures and syncretic traditions. Religions were born of a critique of hegemonic cultures and gained roots in the territory that is today considered India. The term 'multicultural' therefore can be used to describe India much before its inception in the 20th century. It does, however, become crucial to interrogate this multi-cultural dimension within India as the diversity has resulted in a somewhat chequered history. The character of the sovereign state of India and its Constitution has been mindful of this tumultuous history. This essay seeks to investigate the multicultural dimension in a select provision of the Indian Constitution i.e. cultural and educational rights (given to religious and linguistic minorities). This is reflective of what Will Kymlicka years later defended as a liberal theory of minority rights.

Examining institutionalised multiculturalism in India presents two challenges. One, much of the literature on multiculturalism in the west has been accommodated by the Indian state within the discourse of secularism. Therefore, theorists have actually had to articulate the multicultural discourse in India as

opposed to having the same as a ready reference. The second is the multiple sources from where institutionalised multiculturalism poses a challenge.

This essay is structured as follows: part one would examine the theoretical underpinnings of multiculturalism and attempt to establish the case of India that comes closest to it. Part two would summarize some key points that emerged in the articulation of cultural diversity in India in the course of drafting the Constitution. The third and final part would look at select instances of minority rights through the prism of Article 30 to demonstrate the challenges of institutionalized multiculturalism.

Multiculturalism – theoretical considerations

Political theory and thought have over the years addressed questions of understanding and organising society, avoiding conflicts, seeking means of peace and accommodation and acknowledging the centrality of rights and duties to citizens and members of the republic or body politic. Needless to say that at different periods of history in both the western and non-western world, frameworks have been developed to respond to these questions. In contemporary times, in particular the 20th century, multiculturalism has emerged as a theoretical paradigm to understand and conceptualise cultural diversity. Theorists writing on issues falling within the ambit of multiculturalism have attempted to establish the importance of cultural embeddedness of individuals within the dominant 20th century liberal paradigm. Within disciplinary confines, literature on multiculturalism has contested and coexisted with the dominant liberal understanding of state, market and society. Practically, multiculturalism has been 'institutionalised' by its incorporation as diversity friendly policy, legislation, institutions, constitution and rights.

This essay is an exercise at investigating institutionalised multiculturalism in India through the prism of cultural and educational rights. At the outset, the essay lays out certain thematic engagements of multiculturalism available in existing literature. Multiculturalism as a theory and practice emerged in the mid-20th century to address growing concerns of recognition and accommodation raised in parts of Europe and North America. Canada stands out as one of the states to officially embrace multiculturalism. Others such as India embraced diversity in their Constitution; what later came to be called multiculturalism in the West. Multiculturalism emerged not only to address questions of diversity, individual autonomy and cultural embeddedness, but also has increasingly been tasked with looking at inequalities, discrimination and social justice arising from cultural diversity. The Indian case is distinctive as questions of discrimination and social justice were addressed at the time of Constitution making. This was also preceded by legislations and initiatives when India was a colony of the British. Thus, while not advocating multiculturalism per se, the Indian leaders

drafted a Constitution that, in the context of religious and cultural diversity spoke of secularism.

This section briefly discusses some of the popular theorists on multiculturalism. The list is exhaustive and the attempt here is to broadly map literature on the theme. To begin with, a note on a theorist that addresses the quintessential individual-community dichotomy confronting culturally diverse societies – Will Kymlicka. Kymlicka argues for a theory of group differentiated minority rights. His vision is both liberal and multicultural at the same time as he recognizes the need for individual autonomy particularly with respect to choosing conceptions of good. Individuals however, have to be responsible for these choices and the State in this context provides external conditions for the enjoyment of individual autonomy and exercise of choice. (Kymlicka, 2017: 1) The State, according to him, ought to play a significant role is in its claims to legitimacy based on popular sovereignty. States often claim sovereignty over minorities and it is here that its legitimacy and procedure need to be interrogated. Often, popular sovereignty is linked to ideas of nationhood that are upheld and reinforced through national media, national symbols and holidays, a national language. It is the responsibility of the state thus, to build the same among minorities, through mechanisms of territorial autonomy, representation, indigenous rights and inclusion (not assimilation) of immigrants. (Kymlicka, 2017: 7-8)

Kukathas would extend this position on liberal multiculturalism claiming that it attempts to find a mid-way between isolationism and assimilation. While cultural diversity is bound to result in some imitation and voluntary assimilation, the state has to exercise toleration that according to Kukathas is a form of 'weak multiculturalism'. This weak multiculturalism he locates in classical liberal multiculturalism. (Kukathas: 14) Kukathas's enquiry is more philosophical than it is practical and policy oriented. While subscribing to the view that tolerance within the classical liberal framework is what provides for the theoretical foundations of multiculturalism, he admits to the limitations of such a perfect idea of society that "no regime may be willing, or able to reach". (Kukathas: 21) Nevertheless, as a philosophical premise and as a means of accommodation than suppression of cultural diversity, classical liberal multiculturalism has much to offer in terms of an "open society". (Ibidem)

As stated before, in contemporary politics, multiculturalism has come to be identified with questions of social justice. This in particular is to do with challenges faced in the course of multicultural education. As Alismail argues, multicultural education not only aims at accommodation and inclusion but of providing fair education to students with the purpose of achieving social justice. (Alismail, 2016: 139) In the USA multicultural education emerged in the 1960s – 1980s as a response to the demands of the civil rights movement and a means for African Americans and other "unmeltable ethnics to become a part of the American melting pot". (Ibidem: 140) It implied that educational

institutions had to reflect the cultural diversity in its staff, values, curriculum and student body.

Lastly, Bhikhu Parekh in his essay 'Political theory and the multicultural society' would present a case for multiculturalism as managing cultural diversity in modern societies. The coexistence and plurality is not necessarily seamless as a common culture is one that includes distinctions at individual and group levels. Hence, there is a 'subcultural diversity' that Parekh speaks of. (Parekh, 1999: 1) Moreover, modern societies are constituted by organised and self-aware cultural communities that live or would like to live within their different and distinct systems of beliefs and practices. Some of these would also be critical of the dominant culture and may seek to reconstitute the values of the dominant culture. In the 1960s, multiculturalism emerged in this backdrop, articulating collective rights and the cultural embeddedness of individuals. Gradually, multiculturalism came to assist immigrants and ethnic minorities in their quest for cultural recognition, autonomy in cultural practices and equal respect. Parekh draws our attention to issues within political theory with regard to theorising multiculturalism including the possibility of a cultural bias of those writing about cultural diversity. The challenge for a multicultural society, however, is to evolve a conceptual framework that would rise above the liberal/non liberal divide and counter the 'absolute liberalism' of the West that imposes a cultural monopoly on otherwise diverse societies. (Parekh, 1999: 31-32)

Given the above, the case of pluralism and diversity in India comes closest to the literature on multicultural education and the quest for sub cultural diversity. We will see in the following pages, how Article 30 of the Indian education has incorporated facets of multicultural education i.e. student body, staff and curriculum and how some of these aspects are challenged by the State. Examining multiculturalism in India also presents and complicates the absolute liberal paradigm and demonstrates that a middle path has to be found i.e. liberal values and cultural claims have to, in the end, coexist and address claims to social justice. This discourse is still in the making with respect to minority educational institutions in India. However, it does serve as a roadmap for identifying contemporary shifts in multicultural theory and practice i.e. from accommodation to an assertion of claims.

India: Cultural Pluralism & the Legal Framework

Some theorists have argued that mere cultural pluralism does not amount to multiculturalism (Mahajan). Often most societies are culturally plural i.e. they are constituted by more than two cultures. However, in many of these societies, the dominant culture tends to subsume smaller cultures thereby presenting a more homogenous than heterogeneous character. However, since this homogeneity was neither imposed nor coercive, it received little critical attention. Pluralism,

once it became a basis for claiming rights from the state, served as a contested site. This is the scenario that presented itself to the people of colonial India in the early decades of the 20th century. Due to specific social contexts existing in Indian society, encouraged and 'capitalised' by the colonial state apparatus, cultural concerns in India seemed to centre on religious issues. Concerns for minority groups ascertained by leaders like Motilal Nehru and Jawaharlal Nehru took on the colour of safeguards and protection rather than promotion of and upholding cultural diversity. Even debates, disagreements and contestations on tribal and caste identities appeared to imbibe the religious angle eventually. These were bound to reflect as they did, in Constitution making. A reading of the Constituent Assembly debates would suggest that secularism emerged as a primary concern for many members when discussing rights relating to religious freedom and rights of minorities. This however did not imply that secularism was readily accepted as a state creed. There were enumerable apprehensions regarding the use and the inclusion of the term in the Constitution. Shefali Jha draws our attention to one key instance i.e. the debates and discussion that ensued on the inclusion of the term 'secular' in the Preamble to the Indian Constitution. It emerged partially by the amendments moved by H.V. Kamath, Shibban Lal Saksena and Pandit Govind Malaviya on starting the Preamble with the words 'In the name of god', a point H.N. Kunzru and Rajendra Prasad took objection to. To the former this statement implied the invocation of a narrow, sectarian spirit and for the latter; it violated the religious freedom guaranteed in the Constitution. (Jha, 2002) While H.V. Kamath's amendment stood defeated, the suggestion by some members to include the term secular in the Preamble received no support either and the Preamble that came into being did not include the term secular (included later, in 1976 by the 42nd amendment).

Jha identifies at least three positions on secularism that emerged from the debates in the Constituent Assembly, two of which are significant to this essay. The first position i.e. those that saw religion and state as distinct categories and therefore aligned itself more to a liberal understanding of religion i.e. giving preference to individual freedom, choice and autonomy. In what Jha terms as the 'no concern theory' religion came to be associated as an 'individual's private affair'. (Jha, 2002)[15]. Another position that emerged was the 'equal respect theory' which sought to underpin the cultural significance of religion to an individual's life and hence suggested that the state approach all religions equally, treating them with equal respect, instead of separating itself from religion. This position is significant as it indicated a search for an 'Indian secularism' and was upheld by L.K. Maitra and K.M. Munshi, with the latter cautioning

15 This view of secularism followed the dominant western idea of secularism clearly separating religion and state. The precedence to the individual citizen was upheld by members like K.T. Shah, G.B. Pant and Tajamul Husain.

the members on the use of the United States non-establishment clause to the Indian Constitution (Ibidem).

The summary above of the debates in the Constituent Assembly are of significance to this essay as these debates reflected and influenced the attitudes of the members on provisions under investigation in this article i.e. cultural and educational rights. The unique juxtaposition that the Indian case presents between a multicultural society and a liberal state is a point that our legislations, judgements and institutions have had to address since independence. In the above case discussions on recognizing religious and linguistic minorities as groups eligible for cultural rights came to be questioned by Jayaprakash Narayan who advocated that "secularization of general education… was necessary for the growth of a national outlook and unity" and hence, cultural and educational rights should be confined to linguistic minorities alone. This view found supporters in Damodar Swarup Seth, G.B Pant and none other than Rajkumari Amrit Kaur, a member of the Sikh minority community. Pant argued that cultural and educational rights may be inserted in the non-justiciable part of the Constitution. Rajkumari Amrit Kaur was not in favour of the establishment of minority educational institutions nor state aid to such institutions (Jha, 2002)

Ambedkar's interventions in one way reinforced the centrality of the discourse on religion in the Constituent Assembly. On the other hand, he drew attention to the underrepresentation of social groups governed by caste identities (even though the discrimination they were subject to was legitimatized by a religious code) and hence introduced an element of the 'multi' cultural in India. While he spoke much on minorities, he held that social discrimination constituted the real test for determining whether a social group is a minority or not and hence not just certain religious groups minorities but also scheduled castes constituted the 'minority' in India. (Jha, 2002: 3179)

It is here that Bajpai's work is significant as she argues on how diversity was negotiated in '*Debating Difference*' (Bajpai, 2015). Her narrative seeks to interpret the otherwise dominant secular-religious discourse on the debates in the Constituent Assembly and the nature of the Indian state within a multicultural framework. She begins by establishing that India, on account of its legal pluralism in family law, territorial autonomy for tribal groups, quotas in public education and offices, serves as an exemplary case for multiculturalism. However, at its inception the Indian state enacting a Constitution amidst partition and a tumultuous dawning of freedom "cut back" on its multicultural policies, hence, cultural difference and claims of minority groups arising thereof received little or no "normative support" unlike claims based on backwardness (and its elimination) that formed a part of the long-term vision of the Constitution (Bajpai, 2015: 2). She argues, as have scholars before her, that Constitutional discourse was addressing group differentiated rights as a continuation of colonial policy whereby, the British, the Princely states and nationalists, with

distinctively different intentions, had sought 'special representation' in public offices for tribal groups, Muslims, Sikhs, Indian Christians, Anglo-Indians and Depressed Classes These were facilitated through mechanisms of separate electorates (a contested site), reserved seats and nominations (Bajpai, 2015: 3)The indicator for defining a minority became the 'backwardness' of a community. Subsequently, affirmative action served as a temporary guarantee to address the 'backwardness' of caste groups and political reservations for religious groups was dispensed with. The shift had been made to a discourse that diluted recognition and accommodation of culturally diverse groups, a characteristic feature of multiculturalism. Bajpai observes that these quotas were offered as temporary affirmative action provisions and not as a multicultural right. (Bajpai, 2015: 6) To sum up then, the period of Constitution making and after were channelled in protecting two, diverse sets of values – liberal values of individual rights and equal citizenship and concerns of political unity and social cohesion.

To conclude this section, one can examine select arguments put forward by Constituent Assembly members in drafting Article 23, now incorporated as Article 30. Discussions in the Assembly have to be located in the colonial context of religious neutrality by the British and the existence of traditional educational institutions engaged in religious instruction and general education. The Woods Despatch for instance would recognize many of these private educational institutions and extend grant in aid to all provided they taught secular education, regardless of their religious objectives. Neutrality of the colonial state was demonstrated by the availability of grants to all and the non interference of the British in the administration and management of these institutions. This in a way set a precedent of 'state recognition' and 'state aid' to educational institutions that were community led. Another set of regulations or provisions that were in order resulted from the recommendations of the Indian Education Commission of 1882 that sought to introduce a 'conscience clause' in aided educational institutions engaged in religious instructions. While this was not adopted by the British government some places like the United Provinces, and later Madras state and Travancore incorporated versions of this clause, the primary motive being to forbid compulsory religious instruction in denominational schools.

Thus, when the Constituted Assembly commenced its work at the end of 1946, there was a ready template, a short history of traditional and denominational educational institutions and a system of government grants in place that independent India could not just dispense with. Concerns on the continuity of educational institutions of such a nature were also considered crucial as the state could not bear the entire burden of public education. This context formed partly, the roots of the need for cultural and educational rights of minorities through the establishment and management of educational institutions.

At the outset, the Sub Committee on Minorities chaired by H.N. Mukherjee, a member of the Christian community, circulated a questionnaire seeking to account for the demands of the minority communities, in particular the nature of political, economic and cultural safeguards sought by them. Some of the responses received were by Jagjivan Ram, Khandekar and the All India Adi Hindu Depressed Classes Association, all of whom sought safeguards and representation for scheduled castes in the reservation of seats in the legislatures, ministries, public service and the judiciary; the Sikhs demanded special educational facilities and reservations in public services and reservation for the backward classes within their religion i.e. the Mazhabis, Ramdasias and Kabirpanthis and the reservation seats for the community in the Central legislature and the Central Cabinet. The Anglo Indians demanded a fundamental right to receive education in English and sought continuity, both, in English schools run by them and in receiving grants-in-aid by the state. R.N. Brahma from Assam wanted safeguards for tribal people living in Assam as well as those who had left the region and settled in the plains, in order to protect their own dialects and forms of religion and worship, in addition to reservation in legislature and public services. The Parsis and the Indian Christians did not put forth any specific demands.

From the above, two points stand out – one, the demand for continuation of pre Constitution educational institutions and grants to them, a point that formed an important part of Article 30 and its implementation in independent India. The other, is the claim of representation of backwardness within the religious minority (Sikh), a concern that is prevalent in the contemporary minority discourse in India.

When discussing the provisions that now constitute Article 30, some of the key arguments made were on the following provisions/issues (i) imparting religious instruction in state aided and recognised schools, (ii) State 'maintained' and state 'aided' institutions (iii) the term minority.

The aspect of imparting religious instruction was taken into account by establishing that "No minority whether based on religion, community or language shall be discriminated against in regard to admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them"[16]. The aspect of religious instruction was addressed at length in the discussions on Draft Article 16. This Article had little to do with minority educational institutions per se but did bring to fore the apprehension of religious education in state aided schools. Objections to imparting religious education in state funded

16 As mentioned in Clause 18 (2) of the Draft Constitution. *Constituent Assembly Debates* (CAD), Vol.III, Lok Sabha Secretariat, 1949, p. 503.

schools or in aided, maintained and recognised denominational institutions was raised by K.M. Munshi, Purnima Banerjee, K Santhanam[17] and H.N. Kunzru.[18]

The point on denominational instruction was reiterated with respect to 'state maintained' and 'state aided' educational institutions, with the former forbidding any religious instruction of a denominational character and the latter where religious instruction is allowed provided the rights of the minorities are protected (*CAD*, Vol. V, p. 24) This view was forwarded by S. Radhakrishnan who stated that this distinction reinforced the secular state in India. K.M. Munshi would seek to replace the word 'maintained' with 'recognition' as many schools received no aid from the state but were recognised by the state (CAD, Vol. V). While this may appear as a mere technicality, the Courts in independent India have adjudicated on numerous cases of denial and withdrawal of recognition by the State or Education Boards that have served as a violation of the fundamental right of both religion and language-based minorities under Article 30.

Lastly, the term minority itself was discussed. While 'minority' has not been defined i.e. the basis for declaring an individual or group as a minority, Ambedkar clarified that the import of the term was not merely technical but made way for cultural and linguistic communities as well. He opined,

> "…for the purposes of this [Draft] Article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities. Similarly, if Maharashtrians settled in Bengal, they may not be minorities in the technical sense; they would be cultural and linguistic minorities in Bengal…" (*CAD*, Vol. VII, pp. 922-923).

Moreover, [Draft] Article 23 was not an obligation upon the state to aid and recognize an educational institution established by a religion or language-based minority. The provision says "…if there is a cultural minority which wants to preserve its language, script and culture, the State shall not by law impose upon it any other culture which may be either local or otherwise". (Ibid) Over the course of the debates, non discrimination emerged as a central theme with discussions asserting that neither should the state discriminate against educational

17 There was also a possibility with the existence of numerous sects with certain religions i.e. Hinduism, that the state would have to recognize a plurality of religions. This led K Santhanam to argue, "In our country, even in the same religion, there are a number of denominations…we don't want Saivaite to give Saivite instruction; the Vaishnavites to give Vaishnavites instruction, the Lingayats….We do not want to give even the slightest loophole for such controversies. Therefore, it is essential that all schools maintained by the State should have no religious instruction whatsoever…" *CAD*, Vol. V, p. 18.

18 H.N. Kunzru observed the following with regarding to state funding denominational institutions, "if we allow the State to give religious instruction in any school, it means that we accept the principal of a State religion and that there shall be something like an established Church…" *CAD*, Vol. V, p. 26.

institutions established by religion and language-based minorities and neither should these public educational institutions discriminate against wards seeking admission to their schools regardless of their denominational identity (H.N. Kunzru, Pandit Thakurdas Bhargava & M.A. Ayyangar)[19].

By 1950, the debates stood settled and Article 30 formed a part of the Cultural and Educational Rights of Minorities in Part III of the Constitution and read as follows:

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) 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.

With the inclusion of this provision as also Article 29[20], the Indian Constitution had recognised the cultural diversity in India and sought its expression in the 'secular' space of education. The question arises as to how this legal acknowledgment played out in the implementation of Article 30. Does multiculturalism imply a passive acceptance of diversity or an active engagement with the diverse public space and distinct ways of life seeking a common ground? The following section looks into this aspect of the provision on minority educational institutions.

Multiculturalism institutionalised – a case of MEIs in India

'Institutionalisation' would imply the incorporation of multicultural provisions, in this case, Article 30 in the working of the Indian education system. One of the mechanisms that offers useful insights into the challenges and limitations of institutionalised multiculturalism in India are the court judgements of the High Court and Supreme Court. Besides setting judicial precedents, the Courts are guardians of the fundamental rights under writ jurisdiction. Hence, this section of the article would illustrate the workings of multiculturalism in India, with respect to minority education, by citing some landmark cases and would also examine the role of the Commission on Minority Educational Institutions. This would enable the reader to assess the transitions from legislation to policy and the challenges thereof.

19 *CAD*, Vol. VII.

20 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 one of them.

In 2004-05, the then Congress led UPA government announced the setting up of a Commission to look into the implementation of Article 30 of the Indian Constitution. The National Commission for Minority Educational Institutions Act, 2004 defined the term 'minority educational institution' means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities[21]. The Commission is tasked with looking into cases where educational institutions administered and managed by religion based minorities are not able to fully enjoy their rights. The obstacles are created by agencies of the state that seek documents for verification, affiliation and recognition. Often, there are delays in issuing minority status certificates to institutions seeking protection of Article 30. In many cases State Boards threaten to withdraw recognition and affiliation in educational institutions that are functional.

In the first ten years since its inception, the NCMEI undertook sensitisation drives across the country, touring different states and spreading awareness of the constitutional right provided by Article 30. Representatives from minority managed institutions also appeal to the NCMEI which has the powers of a quasi judicial body. Over the years that NCMEI has issued minority status certificates to minority managed institutions across India[22]. Since 2017, a large number of these institutions belong to the Muslim and Christian communities and are from states of Uttar Pradesh, Madhya Pradesh, Tamil Nadu, Kerala and Bihar[23].

The Commission however suffers from some significant limitations. The first is that it only addresses cases of religion-based minorities and not linguistic minorities. The second is the weak membership of the Commission pointed out in the beginning of the essay. At the time of its inception, the Commission had representations from the Muslim, Christian and Parsi communities. Later, members were drawn from the Sikh community as well. The intention being to make the Commission a representative body governing all the religion-based minorities in India i.e. those recognised by the National Commission for Minorities Act. At present, only one member constitutes the NCMEI i.e. Dr. Shahid Akhter.Else, the Commission seems to have been reduced to a mere administrative apparatus. This is significant to the Indian case as the Commission

21 The National Commission for Minority Educational Institutions Act, 2004. See: https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/NCMEIAct2004.pdf

22 Access to information on the number of certificates issued by the NCMEI since 2005 can be found here: https://cdnbbsr.s3waas.gov.in/s33de568f8597b94bda53149c7d7f5958c/uploads/2023/09/202309272001146081.pdf

23 The community wise publishing of information of minority status certificates issued started from August 2017. See, https://cdnbbsr.s3waas.gov.in/s33de568f8597b94bda53149c7d7f5958c/uploads/2023/03/2023031548-2.pdf

was a noteworthy addition, a mechanism by which Article 30 could be claimed and asserted as a multicultural, fundamental right. Granted with powers of a civil court, the Commission helped remedy many issues that emerged as points of conflict, in particular to do with the 'minority' status of the educational institution/s and the issuance of No Objection certificates (NOCs). In addressing concerns on affiliation and deprivation of Article 30 on one hand, and the power to cancel the minority status of educational institutions on the other, the NCMEI has attempted to strike a balance between claims to the exercise of culture and the equal respect towards all religions as guaranteed by a secular state. The negligence on the part of the government to ensure a robust and representative membership of the Commission reflects partly, the lack of commitment towards the development of minorities.

Nevertheless, prior to the establishment of the NCMEI, it was the National Commission for Minorities and the Supreme Court and High Court that looked into questions concern minority educational institutions. It is pertinent then to peruse through the nature of cases that have come before the Courts in exercising the fundamental right provided by Article 30. As stated before, the acceptance and official recognition of cultural diversity is the initial condition, a precursor to the celebration of multiculturalism. How effectively the actors involved in this institutionalised set up determine whether multiculturalism has been promoted and upheld or exists as mere symbolism.

Since the court cases are numerous, this article would consider select Supreme Court cases to be examined. Petitions by minority managed institutions to the Supreme Court cover appeals on a range of issues concerning temporary recognition[24] and withdrawal of affiliation. The state (implying not just the Indian state, but also the states/federal units, education boards and municipalities within India) on its part perceives these as checks on the establishment and management of institutions. In the case of temporary recognition, the Court has held that while religion and language-based minorities can establish educational institutions of their choice, the management has to follow certain state regulations if it seeks state aid and/or state recognition. Thus, in the case of St Joseph's Teachers Training Institute, the recognition was under consideration. Yet the MEI in question chose to run the course and conduct a public exam. The Court held that the right to establish an educational institution under Article 30 does not entail a right to recognition, affiliation etc. The said institute has to abide by conditions for recognition or affiliation – as the case may be.

In the 1950s and 1960s the Supreme Court had to establish that Article 30 was applicable to *educational institutions established prior to the Constitution*. The 'establishment' of an institution should not serve as a reason for the state to

24 See, State of Tamil Nadu and Others v. St. Joseph Teachers Training Institute and Another, 1991, SC 87 and St. John's Teacher's Training Institute (for Women), Madurai and Others v. State of T.N. and Others, 1993, SC 595.

prevent recognition of a MEI or hinder its management. This was addressed by the Court in the Kerala Education Bill case, 1957[25], Rev S.K. Patro vs. State of Bihar, 1969, S. Azeez Basha and Another v Union of India, 1967 and St. Stephen's v. University of Delhi, 1991. Stating the purpose of Article 30, the Court declared, "…the establishment of educational institutions by minority groups as a cultural right was keeping in mind a number of denominational institutions and traditional centres of learning that existed in pre independence times". In the S.K. Patro case, the Court held that there wasn't any settled question of citizenship to contest whether those who established the educational institution were Indians. Hence, Christian missionaries as long as they were resident in India at the time of the establishment and management of the institution could claim the right under Article 30. However, in the case of Azeez Basha the Court read conjunctively and said unless it was proved that Aligarh Muslim University was established by the Muslim minority, the institution could not seek autonomy in administering the same. In the case of St Stephen's the Court held that if the College were to present 'a proof of establishment' then the appeals against it on arbitrary reservations for Christian students would not hold strong. The Court also asserted that affiliation to Delhi University did not divest St Stephens of its minority status. (SC 295)

There have been instances when State governments have passed what seem like diktats to MEIs that dilute and affect the impact the school or educational institution might have on the communities, both the minority which the institution represents and other community members as well. Thus, in the State of Bombay v. Bombay Educational Society, 1954, a school run by the Anglo-Indian community opened its premises to all communities. The State government however issued an order directing the school to admit only Anglo Indian and European students. The Court struck down the order saying that it violated the right of the minority educational institution and that of the citizens under Article 29[26]. (SC 129) Within a decade of this case, the Supreme Court articulated the 'dual test'[27] as a method of ascertaining the limits to state intervention in minority educational institutions. In Rev. Sidhajbhai Sabhai and Others v. State of Bombay, 1962, the Court held that the right under Article 30 cannot be

25 "The language employed in Article 30(1) is wide enough to cover both pre-Constitution and post-Constitution institutions…Article grants two rights: (i) to establish (ii) to administer educational institutions of their choice…The second right clearly covers pre Constitution schools"

26 "…given the nature of Articles 29(1) and 30(1), the police powers of the State to determine the medium of instruction must yield to this fundamental right to the extent it is necessary to give effect to it and cannot be permitted to run counter to it".

27 State regulations meeting the 'dual test' meant that of the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it" (SC 259, 1962).

"whittled down" by state regulations and excessive administrative interference would render Article 30 to be a "teasing illusion, a promise of unreality" (SC 259). The excessive regulation in this case amounted to a threat of withdrawal of aid and recognition to the institution run by the Christian community which admitted students from all communities. The Court followed a similar precedent in the Rev. Mark Netto v. Government of Kerala case, 1978, striking down parts of a state legislature that sought to unduly interfere in the administration of the minority institution thereby violating their right to manage an institution of their choice (SC 496)[28]. The right to administer was upheld in other cases like Gandhi Faizeam College, Shahajahanpur v. University of Agra, 1975, State of Bihar and Others v. Syed Asad Raza, 1997 and Yunus Ali Shah v. Mohammed Abdul Kalam & Others, 1999, to name a few. While supporting the MEIs, the Court asserted that there was no right to maladminister and in Lilly Kurian v. Sr. Lewina, 1978[29].

With regard to extending recognition and assigning a minority status to denominational groups, the Court has made some interesting departures. For instance, in the D.A.V. College v. State of Punjab, 1971, case the Supreme Court declared Arya Samaj as a minority based on religion. Besides acknowledging the unique contribution of the Vedic culture, the Court used the precedent set in the Kerala Education Bill i.e. the state is the unit to determine the minority. However, the Court rejected the claims of the Jain community[30] and the Brahmo Samaj[31], the latter, a sect within the Hindu religion, which sought the protection of Article 30.

The above case illustrations demonstrated how the state engages with Constitutional provisions addressing cultural concerns. From the perspective

28 The Court held, "…the dominant object of the said rule does not seem to be for the sake of discipline or morality….the said rule crosses the barrier of regulatory provision and interferes with administration of an institution guaranteed under Article 30".

29 The right under Article 30(1) means, 'management of the affairs' of the institution. This right, however, is subject to the regulatory powers of the State. Article 30 is not a Charter of maladministration; regulation, so that the right to administer may be better exercised for the benefit of the institution is permissible.

30 In Bal Patil v. Union of India, 2005, the Commission said the state has to be a unit to decide the minority status of the Jain community, following which the National Commission of Minorities would designate such a status on the Jain community. Here, the Court invoked the 'secular structure' of the Indian State and urged the NCM to gradually reduce the number of notified minorities lest, "…it increases the fond hope of various sections of people getting special protection, privileges and treatment as part of Constitutional guarantee [and encourage] fissiparous tendencies [that] would be a serious jolt to the secular structure of Constitutional democracy". (SC 464, 2005)

31 The Court held, "…reading Articles 19(1)(g) and 26(a) together, the petitioners have a right to establish and manage educational institutions and hence we do not think it necessary to decide the issue of minority/denominational status of Brahmo Samaj. See, Brahmo Samaj Education Society and others v. State of West Bengal and Others, 2004, SC 361.

of the state, liberal citizenship takes precedence over group recognition resulting in the state apparatus becoming assertive and imposing to the point of violating the fundamental right of the community to exercise its right. As shown above, the Supreme Court has sought to uphold diversity in practices when it comes to community and denominational educational institutions. However, the Court has been cautious in not allowing cultural diversity to compromise secular values of freedom of religion to all and a more integrative approach to questions of religion.

Conclusion

The Indian state, both independent and colonial, interacted with culture largely through the prism of religion. Religion often served as a site for accommodation and contestation and thus, the nationalist discourse articulated culture largely in religious terms. This is not to say that other ascriptive identities were not taken into account; only that religion tended to play a more dominant role in identity formation, recognition and assertion. The essay has attempted to show how the multicultural in India was examined through the prism of the secular and how secularism guided the language and discourse on minority rights. While multicultural avenues i.e. autonomy and self governance are contained in the Indian constitution, this essay focused on Article 30 – to do with educational institutions. In doing so, it has been seen how minority educational institutions became instrumental in identity formation and recognition. While the 'secular' remained the predominant concern in Constitution making and judicial precedents, a study of the MEIs reveals how the state can promote and encourage or deny and dissuade the enjoyment of rights by MEIs.

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