

**CASE COMMENT: ST. STEPHEN V. UNIVERSITY OF DELHI
(‘AB DEI GLORIUM’)*****SATYAM VERMA**

The Constitution of India, the grundnorm upon which all the laws in India are based and from which all the laws derive is the supreme authority, the Constitution offers a plethora of rights and takes into consideration all of the sections of the Indian society. The minorities form a significant portion of the Indian state. The independence for which are forefathers so vehemently fought, had been bestowed upon us in a not-so-perfect circumstance, which although was favorable to a considerable section of the society also included a portion which was left unattended and overlooked by many, the minorities formed a part of that community. The forefathers of our nation and the drafters of this comprehensive document, i.e. the Constitution of India took special care and with utmost sincerity included the minorities in their policy of moving forward and included for them a vast and wide range of options for their upliftment. The case and its judgment, which has been scrutinized by the scholar discusses, Article 30(1); which includes the rights of the minorities to establish and administer educational institutions.

CITATION NUMBER: 1868 of 1980[(W/P) Civil];

BENCH: M.H. Kania, K.J. Shetty, N.M. Kasliwal, M. Fathima Beevi, Y. Dayal;

DISSENTING OPINION GIVEN BY N.M. KASLIWAL;

(NUMBER OF JUDGES: 5);

RATIO OF JUDGEMENT: 4: 1 (1 DISSENTING IN FAVOUR OF THE UNIVERSITY OF DELHI OTHERS BEING IN FAVOUR OF ST. STEPHENS COLLEGE);

PETITIONER: ST. STEPHEN'S COLLEGE;

RESPONDENT: UNIVERSITY OF DELHI;

DATE OF JUDGMENT: 06/12/1991.

A. STATEMENT OF FACTS AND BACKGROUND OF THE CASE

1. Stephen College at Delhi was affiliated to Delhi university and later to UP university. It is a state aided educational institution. The college admission procedure provides to give preference to Christian students since they are religiously minority institution.
2. The College was founded in 1881 being the oldest in Delhi. The courses for the academic year 1980-1981 was published in admission prospectus, it was also provided that the final admission would be based on the student choice, however the VC of Delhi University had recommended necessary dates and procedure for the same academic year.
3. The admission to B.Com and BA was on the basis of marks of the qualifying exam. Also individual subjects could be given weighted but should be notified in advanced through prospectus.
4. The Delhi University Students Union complained that the college had fixed its own time schedule and interview dates before the admission dates of Delhi University.
5. A student named Rahul Kapoor seeked admission to a under graduate course challenging the admission schedule of St. Stephen College. The college by means of Writ Petition under Article 32 stated that it was a religious minority run institution. For 300 seats 6000 applications were received. On admission students who were denied filed Writ Petition in Allahabad High Court Challenging reservation for Christian Students.
6. The High Allowed the Writ Petition under Article 29(2). An Appeal was made.

B. RESEARCH QUESTIONS:

1. When can an institute be accorded a minority status?
2. Whether the minority veil can be lifted?
3. Whether the nexus between the institute and the minority hold any significance?
4. Whether the single argument that an institute is founded by a minority enough evidence to accord minority status to that institute?
5. Whether Indian Citizenship is a perquisite to the application of Article 30?
6. Whether 'standard of education' is a part of Article 30(1); 'management of affairs' of the institute; and can the State intervene in these issues?

C. LITERARY REVIEW:

The case has been a regular citation in minority rights issues and a part of almost all discussions related to Section 30 (1) of the Constitution of India.

D. SCOPE AND LIMITATIONS

The scope of this research extends to the major objective of the Article 30 (1) which safeguards the rights of the minorities as deliberated below:

The real reason embodied in Art. 30(1) of the Constitution of India is the conscience of the nation that the minorities, religious as well as linguistic are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best education general, education to make them complete men and women of the country. The minorities are given this protection under Art.30 in order to preserve and strengthen the unity and integrity of the country. The sphere of general secular education is intended to develop commonness for boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religion or linguistic minorities are not given protection under Art. 30, to establish and administer educational institutions of their choice, they would feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our country men to live in the whole. The rights conferred on the minorities under Art. 30 (1) is to ensure equality with the majority and is not intended to place minorities in a more advantageous position *vis-à-vis* the majority and there is no reverse discrimination in favour of minorities. General laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation, etc., which are applicable to all will apply to minorities also. The minorities cannot be treated in a religious neutral way in the educational institutions administered and registered by them and Art. 30 (1) is incorporated to secure to the minorities a fair deal in the religion only. It was held in that case that, that there may be individuals in minority group who want to assimilate into majority, but the group itself has a collective interest for non-assimilation and it is interested in the preservation and promotion as a community and this is the chief reason for which article 30 (1) has been incorporated as a fundamental right.

Article 30(1) is a special right and hence minority educational institutions need not be educational institutions, which are set up to conserve language, script or culture of minority community.

E. RESEARCH METHODOLOGY

The scholar has adopted doctrinal method of research focusing on legal prepositions and doctrines by analyzing the law in the question through the precedent set forth by the apex court of the country and it's reflection in Article 30 (1) of the Constitution of India and the fundamental rights guaranteed to us by this comprehensive document.

F. AIMS AND OBJECTIVES

The aim of this research is to comment upon the case of St. Stephen College v. University of Delhi and how it brings to the forefront various constitutional features, and the objective being to discuss an important interpretation of the Article 30 (1) of the Constitution.

3. ARGUMENTS ADVANCED

A. PETITIONER'S ARGUMENTS:

- I. College has not been declared to be a minority college nor by any university. *Alternatively*
- II. Assuming that it is a minority college , it is not entitled to discriminate students on grounds of religion as the college is receiving maintenance grant from the government , therefore since the state is funding the college it is not entitled to practice discrimination on the ground of religion and or language since it is contrary to Article 29(2) of the Constitution.

B. RESPONDENT'S ARGUMENTS:

- I. The college was founded, established and administered by Christian Missionaries and therefore qualifies as a religious minority institute and hence possesses the Right to administer the institute accordingly.

The High Court has allowed the writ petitions declaring that the policy of reservation for Christian students is contrary to the equality guaranteed to citizens under Article 29(2) of the Constitution

Being aggrieved by the decision of the High Court, the Institute be obtaining certificate under Article 133(1)(a) of the Constitution has preferred Civil Appeal Nos. 1831-41 of 1989. Civil Appeal Nos. 1786 of 1989 and 2829 of 1989 are by some of the students. They are connected appeals against the same judgment of the Allahabad High Court Question of Law

The Allahabad Question of law is enumerated below.

C. ISSUES INFRONT OF THE COURT

- I. Whether St. Stephens College is a minority run institution?
- II. Whether St. Stephens College as minority institution is bound by University Circulars?
- III. Whether St. Stephens College is entitled to reserve seats to its own Community?

4. THE QUESTIONS DEBATED IN THE HEARING

The important issues can be grouped under three main heads

Firstly: Whether St. Stephen's College is a minority - run institution?

Second: Whether St. Stephen's College as minority institution is bound by the University circulars dated June 5, 1980 and June 9, 1980 directing that the College shall admit students on the basis of merit of the percentage of marks secured by the students in the qualifying examinations?

AND,

Lastly: Whether St. Stephen's College and the Allahabad Agricultural Institute are entitled to accord preference to or reserve seats for students of their own community and whether such preference or reservation would be invalid under Article 29(2) of the Constitution?

The first two questions are relevant only to St. Stephen's College and they do not arise in the case of Allahabad agricultural Institute since there is no dispute as to the minority character of that Institute. There is also no grievance by the U.P. University with the procedure of selection of candidates followed by the Instituted. The third question, of course, is relevant to common problems of both the institutions.

5. THE JUDGEMENT- THE REASON IN THE HEARING AND THE DISSENTING OPINION BY KASLIWAL J.

The final verdict of the judges consisted of these deliberations:

Firstly, held ,per majority, it was contended that St. Stephen's College after being affiliated to the Delhi University has lost its minority character. The argument was based on some of the provisions in the Delhi University Act and the Ordinances made thereunder. It was said that the students are admitted to the University and not to the College as such. But we find no substance in the contention. In the first place, it may be stated that the State or any instrumentality of the State cannot deprive the character of the institution, founded by a minority community by compulsory affiliation since Article 30(1) is a special right to minorities to establish educational institutions of their choice. The minority institution has a distinct identity and the right to administer with continuance of such identity cannot be denied by coercive action. Any such coercive action would be void being contrary to the constitutional guarantee. The right to administer is the right to conduct and manage the affairs of the institution. This right is exercised by a body of persons in whom the founders have faith and confidence. Such a management body of the institution cannot be displaced or reorganized if the right is to be recognized and maintained. Reasonable regulations however, are permissible but regulations should be of regulatory nature and not of abridgment of the right guaranteed under Article 30(1) *Secondly*, according to K.G. Shetty, since there was no provision in the Delhi University Act with overriding powers precluding the management of the College from exercising its right to administer the College as a minority institution, therefore, it would be wrong to state that there is no admission to the College but only for the University. The procedure for admission to Post Graduate courses is of course, different but the instant case is not concerned with that. *Lastly*, as deliberated by M.Fatima Beevi and Y.Dayal, the question as to the minorities whether based on religion or language has the right to establish and administer educational institutions of their choice.

The administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institutions. This management must be free from control so that the founder or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. But the standard of education are not a part of the management as such. The standard concerns the body politic and is governed by considerations of the advancement of the country and its people. Such regulations do not bear directly upon management although they may indirectly of affect it. The state, therefore has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others. There is a wealth of authority on these principles. On the contrary it was also argued by Kasliwal J. (dissenting opinion), that the right conferred on minorities to establish and administer educational institutions under Article 30(1) of the Constitution is not absolute and is always subject to reasonable regulations. If a minority had established and is administering educational institution without receiving any aid out of state funds then clause (2) of the article 29 will not come into play.

The final verdict was in favour of St. Stephen College according to the reasoning as discussed above.

6. SIMILAR CASES

1. State of Bombay v. Bombay Education Society⁷ : Linguistic minority institution is entitled to protection under Article 30(1) of the Constitution of India.
2. A.P. Christian Medical Educational Society v. Government of A.P. :The government; the university and ultimately the court have undoubted right to pierce the minority veil and discover whether there is lurking behind it no minority at all and in any case no minority institution. Minority institute must be educational institute of the minorities in truth and in reality and not mere masked phantoms, it was emphasized that what is important and what is imperative is that there must exist some real positive index to enable the institute to be identified as an educational institute of the minorities.

7. CONCLUSION – A CRITICAL ANALYSIS

The case very finally enumerates very fine critical points including the rights of minorities, i.e. their right to set up, i.e. establish and administer educational institutes. The judgment is a benchmark upon the validation of these rights given to the minorities, not that they need validation, but a positive precedent upon the reaffirmation of these rights guaranteed to the minorities of the state.

The scholar while completely agrees with the front running of the minority institutions, also disagrees in the amount of say the state has in the administration of the university, also because the nature of minority to majority ratio is constantly changing, particularly because of the fact that the majority has now become a minority in the current Indian political dynamics.

In *Lily Kurian v. Sr. Lewina* It was pointed out that

“Protection of minorities is an article of faith in the Constitution of India. The right to the administration of institutions of minorities choice enshrined in Article 30 (1) means ‘management of the affairs’ of the institution .This right is, however, subject to the regulatory power of the stat. article30 (1) is not a charter for maladministration; regulation , so that the right to administer may be better exercise for the benefit of the institution, is permissible ; but the moment one goes beyond that and imposes what is in truth , not a mere regulation but an impairment of the right to administer , the article comes into play and the interference cannot be justified by pleading the interest of the general public, the interest justifying interference can only be he interest of the minority concerned .”

This is short being the reason behind the case’s majority judgment and the view of the scholar, wherein the minorities get the requisite rights, the state their regulatory powers, which remain just to keep the amount of checks and balances as is it required to keep and regulate -the minority institutions which are an entity in the state to take this society on a progressive front.