

Right to Get Grants by Minority Institutions is Not a Fundamental Right: SC

October 23, 2021

Recently the supreme court held that an institution's right to government aid is not a fundamental right. This has an important impact on the interpretation of Article 30 of the Indian Constitution.

In news: Right to Get Grants by Minority Institutions is Not a Fundamental Right: SC

Placing it in syllabus: Law & Policy

Dimensions

- SC ruling
- Text of Article 30
- Importance of the ruling

Content:

SC Ruling:

The Supreme Court of India recently made some observations about the rights of minority institutions.

These were done during the Uttar Pradesh's appeal challenging the Allahabad High Court verdict holding that Regulation 101 framed under The Intermediate Education Act, 1921 is unconstitutional:

Supreme court observed that:

- The right of an institution, whether run by a majority or minority community, to get government aid is not a fundamental right.

- Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilisation of the grant-in-aid by an educational institution can be imposed.
- All that **Article 30(2)** states is that on the ground that an institution is under the management of a minority, whether based on religion or language.
- The grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive aid
- If the government made a policy call to withdraw aid, an institution cannot question the decision as a “matter of right”.
- A grant of government aid comes with accompanying conditions. An institution is free to choose to accept the grant with the conditions or go its own way

Other similar rulings on Art 30:

Ahmedabad St. Xavier’s College v State of Gujarat:

- The Supreme Court pointed out that the spirit behind Article 30(1) is the conscience of the nation that the minorities, religious as well as the linguistic.
- It said minorities are not prohibited from the establishment and the administering educational institutions of their choice for the purpose of giving their children the best general education to make them a complete men and women of the country.

T.M.A Pai Foundation v State of Karnataka:

- SC overruled the proposition that no regulation can be cast in the interest of the nation if it does not serve the interest of the minority as well.
- Justice Kirpal C. J. had ruled that any of the regulation which is framed in the national interest must necessarily apply to all the educational institutions,

whether run by majority or by a minority.

- Moreover, such a limitation must necessarily be read into Article 30.
- The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations on that behalf.
- The court was of the view that no right can be absolute. Whether a minority or a nonminority, no community can claim its interest to be above national interest.

Text of Article 30:

- Article 30 of the Indian constitution consists of provisions that safeguard various rights of the minority community in the country keeping in mind the principle of equality as well.
- Article 30(1) says that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- Article 30(1A) deals with the fixation of the amount for acquisition of property of any educational institution established by minority groups.
- Article 30(2) states that the government should not discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language, while giving aid.

Exact Text of 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
- (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority,

referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause

- (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

Importance of the ruling:

Government aid is a policy decision:

- Therefore, it depends on various factors including the interests of the institution itself and the ability of the government to understand the exercise.
- Financial constraints and deficiencies are the factors which are considered relevant in taking any decision qua aid, including both the decision to grant aid and the manner of disbursement of an aid

Puts restrictions on grounds for challenge:

- Making the right to get an aid as not a fundamental right, puts restrictions on the grounds on which such executive decisions could be challenged in courts.
- Even in a case where a policy decision is made to withdraw the aid, an institution cannot question it as a matter of right.

Discrimination valid reason for challenge:

- Such a challenge would still be available to an institution, when a grant is given to one institution as against the other institution which is similarly placed

Mould your thought: The Indian constitution consists of

provisions that safeguard various rights of the minority community in the country keeping in mind the principle of equality. Critically evaluate the statement wrt constitutional provisions and recent SC verdicts.

Approach to the answer:

- Introduction
- Mention the provisions of Article 30 (1), (1A) and (2)
- Discuss how they provide equality
- Discuss the TMA Pai verdict
- Discuss the recent ruling about getting aid not FR and its importance
- Conclusion