

PROFESSIONAL EDUCATIONAL INSTITUTIONS: A PROFIT MAKING INDUSTRY

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For over a decade, there has been growing concern that opportunities for higher education to the weaker/minority sections of the society are rapidly getting eroded. The persistence of inequities is manifest in local and regional disparities of access, gender discrimination, non-affordable fee structures, confusing eligibility requirements, bewildering admission procedures, reduced government support, unabashed commercial practices, and lack of socially sensitive government policies on higher education. More opportunities are available to the urban population and those with higher economic status.

Since the days of Kerala Education Bill case¹, there has been much controversy on the constitutional dimension of minority rights to set up institutions of higher education, catering to religious and linguistic minorities. While, St. Xavier's case², which held the field for a long time. However, the situation underwent a change after Unni Krishnan case³. But now, after TMA Pai Foundation case⁴ the entire jurisprudence has been changed.

By virtue of Article 30(1) of the Indian Constitution, religious and linguistic minorities have the right to establish and administer educational institutions of their own choice. The use of the words "*of their own choice*" indicates that even professional educational institutions would be covered under Article 30.

It is to be agreed that education, now occupies the centre-stage of jurisprudence and for a long time to come, will remain an "occupation" or "business" rather than a welfare activity of national importance. Of course the new view of private education with profit making incentives is necessity. This is in terms with the World Bank's Privatisation Policy or Philosophy that State should withdraw from the field of education.

The TMA Pai verdict virtually opens the constitutional door wide to the private unaided educational institutions. Private education is one of the most dynamic and fast growing segments of post-secondary education at the turn of the twenty-first century. A combination of unprecedented demand for access to higher educational institution and inability or unwillingness

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¹ In *Re The Kerala Education Bill 1957*, [1959] SCR 995

² *The Ahmedabad St. Xaviers College Society & Anr. etc. v. State of Gujarat & Anr.*, [1975] 1 SCR 173

³ *Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors.*, [(1993) 1 SCC 645]

⁴ *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.*, [(2002) 8 SCC 481]

of government to provide the necessary support has brought the private higher educational institutions to the forefront.

Private higher educational institutions, with long history in many countries, are expanding in scope and number, and are becoming increasingly important in parts of the world that relied almost entirely on the public sector. It is well established all over the world that those who seek professional education must pay for it.

Taking notice of the cost of infrastructure and better amenities, the requirements of the competitive world, and role of economic forces, the Pai Foundation judgment holds that, the decision on the fee to be charged must necessarily be left to the private educational institutions that doesn't depend or seek upon any funds from the government.

The very same judgment also stated that, it would be unfair to apply the same rules and regulations to both aided and unaided professional institutions. While the unaided institutions are entitled to autonomy in administration, they cannot disregard the principle of merit. However, admission of students to unaided educational institutions viz., Schools, Under Graduate, Post Graduate colleges, where the scope for merit-based selection is practically nil.

It would be therefore permissible for the University or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while at the same time giving the management sufficient discretion in admitting students. This can be done through various methods. Here again the reality is that capitation fee is the main criterion. While many private professional institutions that have been conferred the status of Deemed Universities in recent years enjoy freedom from governmental interference.

Most of them have disregarded the principles of transparency and non-commercialisation. It is for the Central Government or State Government(s), in the absence of a Central legislation, to come out with a detailed well thought out legislation on the subject. The Committees that regulating the admission procedure and fee structure shall continue to exist, but only as a temporary measure and inevitable passing phase until the Central Government or the State Government(s) are able to devise a suitable mechanism and appoint a competent authority.

There is no doubt that State should withdraw from creating conditions, where the humbler humans have an equal opportunity for higher education. Secularism is the basic concept of the Constitution and this is no longer in doubt. The idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to give to right to the minorities a sense of security and feeling of confidence.

It appears doubtful if governments would be willing to undertake any of these measures. It is an open secret that the professional institutions engaged in undesirable commercial practices are owed or control by powerful persons. Many are major donors to political campaigns. However a limited power of regulation is still vested in government, which is welcome.

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