PRAMATI EDUCATIONAL AND CULTURAL TRUST V. UNION OF INDIA: A CRITICAL ANALYSIS

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"We are free only if we know, and so in proportion to our knowledge. There is no freedom without choice, and there is no choice without knowledge - or none that is not illusory. Implicit, therefore, in the very notion of liberty is the liberty of the mind to absorb and to beget."[1]

ABSTRACT

This paper seeks to critique the rationale behind the judgment in Pramati Educational and Cultural Trust v. Union of India [(2014) 8 SCC 1]. The author's approach will be to question the rationale behind the relevant articles of the Constitution and the Right of Children to Free and Compulsory Education (RTE) Act, 2009. The two pronged analysis deliberates on why private higher educational institutions must provide for reservation under Article 15(5) and why minority institutions must be exempted from reservations under the Right to Education Act. As concluding remarks, the author will also explore alternative arguments in support of the exemption provided to minority institutions in terms of reservations for historically backward classes.

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[1] Benjamin N. Cardozo, THE PARADOXES OF LEGAL SCIENCE 104 (Greenwood Press 1982) (1928).

INTRODUCTION: FACTS AND ISSUES RAISED IN THE JUDGMENT:

The reference in *Pramati Educational and Cultural Trust v. Union of India*[2] ("*Pramati*") lies from an order passed by a three-judge bench in 2010 in *Society of Unaided Schools v. Union of India*[3] *(*"*Unaided Schools"*) to judge the constitutional validity of Articles 15(5)[4] and 21A.[5]

In *Pramati*, the two issues raised before the apex court were regarding the insertion of Articles 15(5) and 21A and whether they violated the basic structure of the Constitution.

The Judgment affirms the validity of Article 15(5) on the ground that it does not violate the 'golden triangle'[6] of Articles 14, 19 and 21. The Court reasoned that since education is an implied right under Article 21,[7] guaranteeing the same under the charitable nature of educational institutions would not violate the fundamental rights of such institutions as they would continue to exercise their powers under Article 19(1)(g).[8] Additionally, the Court assumed that any law made to further education as a right would keep in mind the distinctions between various institutions, aided and unaided.[9] This seems to be an application of an argument provided by Ronald Dworkin, whereby an 'is' statement is derived from an 'ought'

[2](2014) 8 S.C.C. 1.

[3] (2012) 6 S.C.C. 102.

[4] INDIA CONST. art. 15(1) [Article 15(5): Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

[5] INDIA CONST. art. 21A

[6]*Supra note 2* at para 5; Minerva Mills v. Union of India, A.I.R. 1980 S.C. 1789.

[7]*See*, Islamic Academy v. State of Karnataka & Ors., (2003) 6 S.C.C. 697 *(*hereinafter, "*Islamic Academy"); Supra note* 3 at 15.

[8]*Supra note* 2 at para 14-15.

[9]*Supra note 2* at para 24-26.

statement.[10] In other words, it may be argued that private institutions ought to engage in charity, and therefore they will abide by the doctrine enshrined in Article 15(5).

Second, the Court held it to be constitutionally valid since it fulfils the aims of Article 45.[11] The Court opined that since the Statement of Objects and Reasons of The Constitution (Eighty-Sixth Amendment) Act, 2002 rejects the possibility of exclusion of private institutions; it was the intention of the Legislature to apply Article 21A across the board.[12] On the other hand, with respect to minority institutions, the judges, in this case, go a step further from *Unaided Schools* to hold that both aided as well as unaided minority institutions are exempted from providing reservations since it would tamper with their identity, expanding the scope of the principles laid down in the previous opinion.[13]

However, these conclusions have been not been founded on detailed reasoning. While the judgment has upheld the validity of Article 21A, it has *"simultaneously weakened it by making it subject to Article 30."*[14]

Therefore, the concern arising from this judgment is the lack of analysis while dealing with two matters: a) Allowing for reservations in private educational institutions in light of Articles 15(5) and 21A; and b) Including minority institutions within the width of these two Articles.

This case comment is divided into three parts. Part I and Part II deal with the critique of the judgment pertaining to private unaided institutions and minority institutions respectively. Part

[10]*See* VON WRIGHT, GEORG HENRIK. "IS AND OUGHT" FACTS AND VALUES 31-48 (Ed. Springer Netherlands, 1986); Ronald Dworkin Tex. L. Rev 60, 527(1981)

[11]*Supra note* 2 at para 39

[12]*Id.*

[13]*Supra note* 2 at para 46.

[14]Alok Prasanna Kumar, *Right to Education: Neither free nor compulsory*, The Hindu (May 9, 2014), http://www.thehindu.com/todays-paper/tp-opinion/right-to-education-neither-free-nor-compulsory/article5991271.ece (last visited August 1, 2015).

III tries to provide alternative modes of reasoning that the judges could have used to arrive at the same conclusion.

PART I- CRITIQUE OF THE JUDGMENT- PRIVATE UNAIDED INSTITUTIONS

I. Violation of Article 19(1)(g) of the Constitution by enforcing Article 15(5) against private unaided institutions

The learned counsel for the Petitioner, in *Pramati,* argued that the imposition of Article 15(5) would lead to nationalization of seats and, in turn, would violate Article 19(1)(g) of the Constitution.[15] The Court admits, in the course of its observations, that private unaided institutions (hereinafter, "private institutions") should be granted complete autonomy with respect to admitting students. It also admits that forcing reservations on higher educational institutions, especially private ones, would lead to nationalization of seats, which has been condemned in the cases of *T.M.A. Pai v. State of Karnataka (*hereinafter, *"T.M.A. Pai")*[16] and *P.A. Inamdar. v. State of Maharashtra* (hereinafter, "*Inamdar*").[17]

Considering the tenor of the Court's reasoning, one would expect it to continue along the same lines and declare Article 15(5) violative of the 'basic structure' doctrine. However, in a rather dichotomous manner, it goes on to hold that Article 15(5) was inserted to supersede the restrictions imposed by fundamental rights. The Court concluded that admitting a small number of students would not annihilate the identity of the institution and that the width of the provision ensures that it can only be exercised for specific purposes, making its application non-arbitrary. Thus, Article 15(5) was held as constitutionally valid and falling within the purview of Article 19(6). This deduction though seems erroneous, considering the lack of analysis by the Court in order to justify the superseding nature of Article 15(5).

[15]INDIA CONST. art. 19(1)(g); *Supra note 2*, ¶¶ 6-7.

[16](2002) 8 S.C.C. 481, ¶38.

[17](2005) 6 S.C.C. 537, 601.

The Supreme Court's verdict in *T.M.A. Pai* clearly held that the right to establish an educational institution is a fundamental right and that it falls within the purview of Article 19(1)(g).[18] The Court emphasised on the right to admit students as being an essential aspect of "establish and administer" as provided in the Article. Further, the Court held that private schools should also be granted maximum autonomy with respect to admitting students of their preference. These schools boast of a higher standard as compared to government schools. By curtailing their income through the imposition of reservations, the government is reducing the overall quality of education imparted by them.[19]

The Supreme Court, in *Inamdar*, held that the solution is for the States to improve their facilities in public schools.[20] The apex court went on to state that the right to establish and administer an educational institution was a fundamental right and that reservations imposed on private higher-educational institutions would lead to an unreasonable restriction on Article 19(1)(g).[21]

Further, in *Ashoka Kumar Thakur v. Union of India*,[22] the Court left the question of the validity of the 93rd Amendment open, with respect to private unaided institutions. It however, did note that, "The State cannot force any private sector unit to implement affirmative action."[23]

Thus, it may be concluded that the Court in *Pramati,* has erred in holding that private unaided higher educational institutions must account for reservation under Article 15(5). Applying the principle laid down in *Pramati* would lead to the induction of less meritorious candidates,

[18]*Supra note 3*, 141-144**;** *Supra note* 17**:** *Inamdar,* 99**.**

[19]*Supra note 16,* ¶61.

[20]*Supra note 17,* ¶60.

[21]*Supra note* 17, ¶157.

[22]A.I.R. 1996 S.C. 75; also *see* M.P. Singh, *Ashoka Thakur v. Union of India: A Divided Verdict on an undivided social justice measure*, 1 NUJS L.REV. 193 (2008).

[23]*Id; Ashoka Kumar Thakur,* ¶60.

thereby putting the development of the nation at stake while denying technical education to a more competent candidate in an attempt to fulfil an obligation that the State took upon itself.

A case in point is that of the Tata Institute of Social Sciences, where reservations have diluted the standards of education. Higher education requires more self-study and personal resources to achieve merit and the students belonging to the Scheduled Castes/Scheduled Tribes /Other Backward Classes [SC/ST/OBCs] being unable to facilitate for the same, have not been able to do well through these reservations. This has caused a drop in the overall performance of the institute.[24] Forcing private unaided institutions to induct people based on reservations goes against the discourse provided by *T.M.A. Pai* and *Inamdar.*

This analysis, in *Pramati,* is based on the premise that since private educational institutions *should* engage in charity, they *ought* to be implementing the doctrine enshrined in Article 15(5).[25] However, what is ignored is the fact that private educational institutions are not state-run entities and thus, if the State is unable to facilitate the provisions for education, private entities are not obligated to aid the State in this respect. The rationale provided by the Court, in imposing such an obligation on these entities, is insufficient and comes across as a massive leap from what the Court believes the private institutions ought to be doing to it finding a legal authority in mandating the same.

Thus, this has led the Court to arrive at the indigestible conclusion that the right of such institutions is not abrogated and highlights the sudden change in the position of law from *T.M.A. Pai and Inamdar* to the present case.

II. Enforcing Article 21A against private institutions

The Petitioners argued that Article 21A was enacted to ensure that the State provided children with free and compulsory education up to 14 years. Further, they argued that fundamental

[24]Weisskopf, Thomas E., *Impact of Reservation on admissions to higher education in India* ECONOMIC AND POLITICAL WEEKLY (2004) 4339-4349.

[25]*Supra note 10*

rights are only enforceable against the State under Article 12.[26] In response, the Union of India contended that Article 45 had not been enforced for 50 years after gaining independence, which necessitated that the State enact Article 21A.[27] The Union of India also pointed out that, for the purpose of implementation of Article 21A, the Right of Children to Free and Compulsory Education Act, 2009 was enacted and this statute ensured that private unaided institutions would also admit children from the weaker sections of the society, beginning from Class I. The Court, in *Pramati,* conceded that while it was the State's duty to provide for education, and not that of the private institutions, however under Article 21A the State is enabled to fulfil its constitutional mandate through private entities if it wishes to.[28] Conversely, the Court held that the fundamental right to education guaranteed under Article 21A can be enforced against the State only.[29] This conclusion creates a dichotomy.

It does come to question that by this rationale does the Court imply that only State run institutions will be held responsible for a breach of Article 21A and not the private entities? Or, does it mean that a claim must be brought against the State who will then enforce it against the private body concerned? Or does it mean that the enforcement of fundamental rights will eventually come down to claims against private entities? The latter possibility has far-reaching consequences.

Reference ought to be made to Justice Shah's opinion in *Rajasthan State Electricity Board v. Mohan Lal.*[30] In deciding whether the State Electricity Board was within the ambit of "State" under Article 12, Justice Shah expressed his apprehension against the same. In considering whether a statutory body is State, one must bear in mind whether fundamental rights can absolutely be enforced against that body and also whether it was "intended by the

[26]*Supra note* 2, ¶32

[27]*Supra note* 2, ¶36

[28]*Supra note* 2, ¶¶ 40, 42

[29]*Supra note* 2, ¶40

[30]AIR 1967 SC 1857.

Constitution makers that the authority be vested with the sovereign power to impose restrictions on very important and basic fundamental freedoms."[31]

In *Unaided Schools,*[32] Justice Radhakrishnan, in his minority opinion, contends that the text of Article 21A would have expressly included institutions other than the State if it was so intended. Thus, reading into the text of Article 21A and including private institutions within its ambit would be unfair to the spirit of the Constitution.

Applying the same to the present case, it should be noted that the Legislature did not intend to enforce fundamental rights against private institutions vide Article 21A. Fundamental rights can only be enforced against the State and State instrumentalities. For example, an individual can move the Court through a writ petition if his fundamental rights have been violated by a State-administered, funded and established institution as it is established that the State has "deep, pervasive" control over that body[33] due to which it is directly responsible for the violation. In contrast, a private institution is not regarded as an instrumentality of the State since the latter has limited powers to ensure that the former is not being mal-administered and is complying with basic educational standards.

The conclusion of *Pramati*, may end up allowing individuals to approach the Court against private entities alleging violation of Article 21A. If that happens, the entity will *ipso facto* be regarded as falling within the ambit of Article 12. It will then have the power to impose restrictions on the fundamental rights of citizens at par with State run institutions. This is a rather dangerous proposition since a private entity, *prima facie*, is not a part of the State machinery. Allowing it to make arbitrary constraints in the name of "reasonable restrictions" would lead to dilution of any universal mechanism in making or applying guidelines relating

[31]*Cf.* Sukhdev Singh, v. Bhagat Ram, A.I.R. 1975 S.C. 1331, ¶187.

[32]*Supra note 3*, ¶27-38.

[33]Ajay Hasia v. Khalid Mujib, A.I.R. 1981 S.C. 487, ¶82.

to education and will de-corroborate the importance of universal standards in State-run educational institutions.

PART II: CRITIQUE OF THE JUDGMENT- MINORITY INSTITUTIONS

I. Minority Rights under Article 30(1) not violated

The Court held that reservations are not applicable in the case of minority institutions since granting admission to individuals belonging to a community, other than that of the minority in question, could jeopardize the minority institution's character under Article 30(1) and that the said Article grants them special protection.[34]

The conclusion reached by the Court is rather unfounded and not based on any analysis. There is no logical basis to conclude that admission to SC/ST/OBC students should not be granted in minority institutions since they belong to communities other than the minority community running the institution. If individuals belonging to other communities were a threat, Courts would have emphasized on complete exclusivity of the minority to admit students from within their ethnicity or linguistics. On the contrary, the Courts aim to achieve an integration of sorts between the minority community and other communities.

This perspective has been highlighted in the case of *St. Stephens College v. University of Delhi.*[35] The Court held that *"the administration of educational institutions of their choices under Article 30(1) means management of the affairs of the institutions."*[36] This was expanded further to mean that minority educational institutions had the right to prefer their community's candidates to maintain the minority character of the institution. However, the Court added a caveat that the percentage of reservation for minority candidates shall not exceed 50 percent.[37] This view was clarified in *T.M.A. Pai* to imply that the number of seats

[34] *Supra note* 2, ¶¶26, 46

[35] A.I.R. 1992 S.C. 1630

[36] *Id.* at ¶54.

[37] *Id.* at ¶¶ 50-54.

reserved by minority institutions for their own candidates shall not exceed a reasonable percentage.[38] The Court reasoned that fixing a number would be unreasonable since specific, case by case circumstances must be considered while imposing an upper limit to reserve seats.[39]

Therefore, in *Pramati* the Court was unable to justify why providing admission to non-minority members of disadvantaged communities poses a greater threat to a minority institution as opposed to any other individual from non-minority communities.

II. The right to establish and administer in Article 30(1) is similar to that of Article 19(1)(g)

Article 30(1) of the Indian Constitution provides that every religious or linguistic minority shall have the right to establish and administer educational institutions of its choice. The Supreme Court has held that the phrases "establish" and "administer" used in Article 30(1) are to be read conjunctively[40] to mean that the institution in question is to have been established by a minority community[41] and is being administered by the members of that community.[42] The Court further clarified in *S.P. Mittal v. Union of India* that a community must show that it is a minority with respect to a particular state[43] and that the institution was established by it in order to administer it.[44]

[38] *Supra note* 16 at ¶329

[39] *Id.*

[40] It also clarified that the Court did not imply that the two words be read disjunctively, In Re: TheKerala Education Bill, 1959 S.C.R. 995.

[41] *See e.g.,* Sidharji Bhai v. State of Bombay, (1963) 3 S.C.R. 837; G.D.F. College v. University of Agra, A.I.R. 1975 S.C. 1821.

[42] *Id.* GDF College.

[43] A.I.R. 1983 S.C. 1 at 734. *; See,* D.A.V. College v. State of Punjab, A.I.R. 1971 S.C. 1731.

[44] *Supra note* 3 at 805.

Interestingly, the phrase "establish and administer", under Article 19(1)(g), has been interpreted similarly with respect to private educational institutions.[45] In other words, apart from the fact that there is an added privilege to reserve seats for the minority community in question, Article 19(1)(g) (with respect to establishment of educational institutions) advocates minimal government interference in terms of management and only allows it to check abuse of power by the authorities in specific cases of mal-administration and when minimum teaching standard are not met.[46] This is in a nutshell is the true meaning of "establish and administer" under both the Articles 19(1)(g) and 30(1).

The learned academician, Dr. M.P. Singh has summarised the position of law by stating that:

> *"In T.M.A. Pai and Inamdar the Court equated the right of citizens under Article 19(1)(g) with that of the minorities under Article 30(1) "to establish and administer educational institutions of their choice" and read within the former the same rights of admission as guaranteed to the minorities under the latter. An unspecified right of every citizen, which was not even known or recognized until Pai, could not have the same scope and content as the specified right of the minorities alone."*[47]

The rationale behind allowing a small number of seats to be reserved for historically backward groups in private unaided institutions is that it does not alter the character of the institution and only helps further the goal of social inclusion.[48] Thus, the same must be applied to minority institutions. The minority institutions are permitted to reserve a certain number of seats for their own community. However, reservation can be allowed to a

[45]SHUBHA TIWARI, EDUCATION IN INDIA (2006).

[46]Modern Dental College and Research Centre and Ors. v. State of Madhya Pradesh and Ors., A.I.R. 2009 S.C. 2432 at ¶¶30-32; *See*, Unni Krishnan, J.P. Vs. State of A.P. [1993] 1 S.C.R. 594.

[47]*Supra note* 22.

[48]*Supra note* 2 at 141-142.

reasonable extent within the remaining seats for the general category[49] as was done in the case of *St. Stephen's College*.[50]

To conclude, since the private institutions and minority educational institutions are being interpreted similarly with respect to State intervention, one cannot enforce the mandate of affirmative action without doing so in the other category. If reservation is imposed on private institutions, which were promised autonomy for the purpose of admission of students, then the same must be applied to minority institutions.

Thus, minority institutions should reasonably allow reservations in such proportion that their character isn't annihilated or in the alternative, the Court ought to allow private institutions to be exempted from the reservations clause as well. In the opinion of the author, that would be the correct interpretation.

PART III: ALTERNATIVE MODES TO REACH THE SAME CONCLUSION WITH RESPECT TO MINORITY INSTITUTIONS

The Court uses the excuse of jeopardy to the minority character of institutions to ban reservations in these institutions.[51] However, as explained above, a small percentage of seats reserved for the socially backward classes would not annihilate the minority character of the institution. If the Court wanted to differentiate between private institutes and minority ones, with respect to reservations, then it ought to have used the following grounds to carve out an exception for minority institutions:

I. Merit

One way of justifying the lack of reservations in minority institutions is to claim that it would jeopardize the efficiency of the institution. In the *St. Stephens* case, it was held that although

[49]Government of India, National Commission for minority educational institutes, Guidelines for determination of Minority Status, Recognition, Affiliation and other related matters in respect of Minority educational Institutions under the Constitution of India., http://ncmei.gov.in/writereaddata/filelinks/c296efcb_Guidelines.pdf (last visited August 1, 2015).

[50]As reported in T.M.A. Pai, *supra note 16* at ¶155

[51]*Supra note* 2 at ¶46

50% of the seats could be reserved for Christians to keep the character of the minority institution intact, the remaining seats must be allotted solely on the basis of merit.[52] This was further affirmed in *T.M.A. Pai* wherein it was mandated that a merit-based process for admission to higher educational institutions be followed.[53] The rationale behind it being that it is implicitly agreed among courts that minority groups are unable to meet purely merit-based selection criteria. Thus merit is anyway compromised to a certain extent to maintain the minority character of the institution.[54] If the remaining seats also allow for reservation for historically backward classes it would greatly hinder the overall performance of the institution. Thus, if for example, 50% seats are reserved for the minority community and 25% is reserved for backward classes, only 25% of the applications would be merit based, thereby decreasing the efficiency of the institution.[55]

[52]*Supra note* 35 at ¶54.

[53]*Supra note* 16 at ¶152.

[54]Supra *note* 16 at ¶152**;** Saurabh Chaudri & Ors v. Union Of India, A.I.R. 2004 S.C. 2212 citing Islamic Academy and following Pradeep Jain v. Union of India, A.I.R. 1984 S.C. 1420 held: "For the purpose of achieving excellence in a professional institution, merit indisputably should be a relevant criterion. Merit, as has been noticed in the judgment may be determined in various ways (Para 59). There cannot be, however, any fool-proof method whereby and where under the merit of a student for all times to come may be judged. Only, however, because a student may fare differently in a different situation and at different point of time by itself cannot be a ground to adopt different standards for judging his merit at different points of time. Merit for any purpose and in particular for the purpose of admission in a professional college should be judged as far as possible on the basis of same or similar examination. In other words, inter se merit amongst the students similarly situated should be judged applying the same norm or standard. Different types of examinations, different sets of questions, different ways of evaluating the answer books may yield different results in the case of the same student. Selection of students, however, by the minority institutions even for the members of their community cannot be bereft of merit. Only in a given situation less meritorious candidates from the minority community can be admitted vis-à-vis the general category; but therefore the modality has to be worked out. For the said purpose de facto equality doctrine may be applied instead of de jure equality as every kind of discrimination may not be violative of the equality clause."

[55] PANDEY, BHRIGU NATH, SOCIO-LEGAL STUDY OF CULTURAL AND EDUCATIONAL RIGHTS OF THE MINORITIES (2000)

II. Special purpose

Another argument against reservations in minority institutions is that these institutions do not meet the exact aim of Article 15(5) or Article 21 since they have been established for a special purpose apart from imparting secular or technical education.

The case of *Ahmedabad St. Xaviers v. Gujarat*[56] held that minority institutions were established to meet a specific aim and impart special education to those communities who seek to preserve their culture,[57] under Article 28. Similarly, the case of *Islamic Academy v. State of Karnataka,*[58] established that the needs of the minority community should supersede merit since Article 30(1) was inserted to enable them to be at par with non-minority institutions while preserving their own culture.

The purpose clause of the Right of Children to Free and Compulsory Education Act, 2009 or The Constitution (Eighty-sixth Amendment) Act, 2002 makes it clear that the aim of the minority institutions is to provide for basic education to uplift the socially backward classes, to bring them at par with other communities[59] and not to impart any special education to them. For example, the purpose of Article 21A does not mandate teaching of Christian scriptures to a child to preserve the culture. Rather, its aim is to impart basic knowledge to all children uniformly. Thus, minority institutions and their mode of imparting education with a specific lens to protect culture fall outside the ambit of this provision.

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[56] Mr. Divan relied on the decision of this Court in The Ahmedabad St. Xavier's College Society and Another v. State of Gujarat and Another, (1974) 1 S.C.C. 717 to submit that the whole object of conferring the right on the minority under Art. 30 of the Constitution is to ensure that there will be an equality between the majority and the minority

[57] *Id at* page 192-3 , *See, Supra note* 35 at ¶¶20, 55.

[58] *Supra note* 7 at ¶¶169-172

[59] Report on the RTE Act, Odisha Primary Education Programme Authority available at: http://www.opepa.in/website/Download/Framework_finalapproved.pdf (last visited: August 1, 2015)

III. Intention of lawmakers

As stated in *Inamdar:*[60]

> *"Notwithstanding the fact that the right of a minority to establish and administer an educational institution would be protected by Article 19(1)(g) yet the Founding Fathers of the Constitution felt the need of enacting Article 30. Article 30(1) is intended to instill confidence in minorities against any executive or legislative encroachment on their right to establish and administer educational institution of their choice. Article 30(1) though styled as a right, is more in the nature of protection for minorities. But for Article 30, an educational institution, even though based on religion or language, could have been controlled or regulated by law enacted under Clause (6) of Article 19, and so, Article 30 was enacted as a guarantee to the minorities that so far as the religious or linguistic minorities are concerned, educational institutions of their choice will enjoy protection from such legislation."*

The Court, in *Inamdar,* noted that Article 30 was enacted by the Legislature despite it being aware of the generic nature of Article 19(1)(g). In other words, the Legislature enacted a special provision in the nature of Article 30 to explicitly provide protection to these minorities and instill confidence in them with regard to the fact that their institutions would be protected from reasonable restrictions in the nature of Article 19(6). Thus, imposing such a policy of reservations on them under the garb of Article 19(6) through this judgment would be going contrary to the intention of lawmakers, who enacted Article 30 to ensure protection from such a situation.

CONCLUSION

Thus, in the light of the above reasoning it is the opinion of the author that, the Court has greatly erred in its judgment in *Pramati*. Without providing any substantial analysis, it has left

[60] *Supra note* 17 at 99.

immense scope for confusion in applying its principles. It has also widened the net for protections secured to minority institutions without any reasonable justification.

As Amartya Sen states, *"Development consists of the removal of various types of unfreedoms that leave people with little choice and little opportunity of exercising their reasoned agency."*[61] How far is it fair to encroach on the freedom of private entities to meet the socialistic promises of the welfare state? *Pramati puts* private institutions at a loss in this scenario.

The judgment may have the effect of unleashing a Pandora's Box wherein multiple institutions will now seek to acquire minority status to become autonomous. Autonomy remains a central theme of any private entity and the State must now provide for a logical basis to explain its curtailment. The Court in the instant case of *Pramati* fails to do so.

Several states have issued new RTE Guidelines to deal with the issue of minority institutions sidestepping the implementation of the right to education mandate, while at the same time maintaining a semblance of merit based admissions in these institutions. For instance, the Maharashtra Minority Development Department has specified that aided religious minority institutes offering higher and technical education should admit minimum 50% students on the basis of merit under the minority quota. However, if seats are not filled under the religious minority quota, then admissions should be given to students from linguistic minority. If seats are still lying vacant, then students from a non-minority background can be given admissions after taking prior permissions from the government. Implementing the state government reservations and open category students then can fill the remaining 50%. The same policy will be applicable for unaided minority institutions, but they have to fill a minimum of 51% of

[61] AMARTYA SEN, DEVELOPMENT AS FREEDOM xii (1999) as cited in Kumar, C. Raj. *International Human Rights Perspectives on the Fundamental Right to Education-Integration of Human Rights and Human Development in the Indian Constitution*, TUL. J. INT'L & COMP. L. 12 (2004) 237.

seats under the minority quota.[62] Similarly, Karnataka has reduced the total percentage of students belonging to the minority community from 75 to 25, for implementing the Right to Education Act in primary education.[63]

This move by several States indicates a step back from *Pramati's* overarching holding *vis-à-vis* minority institutions, thereby promoting a higher meritorious threshold for inducting students. However, this wave of change still requires a longer timeframe to be tested and has already been challenged in Karnataka.[64] Thus, the future of Indian minority institutions still rests in the manner states accede to the judgment and public acquiescence to the same.

[62] Notification dated May 15, 2014, Department of School Education and Sports, Government of Maharashtra, available at: http://rterc.in/wp-content/uploads/2015/05/RTE-NOTIFICATION-15-05-2014.pdf (last accessed: August 10, 2015)

[63] Notification dated May 8, 2012, Department of Education, Government of Karnataka, available at: http://righttoeducation.in/sites/default/files/karnataka-notification-regarding-section-12.pdf (last accessed: August 10, 2015)

[64] "PIL Challenges 25% criterion", Times of India, Sept. 11, 2014, available at: http://timesofindia.indiatimes.com/city/bengaluru/PIL-challenges-25-criterion/articleshow/42212217.cms (last accessed: August 10, 2015)