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# The Kerala Education Bill

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# THE KERALA EDUCATION BILL

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THE KERALA EDUCATION BILL, 1957, is avowedly for the better organisation and development of educational institutions in the State. The purpose is, therefore, laudable but the means adopted are of a doubtful character, as some of the sections of the Bill are in clear contravention of the fundamental rights guaranteed in the Constitution of India.

## Curtailing Rights

It is quite praiseworthy to improve the service conditions of the teachers in aided schools. That the Bill seeks to make them equal to the teachers of Government schools in all important respects is a fact that not only elicits gratitude from the teachers concerned, but also commends itself to every thinking person in the State as well as outside. It is just and proper that rules be made to prevent abuse of their powers by managers of educational agencies, but that does not justify the enactment of such laws as would substantially curtail the right of children and their guardians to the free exercise of their religion.

The saving clause (Section 38)[1] and Section 27 (2) (a)[2] seem to leave the religious-minded parents of a child with two heartless alternatives: either they should send the child to an educational institution of the kind contemplated in Section 27 (2) (a), making a substantial contribution towards the maintenance of the institution, or they should send the child to a Government school or "private" school where non-religious teachers may teach him by example, if not by direct precept, the tenets of a materialistic cult. This is an unjust choice and, when parents are coerced into it, may prove unconstitutional too.

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1 Section 38: "Nothing in this Act shall apply to any school which is not a Government school or a private school."

2 Section 27: "A child may be exempted for a specified period or periods from compulsory attendance at school under this act . . . (2) by the Local Education Committee, (a) when it is receiving, otherwise than in a Government or Private School, instruction in an educational institution approved by the Local Education Committee."

It is difficult to understand what type of educational institution is contemplated in Section 27 (2) (a). If it is run by a minority, linguistic or religious, it has to be granted aid under Article 30 (2) of the Constitution, and then it becomes an aided school and the saving clause will not cover such an institution. If it is run by any person or group of persons meeting state standards for public institutions, it has to be recognised, and then it becomes a recognised school which again is not exempted by the saving clause. If the institution does not meet state standards, it will not be right for the Local Education Committee to approve it. If it is approved by the Committee and recognised by the Government, in all fairness it has to be granted aid, for it is the duty of the State to help the institution through financial aid when it makes a contribution to one of the public services undertaken by the State. All this boils down to the fact that the exemptions mentioned in Section 27 (2) (a) and Section 38 are negligible and possibly non-existent for all practical purposes. The Bill will therefore apply to almost all educational institutions in the State.

## Exercise of Police Power

The police power of the State should not be exercised in violation of human rights guaranteed by the Constitution. A Government may choose to consider that the police power thus exercised is in the public interest, but when there is a clear law protecting the rights infringed by it, then such exercise is undoubtedly ultra vires, unless there is some real substantial justification for it, as, for instance, during a period of emergency. The modern trend in public policy also inclines to organise public services within the bounds of general law, and not outside them.

Education is not merely a public service. It involves the fundamental issues of life. The Christian Churches believe and teach that it is the responsibility of the parents to educate their children. If the State considers that it has a responsibility to educate the young, its responsibility should not be in conflict with that of the parents or of the Church – for the Church too has its responsibility under the divine command, "Go forth and teach all nations." It is the harmonisation of interests which, according to Roscoe Pound, is the ultimate objective of civil law. A legislature should have this harmonisation of interests in view while enacting new law.

That the education of his children is not a purely secular matter to a Christian can be easily proved from the teaching of the Christian Churches. The form of solemnisation of matrimony in the Book of Common Prayer has it that matrimony ". . . was ordained for the procreation of children, to be brought up in the fear and nurture of the Lord, and to the praise of His holy name." In his encyclical letter of October 29, 1939, Pope Pius XII says:

> The charge laid by God on parents to provide for the material and spiritual good of their offspring and to procure for them a suitable training saturated with the true spirit of religion cannot be wrested from them without grave violation of their rights. . . . [An education] which forgot . . . to direct the eyes and hearts of youth to the heavenly country would be an injustice to youth, an injustice against the inalienable duties and rights of the Christian family, and an excess to which a check must be offered in the interests even of the people and of the State itself.

Not only religious heads, but jurists also are inclined to the same view. Says Pufendorf: "For take away from the Parents all

Care and Concern for their Childrens Education, and you make a social Life an impossible and unintelligible Notion."[3] In *Lewis v. Graves*,[4] it was affirmed that ". . . the right of the parent to direct the training and nurture of the child is a fundamental right."[5] While holding in *Pierce v. Society of Sisters*[6] that the fundamental theory of liberty excludes any general power of the State to standardise its children by forcing them to accept instruction from public teachers only, Justice McReynolds of the U. S. Supreme Court said: "The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."[7]

## Free Exercise of Religion

Thus it is not only a right, but also a religious duty of a Christian parent to educate his children. This duty is enjoined on him by the teaching of the Church. Any interference with this duty will be a violation of his right to the free exercise of his religion. The right freely to practise religion affirmed in Article 25 (I) of the Constitution protects acts done in the exercise of religion and also those done in pursuance of religious belief as part of religion. Quoting with approval a few observations made in *Adelaide Co. v. Australia*[8] regarding religious freedom, Mr. Justice Mukherjea remarked in *Ratilal v. State of Bombay*[9]:

> Religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines. No outside authority has any right to say that these are not an essential part of religion, and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like.

In *Commissioner of Hindu Religious Endowments v. Swamiar*[10] Mr. Justice Mukherjea further observed that

> the guarantee under our Constitution not only protects the freedom of religious opinion, but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression, "practice of religion" in Article 25. . . . What constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. . . . A religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold, and no outside authority has any jurisdiction to interfere with their decision in such matters.

A Christian's religious belief includes the opinion that it is the duty of the parents to educate their children. As children grow up, they are sent by their parents to institutions where the parental responsibility is carried forward in a delegated manner by a professional teacher who takes over, in the common interests of parents. No average prudent man will delegate such a responsibility to any unknown person whose ethical principles may be a spectacular vacuum, and if a State compels a Christian parent directly or indirectly to send his children to such a teacher, the guarantee of religious freedom in the Constitution will be well nigh meaningless.

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[3] 6 PUFENDORF, OF THE LAW OF NATURE AND NATIONS 601 (4th ed. 1729).
[4] 127 Misc. 135, 215 N. Y. Supp. 632 (Sup. Ct. 1926).
[5] *Id.* at 140, 215 N. Y. Supp. at 637.
[6] 268 U.S. 510 (1925).
[7] *Id.* at 535.
[8] 67 Com. L.R. 116, 124.
[9] A.I.R. 1954, S.C. 388.
[10] A.I.R. 1954, S.C. 282.

## State Cannot Bar Religion

The secular character of a State requires it to be neutral in its relation with groups of religious believers and non-believers. It does not require the State, to quote Justice Black in *Everson v. Board of Education,*[11] ". . . to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them."[12]

Article 29 (I) of the Constitution affirms the right of any section of the citizens having a culture of its own to conserve it, and Article 30 (I) guarantees to all linguistic and religious minorities the right to establish and administer educational institutions of their choice. The Christians in Kerala are a section of Indian citizens having a culture of their own, and they do not believe that their culture will remain safe and uncontaminated if their children are taught by a body of public teachers who may have scant respect for that culture.

The Christians of Kerala, again, are a religious minority. They have therefore the right to establish and administer educational institutions of their choice. Section II (I) of the Bill provides that candidates selected by the Public Service Commission only are to be appointed as teachers in government and aided schools. Every educational institution managed by a minority is likely to be an aided institution, if Article 30 (2) is respected. If a minority is not permitted to appoint teachers of their choice without reference to any outside body, their school will cease to be of their choice. As Mr. Justice Chagla expressed it in another connexion, in *Bombay Education Society v. State of Bombay*[13]: "If the Board were to comply with the government's suggestion then the institution which it will be administering would not be a school of its own choice, but the choice of the State." The choice of the minority community is that they should have a school where the teachers should be God-fearing men and women who by precept and example, as becoming their status as delegates of Christian parents, will bring up the children of the community "in the fear and nurture of the Lord."

## Police Power Must Yield

Mr. Justice Das of the Supreme Court (the present Chief Justice) observed in *State of Bombay v. Bombay Education Society* that the powers of the State to make reasonable regulation for all schools cannot be lightly questioned ". . . and certainly not in so far as their exercise is not inconsistent with or contrary to the fundamental rights guaranteed to the citizens." After referring to *Bartel v. Iowa*[14] and to *Meyer v. Nebraska,*[15] he continued:

> Where a minority has a fundamental right to conserve its language, script and culture under Article 29 (I), and to the right to establish and administer educational institutions of their choice under Article 30 (I), surely then there must be implicit in such fundamental right, the right to impart instruction in their own institutions, to the children of their own community in their own language. To hold otherwise will be to deprive the Articles 29 (I) and 30 (I) of the greater part of their contents. Such being the fundamental right, the police power of the State to determine the medium of instruction must yield to their fundamental right to the extent it is necessary to give effect to it, and cannot be permitted to run counter to it.

[11] 330 U.S. 1 (1946).
[12] *Id.* at 18.
[13] A.I.R. 1954, Rom. 468.
[14] 262 U.S. 404 (1923).
[15] 262 U.S. 390 (1923).

In *State of Bombay v. Bombay Education Society* the question at issue was the medium of instruction: in the Kerala Bill it is the appointment of teachers. There does not seem to be anything else to differentiate the Bombay government's order from the Kerala Bill.

It is also submitted that when teachers of materialistic or atheistic inclinations are forced upon a Christian school, the administration of the institution contemplated in Article 30 (I) virtually passes from the hands of the minority.

## Unreasonable Restrictions

When a candidate for appointment as a teacher in an aided school has the necessary academic and professional qualifications prescribed by the State or the University, the insistence that he should be selected by the Public Service Commission is an unreasonable restriction on the exercise of the right conferred by Article 19 (I) (g), to practise any profession, or to carry on any occupation, trade or business.

In *Chintaman v. State of M. P.*,[16] Mr. Justice Mahajan observed:

> The phrase 'reasonable restriction' connotes that the limitation imposed upon a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. . . . Legislation which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness, and unless it strikes a proper balance between the freedom guaranteed under Article 19 (I) (g) and the social control permitted by clause (6) of Art. 19, it must be held to be wanting in that quality. . . . The determination by the legislature of what constitutes a reasonable restriction is not final or conclusive: it is subject to the supervision of this Court.

The Kerala Bill under the pretext of protecting public interest, arbitrarily imposes unreasonable and excessive restrictions upon lawful occupations like teaching and administering educational institutions.

Sections 6 (I) and (3) of the Bill regarding restriction on the alienation of the property of aided schools are repugnant to Article 19 (I) (f) of the Constitution.

Because of these repugnancies, one may assume that the Bill will not stand any judicial examination.

[16] A.I.R. 1951, S.C. 118.