Examrace

Competitive Exams: Political Science Study Material Gujarat's Anti-Conversion Act

Gujarat's Anti-Conversion Act

- The Freedom of Religion Act, 2003 has been modelled on similar legislation introduced in the state of Tamil Nadu (now withdrawn) and already on the statute books in the states of Madhya Pradesh and Orissa.
- Penalties for people convicted of carrying out conversions using allurement or force include up to three years in prison and a fine of 50, 000 rupees.
- Under the terms of the Act, a conversion must be assessed by officials, and prior permission given by the District Magistrate to be lawful.
- Conversions, which are found to be genuine and voluntary, but where prior permission was not secured from the District Magistrate could also be punished with up to one year in prison and a fine of 1, 000 rupees.
- The Gujarat bill is harsher than a similar one adopted earlier by the Tamil Nadu Assembly, which only provides forgiving information to the District Magistrate concerned about any religious conversion and does not seek his prior approval. Whereas, even a genuine religious conversion in Gujarat would depend on the whims of the District Collectors. Legislative history
- While British India had no anti-conversion laws, many Princely States enacted anti-conversion legislation: The Raigarh State Conversion Act 1936, the Patna Freedom of Religion Act of 1942, the Sarguja State Apostasy Act 1945 and the Udaipur State Anti-Conversion Act 1946.
- Similar laws were enacted in Bikaner, Jodhpur, Kalahandi and Kota and many more were specifically against conversion to Christianity.
- In 1967 – 68, Orissa and Madhya Pradesh enacted local laws called the Orissa Freedom of Religion Act 1967 and the Madhya Pradesh Dharma Swatantraya Adhiniyam 1968.

Minority Institutions and Regulatory

It measures

- Art. 30 confers the right to establish and administer an institution by a minority community.
- But, states can regulate the working of such institutions.

- Regulations should pass the dual test of reasonableness and there being an effective vehicle of education for the minority community.
- The Supreme Court observed that the right to administer is not the right to maladminister.
- Also, management should be effective; but Universities cannot regulate the composition and personnel of the managing bodies.
- Regarding selection of teachers, the Supreme Court held that it is a part of administration.
- But, the Universities can put basic qualifications for selection.

Note: No time-limit is prescribed for issuing the writs in the Constitution, and has been left to the Courts to decide.

Minority Education Institutions & Supreme Court Verdict

- In a significant ruling in T M A Pai Foundation versus State of Karnataka case, the Supreme Court on October 31, 2002 re-defined the rights of 'minorities' to establish and run educational institutions of their choice.
- It held that while unaided minority institutions would have unfettered rights, aided institutions could be subject to minimal regulatory measures by the state.
- An 11 judge Constitution Bench, headed by the then Chief Justice, B. N. Kirpal, in an unanimous verdict on the 11 questions framed by the Court held that the words of their choice in Article 30 (1) indicates that even professional educational institutions would be covered by Article 30.
- On the question who constitutes a minority, the Bench said, The linguistic and religious minorities have to be considered on the basis of States and the population therein as the States were reorganised on the basis of language.
- On the contentious issue that the majority community also should have similar rights, the Bench held that all citizens have a right to establish and administer educational institutions under Article 19 (1) (g) and 26, but this right is subject to the provisions of Articles 19 (6), viz. Reasonable restrictions and 26 (a), viz. To establish and maintain institutions for religious and charitable purposes.

Highlights

1. All citizens have right to establish and administer educational institutions.
2. The right to administer Minority Education Institution (MEI) not absolute.
3. State can apply regulations to unaided MEIs to achieve educational excellence.
4. Aided MEIs should admit certain percentage of non-minority students.

5. Percentage of non-minority students to be admitted to an aided MEI to be decided by the State or university.
6. Fees to be charged by unaided MEI cannot be regulated but no institution can charge capitation fee.
7. State can prescribe minimum qualification for teachers and principal in an unaided MEI.
8. Tribunal headed by District Judge should be constituted for redressal of grievance of employees of MEI.
9. State can provide the manner of admission in case of an aided MEI to ensure that it is done on the basis of merit.
10. Merit could be determined through common entrance test.
11. Unaided MEI could have their own procedure for admission but the same had to be fair and transparent.