

HUMAN RIGHTS: RIGHT TO LIFE*

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Abstract

Every human being has the inherent right to life and no one shall be arbitrarily deprived of her/his life. Right to life includes prohibition of torture and protection of every limb and human faculty. An equally important facet of the right to life with dignity is the right to livelihood, because no person can live without the means of livelihood. Similarly right to food falls within one's right to life. Right to food in turn implies food security – accessibility of every human being to food necessary for quality life. As a condition of right to life with dignity, every human being has the right to pollution free environment. In the context of the development programmes of intervention in environment, safeguard of the human right to environment demands that development be sustainable. Other human rights related to right to life are right to development and education, and rights of the disabled, women, minorities, and of the person arrested by the police. Despite the plethora of enforceable laws to safeguard human rights, in reality citizens do not have the opportunity to assert their fundamental rights that are guaranteed in the country's Constitution. Perhaps the most influential legal voice is the Supreme Court, which, through judicial activism, has brought attention to the ongoing right to life issues.

Introduction

All human beings are born free and equal in dignity and rights. Every human being has the inherent right to life. This right shall be protected by

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law and no one shall be arbitrarily deprived of her/his life. Recognition of the inherent dignity, and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Everyone has, therefore, the right to life, liberty and security of person. This is the most natural or the God given right. In the *Munn vs. Illinois* case in the United States [94 US 113 (1877)]¹, J. Field observed that life means something more than mere animal existence and inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. In the case of *Barsky vs. Board of Regents* in the United States [347 US 442 (1954)] J. Douglas observed that the right to work is the most precious liberty because it sustains and enables a person to live, and the right to life is a precious freedom.

The sweep of the right to life conferred by article 21 of the Constitution of India is wide and far reaching.² It is like a sentinel to guard against human misery, degradation and oppression. In 1978, in *Maneka Gandhi case*, the Supreme Court of India ruled that the expression "life" did not mean mere animal existence but with dignity [(1978) 1 SCC 248]³. In that angle Article 17 of the Constitution which abolished untouchability is a landmark in the constitutional history of our great nation to bring dignity to millions of dalit brothers and sisters, for which efforts were made from the days of *Gautam Buddha* right up to *Mahatma Gandhi* and *B. R. Ambedkar*.⁴ The Supreme Court added another legal leaf in 2008 in *Deepak Bajaj case*, when it said that right to life encompassed a person's reputation as well. It also includes prohibition of torture and protection of every limb and human faculty. An equally important facet of that right is the right to livelihood, because no person can live without the means of living, that is, the means of livelihood. It has thus a much wider meaning which takes in right to livelihood, acceptable standard of living, hygienic conditions in the workplace and leisure, as held by the Supreme Court in the case of the *Consumer Education and Research Centre vs. the Union of India* [(1995) 3 SCC 42].

Right to Life as Civil, Political and Economic Right

The founding fathers of the Constitution of India have wished that the right to life and personal liberty assured in article 21 shall not remain only a dead letter. That was why the Constitution itself has shown a path in Part

IV on the Directive Principles of State Policy for those coming in power of governance. Here article 39 in clear terms lays down that the state shall, in particular, direct its policy also towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.⁵

Several rights included in the Directive Principles of the Constitution of India, being non justifiable in the beginning, consequent upon the interpretation of article 21, have been elevated to the facets of right to life. Right to healthy environment, right to speedy trial and free legal aid, right to free education up to fourteen years of age, right to privacy, right to live with human dignity and many more have been read into right to life.

Broad discrepancies between the law and reality are not limited to civil and political rights alone. In fact, discrepancies are so widespread that other rights-to-life issues are also affected. Although the right to life has traditionally been thought of as strictly a civil and political right, economic and social rights are arguably included as well. The right to life must be interpreted broadly to ensure the protection of the right to live in a humane and dignified manner.

Right to Food

The right to food and sustenance is an example of an economic and social right that falls within one's right to life. Although the right to food is protected under both international and domestic law, it too is frequently ignored as a fundamental right to life. India has signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), which obligates the government under article 11 of the covenant to protect the right to food. This article "ensures the right of everyone to an adequate standard of living" for oneself and one's family, that each party to the covenant must initiate special programmes to secure methods of production and resolve problems related to exporting and importing food.

Thus, the government of India is undeniably required under international law, both the ICESCR and the ICCPR (International Covenant on Civil and Political Rights), to prevent starvation and hunger among its citizens and to have programmes that effectively protect the right to food. The Constitution of India, which provides for the right to life and thus this broad interpretation, allows for enforcement of the right to food under article 21. The Supreme Court enforced the right to food by directing programmes like midday meal which requires primary schools to supply midday meal consisting of 300 calories and 8-12 grams of protein. Moreover, the state governments were asked to take measures to ensure transparency in and public awareness of these programmes.

While calamities and starvation deaths remain the popular representation of the contemporary problem of hunger, one of the most significant, yet understated and perhaps less visible area of concern today, is that of chronic or persistent food and nutrition insecurity. Sizable people regularly subsist on a very minimal diet that has poor nutrient and caloric content as compared to medically prescribed norms. At the global level, the South Asian region is home to more chronically food insecure people than any other region in the world. India is 65th in the Global Hunger Index of 121 developing countries (Wikipedia 2009). In the words of M.S. Swaminathan: "Nutrition security involving physical, economic and social access to balanced diet, clean drinking water, sanitation and primary health care for every child, woman and man is fundamental to giving all our citizens an opportunity for a healthy and productive life" (UNWFP and MSSRF 2009). Unless this aspect of food security is attended to with the involvement of local bodies, the food security situation in India will not show the desired improvement.

Food Insecurity in Rural India

On the composite index of food insecurity of rural India, states like Jharkhand and Chhattisgarh are found in the category of the very high level of food insecurity, followed by Madhya Pradesh, Bihar and Gujarat. The better performers in this matter include Himachal Pradesh, Kerala, Punjab, and Jammu and Kashmir. Andhra Pradesh, Madhya Pradesh, Bihar, Gujarat,

Karnataka, Orissa and Maharashtra perform poorly (World Food Programme and MSSRF 2009). The fact that economically developed states like Gujarat, Maharashtra, Andhra Pradesh and Karnataka find themselves in the category of the high food insecurity is perhaps a reflection of the agrarian crisis and consequent adverse impact on the health and well-being of the rural population.

This drives us to the rural area where the soul of India toils for producing food. Agriculture and allied activities contribute to about a fifth of India's GDP; and close to two-third of the population (over 600 million) is dependent on farm and related activities for livelihood. Yet, the sector is a laggard, having grown at a very modest annual average of 2 or 3 per cent in the last 10 years, sharply contrasting with the robust growth in manufacturing and service sectors. In the resultant scenario, this lopsided nature of economic growth of recent years continues to put more money in the hands of about 30 per cent of the country's 200 million families, while the majority, still dependent on agriculture and related activities for livelihood, have limited financial capacity to be able to afford even those minimum levels of basic foods, better not to speak of other essentials for a minimal life.

This paves way for widening income disparity, aggravating poverty of the lower middle class and making the poor still poorer, and it is a serious cause for concern. Despite the rising output until last year, per capita availability of food grains has actually declined in the last ten years. 'Food inflation' is generally far higher than the overall inflation figure, because of high food prices. Welfare programmes of the government may bring minimal relief, while the challenges of meeting the food needs of the people are daunting. But one thing has to be conceded. The National Rural Employment Guarantee Act with the scheme implemented there-under is the most revolutionary step that has been taken in the history of India to alleviate starvation in our villages.

Right to Environment as Condition of Right to Life

There are now worldwide expectations concerning the quality of life and the dignity of humankind, and effective safeguard of environmental rights. The right to pollution free environment forms a part of the third

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generation human rights that are emerging and simultaneously developing. It has a philosophical basis that this right must be protected if the mankind is to survive on this planet. Air pollution, marine pollution, nuclear contamination, deforestation, erosion of biodiversity and extinction of wild life threaten the survival of life on earth. It is an undeniable fact that contaminated environment will kill human life. Thus the right to pollution free environment underlies the right to life which is meaningless in the absence of life supporting ecosystem. In terms of article 48A of the Constitution of India, it is now the duty of the state and its agencies to protect and improve the environment and to safeguard the forest and wild life.⁶ At the same time the citizenry of the country also has a fundamental duty to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures in terms of article 51A of the Constitution, which flows from the World Charter for Nature adopted by the UN General Assembly in October 1982.⁷

In the context of development programmes of intervention in environment, safeguard of the human right to environment demands that development be sustainable. The term sustainable development was used at the time of the Tokyo Declaration on Environment and Development in the early 1970s and it received impetus in the Stockholm Declaration of 1972 which is called the "Magna Carta" of environment protection and its development. The concept of sustainable development was defined by the World Commission on Environment and Development (WCED) in its report of 1987, entitled "Our Common Future" and popularly known as the Brundtland Report (named after Gro Harlem Brundtland, the chairman of the WCED). Sustainable development as defined in the Brundtland Report means development which meets the needs of the present without compromising the ability of the future generations to meet their own needs (Wikipedia 2010).

In the case of the Vellore Citizens Welfare Forum vs. the Union of India, it was observed by the Supreme Court of India that some of the salient principles of sustainable development are intergenerational equity, use and conservation of natural resources, environment protection, precautionary principle, polluter-pays principle, obligation to assist and cooperate in eradication of poverty, and financial assistance to developing countries [(1996) 5 SCC 647].

In pursuit of safeguarding the citizens' right to environment, certain environmental laws such as the Forest Act were in force in India well before 1972. Besides this, action could also be taken under sections 268 and 290 of the IPC against public nuisance relating to environment. However, with India's participation in the United Nations Conference on Human Environment held in Stockholm in the year 1972, there arose the need to enact specific laws. All these circumstances led to the enactment of the Water (Prevention and Control of Pollution) Act 1974, the Forest (Conservation) Act 1980, the Air (Prevention and Control of Pollution) Act 1981 and the Environment (Protection) Act 1986.

Not only around the world, but in India also, people have shown positive response to the need for protection of the environment and full support to it has been given by the judiciary of the country. People, cautious of their rights to a healthy and pollution-free environment, have formed groups such as the Centre for Science and Environment seeking directions from the courts to protect the environment and it has been done so by way of public interest litigation. These groups have often pressurised the executive to take decisions on certain development projects only after making proper environment-impact assessment.

Even though it is not the function of the court to see the day-to-day enforcement of the laws, that being the function of the executive, because of the non-functioning of the enforcement agency, the courts as of necessity have had to pass orders or directions to the enforcement agencies to implement the law for the protection of the fundamental rights of the people. Courts not only pass orders at the initial stage, but also monitor the functioning of the environment protecting agencies like the Pollution Control Boards, and the activities of polluters.

Heads of states and governments, gathered at the United Nations headquarters in September 2000, reaffirmed their 'Respect for Nature' and proclaimed that prudence must be shown in the management of all living species and natural resources, in accordance with the precepts of sustainable development. Only in this way can the immeasurable riches provided to us by nature be preserved and passed on to our descendants. The current

unsustainable patterns of production and consumption must be changed in the interest of our future welfare and that of our descendants. In other words, if development meets the need of the present without compromising the ability of the future generations to meet their need, it is sustainable growth. This is the concept of "intergenerational equity", which means what this generation gives to the next.

All persons have the right to a secure, healthy and ecologically sound environment. They have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment and threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries. They have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.

Right to Development and Education

All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being. It is, therefore, necessary to promote and protect an appropriate political, social and economic order for development. The human person is the central subject of development and should be the active participant and beneficiary of the right to development. The human right to development also implies the full realisation of the right of peoples to self-determination, which includes, subject to the relevant provisions of the international covenants on human rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

The Constitution of India has recognised the significance of education in social transformation and the right to education at the elementary stage was held to be a fundamental right. In *Unnikrishnan, J.P. vs. the State of Andhra Pradesh* a constitution bench of the Supreme Court of India held

education up to the age of 14 years to be a fundamental right [(1993) SCC 1 645]. It would, therefore, be incumbent upon the state to provide facilities and opportunity as enjoined under article 39 (e) and (f) of the Constitution and to prevent exploitation of childhood due to indigence and vagrancy. This led to the amendment of the Constitution incorporating article 21-A enjoining on the state to provide free and compulsory education to all children of the age of 6-14 years in such manner as the state may, by law, determine.⁸ It took again another almost seven years after this amendment was made in the Constitution of India, to legislate “The Right of Children to Free and Compulsory Education Act 2009.” All aspects of child education, including quality of education, school infrastructure, teacher-pupil ratio, qualification of teachers etc., which form an essential part of the overall development of children, are now to be addressed and it is a statutory duty of the government.

Rights of the Disabled

In the words of Patricia Wright, all disabled people share one common experience, that is, discrimination. That was why one of the great leaders, Nelson Mandela said that all countries today need to apply affirmative action to ensure that women and disabled are equal to all of us. Apart from guaranteeing equality and equal opportunity as fundamental rights under articles 14 and 16 of the Constitution of India, article 41 directs the state to make effective provisions for securing right to work, to education and to public assistance in cases of unemployment, old age, sickness and other cases of undeserved want.⁹ India, being a signatory to the Beijing Proclamation of 1992 on people with disabilities in Asia and Pacific Region, has enacted the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act 1995. There are also other legislations such as Mental Health Act 1987, Rehabilitation Council of India Act 1992 and the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 2000, which have a bearing on the protection and development of persons with disabilities. Labour legislations like Workmen’s Compensation Act 1923, Employees’ State Insurance Act 1948 and the Public Liability Insurance Act 1991 are also in force to protect and promote the rights of persons disabled during the course of employment.

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Disability is no longer a medical problem, but something to be solved by societal intervention. Supreme Court [(1999) 6 SCC 9] observed that the right to life encompassed within it the “right to good health”, which can be used by persons with disability who are prevented from accessing health and medical care services owing to disability. We must be conscious that legal predications, judicial pronouncements and constitutional preferences only elucidate the imperative, for laws alone cannot guarantee integration. We require policy decisions and action plans as to how and in what manner the legal provisions would be implemented apart from financial impact assessment to anticipate the cost factor.

Rights of Women and Minorities

The human rights of woman and of the girl-child are an inalienable, integral and indivisible part of universal human rights. Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support. The human rights of women should form an integral part of the human right activities, including the promotion of all human right instruments relating to women. Participation of women in governmental machinery is an attendant issue.

Effective participation of national minorities in public life is an essential component of a peaceful and democratic society. Experience has shown that, in order to promote such participation, governments often need to establish specific arrangements for national minorities. This is built upon fundamental principles and rules of international law, such as respect for human dignity, equal rights, and non-discrimination, as they affect the rights of national minorities to participate in public life and to enjoy other political rights. States have the duty to respect the human rights of all those affected because of minority status. Individuals identify themselves in numerous ways in addition to their identity as members of a national minority. The decision

as to whether an individual is a member of a minority, the majority, or neither rests with that individual and shall not be imposed upon her or him. Moreover, no person shall suffer any disadvantage as a result of such a choice or refusal to choose.

The Constitution of India has in article 30 (1) recognised the right of minorities to “establish and administer educational institutions of their choice.”¹⁰ Given the right of persons belonging to national minorities to establish and manage their own educational institutions, states may not hinder the enjoyment of this right by imposing unduly burdensome legal and administrative requirements regulating the establishment and management of these institutions. Establishment of a new ministry for minority affairs in the Government of India and in several state governments is a welcome step to bring the marginalized sections of the minorities into the mainstream, by providing them educational help, employment opportunities and housing facilities, and ensuring their participation in rural and urban micro economic ventures.

Right of Persons Arrested by Police

Recognising the ineffectiveness of the Constitution of India in preventing custodial torture, the Supreme Court of India has taken up the issue. In the much praised case of *D. K. Basu vs. the State of West Bengal*, the Supreme Court stated that a citizen does not shed off her/his fundamental right to life, the moment a policeman arrests her/him [(1997) 1 SCC 416]. In other words, every citizen, regardless of her/his position or status in society, deserves the protection afforded to her/him under the Constitution. However, the Supreme Court was aware that this is not always the case in practice. Thus, it issued 11 requirements to be followed in all cases of detention. Among the most notable guidelines is that the police must make a memo of arrest to be countersigned by a witness and the arrested person, and the friends or relatives of anyone arrested should be informed of the arrested person's location. Moreover, the police must keep a diary with the names of the custodial police officers, and the detainee must be medically examined at the time of the arrest and every 48 hours afterward.

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The theory behind these guidelines, especially those involving documentation of the arrest procedure, is to ensure that the laws regarding arrest and detention are properly followed and respected. While the requirements do provide certain level of judicial protection, more often than not, however, they too are disregarded entirely. In 1994, the Supreme Court stated in the case of *Joginder Kumar vs. the State of Uttar Pradesh* that “no arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another” [(1994) 4 SCC 260]. While the Criminal Procedure Code provides the power to arrest, many police officers do so without the justification.

Conclusion

Despite the plethora of enforceable laws, the daily reality in India is quite different. From civil rights to economic rights, citizens do not have the opportunity to assert their fundamental rights that are guaranteed in the country's Constitution. Perhaps the most influential legal voice is the Supreme Court, which, through judicial activism, has brought attention to the ongoing right to life issues. To give voice to the voiceless is the need of the hour. The task is on voluntary and non-governmental organisations (NGOs), and human right activists.

We in India must remember time and again that the struggle for our freedom was not only to demolish the foreign rule, but also to build an egalitarian society to secure life of quality to the people with right to equality. Our Constitution is not only a pragmatic result of the struggle for freedom, but also reflects the aspirations and hope of the people. It was the pious wish of the founding fathers of our Constitution to give a life of quality to their progeny. As Pandit Jawaharlal Nehru said on the occasion of the granting of Indian independence on 14 August 1947, the ambition of the greatest man of our generation has been to wipe every tear from every eye, and that may be beyond us, but as long as there are tears and sufferings, so long our work will not be over. It is needless to state that, however well thought or well drafted a constitution is, it by itself will not serve the purpose; ultimately it is the people who work under a constitution and their way of life, consistent

with the spirit of the constitution, that matter. The goal of all our actions, political, social or economic, must lead to humanisation. Humanise the globe so that everywhere human rights are respected and obeyed touching the lives of the people, particularly of all those who are the hungry, the excluded, the destitute, the voiceless, the persecuted, the sick, the suffering, the disabled, the less fortunate and the unfortunate. As Gandhiji said, there is no human institution without dangers. The greater is the institution, the greater are the chances of abuse. Democracy is a great institution and, therefore, it is liable to be greatly abused. The remedy, therefore, is not avoidance of democracy, but reduction of possibility of abuse to a minimum. Watchful and responsible NGOs and activists are the effective guarantee to bring about that reduction of abuse and that alone assures the quality of life to, and enjoyment of real right to life by, those who are denied of it. The governors have now started to remember the words of Churchill, that it is “the little man with a little pencil with little ballot votes.” Today under article 21 of the Constitution of India we need to introduce the concept of ‘inclusive growth’. Of course it is an economic concept. Our economy is growing at the GDP rate of 7 or 8 per cent. Three hundred million people have benefited out of this. Seven hundred million are not given access to this growth. This is where empowerment comes in to include them also in this growth economics for attainment of quality to their life, which now is almost the sheer existence.

Let me add a tail piece. There is a so called progressive group now getting momentum in our society, propagating the right to die. We must be aware that the issues like ‘euthanasia’ or the right to die can be discussed only in the context of specific social reality. There are two hundred million destitute persons in India, whose basic needs for food, shelter, health care, education etc, still remain unfulfilled. This largely illiterate, property-less and jobless populace lives through queer ways of parents selling or pledging their wards, individuals selling their blood or organs, child labour in dehumanising and exploiting circumstances, etc. Even these are not sufficient in their case to ward off the risk of starvation death in their family, exposure to winter, heat stroke in summer and the like. The deliberations on the right to die has to keep in mind the fate of those who struggle for just survival, be it at the cost of human dignity or even the fear of losing one’s nearest kin.

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Notes

* This is the revised version of the Key Note Address delivered at the Dnyuti 2009 Conference on Right to Livelihood held in December 2009 at the Rajagiri College of Social Sciences, Kalamassery, Kochi, Kerala.

1. The details of the judgments of the Supreme Court of the United States of America referred in the text, for example as “[94 US 113 (1877)],” indicate the volume number of the *United States Reporter*, beginning page and year of the judgment. They are listed under “References” at the end of the paper with USSC (US Supreme Court) and the year of judgment, for example as “USSC, 1877.”
2. Article 21: “No person shall be deprived of his life or personal liberty except according to procedure established by law (GOI 2010).”
3. The details of the judgments of the Supreme Court of India referred in the text, for example as “[1978] 1 SCC 248],” indicate the year of the judgment, volume number of the *Supreme Court Cases*, and beginning page. They are listed under “References” at the end of the paper with SCI (Supreme Court of India) and the year of judgment, for example as “SCI, 1978.”
4. Article 17: “Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law (GOI 2010).
5. Article 39: The State shall, in particular, direct its policy towards securing—
 - (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
 - (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
 - (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
 - (d) that there is equal pay for equal work for both men and women;
 - (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
 - (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 39A: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other (GOI 2010).

6. Article 48A: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country (GOI 2010).
7. Article 51A: It shall be the duty of every citizen of India—
(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures (GOI 2010).
8. Article 21A: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine (GOI 2010).
9. Article 41: The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want (GOI 2010).
10. Article 30 (1): All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice (GOI 2010).

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