Two judgments in education

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On 6 May a five-member constitution bench of the Supreme Court (SC) pronounced its judgment in two separate cases on education.

In the case that will be known as Pramati, the bench upheld the constitutional validity of the Right of Children to Free and Compulsory Education Act, 2009 (RTE). This was a reaffirmation of the court's earlier position, pronounced in 2012, in "Society for Unaided Private Schools of Rajasthan versus Union of India and others". The second part of the Pramati judgment exempts all minority institutions from the RTE. This is an expansion of the ambit of exemption from Society, which had limited it to unaided minority institutions. Minority institutions here refer to both religious and linguistic minorities, as referred to within the Constitution.

In both Pramati and Society the challenge to the RTE was posed in courts by groups of private schools. The nub of the issue has been the RTE forcing the private schools to admit 25% of their students from socio-economically backward classes. Despite the judgment in 2012, many private schools have opposed this provision (and others) of the RTE in practice. The judgment in the second case labelled as Associated, basically said that there are sound educational reasons for using the mother tongue of children as the medium of instruction in schools; however this "mother tongue" cannot be imposed by anyone—not even the State; it must be the choice of the parents. Specifically it states that the State cannot stipulate as a condition for recognition of the medium-of-instruction, for private unaided schools and for minority schools. Over many years the Karnataka government had fought a battle in the courts to protect its policy of making recognition of schools by the government contingent upon schools using Kannada (thus making it mandatory) as the medium of instruction in primary classes. The Associated judgment invalidates this policy.

Let's consider some issues and implications of the second part of the Pramati and that of the Associated judgments.

In Pramati (and in Society) the court's position rests on the idea that mandating minority institutions to admit 25% students from socio-economically backward communities may lead to diluting the minority character of the institutions. This in itself is a contestable point e.g. the 25% students could well be from the relevant minority. However there are two other big issues with this judgment.

The first issue is why should minority institutions be exempt from the entire RTE Act? For example, the requirement to have trained teachers has no relationship to the minority character of institutions, why should there be an exemption from that? The RTE has 38 sections with multiple provisions, most with direct educational and environmental (including safety) implications for students. Blanket exemption from all these sections and clauses, when they have no relationship to the core issue as identified by the SC itself, is not justified.

Second is the issue of definition and classification of minority institutions. Already, getting classified as a minority institution is a racket (there are bonafide minority institutions also; I am not referring to them). This judgment is likely to lead to further abuse of this classification, because the ambiguity of the definition remains, and the “privileges" (exemption from RTE!) of being a minority institution have increased manifold.

These two specific issues are reflective of the fragility of these judgments. Pramati should have clarified and resolved issues arising from Society, it has done the opposite. The fragility arises from giving precedence to the notion of protection of rights of minority institutions over everything else, including educational considerations, realities on the ground and other central features of the Constitution such as reasonable, justifiable restrictions on freedoms to achieve ends such as social justice.

The judgment in Associated has no such fragility. Mandating schools to use a particular language as medium of instruction violates the right of linguistic minorities to choose their language of instruction. Even more fundamentally, it violates the rights of individuals to choose their language. Also, given the deep linguistic diversity of all regions of the country, no one language can be claimed to be the “mother tongue" of all students in any region. So, the court sees no justification for a regional medium of instruction, even on limited pedagogical grounds.

Despite the soundness of this judgment, it will be contested for sure because of very important socio-cultural reasons. The reasons arise from the legitimate desire to preserve Kannada and other regional languages, which are under onslaught on various fronts, including the almost universal desire of parents to move children to “English medium" schools. We will have to figure out ways for our languages to survive and grow in the face of this onslaught.

This is just another episode where our legal and political systems, deeply shape education. Associated may well be final word on the matter of medium-of-instruction, given the weight of a five-member constitutional bench, but it’s not going to be final word on the overall matter of languages. I hope Pramati is not the final word on minority institutions, for the sake of education.

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