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Inseverable Law: Inapplicable or Invalid?

Visual HTML

A hypothetical illustration

Let us start with a hypothetical example to understand the premise of this article.

Suppose the Government of India brought in a new criminal law in the country meant to tackle traffic offences. The new law declares that it overrides every other law existing in the country with respect to traffic related violations. Further, it defines a new punishment for the crime - that the convicted person shall lose his or her job whenever a traffic violation occurs.

(Ignore the wierdity of the punishment for a moment)

We can notice straightaway that there are some problems with this law. It cannot for e.g. apply to those violators who do not have a job! It can also not apply to those who are in business. The list goes on. In essence, this new law cannot apply to several sections of citizens.

Imagine this new law was taken to the courts for review. After considering the above objections, and agreeing with the problems with the law, what if the Courts held that the law would be inapplicable to the jobless and business folks, but would continue to apply to those who were employed?

Absurd, right?

Absurd indeed - because by virtue of the new law superseding the old laws on traffic violations, there exists simply no other law for this offence. And by virtue of the in-applicability of the law to people without jobs, traffic violations are no longer a crime if committed by the unemployed!!

The only correct remedy, by the Courts, at this stage would be to declare the entire law invalid. This is also of course what the **principle of severability** states - if parts of a law are invalid, and the valid parts of the law cannot be enforced separately, then the whole law will have to be declared invalid.

Let us now move on to discussing restrictions that can be imposed on educational

institutions per our Constitution and SC jurisprudence.

Restrictions on rights granted under Article 30(1)

The fundamental rights granted by the Constitution under Article 19 have 'reasonable restrictions' imposed upon them in the Constitution itself.

For e.g. the freedom of speech guaranteed under Article 19(1)(a) is bound by restrictions imposed through 19(2). The freedom to carry on any occupation guaranteed under Article 19(1)(g) is bound by some restrictions imposed through Article 19(6).

The restrictions imposed by the State on any of these rights must relate to the restrictive clauses mentioned in the Constitution. Further, the restrictions must be specific and apply to the area of operation of the Right guaranteed.

Article 30(1), on the other hand, gives a right to minorities to establish and administer educational institutions of their choice WITHOUT any explicit restrictions. Naturally, this became a contentious issue in the courts. And over the past several decades, the Supreme Court has adjudicated that though there is no explicit restriction imposed, no right can be absolute, and hence clarified what could be 'reasonable restrictions' on minority educational institutions.

Very early in the **Kerala Education Bill** case, the Supreme Court identified some restrictions as follows

"The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided"

In In **Rev. Sidhajbhai Sabhai and Ors. v. State of Bombay and Anr**, the Supreme Court held thus

"Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such

regulations are not restrictions on the substance of the right which is guaranteed: they secure the proper functioning of the institution, in matters educational"

In **TMA Pai Foundation & Ors vs State of Karnataka & Ors**, the Supreme Court's take on resonable restrictions was as follows

"However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing maladministration.
For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the courses of studies and curricula. The existence of infrastructure sufficient for its growth can be stipulated as a prerequisite to the grant of recognition or affiliation"

We can see from above that provisions such as teachers' quality, course, infrastructure requirements have all been held as 'reasonable restrictions' vide TMA Pai.

P A Inamdar & Ors vs State of Maharashtra & Ors upholds the take of the SC as held in TMA Pai by quoting the very same paragraph from the TMA Pai judgement.

In the post RTE Era, neither in the **Society for Un-aided Private Schools of Rajasthan vs UOI & Ors** nor in the **Pramati Educational & Cultural Trust & Ors vs UOI & Ors**, the Supreme Court has attempted to re-examine the list of reasonable restrictions that may be imposed on minority educational institutions. In fact, in the minority judgement of Unaided Private Schools of Rajasthan, the honorable Judge quotes TMA Pai and PA Inamdar in an approving tone.

Thus, we can safely conclude that, as per Supreme Court jurisprudence, there continues to exist 'reasonable restrictions' on minority educational institutions in areas like teachers' quality, infrastructure requirements, national interest, etc.

Inapplicable or Invalid Law:

Based on what we have seen above, restrictions can be imposed on BOTH non-minority and minority institutions in India.

The RTE Act, over-rides previous educational laws in the country. Further, all states have made RTE Acts/Rules in accordance with the Central Act and the same is the operative law in the entire country.

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Section 23 of the Act imposes certain restrictions related to quality of teachers to be employed. Sections 26, 27 and 28 also deal with the topic of teachers.

Section 19 of the Act imposes conditions related to norms and standards for the school.

Sections 8 and 9 talk about infrastructure requirements of schools.

The conditions, or restrictions, imposed by the above sections necessarily have to be applied to ALL schools. In other words, the RTE Act contains provisions which necessarily have to apply to all schools.

In **Society for Un-aided Private Schools of Rajasthan vs UOI & Ors** and **Pramati Educational & Cultural Trust & Ors vs UOI & Ors,** the Supreme Court applied the "Principle of Severability" and held that the RTE Act was NOT SEVERABLE.

In other words, the Act is constructed in such a way that if some portions of the Act were inapplicable, the whole Act does not stand.

The SC also held Section 12 of the Act, related to reservation of seats, as being inapplicable to minority educational institutions.

Therefore,

- The RTE Act is inseverable
- The RTE Act has sections invalid with respect to some (minority) institutions.

Therefore, if the principle of severability has to be correctly applied, the entire RTE Act has to be declared as invalid.

The SC, by not doing so, and by only making the Act inapplicable to minority educational institutions, has effectively *removed* even those restrictions on them which were held to be valid by the Supreme Court itself over several decades and tens of judgements.

Recall the hypothetical example in the beginning of the article. The result is equivalent to exempting unemployed people from being held guilty for traffic violations.