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Right to Freedom of Religion and Legal Reforms on Secular Lines

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ABSTRACT

Freedom of religion and secularism are topics of everyday debate in Indian society. The lack of clarity over these issues leads to an ill-informed opinion of the public at large. Religion being a very personal matter to individuals, is often perceived with a sense of protection, and therefore, whenever a matter which touches upon religion is brought before any constitutional court of the country, the arguments and judgments go through the scanner of public opinion. In order to understand the judicial aspects of such a matter, one has to understand the socio-religious jurisprudence of India. Thus, this article tries to bring out the nuances of these issues and also highlights the approach of Indian courts on matters incidental to or directly linked to religion.

Keywords: *Secularism, Freedom of religion, Fundamental rights.*

I. INTRODUCTION

The preamble to the Constitution of India mandates the constitution to secure the liberty of thought, expression, belief, faith, and worship to all Indian Citizens. Guided by these principles, the Constitution regards the right to freedom of religion as fundamental and provides for it under Articles 25-28. India as a nation is the greatest example of a pluralistic society to which people following almost all of the major religions of the world call a home. The religious diversity in India is magnanimous, and it runs down across all the religions followed here. There are sects and sub-sects within a religion, regional variations regarding ceremonies and religious laws, and then there are numerous tribes that follow their own set of religious norms, much different from the major religions. To protect the interest of every single individual, it was imperative for our constitution to safeguard the religious expression of all Indians. And this was done in a two-folded fashion. The right to freedom of religion was made fundamental, and the state was given a secular character. The Supreme Court of India has explained the secular character of India as “There is no mysticism in the secular character of the state. Secularism is neither anti-God nor pro-God; it treats alike the devout, the antagonistic, and the atheistic, eliminates God from the matters of the state, and ensures that no one shall be

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discriminated against on the ground of religion”.² This article will talk about both of these concepts and will then discuss the reforms on secular lines.

II. FREEDOM OF RELIGION

Article 25 grants two broad freedoms with respect to religion, the freedom of Conscience and the right to freely profess, practice, and propagate religion. In order to give a proper effect to this right, it is essential to understand as to what religion means though Constitution fails to provide any definition for the same. When this question came before the Supreme Court, it gave a very liberal interpretation to the term ‘religion’ so as to protect the above-mentioned rights of even those whose religions do not confine with the characters of the most prevalent ones. The Court held, “A religion has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their religious wellbeing,³ But it will not be correct to say that religion is nothing else but a doctrine of belief. Religion may only lay down a code of ethical rules for its followers to accept. It might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral part of religion, and those forms and observances might extend even to matters of food and dress”.⁴

Article 26 grants every religious denomination or a section thereof the freedom to manage their religious affairs which include i) establishment and maintenance of institutions for religious and charitable purposes, ii) management of its own affairs in the matters of religion, iii) Ownership and acquiescence of movable and immovable property and its administration in accordance with law. As the rights under this article have been made available to religious denominations and not an individual, it is important to understand the meaning of the said term but the Constitution again fails to define it. The Supreme Court has set three conditions for an organisation to qualify as religious denomination. 1. It must be a collection of Individuals who have a system of beliefs which they regard as conducive to their spiritual well-being, that is common faith; 2. It must have a common organisation; 3. It must be designated by a distinctive name.⁵

Article 28 provides for the freedom of attendance at religious instruction or religious worship in non-state institutions as well as in institutions though administered by the state but which were established under any endowment or trust which requires that religious instruction shall be imparted in such institution. This right is an extension of the rights under article 25 and it

2 St. Xavier’s College v. State of Gujarat, AIR 1974 S.C. 1389.

3 The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Tirtha Swamiar of Sri Shirur Mutt, AIR 1954 S.C. 282.

4 S.P Mittal v. Union of India, (1983) 1 S.C.C. 51.

5 Id.

allows for the even growth of all the religions in India.

III. SECULARISM

The word secularism was added in the preamble to the Indian Constitution by the 42nd Constitutional amendment but the concept was very much implicit in the preamble as it provided for the liberty of thought, belief, faith and worship. Apart from its various provisions of the constitution elaborate this concept very widely. Article 14 categorically imparts equality before the law and equal protection of law to all the persons that is to say, it extends equality to non-citizens as well. Articles 15 and 16 prohibit the discrimination by the state on the ground of religion. Apart from them the most significant proponents of secularism in India are Articles 27 and 28. The former prohibits the state from compelling any person to pay a tax, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. The latter prohibits the imparting of any religious instruction in any educational institution wholly maintained out of the state funds. Viewing these articles with a holistic approach to the constitution it can be easily said that no religion has been imparted a dominant character as far as the working of the state is concerned, but it has to be also understood that unlike the concept of secularism in the western world, In Indian secularism the state does not denounce any religion, rather it works by taking all of them together. The Indian state is though not pro-God, it is neither anti-God. The Indian state recognises the importance of morality as propounded by various religions and therefore when the case regarding the teaching of certain religious texts in the school came before the Supreme Court, it upheld the validity of such instruction and held that Secularism has a positive meaning that is developing understanding and respect towards different religions.⁶

IV. FREEDOM OF RELIGION IS NOT ABSOLUTE

The Indian constitution does not grant absolute status to any fundamental right as it works on the principle of balancing interests. Hence the Rights of Religious freedoms are not absolute. Their boundary is recorded either within the respective Article or in the Constitutional Principles. The rights guaranteed under Article 25 have been made subject to public order, health, morality and other provisions of Part III. Additionally, the article allows the state to make laws for the restriction or regulation of any economic, financial. Political or other secular activity which may be associated with religious practice. The Article also empowers the state

⁶ Aruna Roy v. Union of India, AIR 2003 S.C. 3176.

to make laws for providing social welfare reforms of Hindu religious institutions which includes the throwing open of the gates of such institutions which are of public character for all the classes and sections of Hindus. The Rights to religious denominations granted under Article 26 have also been made subject to public order, morality and health.

Apart from the above restrictions the State has the power to make laws for the enforcement of Directive Principles of State Policy even though such laws may stand in some conflict with a fundamental right. The Supreme Court in 2005 in a cow slaughter case has held, "A restriction placed on any Fundamental Right, aimed at securing Directive Principles will be held as reasonable and hence *intra vires* (as long as) it does not run-in clear conflict with the fundamental right"⁷. The 'clear conflict' is best understood as implying the settled indisputable central core of any concept (such as equality, free speech, freedom of conscience. Etc) that conceptions cannot violate if they are to be conceptions of the concept in the first place⁸.

V. REFORMS ON SECULAR LINES

In light of the above-mentioned restrictions on freedom of religion, the Indian state has from time-to-time enacted laws to maintain a check and balance and has also pushed for legislation on secular matters pertaining to religion in order to achieve the other fundamental objectives of the Constitution. These laws have time and again been tested for their constitutional validity and to draw a balance between the freedom of religion and the power of the state to infringe that freedom, the Supreme Court has come out with its test of essential practices through various judgements. The first such instance came in the Shirur Mutt case where the Court held "What constitutes essential part of a religion is primarily to be ascertained with the reference of that religion itself. The 'essential part' of the religion is protected by the Constitution under Article 26(b). However, the State can legitimately regulate religious practices when the run counter to public order, health and morality and when they are economic, commercial or political in their character though they are associated with religious practices"⁹. This initial approach of the court though restrictive opened the door for the State's interference in secular matters of a religion. Later through a series of Judgements by Gajendragadkar J, the Supreme court widened the scope for State's interference. In a case of 1963 while determining the extent of essential practices the Court held " If an obviously secular matter is claimed to be a matter of religion, or if an obviously secular practice is alleged to be a religious practice, the court

7 State of Gujarat v. Mirzapur Moti Kasab Jamat, (2005) 8 S.C.C. 534.

8 GAUTAM BHATIA, THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION 659 (1st ed. 2016).

9 Commissioner, Hindu religious Endowments, Madras v. Sri Lakshmindra Swamiar of Sri Shirur Mutt, A.I.R. 1954 S.C. 282.

would be justified in rejecting the claim...a claim made by a citizen that a purely secular matter amounts to a religious practice or a similar claim made on behalf of the domination that a purely secular matter is an affair in matters of religion, may have to be rejected on the ground that it is based on irrational considerations and cannot attract the provisions of Art 25(1) and 26 (b)".¹⁰ Summing up the crux of the Judgement Dhawan and Nariman observe "Judges are now endowed with a three step inquiry to determine, in tandem, whether a claim was religious at all, whether it was essential for the faith and, perforce, whether, even if essential, it complied with the public interest and reformist requirements of the Constitution".¹¹

Taking a cue from the above holdings of the Supreme Court some progressive reforms have been made in respect of personal laws to further the principles of equality enshrined in the Constitution. Such reforms always meet with heavy protest from the religious scholars, politicians and public at large. Due to this very reason, the State is always reluctant to push for reforms. Over the years it has been the Supreme Court and various High Courts which have tested personal laws and religious practices on the balance of constitutionality and have come up with many reformist judgements. One of the best interpretations of Personal Laws vis a vis the Constitution was given by Krishna Iyer J as he observed "Personal Law... is law by virtue of the sanction of the sovereign behind it and is, for that very reason, enforceable through court. Not Manu nor Mohammed but the monarch for the time makes 'personal law' enforceable... Hindu and Mohammedan laws are applied in Courts because of old Regulations and Acts charging the courts with the duty to administer the personal laws and not because the ancient law-givers obligate the courts to enforce the texts".¹²

VI. CONCLUSION

Though there is reluctance on part of the legislature to bring reforms on secular lines in religions, some reforms have seen the light of the day such as The Hindu code Bills, Amendments in the Archaic Indian Divorce Act 1869, Muslim Women (Protection of Rights on Divorce) Act 1986(Though this Act was passed to subvert the reforms of the Shah Bano¹³ case, the Supreme Court in Danial Latifi¹⁴ gave it a reformist interpretation while upholding its constitutional validity.), Hindu Succession (Amendment) Act,2005 and the much recent

10 *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan*, A.I.R. 1963 S.C. 1638.

11 RAJIV DHAWAN AND FALI NARIMAN, 'THE SUPREME COURT AND GROUP LIFE: RELIGIOUS FREEDOM, MINORITY GROUPS, AND DISADVANTAGED COMMUNITIES', SUPREME BUT NOT INFALLIBLE: ESSAYS IN HONOUR OF THE SUPREME COURT OF INDIA 260 (BN Kripal et al. eds. Oxford University Press, 2000).

12 *Assan Rawther v. Ammu Umma*, (1971) K.L.T. 684.

13 *Mohd Ahmed Khan v Shah Bano Begum*, (1985) 2 S.C.C. 556.

14 *Danial Latifi v. Union of India*, (2001) 7 S.C.C. 740.

Muslim Women (Protection of Rights on Marriage) Act,2019. The Courts in India have been doing a balancing act in this regard and one can only hope that in coming times more of such reforms will come into existence.
