

THE INCONGROUS RELATIONSHIP BETWEEN THE RELIGIOUS PRACTICES AND THE CONSTITUTIONAL MORALITY (IN LIGHT OF THE SABARIMALA TEMPLE CASE JUDGEMENT)¹

INTRODUCTION

The Constitution of India provides certain Fundamental Rights in its Part III. These Fundamental Rights are certain basic Rights for the people of India. So one of these rights is Right to Religion. India is a Secular country thus it has no official religion for the people to practice which was never mentioned in the Constitution previously. But the 42nd Amendment to the Indian Constitution has brought the word “Secular” for the first time in India. After this word has been officially incorporated in the Indian Constitution, India officially became a “Secular” country.² However in spite of India being a secular country, there have been always some issues regarding the practice of religion. Therefore to understand the issue better at the very first instance it is necessary to know the rights which have been guaranteed under the Constitution and what are its scope better. The religious bodies for example the Sabarimala Temple was also run by an autonomous body since time immemorial, therefore regulating the rules as per the customs and traditions was also their independent right and privilege. Thus this created a nuisance between both the bodies where both had the right to exercise their powers to protect the interests of the people at large. Thus the Rights of Freedom of Religion given in our Constitution under articles are as follows-

- *Article 25- Freedom of conscience and free profession, practice and propagation of religion*
- *Article 26- Freedom to manage religious affairs*
- *Article 27- Freedom as to payment of taxes for promotion of any particular religion*
- *Article 28- Freedom as to attendance at religious instruction or religious worship in certain educational institutions.³*

Now the question is how these Fundamental rights are being administered by the Religious Institutions. Do the Institutions have any role to play in the changing roles of these rights? Can

¹ Deekshita Das, National Law University, Odisha.

² M V Pylee, Constitutional Amendments in India (Universal Law Publishing, New Delhi, 5th edition, 2017).

³ The Indian Constitution, 1950.

constitution interfere if the Religious Institutions interpret the Articles in a wrong manner? And also what would be the scope of these rights.

DIFFERENCE BETWEEN RELIGIOUS SENTIMENTS AND CONSTITUTIONAL MORALITY

Both instigate the standards the morals. Religious sentiments are something which is pious in nature as well as which is related to the sentiments of a group of people associated with a deity, on the other hand, Constitutional morality, as quoted by the Former Chief Justice of India, Justice Dipak Mishra, should be cultivated. The decisions and the orders given by any court of Law, should not only adhere by Constitutional provisions but also certain moral grounds must be reflected in the decisions. Therefore there is very thin line between the Constitutional Morality as well as Religious sentiments. The Constitutional morality has a very large scope and wide range as it not only covers the religious feelings of a party but it considers every other aspects of a society leading to a very holistic judgement whereas in case of religious sentiments, one's affinity towards a deity is only reflected. Both are equally important to be considered and should be taken care of that none of them is violated. But what happens when both comes to a conflict or a clash. In this particular case of Sabarimala Temple, the Constitutional morality supersedes the religious sentiments and feelings creating an out rest thereby in the country. The most interesting part is that a few groups of women itself opposed the judgement of the Supreme Court. Therefore, such protests and judgements nullifies the true spirit of Constitutional morality in its wider aspect.⁴

HOW INDEPENDENT IS A PERSON TO PRACTICE HIS RELIGION?

The degree of independence to practice a religion cannot be scaled as such, but what our constitution provides is that we can practice any religion in any way or manner we want, till the time it does not disturbs the social order either morally or politically and does not hamper the smooth running of the society. Hence it means that a citizen should not commit any act of social misconduct which may lead to any threat to the ongoing peace of the society or any immoral act or any other activity which have been banned by the state.⁵

There are instances in the society from the past, which have been banned in name of ill practices under religion which are violative of the basic Human Rights of the people, and Right to Equality. Some of those practices are like sati, child marriages, dowry, and various sacrificial

⁴ Kalpana Kannabiran, 'The scope of Constitutional Morality', The Hindu, 04th October 2018.

⁵ Dr. J. N Pandey, Constitutional Law of India, (Central Law Agency, Lucknow, Edition 2015).

offerings have been banned owing to the fact that it has been classed as immoral social practices.⁶ Hence, Article 25 & 26 are not absolute. No person can do such religious things which affect the public order, morality and health. For example no one has right to conduct human sacrifice. No one can perform worship on busy highway or other public places which disturb the community. India has been declared as a “Secular” country since the 42nd Amendment Act, which declares every citizen of the country to practice their own religion of choice provided it should not disturb the moral balance of the society. Hence it means the Fundamental Rights provided under Indian Constitution is not absolute hence it’s subjected to certain restrictions. So, as per the heading given above yes, every citizen in India is free to practice his or her religion of choice provided they must adhere to the reasonable restrictions.

WHO CAN EXERCISE THE RIGHT GIVEN UNDER ARTICLE 25?

The said freedom to practice any religion of a person is enshrined under Part III of the Constitution in Article 25, which governs all the persons residing in the country irrespective of their status of citizenship. Hence, no one can question the religious inclination of any person irrespective of whether he is a foreign national or any person residing in the territory of India. Therefore, India practices Secularism in a very liberal sense. It not only gives the right to practice religion to its citizens but also to others who are not citizens of India. The immigrants or the declared Foreigners in India can also enjoy the Right to Religion under all circumstances.⁷

CONSTITUTIONAL SAFEGUARDS FOR FREEDOM OF RELIGION

Religion has been dealt with very carefully by our constitution makers in order to avoid any clash between the state and its subjects. Hence, under Part III which talks about fundamental rights of a citizen, there are several provisions which provide for the safe and healthy accommodation of religious matters into the society.⁸

Though the Right to freedom of speech and expression (Article 19) envisages the philosophy of freedom of religion in India because despite of the creation of Pakistan, a lot of Muslims were scattered all over India, part from Sikhs, Parsees, Christians and others. Yet the constituent assembly made it explicit by incorporating a separate group of Articles as per an agreement with / recommendation of Advisory Committee on Fundamental Rights, Minorities,

⁶ *Ibid* at 4.

⁷ *Supra* note 3 at 2.

⁸ *Supra* note 5 at 3.

Tribal and Excluded Areas (Chairman: Vallabhbhai Patel) and Minorities Sub-Committee (Chairman: H.C. Mukherjee).⁹ Before the Constitution 42nd amendment Bill added the word “secular” in the constitution of India, the word “secular” appeared only in “Article 25”. India is a secular country and there is no state religion. India also does not patronizes any religion. The Constitution 42nd amendment Act made the above thought “explicit” in the constitution.

IS RIGHT TO PROFESS AND PROPAGATE A RELIGION AN ABSOLUTE RIGHT?

Article 25 gives to all persons the right to freely profess, practice and propagate religion. This right, however, is not absolute. The opening words of Article 25(1) make this right subject to public order, morality, and health. The same restriction also applies to the other provisions of Part III of the Constitution. This would mean that the right given to a person under 25(1) can be curtailed or regulated if the exercise of that right would violate other provisions of Part III of the Constitution, or if the exercise thereof is not in consonance with public order, morality and health and it cannot be violated by any person in exercise of his freedom of conscience or his freedom to profess his religion. For example, a person cannot profess his religion in such a manner as to denigrate another religion or bring about dissatisfaction amongst people.¹⁰ The freedom to profess any religion is a fundamental right, but in cases where a particular community is kept under minority status, the shield of freedom of religion cannot be used for the purpose of claiming minority status so as to avail the benefits of Articles 29 and 30 of the Constitution of India. The same principle was upheld in the case of *State Of Rajasthan And Ors. V. Vijay Shanti Educational Trust, RLW 2003 (4) Raj 2568*.¹¹

TO WHAT EXTENT THE STATE CAN RESTRICT ONE’S RIGHT TO PRACTICE, PROFESS OR PROPAGATE RELIGION?

Each time the state plans to introduce restrictions to curb religious dealings, it gets a wide array of reactions from the society. A careful reading of Article 25(2) (a) indicates that it does not prevent the State from making any law in relation to the religious practice as such. The limited jurisdiction granted by Article 25(2) relates to the making of a law in relation to economic, financial, political or other secular activities associated with the religious practice.¹² This means the state can regulate the affairs of the religious bodies indirectly.

⁹ Anuj Kumar, ‘Constitutional rights and safeguards provided to the Vulnerable groups of India’ Desire, June 14 2016.

¹⁰ D B Civil Special Appeal (W) no 58 of 2001.

¹¹ *Ibid* at 8.

¹² *Supra* note 4 at 3.

Apart from above mentioned regulations state can intervene for social welfare reforms which tend toward off social evils prevailing in the society having their origin from religious dealings.¹³

However, the rights and freedoms given under Article 25 of the Indian Constitution, is not absolute rights, hence the state can definitely intervene if the freedom or the fundamental rights are misused or is being used against the betterment of the society or for social injustice and social insecurity.

No rights or freedoms are greater than justice and equality in the society, because as per the principle of Natural Justice, Equality must prevail. Hence violation of Equality is violation of Natural Justice as per the Indian Constitution.¹⁴

Therefore, at the end we can conclude saying that, state can intervene or restrict the right or freedom of a person to practice, profess and propagate his own religion.

HOW THE CONSTITUTION AND THE RELIGIOUS INSTITUTIONS ARE INTER-CONNECTED AND HOW DO THEY COMPLEMENT EACH OTHER?

Indian Constitution has granted certain Fundamental Rights for the citizens and their welfare in Part III of the Constitution.

Right to Freedom of Religion as stated under Articles 25 to 28, and Article 26 specially which says that certain rights are to be given to the Religious Denomination i.e. religious institutions which preach a Deity. Therefore the rights given to them are-

- *To establish and maintain religious and charitable institutions.*
- *To manage the affairs of those institutions.*
- *To own and acquire property(both movable and non-movable)*
- *To administer the same.*¹⁵

Now, what is Religious Denomination? It is therefore a collection of individuals classed together under a distinct name and which runs a particular religious institution.

Therefore, a Religious Denomination can enjoy the following above given rights only when, they are a collection of people classed together under a particular name. Only when they can

¹³ Ratilal Panachand Gandhi v. State of Bombay, AIR (1954) 388

¹⁴ *Ibid* at 12.

¹⁵ *Supra* 2 at 2.

prove or justify that they are a Religious Denomination, then only they can enjoy the rights given under Article 26 of the Indian Constitution.¹⁶

Hence, Religious Institutions have an undenying relation with the Indian Constitution, and they complement each other because, both should be binding on the other. The constitution cannot interrupt into the affairs of a Religious Institution unless and until it violates any of its provisions, on the other hand, the religious institutions cannot violate the constitution just for the sake of enjoying the benefits or the rights.

SIGNIFICANCE OF THE INTRA-RELIGIOUS DISCRIMINATIONS IN CONTEXT OF THE ISSUE

Our Constitution debar and restricts discriminations and preaches equality under Article 14 as a Fundamental Right. This issue of conflict is not only between the religious sentiments and Constitutional morality but also the discriminations between men and women. When there are different rules on the grounds of religion, it would be called Inter-religious discriminations but what about the discriminations that take place within a religion i.e. between two genders. Article 14 of our Constitution says all men are equal before the law and hence should not be discriminated on any grounds, but on the other hand the religious independence of the institutions practicing the same since ages are some important factors that comes into conflict and thereby gives rise to concepts like Intra-religious discriminations.¹⁷ Therefore in such cases of crucial issues, it is very important to understand and know the facts well. Our country is no doubt a Secular country and therefore here this concept stands irrelevant if we see from the perspective of Intra-religious discriminations or from a perspective as a whole, but if we try to analyse the fact from a single individual, whose religious rights are being violated i.e. a women below the prescribed age has definitely full right to comply by the definitions of secularism of our country. Only by changing the perspective of looking into the issue changes the whole scenario and which cannot be ignored as both are pertinent in nature.¹⁸

ROLE OF THE SABARIMALA TEMPLE CASE JUDGEMENT

This issue has a very significant emphasis in this recent judgement in the Sabarimala Temple Case which has been passed few days back by a 5 Judges Bench in the Supreme Court of India, last month.

¹⁶ Glen O Robinson, 'COMMUNITIES', Volume No 83, VLR, 269, 1997.

¹⁷ *Ibid* at 15.

¹⁸ *Ibid* at 16.

In this particular Case, i.e. the Sabarimala Temple which is situated in Kerala, restricts women from age 10 to 50 from entering into the Temple considering them to be impure for the pre-rituals of 41 days Vratam before going into the Temple.¹⁹

However, the Chief Justice including other three judges said, that such an act was against the gender equality and was also a kind of untouchability. They claimed that the Temple was not a Religious Denomination and hence could not enjoy the given benefits under the Article 26 of the Indian Constitution.²⁰

They also said that, women had equal rights to profess and propagate their choice of religion as per their own time period without being discriminated on the basis of any natural process. Hence, the activities of the Temple was violative of Articles 14 i.e. Untouchability, 25 and 26. It was also violating Article 14. And hence the 4 Judges including the former Chief Justice of India along with other three, passed the judgement that women should also be allowed to enter into the temple, breaking all kinds of stigmas and stereotypes.

On the other hand, the minority or the dissenting judgement which was given by Justice Indu Malhotra, who was herself a woman, protested and said that women should not be allowed to enter into the temple as it was against the nature of the Deity worshipped in the Temple, and letting women enter would be a violation of their Right to Privacy of the Deity.

She dissented saying that, the Temple was an independent Religious Denomination and hence it had full rights to administer its own activities or affairs without any interference of the Court or the Judiciary i.e. the State.²¹

However, this Judgement has led to many hue and cry in the State of Kerala and it is proved consequential into a lot of protests and debates regarding the issue. Thus, the future prospects of this Judgement is still in a stuck.²²

AFTER IMPLICATIONS OF THE JUDGEMENT

The judgement had a lot of replications in the society. No matter the judgement has been sent for a review now, many political organisations and as well as various religious bodies have vehemently protested against this judgement. There were many groups of radical women who had themselves being a woman opposed the judgement. The strongest irony was the dissenting

¹⁹ Indian Young Lawyer's Association vs State of Kerala, Writ Petition (Civil) No 373 of 2006.

²⁰ *Ibid* at 18.

²¹ *Ibid* at 19.

²² *Ibid* at 20.

and the minority judgement given in this case was also by a women. But on the other side, we could also see women who have entered the temple irrespective of any age-groups, post judgement, were also seen appreciated from many parts of the country. But the radical thinkers were also equivalently criticising those women who have dared to enter the temple after the judgement as in many security threats were also imposed on them. The Religious institutions were so much adamant that after the Supreme Court verdict of allowing women of all age-groups into the temple, the authorities of the temple started a purification process of the whole temple believing the women of all age-groups to be impure and contaminating the sanctity of the deity of the temple.²³

Therefore, what role Judiciary played at the end of the day in such cases. Weren't the Judiciary binding enough on the administration of the temple was the greatest issue in this case. How much both of them had a say over each other and to what extent these bodies were liable for each other was the grave concern.²⁴

COMMENTS

Anyway, on the topic as well on the Judgement, I would like to comment that, yes, state can interfere into the affairs of a religious institution provided in there is an urgent need of protecting the public order, morality, justice and peace of the society. However, the benefits given under Article 26 can only be enjoyed by a religious denomination which justifies to be a one, in a true sense.

In reference to this Case, I think further inquiry and investigations is required as per my opinion. So logically I would comment that, if the Sabarimala Temple is a religious denomination then, it has definitely full rights to administer its own affairs, but if it's not, it's unethical to do so. Again, if it also a religious denomination, it can make laws against the welfare of the people and create injustice in the society, in such cases state has to intervene.

CONCLUSION

Here, I have come to the conclusion, of this article that though our country is a Secular state, there are few ideologies embedded in the minds of the people in the society who doesn't help in making India a bias free country. The grass root level awareness and changes must be incorporated in such a way that each and every provision of the Constitution is practically

²³ Chennabasaveshwar P., 'Sabarimala verdict will impact other religious places of worship, says Activist.' Yahoo News, 28th September 2018.

²⁴ *Ibid* at 22.

practiced and justified in the truest sense. At the end of the analysis, a very diplomatic kind of viewpoint on the issue can be given, however it requires a lot of study and deep analysis for better results. This can be done when the scope of both the bodies i.e. religious bodies as well the Judiciary must be defined as clearly as possible so that there doesn't arise any arena of confusion. But nonetheless we cannot ignore the fact that India is such a country of diversity where people have different opinions. There are hundreds of Gods in Hindu mythology which have different and allied ideologies attached to each other and hence justifying each of them is sometimes impractical in nature too. In such cases, a middle way should be found out because people themselves doesn't want to be treated equally, the Constitutional provisions stands baseless. In context of the Sabarimala judgement, there were huge number of women in South India who relentlessly protested against the judgement of the Supreme Court. Therefore in certain cases, the Judiciary must leave the decisions on public opinion or should sought some other alternative. However it would be very challenging to come to a conclusion in such issues, therefore I would like to leave to the readers to ponder upon this fact whether the Judiciary can interfere in the religious affairs of a body or there must be some mutual coherence between the both in certain controversial and exceptional cases.

