

RELIGIOUS FREEDOM

Sahla Farsana Ck¹

In a multi-religious and spiritually advanced country like India, Freedom of Religion guaranteed as a fundamental right under Article 25 and Article 26 of the constitution of India. This right is a matter of spiritual significance. India does not accept any religion as state religion and it maintains absolute neutrality and impartiality towards all religions. Hence India is a perfect example of a secular state-flanked by theocracies in the East and West. Right to Religion guarantees to every person, and not merely the citizens of India, the freedom of conscience and the right freely to profess, practise and propagate religion. This is subject, in every case, to public order, health and morality. Thus, subject to the restrictions which the article imposes, every person has a fundamental right not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for edification of others. Conscience and religious matters are intensely personal. But, when such faith and belief manifest themselves into “outer acts” like customs, observances, rituals and practices under and /or in the name of religion, they get separated from the universality of conscience, which is the core of religion and when pitted against social order-degenerate into religionism or freedom to follow a name or designated religion, identifiable with and /or followed by a particular caste, community named after it. The State’s approach towards religion embedded in these constitutional provisions is one that maintains a ‘principled distance’ from religion. This, however, does not prohibit the State to intervene when practice of religion contravenes public order, morality, health, egalitarian social order and objectives of the welfare State intended for integrated development of the individuals and communities. State intervention or non-intervention in the practice of religion depends upon which of the two better promotes substantive values like religious liberty, egalitarian social order, social justice and religious harmony which are constitutive of a life worthy of human dignity for all. The Courts in India have taken upon themselves the task of giving judicial definition to ‘religion’ protected under the secular provisions of the country’s

¹ Student, Nehru academy of law palakkad kerela

Constitution. They also have the burden of doing the sensitive job of differentiating ‘matters of religion’ protected under the same provisions from matters of secular interest added or associated with religious practices, which may be liable to the action of the State when needed to maintain common good and to promote social welfare and reform.

The term Religion

The meaning of the term ‘Religion’ in the context of the Fundamental Right to Freedom of conscience and the right to profess, practise and propagate religion, guaranteed by Article 25 of the Constitution, has been well explained in the well known cases of *the Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*¹, *Rati Lal Panachand Gandhi v. State of Bombay*², *S.P Mittal v. Union of India*³, and *A.S. Narayana Deekshitulu v. State of Andhra Pradesh*⁴.

India is a secular state

The concept of secularism is implicit in the Preamble of the Constitution which declares the resolve of the people to secure to all of its citizens “liberty of thought, belief, faith and worship”. The 42nd Amendment Act, 1976, has inserted the word ‘secular’ in the Preamble. This amendment is intended merely to spell out clearly the concept of ‘secularism’ in the constitution. There is no mysticism in the secular character of the state. It only means in matters of religion it is neutral. It is the ancient doctrine in India that the state protects all religions but interferes with none.⁵ Explaining the secular character of the Indian Constitution the Supreme court said “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 atheist. It eliminates God from the matters of the state and ensures that no one shall be discriminated against on the ground of religion.”⁶

-
1. AIR 1954 SC 282:1954 SCJ 335:1954 SCR 1005
 2. 1954 SCR 1055 (1062-66): AIR 1954 SC 388: 1954 SCJ 480
 3. AIR 1983 SC 1:1983(1) SCJ 45: (1983)SCR 729

4. AIR 1996 SC 1765: 1996 AIR SCW 2029: (1996) 9 SCC 548
5. Vasudev v. Vanamji, ILR 1881 Bom.80
6. St. Xavier's College v. State of Gujarat, AIR 1974 SC 1389 at 1414

In *S. R. Bommai v. Union of India*,⁷ the Supreme Court has held that “secularism is a basic feature of the constitution”. The state treats equally all religious and religious denominations. Religion is a matter of individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the state by enacting a law. Justice Ramaswami observed that secularism is not anti-God. In Indian context secularism has a positive content. The Indian Constitution embodies the positive concept of secularism and has not accepted the American doctrine of secularism, i.e., the concept of erecting a wall of separation between Religion and State”. The concept of positive secularism separates spiritualism with individual faith. In the matter of Religion State is neutral and treats every religion equally.

An analysis

By the Constitution (Forty Second Amendment) Act, 1976 nearly forty years after independence with effect from 03-01-1997, India proclaimed itself a “Sovereign Secular Democratic Republic”. It is therefore proposed to amend the Constitution to spell out expressly the high ideals of socialism, secularism and integrity of the nation. To serve the constitutional objectives, the constitutional makers added words “Unity and integrity of the nation” to the fundamental objective of “Fraternity, assuring the dignity of the individual.” By article 39A, added to the Directive Principles of State Policy, the state ensured that the legal system promoted justice on the basis of equal opportunity. Part IVA was also added to the Constitution by the Forty Second Amendment comprising Fundamental Duties and by clause-A thereof in no uncertain terms, it was laid down that it was the fundamental duty of every citizen to “promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious linguistic and regional or sectional diversities, and to renounce practices derogatory to the dignity of women.” In spite of such significant changes made by the Forty Second Amendment Act, the Constitution (Forty-Forth Amendment Act, 1978 had to be brought in w.e.f 20th June, 1979, to insert Article 38 in the Constitution to enable the State to secure a social order for promotion of the welfare of the people-reading :

7. AIR 1994 SC 1918

38(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social economic and political, shall inform all institutions of the natural life.

(2) The State shall, in particular, strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only among the individuals but also among groups residing in different areas or engaged in different vocations.

Under the Constitution of India all men are equal and must be equally treated. Customs, observances, rituals, practices, and the like followed by various castes, communities and denominations –conveniently referred to under one head “as matters of religion” under Article 26(b) - should not be allowed to divide and thereby, separate or distinguish one caste, community or denomination from the other, because they have nothing to do with matters of one’s or inner faith, belief or conscience, the freedom of religion under Article 25(1). Such customs, observances, rituals, practices have evolved or have been evolved over the years, for various sociological, economical and /or political reasons prevailing at that particular point of time, which may have lost significance or relevance today and which in the present day and time would only serve to foster and accentuate inequality in status, dignity and in the ordinary conditions of daily life and existence. Men are equal only when they are treated equally by and under the law.

State is prohibited to establish a religion of its own and/ or to identify itself with or in favour of any particular religion because the state is enjoined to accord equal treatment to all religions- castes, communities and denominations, as also to the sects or sections thereof.

Some illustrative cases in which the “freedom of religion” under Article 25 has been misconstrued and thus allowed to be overtaken and substituted by freedom to “ manage affairs of Religion” under Article 26(b), may be considered:

(1) One of the earliest cases-*Sardar Syedna Taher Sifuddin Vs. The State of Bombay*. AIR 1962 SC 833, is thought provoking on the points raised hereinabove. Here, the

Supreme Court struck down the Bombay Prevention of Ex-communication of the Dai-ul-Mutlaq of the Dawoodi Bohra community to excommunicate any member thereof “on religious grounds” Reliance was strongly placed on the case of *Hsanali Vs.Mansoorali* decided by the Privy Council as far back as in 1948(AIR 1948 P.C 66) and it was held that “that was the law no longer in dispute”

- (2) *In Qureshi vs State of Bihar* (1959) SCR 629 (FB) – the Supreme Court upheld the validity of three State enactments, totally banning cow-slaughter and slaughter of the buffaloes and their progeny, so long as they were capable of breeding or yielding milk or working as draught animals, as a measure of economic/social reforms, pursuant to Article 48 of the Directive Principles of State Policy, contained in part IV of the constitution.
- (3) *Stanislaus Vs. State of MP 163*, came to expressly clarify that every person has a fundamental right not only to entertain a religious belief as may be approved by his “judgement of conscience”, but also to exhibit such belief and ideas in such “overt-acts” as are enjoined or sanctioned by his religion and further to propagate his religious views for the eradication of others.

The Hon’ble Member H.V Kamant of the Constituent Assembly-“though the Preamble to the constitution has drawn up without invocation of God principles of Justice, Liberty, Equality and fraternity in the Preamble, would not mean much, unless Gods finds a place, which he ultimately did, if only in the form of oath to be taken by the various dignitaries of the State.

According to the Hon’ble member , the only system that will save India and the world, is one which is based on the spirit of the divinity controlling human affairs-and which will alone will resolve the increasing conflict between the “atman” and the “atom-bomb”- that is to say, the atma shakti. The Hon’ble member lauded the abolition of “untouchability” as a cancer of the Hindu Society, operating as a hurdle in the success of Parliamentary Democracy – by creating a fissiparous social system- based on ideas, sub castes, creed and religion- notorious for strong antipathies of superiority and inferiority which operate subconsciously and permeate the very air we breath. Unless these obnoxious tendencies and antipathies are shed and separated from the religion of the conscience- Equality under our Constitution will remain only a dream-as between a cat and a mouse and a horse and an ass and in our effort to create a vinayaka, we will end up creating a Vanara. The Hon’ble member ended his speech

by remaining us of peace, harmony and love bathed in the Himalayan Dawn and the spiritual genesis of Vivekananda, to say that “ the day India forgets God and discards spirituality, India will die and cease to be a force in the world, therefore, *Aware, Arise and Stop not till the goal is reached*”.

