

TO STUDY ON COURTS OF LAW AND RELIGIOUS PRACTICES IN CONTEMPORARY HINDUISM

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ABSTRACT:

The Indian Constitution posits a separation between a secular domain regulated by the State, and a religious domain in which it must not interfere. However, courts of law are regularly called upon to resolve a multiplicity of issues related to religion, and their decisions may have a far-reaching impact on religious conceptions and practices. The judicial process requires that standardized, clear-cut definitions of many notions (such as “religion” itself, or “worshipper,” “custom,” “usage,” “religious service,” “religious office,” “religious honor,” etc.) be established in order for them to be manageable within a legal context. Moreover, even though a religious domain may be distinguished from a secular one and protected from State intervention, there are litigations concerning civil rights that involve religious issues on which civil courts may therefore have an explicit duty to rule. Interventions such as imposing legal definitions or deciding on religious matters on which civil rights depend are systemic in character and intrinsic to “modern” law itself. In this they do differ from any explicit policy of state secularism or the no less explicit reformist will of some judges, which may change according to the historical period or to their personal dispositions. This paper comments on several judgments from the upper courts of India chosen from the end of the nineteenth century to the present day, with a view to discussing the disputed limits of this judicial intervention and the resulting entanglement between law and religion.

Keywords: Court, Laws, religion, hindhusthan, Article 25.

1. INTRODUCTION

Although India presents features of its own, many issues are common to secular states throughout the world where legal conceptions of religion are anchored in the distinction the law makes between “private” and “public” domains. This was already the case in India during British rule and was subsequently reinforced in the Constitution after Independence. The “Fathers of the Constitution,” according to a former Chief Justice of India, “placed the individual at the centre of the Constitutional scheme” (Bhagwati 2005:40),⁵ though not without a debate (Dhavan 1987:209). This individual character of religious freedom has been further developed in various upper court decisions. For instance, in 1995, the Supreme Court of India referred to Halsbury’s Laws of England (1 st ed. 1907, regularly reedited and updated since then) according to which “A church is formed by the voluntary association of individuals” and extended this conception to all religious bodies (Most. Rev. P.M.A. Metropolitan 1995:§35). Society, and religion, is thus seen as being made up of an addition of individuals, a presupposition that is widely at odds with the holistic

view projected by most religious systems: placing the individual at the center of legal action may foster, by itself, profound changes in religious attitudes and practices. As Maya Warrier (2003:214) pointed out, secularization in general may be linked to a “retreat of religion from public life”: By secularization I mean therefore a decline in the public, community-affirming and socially-binding aspect of religion, and a growing trend towards the internalization of faith such that it is personal choice, inner spiritual striving and self-fulfilment that become central to religious life rather than the affirmation of shared community orientations, affiliations, aspirations and identities. Such an individualistic perspective found its way, for instance, into a definition of religion given by the High Court of Bombay, which ruled that “whatever binds a man to his own conscience and whatever moral or ethical principle regulate[s] the lives of men believing in that theistic conscience or religious belief that alone can constitute religion as understood in the Constitution” (Ratilal Panachand Gandhi 1952:§4) . However, this definition, solely in terms of conscience, was felt to be ill-adapted to Indian realities and was later broadened by the Supreme Court in the so-called “Shirur Mutt case”: A religion

may not 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 parts of religion, and these forms and observances might extend even to matters of food and dress (The Commissioner, Hindu Religious Endowments 1954:1024). Thus, religious freedom actually extends beyond the individual's conscience and concerns public space through the freedom accorded to religious practice, as stated clearly in Article 25 (1) of the Constitution, quoted above, however limited it may be by considerations of "public order, morality, and health" (a provision common to secular Constitutions throughout the world).⁶ Religious communities are also recognized as such in Article 26 of the Constitution under the label "religious denomination." While the law therefore acknowledges absolute religious freedom in the intimacy of individuals, it also recognizes the fact that the expression of this religious freedom may take various public forms, whether through religious practice or by taking part in religious collectives and institutions. Nevertheless, this remains an individualistic perspective according to which society — and religion—are made up of an addition of persons, with their rights and actions limited by the public good, a presupposition that is widely at variance from what social science has reported about the entanglement, if not the indeterminacy, of religious issues with social, economic, legal, and political relationships. More specifically with regard to Hinduism, equality for all citizens, as posited by the Constitution, contradicts views of human nature that are found in many Hindu (upper caste) traditions, which Coward (2005) summarizes as "presuppositions of karma and *guṇa* theory." As the author develops, "the very idea of ordering society in terms of static purity of *guṇa* theory is ruled out by the new Constitution. It is for this reason that D.E. Smith describes the Constitution as introducing a revolution in traditional conceptions" (Coward 2005:60).⁷ For Coward, the inspiration behind this "revolution" is to be traced back to philosophers such as the Utilitarians (Bentham, Mill) and Locke: "in the Hindu case the Constitution is acting to secularize and reform religion by replacing the karma and *guṇa* presuppositions with the Lockean view of human nature" (Coward 2005:64). Even if the "karma and *guṇa* theory" might not actually characterize all the traditions that fall under the umbrella of "Hinduism," it is certainly the case that the Constitutional framework—its fundamental

assumptions about the individual and about equality— profoundly re-orientates the perspectives of many religions in India, and imposes a legal universe of discourse which is at variance with widespread conceptions of the position of man and other creatures within an overall divine order.

2. RELATED STUDY

It is important to note that, beyond the personal opinions of individual judges or their will to act as reformers in the name of progress, it is the very nature of the legal process to categorize the world according to its own requirements. For instance, in their quest for precision and "rationality," legal scholars and judges have endeavored to establish a reference language that would be used by all the courts. As part of this process, there is a need to provide unambiguous definitions of common-language expressions that otherwise seem fuzzy or polysemic. It is one of the roles of the Courts to set down these definitions and to establish the legal categories on which judgments may be based, therefore directly impacting the issues in question—in this case, religious life. This intervention of the Courts is systemic in character. It does not necessarily stem from any agenda other than the wish to eliminate semantic indeterminacy or confusion, as can be seen in the fact that today's courts may refer to British colonial precedents or to current Common law in other countries, and that the definitions they articulate may apply indiscriminately to Hinduism, Islam or Christianity. Here are a few examples concerning Hinduism. One example is the notion of "worshipper." Defining who is to be considered a worshipper was found necessary with regard to the legal requirement of having *locus standi*, that is, the need to have a personal interest in a given conflict in order to be allowed to file a litigation (this requirement is eschewed in the much less common Public Interest Litigation procedure). In order to accept a petition, a court has to determine if the petitioner has an interest in the case; if not, the petition is rejected. What does it mean to "have an interest" as far as religious matters are concerned? In the case of temples in Tamil Nadu, for instance, Section 6 (15b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, explains that it is "a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat" (quoted in *Chockalingam* 2010:§33).

Thus, only worshippers at a given temple may petition a court about matters regarding this temple. Learned counsel for the first defendant ... submitted that the plaintiffs are not the worshippers and they have no locusstandi to file the suit, and hence, it is worthwhile to refer the book titled, "V.K. Varadachari's Law of Hindu Religious and Charitable Endowments," Revised by Dr. R. Prakash, Advocate, Supreme Court, Fourth Edition 2005, ... which is relied on by the learned counsel for the plaintiffs, in which, it is noted by the renowned author with regard to the meaning of "worshipper" in page 565, as follows: "The word worshipper does not mean only those persons who engage themselves in some sort of rituals for performing worship. It has a wide meaning. Thus, a person merely visiting some temple and after paying his respects goes away, is also a worshipper. A pujari, devotee, archaka, sewak, person coming to have darshan and pay respect are all included in "worshipper." Even a single annual visit is sufficient to make one as worshipper of a particular deity. A person may not have even gone to some temple; even then if he is devoted to that particular one, he will be a worshipper.

3. AN OVERVIEW OF PROPOSED SYSTEM

Judiciary is the third and most important organ of state, which is so vital and pivotal that one cannot imagine the concept of democracy in existence. A constitution cannot secure fundamental rights by merely making pious declarations. To make the promises of fundamental rights enforceable a measure of judicial review is essential and indispensable¹. This body is supreme adjudicatory authority in democratic country. It is the duty of this body is to solve the disputes between and among the parties. Adjudication is primary function of judiciary. Under Indian federalism centre state relationship is also governed by the judicial pronouncements, we will find thousands of decisions which regulate the behavior of state. The present day judicial system in India is quite complicated and not easy to be explained in brief, in a type of work as the present one is². Indian Supreme Court is the most powerful court as compare to any Apex court situated in the world. Supreme Court of India came into existence on 26th January, 1950 and is located on Tilak Marg, New Delhi. The Supreme Court of India functioned from the Parliament House till it moved to the present building. It has a 27.6 meter high dome and a spacious colonnaded verandah. For a peek inside, you'll have to obtain a visitor's pass

from the front office. On the 28th of January, 1950, two days after India became a Sovereign Democratic Republic, the Supreme Court came into being. The inauguration took place in the Chamber of Princes in the Parliament building which also housed India's Parliament, consisting of the Council of States and the House of the People. It was here, in this Chamber of Princes, which the Federal Court of India had sat for 12 years between 1937 and 1950. This was to be the home of the Supreme Court for years that were to follow until the Supreme Court acquired its own present premises. The inaugural proceedings were simple but impressive. They began at 9.45 a.m. when the Judges of the Federal Court - Chief Justice Harilal J. Kania and Justices S. Fazal Ali, M Patanjali Sastri, Mehar chand Mahajan, Bijan Kumar Mukherjea and S.R.Das - took their seats³. Supreme Court of India is the highest adjudicatory authority in India. Freedom of religion is guaranteed under Indian constitution is subject to judicial review of public order, morality, and health. If anyone exercising liberty of profess, practice and propagate any religion as per choice, sometimes it is observed that exercise freedom of religion may create trouble for others. Such activity of state can be challenged as violation of freedom of religion. Judicial review is one of the weapons in the hands of judiciary and even state arbitrary action may be challenged before judiciary. Apex court being last resort must do the justice with the parties. The role of court in determining what constitute religion and essential religious practice has remained undiminished since the formative years of this doctrine⁴. It is expected from final judiciary that it shall do the justice with the aggrieved parties. The authority of courts of law is a weapon that can be used for justice and injustice. In the hands of just government it becomes best means of attending right and justice; but for a repressive and tyrannical government, there is no better weapon for wreaking vengeance and perpetrating injustice. Net to the battlefield it is the court room that some of the greatest acts of injustice in the history of world have taken place⁵. Article 13 of Indian Constitution empowers apex court to deal with judicial review of administrative, legislative and judicial actions itself. It means parliament and state legislatures cannot pass the laws which will take away the freedom of religion. Administrative actions also can be challenged if they infringe the fundamental rights of¹.

Article 25 of Indian Constitution and Role of Supreme Court of India:

There is plethora's of provision under Indian constitution which are committed to protect freedom of religion of private person as well as religious denominations. Article 25 of Indian constitution of India is called as reservoir of religious and secularism in India. It has crystal clear provisions when and how religious freedom is available and when this freedom can be curtailed. The text of Article 25 runs as: " Freedom of conscience and free profession, practice and propagation of religion.-

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (&) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. The court has evolved a formula of integral part of religion. It means that all rites and rituals are not essential or integral part of freedom of religion guaranteed under Article 25 of Indian constitution. In the present case court held that making gift for religious propose may be sacred according to particular religion but it must not be an integral part of religion. In *Dara Singh v. Union of India*⁸ apex court held that the state shall not interfere in the matters of religion any other incidental matter which is directly and substantially. In this way state was prevented from doing unnecessary interfere in religion or belief of a particular community. An interesting question was asked in *Bhuri Nath v. State of Jammu & Kashmir*⁹, whether a non Brahmin can be appointed as priest in Hindu temple, court with majority held any person who is well versed in the daily routine of affairs of temple and who can do all essential rites of deity as per religious beliefs is competent to be appointed as priest in any religious body. The basic question was regarding conversion of a person from one belief to another belief. Article 25 of Indian constitution provides freedom to profess any religion as per will and wish of person. If he want to be known by his new religion he have to fulfill certain conditions and merely his / her religion is mentioned in voters list or an application for telephone connection can not establish that he has professed a different religion than earlier. There is a

fourfold formula provided by the constitution of Indian under Article 25 is discussed as under.

Profess any Religion: Indian constitution lays down the three fold policy to exercise freedom of religion in India. Religion is nothing but way of life followed by followers. This way of life includes many things like believe in God, and not believe in God, it may include food habits, clothing's etc. Professing any religion means adopting a way of life as per the directions of any religion. It is full liberty of individual whether to profess a religion or not. There is no compulsion on individuals to profess any religion like theocratic countries. Professing any religion simply means following the principles of religion as per the will and wish of the person. Indian constitution provides fundamental right to every citizen of this country to profess any religion this also include not professing any religion and person can be an atheist means non believer.

4. CONCLUSION

The dispute as to worship, however, may be a dispute as to the worship of a deity in a particular temple or place. It appears to me that if such be the dispute then the dispute as to the worship necessarily involves a dispute as to the user of the land or building in which the particular deity is located. ... To deny the right of worship in a particular place is to deny the right to use that place in a particular manner. The right to worship as I have said cannot be regarded as something entirely apart from the place of worship ... it must be held that a dispute as to the right to worship a deity in a particular temple is a Dispute falling within the ambit of Section 147. As a matter of fact, many of these legal definitions and the whole reasoning behind the discussion on jurisdiction make use of notions that were originally developed for other purposes. A right to an office is taken as an instance of a more general right to property. The right to a religious office does not differ from the right to any other office, which means that it must satisfy the same conditions to be held valid. The right to worship is taken as just one instance of the right to access or use land and water, which is regulated by dispositions of the Criminal Code.

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