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Religious freedom VIS-A-VIS national interest and social reforms

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Introduction

The preamble to the constitution of India declares India as a secular state. Indian secularism respects and treats all religious faiths on equal footing and the State does not have its own religion but it gives due protection to all religions. Freedom of religion enshrined in the constitution under Arts.25-28 includes freedom of conscience, freedom to practice and propagate the faith and freedom to manage religions affairs. However, Article 27 puts a bar on the might of the State that it cannot compel the citizens to pay tax for the advancement of any religion or maintenance of religious denomination.

Like other fundamental right the freedom of religion is also not absolute in character and one is not free to do anything' in the name of religion. There has been a lot of controversy regarding the protection of national interest on one side vis a vis the religious liberty on the other side. The Apex Court, in the National Anthem Case [1], was called upon to decide a similar controversy, the court, following a judgment of the U.S. Supreme Court in the West Virginia State Board Case [2], gave predominance to the religion freedom as against national respect, national interest and national values. The Supreme Court, perhaps, did not give much credence to the fact that we are Indians first and thereafter Christians or Jehovas or Muslims etc. We all owe a national duty, in addition to the fundamental duties that we must respect our national flag and song. The instant ruling of the Apex Court will only add fuel to the fire and is likely to be interpreted as a license for all to disregard the sanctity of the National Anthem, National Flag and other National marks of the country which may endanger national integrity and unity of the country. It is, therefore; estimated that the judgment of the High Court in this case appears to be more sounds.

In the Ismail Faruque Case [3], the majority judgment of the Supreme Court appears to be more sounds as the State under its sovereign powers can acquire any land in public interest. The area and structure around Babri Masjid - Ram Janambhoomi has been a constant point of severe ethnic clashes and riots between Hindus and Muslims and, therefore, the Government has rightly intervened in the matter in the interest national solidarity and public order, after all the freedom or right to perform pooja or pay Namaj cannot be permitted at the cost of bloodshed.

In the Adelail Co. Case [4], the Australian Supreme Court has rightly laid down that anti-war propaganda cannot be allowed in the guise of religion or under the pretext of religions propagation, especially, when the nation is at war. Religions liberty is subject to national Security.

If, we look at the religions fabric of our country, then it becomes clear that it is so vast and wise to cover everything from birth to death of a persons. Therefore, power has been given to the State to regulate this freedom and to provide for social welfare, especially to eradicate social evil prevalent in the society for centuries together. The reformative zeal in the arena of religions faith and practices was must and envitable because of fantasies guiding most of the religious faith even to the extent of child or human sacrifice for religious benefit. Such activities, can, even be heard in the media reports of modern society. The concept of social reforms was inherited by the Indian constitution under Article 25 (2) (b) without impairing the religion freedom. But, the process of reformation, it appears, has been more in case of the Hindus society, whereas, the State has taken a precautionary approach in the field of orthodox Muslim society.

In the Narasu Appamali Case [5], the Bombay High Court upheld the Bombay Prevention of Hindu Bigamous Marriages Act, 1946 which declared "the contracting of bigamous marriage by a Hindu", a penal offence but on the other hand same was permitted- among Muslims. The court laid down that it is to be seen by the State that it want to bring about the reforms stages by stages or by community wise or territory-wise and the same cannot be applied uniformly to all communities. The court, further made it clear that the two communities cannot be treated absolutely alike as both are governed by separate and distinct personal laws based upon their separate religions texts. More so, polygamy has never been recognized among Hindus and monogamous marriage is, therefore, a rule without exceptions.

In the Srinivase Case [6], also the Madras High Court followed the principle laid down in the Narasu Case while upholding the validity of the Madras Hindu Bigamy Prevention and Divorce Act, 1949 and made it clear that bigamous marriage cannot be permitted as a policy among Hindus. In the Ram Prasad Case [7], the Allahabad High Court laid down that a person cannot be permitted and allowed to contract second marriage even on the failure of first wife to bear a son for pindadan and continuation of race and the name of the family. In such cases, the law permits adoption of a son, if the family realty desire to have a son, as the adopted son being an equally efficacious alternative to a natural son and within the framework of monogamous marriage. In short, the legislatures have laboured hard for the reformation of Hindu practices and to ward off any attempts towards plural marriages by giving solid legal justifications.

However, in the Muslim society, it appears, the approach of the legislature has been sluggish for reformation of various secular practices associated with the religion, though on many occasions, the courts have tried to regulate such secular practices amidst strong protests and objections raised by Muslim fundamentalists. In the Badruddin Case [8], the Allahabad High Court laid down that "under the personal law of Muslims a Muslim may have as many as four wives but

having more than one wife is not part of religion. There is no authority which precisely laid down that a Musalman must have more than one wife always or it o is obligatory upon him to have four wives at time."

In the Sahulameedu Case [9], the Kerala High Court made it clear that the benefits of a rule under Section 488 (3) Cr.P.C. regarding the maintenance cannot be denied to a Muslim wife who is staying away from husband after his second and subsequent marriages. In the Shah Bano Case [10], a lot of hue and cry was raised by the Muslim fundamentalists, over a controversial judgment delivered by the Apex Court while dealing with the right of a divorced Muslim wife under Section 125 Cr. P.C. The court laid down that Section 125(1) (b) which defines 'wife' as including a divorced wife, contains no words of limitation to justify the exclusion of Muslim women from its scope. Therefore, a divorced Muslim woman, as long as she has not remarried is 'wife' for the purposes of Section 125 and the statutory right available to her under this Section is unaffected by the provisions of the personal laws applicable to her. But, due to the pressure exerted by the Muslim fundamentalists on the ground that the judgment of the Apex Court is in violation of Shariat Law, the parliament has diluted the impact of the judgment by passing of the Muslim Woman (Protection of rights and Divorce) Act, 1986 adidst strong protests and agitations. Therefore, it is amply clear that the Muslim society resist the reformation and do not permit any one to look into their "religions affairs and practices" under the pretext of religious freedom and liberty.

As pointed out earlier, the freedom of religion is not absolute in nature and is certainly subject to power of the State to make laws for social welfare and social reforms. Therefore, the freedom of religion certainly cannot prevent State from throwing open all "Hindu Religions Institutions of Public Character" to all classes and sections of Hindus without any favour or discrimination. Undisputedly, the aforesaid right conferred by Article 25 (2) (b) is a right of "all classes and Sections of Hindus" to enter into a public temple and to have 'darshan'. The Scope and unqualified terms would cover individuals under Article 25 (2). Therefore, the right to enter a temple shall be available against individuals and against denominations. The fact is that, though Article 25 (1) deals with the right of individuals, Article 25(2) is much wider in scope and ambit, and has reference to the rights of communities, and controls Article 25(1) and 26(1). Article 25 (2) (b), therefore, prescribed a right to enter into a temple or other like institutions of public character (which are dedicated to the public as a whole or those founded for the benefit of Sections or denominations thereof) for the purposes of darshan and pooja, though subject to such regulations made by the Management in this behalf.

In the Vekatararnana Deraralu Case [11], while upholding the right of public to have 'darshan' and 'pooja' in a denominational temple, the court said that, however no member of the public could claim as a part of rights protected by Article 25 (2) (b) that a temple should be kept open for worship at all hours of the day and night, or that he should be allowed personally to perform the services of Archaks (poojaries) or special 'pooja' on certain occasions. The right of public will be not absolute in nature and is subject to such limitations which are made out by the denomination. But, simultaneously, the denomination cannot bar the public at large, absolutely, to have darshan and pooja in the religions institutions of public nature or temples. Further, the instrument or deed of dedication of a denomination will be guiding piece of evidence in determining the public vis—a-vis denominational rights over such institutions in the matters of internal discipline and manner of pooja etc.

The judgment of the Apex Court, is, however being criticized by some critics [12] on the ground that it would have been better if the Apex Court would have read Article 25(2) (b) as an integral part of Article 26(b), without applying the principle of harmonious construction for validating temple entry laws, as the same would have been more justified and logical. In the Yagnapurushdasji Case [13], Apex Court laid down that the Harijans cannot be refused entry into a public temple on superstitions, ignorance and complete misunderstanding of the teachings of Hindu religion and of the real significance of the tenets and philosophy taught by "Swaminarayan" himself.

In E.R.J. Swami Case [14], the court has tried to nationalize the institution of priesthood (poojaries) by holding that the act of appointment of a 'poojary' in a temple is a secular act and is not a religions practice, and, therefore, the monopoly of certain castes in the appointment of poojaries is bad. The people of other castes and the scheduled castes, therefore cannot be refused appointment of 'poojaries' or 'Archakas' merely on the grounds of caste. It is submitted that the decision of the court appears to be too much technical in the instant case. The courts were right and justified when they were trying and justifying the temple entry laws by enforcing the "Omnibus equality clause" but to prescribe reforms" in the area of religion" or to eliminate the hereditary usage ensuring denominational qualifications of the "Archaka or poojary" are apparently unjustified and, therefore, amounts to judicial encroachment of the religions liberty of a denomination.

In the Pogakula Laxmi Reddy Case [15], The A.P. High Court, while upholding the right of the public to worship a "Tarmind Tree" and the nearby place like a temple, refused the excavation of the place for taking out Kala Gnanam Bhandaru (knowledge of the future) on the basis of the disclosures made by Swami that he is reincarnate of some saint who had been the founder of that temple or disputed place in 4th century, and therefore, now he want to get back the preserved treasure i.e. Kala Gnanam Ehandaru (Knowledge of the future). The court declared the public right of worship. The A.P. High Court laid down that the court cannot decide the questions regarding the excavation of Kala Gnanam Bhandaru, the disclosures of Swamy, the issue of reincarnation of Swamy and the propriety of the Swamy over the place in dispute etc., under Article 226 of the Indian constitution.

The judiciary has played a vital role in the reformation of certain so-called' religious practices. In the A.I.D. Women Association and Janwadi Smiti Case [16], the Supreme Court upholding the restraint orders of the Government on the "performance of chunri ceremony" in the Ram Sati Ji Mandir laid down that Section 2(1) (b) of the Commission of Sati (Prevention) Act, 1988 prohibits the glorification of Sati "in any form."

But, in the Atheist Society - Case [17], however, the court refused to interfere and to issue a writ of mandamus to prohibit breaking of coconuts, performing of poojas, chanting of mantras or of different religions at State functions.' The A.P. High Court rejected the prayer of the petitioners and held that these activities have been a part of the Indian tradition and are

meant to provoke the blessings of the Almighty for the success of the project undertaken.

In the Anand Margis Case [18], the practice of procession with “Tandva Nritaya” in the busy streets of Calcutta and in the Cow Slaughter Case [19], the practice of slaughtering of cows and distribution of cow-flesh among Muslims on ‘Bakrid’, were not appreciated and considered as part of the religion by courts, and, therefore, not protected under At. 25 of the Indian constitution.

To implement the mandate of omnibus equalitarian clause, Art. 17 of the Indian constitution abolished ‘untouchability’ and prohibited its practices in any form. It is further provided that enforcement of any disability arising out of “untouchability” shall be an offence punishable in accordance with law.

In the Banwari Case [20], the Allahabd High Court upheld the convictions of certain “Dhobies” and “Barbers” under U.P. (Removal of Social Disabilities) Act, who had refused to render the personal services to Harijans.” In the Souriyar Case [21], the Madras High Court refused to issue declaration in favour of Caste Hindus restraining the Harijans from using the burial ground, customarily, reserved by the former for their use. In the Bhaishankar Case [22], the Bombay High Court declared that the Segregation practices followed in the canteen of certain mills, thereby, serving separately to Harijans and other caste workers, is offensive of the Bombay (Removal of Social Disabilities) Act,. 1947. In the Behari Lal Case [23] the Allahabad High Court held that refusing a person to take water from a public tap because the person belonged to scheduled caste, to be an offence under Section 7 (1) (b) of the Untouchability offenses Act, 1955. In the Ramchanderan Case [24], the head-Master of a Govt. Girls School was convicted for his discriminatory action in constituting a separate section of Harijan girls students of IXth standard without justification.

Therefore, it is clear from the above discussion that judiciary is playing a pivotal role in strictly applying the provisions of laws directed to eradicate the social evil of ‘untouchability’. In the E.R.J. Swami Case [25], the Court has even gone to extent that while appointing “poojaries or Archakas’ of temples the monopoly and favour of certain traditional caste in exclusion of other castes and Harijans, is discriminatory.

For the enforcement of “ominibus equalitarian clause”, the judiciary has not appreciated the power of Dadas’, Sardars’ or Dal’ to excommunicate a person from a tribal or a kabila or a community. The practices of Hukka-Pani Bandh’ or expulsion from caste or community are outdated and requires reconsideration in the modern and civilized communities. More so, neither the “freedom to manage the religions affairs” or protection under personal laws would validate the action of “Dadas” and “Sardars” who intent to expel persons of their tribal or Kabila or community on grounds of disobeyance of commands of such Sardars or for the violation of rules of such kabilas or communities. In the Saifuddin Case [26], the Apex Court has laid down by a majority decision that the head of a community cannot ex communicate a person from their society while “managing their religions affairs” under Article 26 (b) , as expulsion of a person from a community reduces such person like an untouchable and the practices of untouchability and caste based disfavours have already been abolished. Similarly, the practices of Hukka-Pani Bandh though very common in villages, are devoid of any legal force and sanctity.

A lot of reformation has been done by the Union and State Governments, in the financial administration or secular administration of denominational or other like properties. The courts have also backed the executive orders and the legislations in this behalf. More so, the role of Union Govt. is certainly praiseworthy in providing the facilities for yatries to Amaranth, Vaishnu Devi, Kailash Mansarovar, Haz, Badrinath, Neelkanth etc.

In the Aurbindo Ashram Case [27], the Apex Court has upheld the constitutionality of Aurbindo (Emergency Provisions) Act, 1980,Wherein the Govt. Took over the secular administration of the ‘Ashram’ as the ‘management’ of the Aurbindo Ashram was engaged in corrupt practices and was guilty of mismanaging the affairs of Ashram. The Govt. had received numerous complaints in this behalf. Similarly in the Bia Kishore Case [28], the Supreme Court upheld the action of taking over the secular administration of Shri Jagan Nath Temple from the Raja of Purl and Vesting it in a committee. In the Babri Masjid Case [29], the Apex Court has upheld the governmental action to acquire the disputed structure and the adjoins land under its sovereign powers to avoid the probable blood-shed and Hindu-Muslim riots till the matter is finally disposed of by the Apex Court. In the Gulam Abbas Case [30], the court wisely ordered the shifting of the two graves of Sunnies to avoid the clashes between Shias and Sunnies and in larger interest of society as there had’ been long-standing controversy over these graves and many a times tensions prevailed in the communities, though Shariat law is against shifting of graves.

In the All India Iman Organization Case [31] the Apex Court has delivered a land mark judgment and came to the rescue of Imams for the payment of some honorarium for their subsistence so that they could better manage the Muslim religions places.

The parliament has recently passed a Uniform Wakf Act, 1995 for better management and proper administration of wakf properties and to check the possible misuse and mal administration of such properties.

In last, the Parliament must take up the initiative of framing a Uniform civil Code by taking the Muslims in confidence and without injuring their religions tenets and freedom.

Furthermore, we must keep in mind that freedom of religion” is given to Choose a path to attain ‘Moksha’ or to purify your soul or to get religions advantage and the same cannot be permitted to be misused for ulterior objectives. Lastly, we are Indians first, and, thereafter Hindus, Muslims, Sikhs or Christians, therefore, national interest and solidarity must predominate over other issues including religion.

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