



Court cases in India related to secularism

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Abstract

Shortly afterwards, Supreme Court reaffirmed this ruling and held : the free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief is... subject to state regulation and that religious practices or performance of acts in pursuance of religious belief are as much part of religion as faith or belief in particular. The court further held that under Article 25- a person has fundamental right to exhibit his beliefs in such overt acts as are enjoyed or sanctioned by his religions and that no outside authority has any right to say that these are not essential part of religion and it is not open to the secular authority to restrict or prohibit them in any manner they like.

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Introduction

In another case, the Supreme Court treated as settled those matters of religion in Article 26(b) to include even practices which are regarded by the community as part of its religion. In the cow-slaughter case the court read into Article 25 the essential-non essential dichotomy. In this case the petitioners, Muslim butches, questioned the validity of laws prohibiting slaughter of cow and its progeny under various fundamental rights, including religious freedom. They contended that the challenged laws which prevented them from sacrificing on Id-UI Zuha as required by their religion violated their religious freedom. The court rejected this argument and held, relying on a Quranic verse that sacrifice of cow on Id-UI-Zuha was optional and not obligatory. The Supreme Court also disregarded the warning even in Ratilal that no outside authority has any right to pronounce on the essentials of religious practices. In the Gurudwara case, the court followed Lakshmindra and Ratilal, ignoring the cow slaughter case: Under Art. 26 (b), a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rights and ceremonies are essential according to the tenets of religion they hold. In the Durgah Committee Case the court struck yet another discordant note : Whilst we are dealing with this point it may not be out of place incidentally to strike a note of caution and observe that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not essential or an integral part of religion are apt to be clothed with a religious from and may make a claim for being treated as religious practices within the meaning of Article 26 Similarly even practices, though religious, may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an essential and integral part of a religion, their claim for the protection under Article 26 may have to be carefully scrutinized; in other words, the protection must be confined to such religious practices as are an essential and an integral part of it and not otherwise.

In the Ex-Communication case the Bombay High Court held without over-ruling Lakshmindra, Retilal and Devaru what constitutes an essential part of a religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion. To sum up, Lakshmindra, Jagannath, and Ratilal did not state clearly whether religion in Articles 25 and 26 (b) encompass only essential ceremonies and acts. Ratilal expressly foreclosed determination of essentialness of religious practice by a secular authority, Devaru treated this issue as settled, and Gurudwara followed Ratilal and Devaru. The cow slaughter case, professing to follow Ratilal, limited constitutional protection to essential religious practices only the Durgah Committee case further refined the already fine essential non-essential dichotomy by emphasizing the difference between religion and superstition and the ex-communication case held that only court could determine essentialness of a religious practice. According to the last decision a non-essential practice is not entitled to constitutional protection while an essential practice is not immune from state regulation. This is the implication of Articles 25 and 26; As the courts can determine the essentialness of a religious practice with reference to the scriptures of a religion, commentaries on the scriptures will ultimately govern and determine the content and extent of Articles 25 (1) and 26 (b). With such an expansive interpretation, the state may even encroach upon the quintessence of religion, like idol worship in temple or congressional prayer in a mosque, if it can justify its action as one which is aimed at social welfare and reform; the courts will, of course, be the ultimate arbiter – It can easily strike down such legislation as a fraud upon the constitution if there is no evil to be eradicated by it or if the evil is too trivial to warrant such outrageous action, or if the state has enacted such legislation with ulterior motives.

The judgment of the Supreme Court in the Ex-communication case, referred to earlier, is conservative and retrograde. In 1949, the Bombay Government passed the prevention of Ex-communication Act. This Act sought to restrict the head of the Dawoodi Bohra community from excommunicating persons for choice, standing for election without approval and the like. A

person ex-communicated has to sever his connection with his wife and family, or else they too would be excommunicated. The Syedna, head of the Bohra Community, appealed to the Supreme Court against the Bombay Government's Prevention of Ex-communication Act contending that it violated article 26 of the constitution. The majority judgment, in effect, asserted that if the right of the religious head to excommunicate had been traditionally accepted by the community, then it constituted an essential part of religion. As a result, the Bombay Act was struck down. However the saving grace was that the Chief justice of Supreme Court, Mr. Justice B.P. Sinha appended a note of dissent, He asserted that ex-communication, as it was being practiced, was not a purely religious matter. It made a person into an untouchable and the expunged Act only carried out the injunction of Article 17. The reformist Bohras, despite the lapse of 47 years, have yet to appeal against this judgment as P.C. Chatterjee asks, if any practice which has been in operation for centuries becomes an essential part of religion and cannot therefore be changed, how is secularism going to be possible?

The verdict of the Supreme Court delivered in January 1997 upholding the constitutional validity of the Jammu and Kashmir Sri Mata Vaishno Devi Shrine Act, 1988 makes a distinction between religious service and the person who performs this service. It says that though the performance of the "ritual ceremonies" according to tenets and customs was "integral part" of the religious freedom guaranteed under Article 25 of the constitution and could not be regulated by the state, securing the service of the priest, who perform ritual ceremonies, was a secular activity and within the regulatory power of state. The state has powers to regulate the appointment of the priest and can fix his emoluments, abolish his customary share in the offering to the deity, sequel to the right of the legislature to abolish the hereditary rights of the priests. The judges held that a balance has to be between right to religious belief and faith and the restrictions that can be imposed by the state in such matters. The Supreme Court has also, in connection with cases of mis-use of religion in electioneering, thrown valuable light on the concept and practice of secularism in India.

References

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