

ROLE OF RELIGION IN INDIAN CONSTITUTION (IN RESPECT OF SECULARISM)

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ABSTRACT

The jurisprudence of freedom of religion under the Indian Constitution presents us with a muddled picture. With a complicated history of denominational religion and reform, these provisions have been seen to be the very root of the 'social revolution' which the Constitution intended to mark. At the same time, the restrictive interpretation of arts of the Constitution, in the form of what I have called the doctrine of 'essentiality', has failed to gather enough attention. Moreover, it is argued that this construction of the text re-aligned the constitutional conception of secularism, something that is not often noted. While this construction strengthened the power of the state to regulate denominational religion, it reduced 'constitutional secularism' to a concept antithetical to the individual's right to freedom of religion. On the whole India is a unique Asian state legally swearing by the ideals of secularism and religious neutrality and yet preserving its age-old spirituality. How this is done, this presentation explains and illustrates.

KEYWORDS: Constitution, freedom, religion, history, Indian, Secularism, individuals, power, etc.

INTRODUCTION

The constitution and other laws and policies protect religious freedom and, in practice, the government generally respected religious freedom; however, some state-level laws and policies restricted this freedom. India is a secular republic, with all religions offered equality under the law [1]. There was no change in the status of respect for religious freedom by the government during the reporting period. Some state governments enforced existing "ant conversion" laws, and some local police and enforcement agencies in certain instances were not swift to counter communal attacks, including attacks against religious minorities [2]. The country is the birthplace of several religions, Hinduism, Buddhism, Jainism, and Sikhism, and home for thousands of years to Jewish, Zoroastrian, Muslim, and Christian communities. The vast majority of citizens of all religious groups lived in peaceful coexistence and was conscious of religious freedom and minority rights; however, at times, violence between religious groups and organized communal attacks against religious minorities occurred during the reporting period [3]. The Constitution of India enacted on the 26th day of November 1949 resolved to constitute India as a Union of States and a

sovereign, socialist, secular, democratic republic. Today, a population of over one billion Indians lives in twenty eight states and seven union territories within India. In addition, about twenty five million Indians called non-resident Indians, reside in foreign jurisdictions. Within the territory of India, spread over an area of 3.28 million sq. kms the large Indian population comprised of multicultural societies professing and practicing different religions and speaking different local languages coexist in harmony in one of the largest democracies in the world [4].

REVIEW OF LITERATURE

This study seeks to evaluate the efforts to achieve these perceived goals of effectuating change and managing conflict—through the judicial process, by examining its effects in the context of the religion based conflicts of India and Israel. By way of an empirical comparison the study considers: (i) the judicial impact on the realization of fundamental rights, the rectification of existing discriminatory practices, and the advancement toward a more pluralist and egalitarian society; (ii) the judicial contribution to generating authoritative resolution to religion-based conflicts; and (iii) possible long term social and political implications stemming from judicial intervention in policy questions concerning hotly disputed religion-based conflicts.

Several reasons dictate the choice of India and Israel for this study. Obvious differences aside, these states share historical and geo-political resemblances [5]. Both states emerged from British rule roughly at the same time, experiencing difficult independence wars that left both of them deeply divided along ethnic and religious lines. In time, both states

became nuclear powers that remained susceptible to regional religio-political conflicts. India and Israel belong to the common law tradition, bestowing legal development primarily in the hands of courts. Judicial activism by the Indian and Israeli supreme courts evolved from a phase of initial restraint into extensive engagement in politically charged policy questions [5]. Finally, the political attempt to define the role of religion for these democracies has been a grueling task since their inception. The complex multicultural realities in both states effectively negated the possibility of separating religious and state affairs, but the ongoing attempt to demarcate this relationship resulted in a deeply polarizing social conflict.

1. RELIGIOUS PERSECUTION

Religious Persecution is not a new phenomenon in India. Christians, as well as Muslims, have faced widespread attacks for decades preceding India's recent anti-conversion legislation. Hinduism and Islam are India's two most prominent religions. India became predominately Hindu after the British "partition of the subcontinent and loss of Pakistan's largely Muslim population" in 1947. Currently, "Hindus . . . make up about three-fourths of India's population." "Muslims, however, are still the largest single minority faith," and Christians form an important minority as well. Religious persecution has continued with increased frequency since India's independence in 1947. Religious conflict in India is deeply rooted in the ethnic and religious character of the continent and in its caste system: "[f]or the last 52 years, India has entirely escaped any kind of international scrutiny of what's been called India's 'hidden apartheid'—abuses stemming from the caste system."

In a 2006 report, Christian Solidarity Worldwide noted, “the widespread ongoing discrimination against Dalits [India’s lowest class] and tribal forms the context for substantial social and political animosity towards religious conversions in India.” [6]

2. RELIGION, LAW AND JUDICIARY

Among the seven nations of South Asia forming the South Asian Association for Regional Cooperation (SAARC), India stands out as the only country that has declared itself a secular State. In each of the remaining six nations, one or another spiritual faith has the status of the officially adopted or legally promoted religion—Buddhism in Bhutan and Sri Lanka; Hinduism in Nepal; and Islam in Bangladesh, Maldives, and Pakistan.

Constitutionally, India is a secular country and therefore has no State religion. However, it has developed over the years its own unique concept of secularism that is fundamentally different from the parallel American concept of secularism requiring complete separation of church and state, as also from the French ideal of *laïcité*. Despite the clear incorporation of all the basic principles of secularism into various provisions of the Constitution when originally enacted, its preamble did not then include the word secular in the short description of the country, which it called a “Sovereign Democratic Republic [7].” This was, of course, not an inadvertent omission but a well-calculated decision meant to avoid any misgiving that India was to adopt any of the western notions of a secular state. Twenty-five years later—by which time India’s peculiar concept of secularism had been fully established through its own judicial decisions and state practice, the preamble to the Constitution was

amended to include the word “secular” (along with “socialist”) to declare India to be a “Sovereign Socialist Secular Democratic Republic.”

3. MAKING OF THE INDIAN CONSTITUTION

India from the beginning of recorded history had to face a long succession of foreign invasions. In the 16th century, the wealth of India attracted a host of European traders to India. The Dutch, the French and the British merchants became the favorable rivals to the earlier traders, the Portuguese. All of them were attracted to India by its fabulous wealth, and none came to settle here. The British traders came to India in the 17th century and certain British traders approached their Queen for a charter to carry on trade with East India’s. The charter was granted in December 31, 1660 and there by the East India Company was given exclusive right to carry on trade with India [8-10]. During the 17th century the Mughal Empire expanded and reached its zenith in India. After the death of Aurangzeb, the Mughal Empire rapidly disintegrated. This gave East India Company a chance to establish its dominion in India. It began its career of conquest in 1757, the battle of Plessey. A hundred years after the battle, the East India Company established its undisputed sovereignty over the whole of India. By the great revolt of 1857, the company’s rule was terminated and the country passed under the direct rule of the British Crown; under the Government of India Act. 1858. The Act was dominated by the principle of absolute imperial control without any popular participation of Indians in the administration of India [11-14]. The subsequent history of India up to the making of the constitution (1949) is of

gradual relaxation of imperial control and the evolution of responsible government.

4. VALUES OF THE INDIAN CONSTITUTION

The celebration of the diamond jubilee of our Republic and the Constitution last year gives us a satisfying remembrance of the challenge once offered by Lord Birkenhead, the then Secretary of State for India, way back in 1927, who was skeptical about the capacity of the Indians in producing an enduring Constitution to which there would be a fair measure of general approval.

Further, we are the largest democracy in the world today, much beyond the perception of the West that a Constitutional government for such a populous, poor and plural society like India would be a mismatch [15]. On both the counts, credit goes to the founding fathers of our Constitution who were both pragmatic and visionary in their approach and attitude while embarking on, what Granville Austin says, perhaps the greatest political venture since that originated in Philadelphia in 1787. In this context, Pandit Nehru's statement during a debate in the Constituent Assembly (CA) on 8 November 1948 sounds very appropriate to be quoted here. He said, The Constitution is after all some kind of legal body given to the ways of Government and the life of the people. A Constitution if it is out of touch with the people's life, aims and aspirations, becomes rather empty: if it falls behind those aims, it drags the people down [16-18]. It should be something ahead to keep people's eyes and minds made up to a certain high mark-Remember this that while we want this Constitution to be as solid and as permanent a structure as we can make it, there should be a certain

flexibility. If you make anything rigid and permanent, you stop a nation's growth, the growth of a living, vital, organic people. Accordingly, our Constitution was drafted keeping in mind the expectations of the freedom loving Indians of that time leaving enough scope for its dynamism to cater to the needs of future generations as well. In other words, our Constitution instead of being solely the resultant of a parallelogram of forces which operate at the time of its adoption was projected for the unknown future.

CONCLUSION

A net analysis of the various propositions and viewpoints discussed above drives home the ideal solution that for Indians there is needed one indigenous Indian law applicable to all its communities which coexist democratically. Analytically speaking, the answers to the social issues discussed above are within the system. Codification of a unified civil code may be the ultimate solution. Other measures will only tide over time. Judicial verdicts will keep the momentum going. Accommodating personal laws of all religions under such a code is an uphill task. It may take time. The legislature will ultimately have to perform this onerous duty of drafting the Code. Religion will have to keep pace with law. Unity in India exists in its diversity. Times have moved ahead, but personal laws have not kept pace. The courts in India perform a Herculean task in carving out solutions on a case to case basis. The executive and the legislature arms of the government in India however now need to contribute to provide the much needed solutions. In the e-age today, the path to progress must be chartered with harmony at home. As the largest democracy in the world, India has an opportunity to be a role model in various aspects of family laws.

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