

Religious denominations under the Indian Constitution

By

rashi sharma -November 2, 2018

In this article, Rashi Singh discusses the provisions of article 25 and 26 of the constitution with reference to religious denominations.

Religion has direct implications on our lives. Dr B.R Ambedkar said, “The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death.”[1] It is also often quoted that Hinduism is a way of life and not just a religion. Therefore the constitution in Part III under Articles 25 & 26, distinctly grants the fundamental freedom to religion. This right is established in two respects: first, the right of an individual to practice, profess and propagate religion, second, the right of the denomination or sections. Undoubtedly these come with restrictions in the form of public order, morality and health.

Article 25 is an individual right as opposed to the 26 which is a collective right granted to a religious denomination. It forms an intricate intersection of individual and group right in the constitution.^[2] Group right being the right of the religion to operate as an organised faith. Article 26 clause (a) to (d) enumerate four rights which are- to establish and maintain religious institutions, manage its own affairs in matters of religion and rights pertaining to owning, acquiring and administer property.

RELATION OF ARTICLE 25 AND ARTICLE 26

The words subjecting Article 25 “to the other provisions of this part” expressly circumscribes its operation. However, such a clause is absent in Article 26 which is only subject to ‘public order, morality and health’. Thereby it can be inferred that Article 26 gives precedence to the rights of the denomination and establishes denominational autonomy. In the scheme of the constitution, it appears that Article 26 is not made subject to the provisions of Article 25. However the Supreme Court in the judgment of *Sri Venkataramana Devaruand Ors. v. The State of Mysore & Ors.*[3] harmoniously constructed the two provisions. The court declared Article 25(2) to have a wider scope of application.

Article 26 must yield to restrictions found in Article 25, such that the right granted under Article 26 cannot substantially reduce the right in Article 25.

WHAT IS A RELIGIOUS DENOMINATION⁴?

The constitution does not define 'religious denomination'. In the landmark judgment of the *Commissioner Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*^[4] a denomination is "a collection of individuals, classed together under the same name; now almost always specifically, specially a religious sect or body having a common faith and organisation and designated by a distinctive name." *S.P Mittal*^[5] further settled the law on the determination of the nature denomination.

Thus if a body has a:

1. Common Faith
2. Common Organisation
3. Distinctive Name; it categorises as a religious denomination.

Article 26 also includes the word "section" making it inclusive of a sect or sub-sect of a religion.^[6] Thus, Arya Samaj will be a religious denomination for the purposes of this article even though it is not a religion in itself.

The term religious denomination in Article 26 is different from that found in Article 30 which includes religious and lingual minorities. The extent of the denomination is immaterial to exercise the protection under Article 26.

RIGHTS GUARANTEED UNDER ARTICLE 26

- Right to establish and maintain institutions for religious and charitable purpose.

The constitution makers believed that for the establishment of religious and charitable institutions it is vital to have the right to freely manage and administer thereof.^[7] For a religious denomination to maintain the religious institution, it has to be first established by the denomination claiming such

right. As in the case of *Azeez Basha v. Union of India*[8] the court refused to grant Aligarh Muslim University protection under Article 26(a). Since it was constituted under a statute and not by Muslims, the community does not have the exclusive right to administer it.

- Right to manage its own religious affairs.

Article 25(2) (b) upholds the individual's protection from discrimination and Article 26(b) on the contrary upholds the institutional right to an organised religious practice. This apparent inconsistency was resolved by the court in *Devaru's case*[9] where the court held that "matters of religion" in Article 26 includes those tenets and practices of a religion that are basic to the religion fall within its ambit. Basically, the court extended the application of the 'Essential Religious Functions Test' evolved in the *Shirur Matt's case*.[10](discussed later) As a result, the entry of Harijans was allowed in the temple except for certain ceremonies when only members of the community are entitled to participate to the exclusion of all others.

- Right to own and acquire movable and immovable property along with the right to administer it.

The right to own and acquire property is an important right for any institution to manage its own affairs.^[11] It is not possible for a body to function effectively if it does not have the freedom to manage and administer its property. This is not an absolute right in the sense that it does not take away the power of the state to acquire the property of the religious denomination.[12] Therefore, not only the denomination but also the state can govern the property. The restriction, however, has to be reasonable and not of nature so as to completely negate the right. Moreover, the clause (d) uses the phrase 'in accordance with the law' which entails that state can regulate the administration by means of a valid legislation. This is also the distinction between clause (b) and clause (d). The right to manage religious affairs cannot be abridged by any law. These principles were established in the *Ratimala Panachand Gandhi v. the State of Bombay*.[13]

LANDMARK JUDGMENTS.

The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.[14]

In this case provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951 was challenged as being violative of freedom of religion and right to property.

The Supreme Court formulated the 'essentiality test' when defining religion. According to the court, only those practices and rituals that form an integral part of the religion must be taken into account. In effect, after this judgment, not all practices can form part of the religion and be protected under the constitution. Only those practices and tenets that are essential to the religion are protected. For example, namaz is an essential practice in Islam but the offering namaz in a mosque is not an essential feature of Islam. Secular matters not governing the religious beliefs do not form part the religion. For instance, managing the property of the temple is secular practice. In determining the essentiality of the essence of a practice the court has generally relied heavily on the scriptures and preaching of the saints.[15]

Sri Venkataramana Devaruand Others v.The State of Mysore and Ors.[16]

In this case, trustees of the temple of Shri Venkataramana of Moolky Petta challenged the Madras Temple Entry Authorisation Act, which allowed entry of Harijans in the temple, as breaching the right to manage its own affairs.

Here an appeal to the HC decision was filed by the trustees of the temple of Sri Venkataramana of Moolky Petta demanding to uphold the ban of entry Harijan into the temple premises. The Temple of claimed to be a religious denomination having an absolute right to manage its own affairs with respect to its religious practice and outside the purview of governmental control. The High court maintained the prohibition only certain instance of special ceremonies but however upheld the public right to worship. The Supreme Court when dismissing the appeal reasoned that Article 25(2) (b)

must be read harmoniously with Article 26 i.e. it must be given a liberal interpretation to benefit the public. It also declared that Article 26 is not an absolute right and yields to the restrictions found in Article 25. The scheme in Article 26 was further read down by extending the application of the essentiality principle to clause (b) 'matters of religion.' The entry of Harijans was allowed with the exception of some special ceremonies when entry could be restricted.

Durgah Committee, Ajmer v. Syed Hussain Ali.[17]

In this landmark case, pertains to the administrating the tomb of Sufi saint Hazrat Khwaja Moin-uddin Chishti of Ajmer. The respondents challenged the Dargah Khwaja Saheb Act, 1955 as ultra vires the constitution under Article 266. Their claim: Khadims, have been custodians of the tomb, since historical times. Khadims do not associate with the Hanafi school of Islam. But identify as 'Chisti Sufis' of the Chisti Order of Sufis, a sect under Islam. (Religious denomination-Article 26)

Consequently, the Khadims claim to have the exclusive right to manage their religious affairs. Under the impugned act, even a Muslim belonging to the Hanafi school of Islam could be appointed to the Durgah administrative committee. The appeal, filed by petitioner was against the judgement of High Court favouring the respondents.

The Supreme Court conceded that Chisti were religious denominations, however also agreed to the law propounded in Shirur matt's case and Devaru case that essential religious practices are applicable to matters of religion. It came to the conclusion that Act regulated solely the secular matters. As the committee was only responsible for the administration and endowments of the durgah, the Act was held to be consistent with the right of the sect.

Further, it observed that Article 26 preserves only existing rights of the denomination and does not seek to create new rights for the denomination. A right cannot be accorded protection found under matters of religion if is not found in Art. 25.

Dr M. Ismail Faruqui v. Union of India.[18]

The Ismail Faruqui case has become the centre of debate in the ongoing Babri Masjid case. Herein the Supreme Court addressed the question of acquisition of the religious property by the State. The court held that mosque, temple and churches are immovable property under Article 26. But the state can acquire immovable property because it is not an integral part of the religion. It is the right to worship at any and every place is not essential unless the particular place has a certain intrinsic value. The court also noted 'the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger national purpose keeping in view that such acquisition should not result in the extinction of the right to practise the religion.'

Indian Young Lawyers Association v. The State of Kerala on 28 September 2018.[19]

The most recent judgment is with regard to the entry of women in the Sabarimala temple complex. The five-judge bench in its majority opinion held that prohibition on the entry of women within the sanctum sanctorum of the temple is unconstitutional.

According to the court, Sabarimala temple is not a separate religious denomination because it does not satisfy the requirement of a distinctive name. It is controlled by the States under Article 290-A of the constitution and regulated by a statutory Board constituted under Travancore-Cochin Hindu Religious Institutions Act, 1950.

Further, this cannot be saved under Article 26(b) since it is controlled by article 25. Barring of the menstruating women is violative of their right to equality (Article 14), right to freedom of religion (Article 25) and is patent discrimination on grounds of sex(Article 15(2)).

CONCLUSION

It is clearly discernible that in under the Indian constitution freedom of religion also includes the group's right to pursue an organised religion. The judiciary has over time in furthering the cause of

the individual has subjected this group right to the individuals right. Article 26 has been made subject to the doctrine of essential religious practices albeit article 26 is explicitly devoid of any phrase or word projecting it to the influence of any other provisions. This view of the court as it stands today, has been forcefully critiqued by Justice Indu Malhotra, in her dissent in the Sabarimala temple case^[20] wherein she clearly states “*Unlike Article 25, which is subject to the other provisions of Part III of the Constitution, Article 26 is subject only to public order, morality, and health, and not to the other provisions of the Constitution. As a result, the Fundamental Rights of the denomination is not subject to Articles 14 or 15 of the Constitution.*” Nonetheless, the Indian constitution is remarkable, as it is the only constitution to fundamentally secure the right of an organised faith and guard the religious institutions in a pluralist society such as India.

[1] https://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-12-02 [2] Abhishek Singhvi, “India’s Constitution and Individual Rights: Diverse Perspectives” 41 *George Washington International Law Review* 327 (2009) at p. 333. [3] 1958 AIR 255. [4] 1954 AIR 282 [5] *S.P. Mittal v. Union of India and Others*, 1983 SCR (1) 729. [6] *Commissioner of Police v. Acharya Jagdishwarananda Avadhuta* AIR 2004 SC 2984. [7] CONSTITUENT ASSEMBLY DEBATE, December 7, 1948 *Speech by Lokanath Misra*. available https://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-12-07 [8] AIR 1968 SC 662. [9] *Sri Venkataramana Devaru and Ors. v. The State of Mysore Ors.* 1958 AIR 255. [10] *Id.* [11] H M Seervai, *Constitutional Law of India* (Universal Law Publishing Co., New Delhi, 4th edn., vol. 2, Reprint 2011). [12] *Narendra Prasadji v. the State of Gujarat*, AIR 1974 SC 2098. [13] AIR 1954 SC 388 [14] <https://indiankanoon.org/doc/1430396/> [15] *See Nikhil Soni v. Union of India & Ors.* 2015 Cri LJ 4951. [16] <https://indiankanoon.org/doc/1896039/> [17] <https://indiankanoon.org/doc/1262157/> [18] <https://indiankanoon.org/doc/37494799/> [19] <https://indiankanoon.org/doc/163639357/> [20] *Idib.*