

CHAPTER III

RELIGION UNDER CONSTITUTION AND RELATED LAWS

3.1. The Indian Concept of Secularism

3.1.1. Declaration of Secularism

Constitutionally, India is a secular country and 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* - described as 'an essential compromise whereby religion is relegated entirely to the private sphere and has no place in public life whatsoever'.

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the clear incorporation of all the basic principles of secularism into various provisions of the Constitution when originally enacted, its preamble did not then include the word 'secular' in the short description of the country which it called a 'Sovereign Democratic Republic'. This was 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 own concept of secularism had been fully established through judicial decisions and state practice - the preamble to the Constitution was amended by the Constitution (Forty-second Amendment) Act 1976 to include the word 'secular' along with 'socialist', to declare India to be a 'Sovereign Socialist Secular Democratic Republic'.

As will be seen below, there is a blend of secular and religious elements within the text of the Constitution and it is this admixture that defines and determines the contours of secularism to be acted upon by the State and the religious freedom to be exercised by individuals and communities in modern India. We are a secular nation, but neither in law nor in practice there exists in this country any 'wall of separation' between religion and the State - the two can, and often do, interact and intervene in each other's affairs within the legally prescribed and judicially settled parameters. Indian secularism does not require a total banishment of religion from the societal or even State affairs. The only demand of secularism, as mandated by the Indian Constitution, is that the State must treat all religious creeds and their respective adherents absolutely equally

and without any discrimination in all matters under its direct or indirect control.

In an early case after the commencement of the Constitution a court had examined the US principle of the 'wall of separation' between religion and State and Concluded that there are provisions in the Indian Constitution which are 'inconsistent with the theory that there should be a wall of separation between Church and State' - *Narayanan Namboodripad v State of Madras* AIR 1955 Mad 385.

In the leading case of *SR Bommai v Union of India* (1994) 3 SCC 1 various judges of the Supreme Court of India individually explained the significance and place of secularism under the Constitution in very meaningful words sampled below:

- (i) The Constitution has chosen secularism as its vehicle to establish an egalitarian social order. Secularism is part of the fundamental law and basic structure of the Indian political system.
- (ii) Notwithstanding the fact that the words 'Socialist' and 'Secular' were added in the Preamble of the Constitution, the concept of secularism was very much embedded in our constitutional philosophy from the very beginning. By this amendment what was implicit was made explicit.
- (iii) Constitutional provisions prohibit the establishment of a theocratic State and prevent the State from identifying itself with or otherwise favouring any particular religion
- (iv) Secularism is more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions.
- (v) When the State allows citizens to practice and profess their religion, it does not either explicitly or implicitly allow them to introduce religion into non-religious and secular activities of the State. The freedom and tolerance of religion is only to the extent of permitting pursuit of spiritual life which is different from the secular life. The latter falls in the exclusive domain of the affairs of the State.

National Flag, Anthem & Emblem

The National Flag of India with its saffron, green and white colours and the Buddhist wheel of *dhamma* (faith) is seen by many Indians as religious symbolism, though legal texts do not specify this implication.

India's National Anthem is more conspicuously religious. Drawn from a Bengali-language song, it invokes the Supreme God:

*Jan gan man adhinayak jaya hey Bharat bhagya vidhata
Punjab, Sind, Gujarat, Maratha, Dravid, Utkal, Banga
Vindya, Himachal, Yamuna, Ganga, Uchchhal jaldhitranga
Tav shubh namey jagey, tav shubh ashish mangey, gahey tav jaya gatha
Jan gan mangai dayak jaya hey Bharat bhagya vidhata
jaya hey, jaya hey, jaya hey, jaya jaya jaya hey*

*Master of minds of people, victory to Thee, Lord of India's destiny
Punjab, Sind, Gujarat, Maharashtra, South, Orissa and Bengal
Vindhya, Himachal, Yamuna, Ganga and waves of Indian sea
They all echo Thy name, seek Thy blessings and sing Thy praise
Giver of happiness to people, victory to Thee, Lord of India's destiny.
Victory to Thee, victory to Thee, victory to Thee, victory, victory, victory
to Thee*

The National Emblem of India is an adaptation from Ashoka's pillar at Sarnath superscribed with the Vedic expression *Satyameva jayate* (truth alone triumphs) in Devnagari script. The emblem is used on all official stationery and seals of the government of India. It also appears on government publications, coins and currency notes.

3.1.2. Proposed Amendments

On two different occasions attempts were made to amend the Constitution with a view to further strengthening and clarifying its provisions on secularism, but the Bills moved for this purpose could not be enacted for technical reasons. Among these Bills were:

- (a) Constitution (Forty-fifth) Amendment Bill 1978 proposing to define the expression 'Secular Republic' as 'a Republic in which there is equal respect for all religions'.
- (b) Constitution (Eightieth Amendment) Bill 1993 seeking to empower Parliament to ban parties and associations if they promote religious disharmony and disqualify members who indulge in such misconduct.

3.2. General Constitutional Provisions on Religion

3.2.1. Equality & Non-Discrimination

The Constitution of India contains in its Chapter on Fundamental Rights several provisions that emphasize complete legal equality of its citizens irrespective of their religion and creed and prohibit any kind of religion-based discrimination between them. Among these provisions are the following:

1. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India - Article 14.
2. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them, either in general or in the matter of access to or use of general and public places and conveniences - Article 15.
3. There shall be equality of opportunity for all citizens in the matter of employment or appointments under the State and no citizen shall, on grounds only of religion be ineligible for, or discriminated against, in respect of any employment or office under the State - Article 16.
4. The traditional religious concept of 'untouchability' stands abolished and its practice in any form is strictly forbidden - Article 17.
5. If the State imposes compulsory service on citizens for public purposes no discrimination shall be made in this regard on the ground of religion only - Article 23(2).

To meet the demands of Article 17 noted above, soon after the commencement of the Constitution Parliament had enacted an

Untouchability (Offenses) Act, which was later amended and renamed as the Protection of Civil Rights Act 1955. The Act prescribes penalties for the practice of untouchability in various specified forms. A second law enacted in this respect is the Scheduled Castes and Scheduled Tribes (Prevention of Arocities) Act 1989.

3.2.2 Freedom of Religion

Individual's Rights

Religious freedom as an individual's right is guaranteed by the Constitution to 'all persons' within the following parameters:

1. All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion - Article 25(1).
2. There shall be freedom as to payment of taxes for promotion of any particular religion by virtue of which no person shall be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religious denomination - Article 27.
3. No religious instruction is to be provided in the schools wholly maintained by State funding; and those attending any State-recognized or State-aided school cannot be required to take part in any religious instruction or services without their (or if they are minor their guardian's) consent - Article 28.

Group Rights

Freedom of religion is guaranteed by the Constitution of India as a group right in the following ways:

1. Every religious denomination or any section thereof has the right to manage its religious affairs; establish and maintain institutions for religious and charitable purposes; and own, acquire and administer properties of all kinds - Article 26.
2. Any section of the citizens having a distinct language, script or culture of its own shall have the right to conserve the same - Article 29.
3. Religious and linguistic minorities are free to establish and administer educational institutions of their choice, which shall not

be discriminated against by the State in the matter of giving aid or compensation in the event of acquisition - Article 30.

3.2.3. Limits of Religions Freedom

The Fundamental Right to religious freedom cannot be enjoyed in an absolutely unrestricted way. There are limitations within which these rights can be exercised, as also lawful restrictions which can be imposed by the State on such rights, as detailed below:

1. The right to freedom of religion is, in general, subject to public order, morality, health and the other provisions of the Constitution - Article 25.
2. Despite the right to religious freedom, the State can pass laws providing for social welfare and reform and also to regulate or restrict any secular activity - economic, financial, and political, etc. - even though it may be traditionally associated with religion - Article 25(2).
3. Despite the minorities' right to establish and maintain educational institutions, no citizen can be kept away from any State-aided or State-maintained educational institution only on religious grounds - Article 29(2).

3.2.4. Relaxation of Rights

The State can, by way of positive discrimination and affirmative action, make special provisions in certain cases as detailed below, and these will not be deemed to be detracting from the provisions relating to the rights of equality and non-discrimination in general:

1. Despite the right to equality, the State can provide special measures for women and children, and for the advancement of any socially and educationally backward class of citizens, or for the Scheduled Castes and Scheduled Tribes - Article 15(4).
2. Despite the right to equality, the State can reserve appointments or posts for any backward class of citizens not adequately represented in State services - Article 16(4).
3. Despite the right to equality, a law may require that the incumbent of a religious or denominational office, or member of such a

committee, must be a person of the concerned religion - Article 16(5).

4. Despite the right to equality, in terms of a Directive Principle of State Policy the State shall promote with special care the economic and educational interest of the weaker sections of the people, including but not exclusively the Scheduled Castes and Scheduled tribes, and shall protect them from social injustice and exploitation - Article 46.

3.2.5. Fundamental Duties

The Chapter on Fundamental Duties, inserted into the Constitution by the Constitution (Forty-second Amendment) Act 1976, includes the following among the basic national obligations of all the citizens:

1. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities - Article 51A(e).
2. To value and preserve the rich heritage of our composite culture - Article 51A (f).

3.2.6. Religious Matters under Distribution of Powers

Under Article 246 of the Constitution read with Schedule VIII various religious matters noted below fall in the jurisdiction of the State - and both Parliament and the state legislatures, or either of them, can legislate on such matters:

- i. Pilgrimage outside India - Union List, entry 20;
- ii. Pilgrimage within India - State List, entry 7;
- iii. Burials & burial grounds, cremations & cremation grounds - State List, entry 10;
- iv. Family relations, succession & all other personal-law matters - Concurrent List, entry 5;
- v. Charities, charitable institutions & endowments - Concurrent List, entry 28;
- vi. Religious endowments & religious institutions - Concurrent List, entry 28.

3.2.7. No Role for Religion in Elections

By a dictate of the Constitution religion has no role to play in elections to Parliament and State Assemblies and Councils. For all elections to central and state legislatures the electoral rolls for every constituency shall be general and common and no person can either be excluded from, or included in, any such roll only on the basis of his or her religion - Article 225.

To implement this provision of the Constitution the election law contained in the Representation of the People Act 1951 incorporates provisions declaring the use of religion during electioneering both a 'corrupt practice' that will vitiate the election of the winning candidate and also a punishable offence [see below heading 6].

3.2.8. Judicial Interpretation

In numerous cases the courts have commented upon, explained and interpreted the provisions of the Constitution on equality, non-discrimination and religious freedom. The decisions in most of these cases have been given in the contexts of the rights of particular religious communities or under special laws relating to such communities. A brief on major decisions follows:

What is Religion?

The Constitution uses but does not define the expressions 'religion' and 'religious denomination' and therefore the courts have found it necessary to explain the meaning and connotation of these words. The Supreme Court has observed that:

In the background of the provisions of the Constitution and the light shed by judicial precedent we may say that religion is a matter of faith. It is a matter of belief and doctrine. It concerns the conscience, i.e., the spirit of man. It must be capable of expression in word and deed, such as worship or ritual - *SP Mittal v Union of India* AIR 1983 SC 1

Right to Religious Freedom

Interpreting the constitutional provisions relating to freedom of religion the Supreme Court has observed:

The right to religion guaranteed under Articles 25 & 26 is not an absolute or unfettered right; they are subject to reform on social welfare

by appropriate legislation by the state. The Court therefore while interpreting Article 25 and 26 strikes a careful balance between matters which are essential and integral part and those which are not and the need for the State to regulate or control in the interests of the community — AS Narayana Deeshitalyu v State of Andhrn Pradesh (1996) 9 SCC 548.

The right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right; they are subject to reform on social welfare by appropriate legislation by the State. The Court therefore while interpreting Article

There have been numerous other rulings explaining the scope and connotation of the religious liberty provisions in the Constitution. Given below is a summary of the major rulings:

- a. Articles 25-30 embody the principles of religious tolerance that has been the characteristic feature of Indian civilization from the start of history. They serve to emphasize the secular nature of Indian democracy which the founding fathers considered should be the very basis of the Constitution - *Sardar Suedna Taiiir Saiifiiddin v State of Bombay* AIR 1962 SC 853.
- b. Freedom of conscience connotes a person's right to entertain beliefs and doctrines concerning matters which are regarded by him to be conducive to his spiritual well being - *Ratilal Panachand Gandhi v State of Bombay* AIR 1954 SC 388.
- c. To profess a religion means the right to declare freely and openly one's faith - *Punjab Rao v DP Meshram* AIR 1965 SC 1179.
- d. Religious practices or performances of acts in pursuance of religious beliefs are as much a part of religion as faith or belief in particular doctrines - *Ratilal Panachand Gandhi v State of Bombay* AIR 1954 SC 388.
- e. What constitutes an integral or essential part of a religion or religious practice is to be decided by the courts with reference to the doctrine of a particular religion and includes

practices regarded by the community as parts of its religion
- *Seshammal v State of Tamil Nadu* AIR 1972 SC 1586.

- f. The right to profess, practise and propagate religion does not extend to the right of worship at any or every place of worship so that any hindrance to worship at a particular place per se will infringe religious freedom - *Ismail Paruqi v Union of India* (1994) 6 SCC 360.
- g. Under Article 25 to 'propagate' religion means 'to propagate or disseminate his ideas for the edification of others' and for the purpose of this right it is immaterial 'whether propagation takes place in a church or monastery or in a temple or parlour meeting' - *Commissioner, Hindu Religious Endowments, Madras v Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* AIR 1954 SC 282.
- h. To claim to be a religious denomination a group has to satisfy three conditions: common faith, common organization and designation by a distinctive name - *SK Mittal v Union of India* AIR 1983 SC 1.
- i. The expression 'matters of religion' in Article 26 extends to acts done in pursuance of religion and covers rituals, observances, ceremonies and modes of worship - *Jagannath Ramanuj Das v State of Orissa* AIR 1954 SC 400; *Dargah Committee v Husain* AIR 1961 SC 1402.
- j. A religious denomination has the right to lay down the rites and ceremonies to be performed by its members - *Ramanuj v Tamil Nadu State* AIR 1972 SC 1586.
- k. A 'common burden' (e.g., land revenue) which is imposed on all does not violate the right of a religious denomination - *Govt. of Tamil Nadu v Ahobila* AIR 1987 SC 245.
- l. Property of a religious denomination violating the agrarian reform and land ceiling laws can be lawfully acquired by the State - *Narendra v State of Gujarat* AIR 1974 SC 2098.
- m. A law which takes away the right of administration from a denomination and vests it in a secular body would infringe

upon the Constitution - *Ratilal Panachand Gandhi v State of Bombay* AIR 1954 SC 388.

- n. Since the State is secular and freedom of religion is guaranteed both to individuals and groups, it is against the constitutional policy to pay out of public funds any money for the promotion or maintenance of a particular religion - *Commissioner, Hindu Religious Endowments v LT Swamiar* AIR 1954 SC 282.

Educational Rights of Minorities

The educational rights of minorities under Article 30 of the Constitution have from the earliest period of the post-Constitution era been the subject of a large number of judicial decisions of all kinds and implications. In a 1958 case the Supreme Court had assertively said that:

Our Constitution has guaranteed certain cherished rights of minorities concerning their language, culture and religion. So long as the Constitution stands as in is and is not altered, it is, we conceive, the duty of this court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own....The right guaranteed under Article 30 (1) is a right that is absolute and any law or executive direction which infringes the substance of that right is void to the extent of infringement - *in re Kerala Education Bill* AIR 1958 SC 956.

In a later ruling of 1974 the courts observed: These provisions enshrined a befitting pledge to the minorities in the Constitution of the country whose greatest son had laid down his life for the protection of the minorities. As long as the Constitution stands as it is today, no tampering with those rights can be countenanced. Any attempt to do so would be not only an act of breach of faith; it would be constitutionally impermissible - *St Xavier's College v State of Gujarat* AIR 1974 SC 1389.

Some scholars have expressed an opinion that the scope of Article 30 of the Constitution is to be limited to the purposes mentioned in Article 29 and, therefore, minorities should be allowed to establish educational institutions of their choice only for the protection of their distinct languages, scripts and cultures. This opinion has never been accepted by the superior courts.

In *St Stephen's College v University of Delhi* (1992) 1 SCC 558 the Supreme Court decided that minority intake in minority institutions should in the interest of national integration be limited to 50%. There is no law or judicial decision to ensure a reasonable presence of children from the minority communities in the educational institutions established and run by the majority community (e.g., the chain of DAY, Sana tan Dharma and Hindu Colleges).

From 1997 onwards large Supreme Court Benches have looked into various aspects of the provision of Article 30, generally restricting its scope — *TMA Pai foundation v State of Karnataka* (2002) 8 SCC 481; *Islamic Academy of Education v State of Karnataka* (2003) 6 SCC 697; *PA Inamdar v State of Maharashtra* AIR 2005 SC 3226.

3.3 Community-Specific Constitutional Provisions

3.3.1. Nature of Special Provisions

Side by side with the foretasted general provisions relating to religious neutrality of the State and religious liberties of the people, we find within the Constitution of India a number of religion-based and religion-related provisions for certain communities who can be classified as follows:

- (a) The Hindus, Buddhists, Jains and Sikhs, who are mentioned in the Constitution by their denominational names; and
- (b) Certain groups who are mostly Christian by religion but the special provisions do not mention them as denominational groups.

Since all these constitutional provisions relate to particular religious communities, these will be considered at length, community-wise, in Chapter IV which covers special laws meant for various religious communities. Given here is a brief classified checklist of all such provisions.

The community-specific provisions of the Constitution reflect the Indian concept of secularism as discussed above and do not change or detract from the secular character of the State in India.

3.3.2. Provisions for Hindus, Buddhists, Jains & Sikhs

The Constitution includes the following special provisions for the Hindu, Buddhist, Jain and Sikh communities:

- (a) Declaration of abolition of untouchability (mainly a Hindu religious custom) and prohibition of its practice in any form - Article 17.
- (b) A Directive Principle of State Policy requiring the State to take steps to prohibit slaughter of cows and calves (reverence for whom is customary among the Hindus) - Article 48.
- (c) Declaration of the validity of pre-existing and future laws made to throw open Hindu places of worship to all sects and sections of the Hindus (with a supplementary provision giving the power for the Buddhist, Jain and Sikh shrines) - Article 25, *Explanation I*.
- (d) A special provision for the grant of specified annual maintenance-allowances to be given from the State exchequer for the upkeep of Hindu temples of a certain denomination in two South Indian states, Kerala and Tamil Nadu - Article 290A.
- (e) Declaration of wearing and carrying a *kirpan* (sword) a Fundamental Right for the Sikhs - Article 25, *Explanation II*.

3.3.3. Provisions for Mainly Christian Groups

The following special provisions were included in the Constitution for certain communities which are mainly Christian by religion:

- (i) Some special provisions of a transitory nature for the Anglo-Indian community - Articles 331, 333, 336-37, 366(2).
- (ii) A provision for the protection of the customary law and its administration among the Nagas in the Christian-dominated State of Nagaland - Article 370A.
- (iii) A similar provision for the Mizos in the Christian-dominated State of Mizoram - Article 370G.

3.3.4. Religious Establishments

There are in India various official establishments for religion, statutory and non-statutory, set up both by the Central and State Governments. Among these are:

- (i) Departments of Religious Affairs in some States including Jammu and Kashmir and Uttar Pradesh;
- (ii) Minority Welfare Departments in most States;
- (iii) Union Ministry of Minority Welfare (set up recently)
- (iv) Special bodies to manage certain religious matters of particular communities.

Among the bodies mentioned in clause (iv) above there are Hindu Religious Endowment Boards, Muslim Wakf Boards, Sikh Gurdwara Committees, State-appointed boards or committees to manage particular shrines, Central Haj Committee, etc. These will be considered at length in the last Chapter dealing with the laws for various religious communities.

3.3.5. Religious Holidays and Processions

Despite its association with the Christian religion, Sunday remains the weekly holiday throughout India. Unlike in USA, where this was once challenged in the court as violation of the non-establishment clause in the Constitution, nobody in India has ever objected to this convention continuing since the days of the British rule.

India celebrates only three national holidays - Independence Day (15 August), Republic Day (26 January) and Father of the Nation's birthday called Gandhi Jayanti (2 October); rest of the holidays in this country - the list of which is rather long - are religious. Birthdays of founders of all religions are observed as public holidays. Among these are the following festivals associated with the birth of the religious figures noted against them:

- i. *Shivaratri* (Lord Shiva)
- ii. *Ram Naumi* (Ram)
- iii. *Janmashtami* (Krishna)
- iv. *Buddha Jayanti* (Gautam Buddha)
- v. *Mahavir Jayanti* (Mahavira)
- vi. *Gurupurab* (Guru Nanak)
- vii. *Eid-e-Milad-un-Nabi* (Prophet Mohammad)
- viii. *Christmas* (Jesus Christ)

While these festivals are public holidays everywhere, in several parts of the country birthdays of some other religious figures including Ganesh, Hanuman, Guru Gobind Singh, Guru Ravidas and Rishi Balmiki, are also observed as closed days.

A part from these birthday-festivals, there are public holidays throughout India also for some other Hindu, Muslim and Christian festivals (or days of mourning) including Holi, Deepawali, Dasehra, Raksha Bandhan, Eid-ul-Fitr, Eid-uz-Zilka, Muharram and Good Friday.

There has been a tradition in India since long, shared by all communities, to take out religious processions on public streets. Such processions are specially arranged on most of the religious festivals referred to above. The law of India approves this right of the religious communities subject to the general laws for maintaining law and order and protecting public mobility. The leading judicial decisions on this right and its limits include *Muzur Hasan v Muhammad Zaman* (1924) 52 IA 61; *Muhammad Siddiqs v State of UP* (1955) 1 All 121.

It was held in an Allahabad case that the right is inherent and does not depend on custom. It is not, however, a license for 'committing nuisance' on the highway. Protecting the right of the processionists to observe their religious practices, the court observed:

Worshippers in a mosque or temple which abuts on a highway have no right to compel the processionists to stop their music completely while passing a mosque or temple on the ground that there was continuous worship inside it. Even if music, whether religious or not, offends against the religious sentiments of another community, it cannot be objected to on that ground. The stopping of the music would offend the religious sentiments of the processionists just as much as its continuance may affect the religious sentiments of others. Therefore there can be no right to insist on its complete stoppage. - *Muhammad Jalil v Ram Nath* (1930) 53 All 484.

3.4. Religion under Laws for Scheduled Castes & Tribes

3.4.1. Scheduled Castes Order 1950

The Constitution of India makes several special provisions for the Scheduled Castes who are to be identified by the government (in the name of the President) and whose official list may from time to time be

amended by Parliament. The Constitution (Scheduled Castes) Order 1950 issued under this provision provided the first list of the Scheduled Castes but made the list religion-specific.

Initially the 1950 Order restricted the Scheduled Castes net to the Hindu religion, although the castes included in the net were shared by various other communities. Later, Sikhs and Buddhists were also included in the net by amendments introduced in 1956 and 1990 respectively.

All other religious communities – including, mainly, the Christians and the Muslims who share many vocation-based castes with the Hindus - hitherto remain outside the Schedules Castes net.

Since as a local custom of general prevalence the caste system is found in vogue also among the Christians and the Muslims, demands have been made by these communities from time to time for the removal of the religion-related Proviso from the Scheduled Castes Order of 1950 so that the lower castes among them may also be included in the Scheduled Castes net and benefit from the special measures introduced for them. They have had recourse to the courts also for this relief but the courts have not agreed to it due to the egalitarian nature of Christianity and Islam in their puritan form. The Supreme Court has observed:

Christianity and Islam are religions prevalent not only in India but also in other countries of the world. We know that in other countries these religions do not recognize a system of caste as an integral part of their creed or tenets. ...The general rule is that conversion operates as expulsion from the caste; in other words a convert ceases to have any caste -*v S. Rajgopal* AIR 1976 SC 939.

Several fresh writ petitions filed by the Christians and Muslims for removal of the religious affiliation clause from the Constitution (Scheduled Castes) Order 1950, clubbed together, are currently under hearing in the Supreme Court.

The Ranganath Misra Commission for backward classes among religious and linguistic minorities, constituted in 2004(ofwhich this author was a member), has in its report of 2007 recommended delinking of Scheduled Caste status from religion. The recommendation has reportedly been endorsed also by the National Commission for Scheduled

Castes with certain conditions. The government has not made public its response to this recommendation.

3.4.2. Conversion by a Scheduled Caste Member

If a Hindu, Sikh or Buddhist Scheduled Caste person converts to any other faith he ceases to remain in- the net and loses all the benefits extended to Scheduled Castes. However, such a person may reconvert to Hinduism and will thereupon regain all those lost benefits. Such effects of conversion and reconversion by 'members of the Scheduled Castes have has been affirmed in several judicial decisions. See, e.g., *S. Swvigaradoss v Zonal Manager, FCI* AIR 1996 SC 1182.

As regards the rights of Scheduled Castes reconverting to Hinduism, the Supreme Court has observed:

The objects and purposes of the Constitution (Scheduled Castes) Order 1950 would be advanced rather than retarded by taking the view that on reconversion to Hinduism a person can once again become a member of the Scheduled Caste to which he belonged prior to his conversion - *CM Ammugam v S. Rajgopal* 1976 SC 939.

Conversion by a Scheduled Castes person to Christianity or Islam would also take him out of the ambit of a law enacted by Parliament for the protection of Scheduled Castes from social atrocities of various kinds, viz., the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

3.4.3. Scheduled Tribes & OBCs

In terms of the provisions of the Constitution relating to the Scheduled Tribes a Constitution (Scheduled Tribes) Order was issued in 1951. Unlike the Scheduled Castes Order of 1950, this Order is not religion-specific. It could not be so, since the tribal groups in various parts of India profess different religion - either one of the established religions or a local indigenous religion. There are numerous Christians and Muslims among the Scheduled Tribes.

The 'Other Backward Classes' (OBC) group is also not religion-specific. Many lower castes and backward sections of various religious faiths not rinding a place in the Constitution (Scheduled Castes) Order 1950 have been accommodated in the OBC group.

The OBC lists in some states specifically include 'Scheduled Class converters of Christianity'. There is no parallel provision in any state of Scheduled Cast persons who may convert to Islam.

3.5. Majority-Minority Status of Religious Communities

3.5.1. Minorities Commissions Laws

National Commission for Minorities Act 1992

The religious minorities in India have the protection of a number of national level commissions, both statutory and non-statutory, set up to oversee the enforcement of their constitutional and legal rights. The first such national-level commission, now known as the National Commission for Minorities (NCM), was founded by a Union Cabinet Resolution in January 1978 under the name 'Minorities Commission'. To start with, this Commission had jurisdiction on both religious and linguistic minorities and the Minister in charge was to be its Secretary. But, in 1988 by another Government Resolution the linguistic minorities were taken out of its jurisdiction and it now deals exclusively with religious minorities.

Fourteen years after the establishment of this Commission, by the National Commission for Minorities Act 1992 this body was renamed as the National Commission for Minorities and given a statutory status and quasi-judicial Powers. (This author chaired the second Commission constituted under the Act in 1996).

The Commission is now slated for the conferment of constitutional status for which a Constitution (103rd Amendment) Bill and a National Commission for Minorities Act (Repeal) Bill are pending in Parliament since 2004.

The 1992 governing statute of the Commission has been examined and explained by the Supreme Court in *Misbah Alam Shaikh v State of Maharashtra* AIR 1997 9(1) 1419; *Bal Patil v Union of India* AIR 2006 SC.

National Minority Educational Institutions Commission Act 2004

A three-member National Commission for Minority Educational Institutions (NCMEI) came into existence in 2004, originally under an Ordinance, which was later replaced by the National Commission for

Minority Educational Institutions Ad 2005. This Commission has jurisdiction on both religious and linguistic minorities and is meant to look after their educational rights under Article 30 of Constitution. Initially the NCMEI had limited powers but its governing Matter was extensively amended in 2006 to widen the scope of its powers and functions.

3.5.2. Who are Religious Minorities

The Constitution of India uses the expression 'minorities whether based on religion or language', but does not specify who are to be regarded as 'minorities on religion.'

Muslims, Christians, Sikhs, Buddhists & Parsis

Both the National Commission for Minorities Act 1992 and the National Commission for Minority Educational Institutions Act 2004 say that the term 'minority' occurring in their provisions would mean the religious communities notified as such by the central government - National Commission for Minorities Act 1992, Section 2(c); National Commission for Minority Educational Institutions Act 2004, Section 2(f).

A notification issued by the central government in 1993 under the National Commission for Minorities Act 1992 listed the Muslims, Christians, Sikhs, Buddhists and Parsi Zoroastrians to be the minorities for the purposes of that Act - SO No, 816(E), F 1/11/93 - MC (D) of 23 October 1993.

The Jains

The aforesaid Notification issued by the central government in 1993 under the National Commission for Minorities Act 1992 was and remains silent about the minority status of the Jains. The community has been making a case for it in the National Minorities Commission which has repeatedly recommended minority status for it. As no action was taken on this recommendation, some leaders of the community went to the court. The Supreme Court, however, did not accept the claim (not on religious grounds but in the interest of national integration) - *Bal Patil v Union of India* (2005) 6 SCC 690.

In a later case the Supreme Court upheld the validity of a UP Government Notification recognizing the Jains as a minority in that State

- *Committee of Management, Bal Vidya Mandir v Basic Shiksha Parishad* 2006 (SC) 9 JX 633.

Hindu minorities

In 1998 a special report prepared by this author as Chairman of the National Commission for Minorities recommended that the Hindus be formally recognized as minorities in the States of Jammu & Kashmir, Meghalaya, Mizoram, Nagaland and Punjab and in the Union Territory of Lakshadweep, in each of which places they are a numerical minority. No action has yet been taken by the government on this recommendation.

In a 1971 ruling the Supreme Court of India held that the minority status of a community was to be determined 'in relation to the particular legislation which is sought to be impugned, namely, that if it is the state legislature these minorities have to be determined in relation to the population of the state'. On that basis it ruled that 'the Hindus of Punjab are a religious minority in the State though they may not be so in relation to the entire country' - *DA V College v State of Punjab* AIR 1971 SC 1735.

The Supreme Court has now decided that the status of a religious community as a minority would be decided at the State level - *TMA Pai Foundation v State of Karnataka* (2002) 8 SCC 481.

In pursuance of this decision a new law is slated for enactment to specify national State-level religious minorities.

Ranganath Misra Commission for Minorities

In 2004 the government constituted a special commission for the educationally and economically backward sections among the minorities with a specific mandate. Chaired by former Supreme Court Chief Justice Ranganath Misra and having this author as its member, the Commission resolved that it was not bound by the description of minorities under the charters of the two Commissions referred to above limiting it to five major religious communities. The commission extended its work and recommendations also to Jains, Jews, Bahais, tribal faith groups and the Hindus (wherever they are a minority).

3.5.3 State Laws

State Minorities Commissions

Local Minorities Commissions have been set up also in a number of States -In most of them under local statutes. The following Acts are in force as of today:

- (a) Bihar State Minorities Commission Act 1991
- (b) Karnataka State Minorities Commission Act 1994
- (c) Uttar Pradesh State Minorities Commission Act 1994
- (d) Madhya Pradesh State Minorities Commission Act 1996
- (e) West Bengal State Minorities Commission Act 1996
- (f) Andhra Pradesh State Minorities Commission Act 1999
- (g) Delhi Minorities Commission Act 1999

There are non-statutory State Minorities Commissions in Maharashtra and Rajasthan. In both the States such Commissions were abolished some time ago but have since been revived.

Religious Minorities in States

The local Minorities Commissions Acts either provide that 'minorities' in the concerned States would mean the religious communities notified as such by the central government, or empower the State government concerned to notify the minorities.

Under both these kinds of provisions in the local Minorities Commission Acts the Muslims, Christians, Sikhs, Buddhists and Parsis are recognized as religious minorities in all those States where such Acts are in force.

In April 2007 a single judge of the Allahabad High Court gave a ruling that the Muslim community had 'ceased to be a minority' in the State of Uttar Pradesh (where their population is as per the Census Report of 2001 18.5%) and directed the government to modify its rules and regulations to this effect. The Supreme Court, however, stayed the operation of this ruling. Commenting on the Allahabad ruling this author observed:

Going by the data of the Census Reports and the dicta of the apex court of the country the directions given by the learned Allahabad judge seem, to say the least, to be factually inexplicable and legally untenable. The conclusion that the Muslims have "ceased to be" a minority in Uttar Pradesh defies comprehension. The use of the plural expression "non-minority religious communities" is equally difficult to understand, since both at the national and state levels there can be only one "non-minority religious community" which is better known as the "majority community". - The Times of India, 14 July 2004

In several States, including UP, the Jains are also recognized as a minority under notifications issued either under the local Minorities Commission Acts or otherwise. In Tamil Nadu religious minority status of the Jains is legally established and was noted in *AM Jain College v Tamil Nadu Government* (1993) 1 MLJ 140.

3.6. Legal Prohibition of Using Religion in Elections

3.6.1. Statutory Provisions

Disqualification for Election

Under the election law of India contained in the Representation of the People Act 1951 (Section 8) a person guilty of the following offences relating to religion may be disqualified for a period of six years:

- (a) Representation of the People Act 1951, Section 125 (using religion for electoral gain);
- (b) Indian Penal Code, Sections 153-A and 505 (offences against religion);
- (c) Religious Institutions (Prevention of Misuse) Act 1988 (misusing shrines for unlawful activities); and
- (d) Places of Worship (Special Provisions) Act 1991 (distorting nature of particular of shrines).

These legal provisions will be explained in this and the later parts of this Chapter.

Invalidation of Winning Candidate's Election

The Representation of the People Act 1951 also prohibits use of religion and religious symbols with a view to promoting an aspirant's

candidacy for a public election or for adversely affecting the election of another such candidate.

The Act empowers the High Courts to declare the election of a winning candidate to be void if he commits, inter alia, a 'corrupt practice' - Section 100.

Indulgence in any of the following acts either for the furtherance of a candidate's election or for prejudicially affecting another candidate's election will be 'corrupt practice' under the Act:

- (a) An appeal to vote, or refrain from voting, for any person on the ground of his religion, race, caste, community or language - Section 122(3).
- (b) Use of or appeal to religious symbols (unless specifically allotted under the Act) – Section 122 (3).
- (c) Promoting or attempting to promote enmity or hatred between different classes of citizens on grounds of religion, race, caste, community, or language - Section 122(3A).
- (d) Propagating the practice or commission of sati or its glorification as defined in the Commission of Sati (Prevention) Act 1987 – Section 122(3B).

Notably, indulgence in any of these acts will be regarded a 'corrupt practice' If It is indulged in:

- (i) By the candidate himself; or
- (ii) by his agent; or
- (iii) By any other person with his or his agent's consent - Section 122(3), (3A), (3B).

Offence of Promoting Religious Disharmony

Promoting or attempting to promote feelings of enmity or hatred between classes in connection with an election on the grounds of religion, race, caste, community or language, is declared by the Act to be an offence punishable with imprisonment up to three years, fine, or both - Section 125. This provision would apply irrespective of the civil action provided for in Section 123 read with Section 100 as analyzed above.

3.6.2. Judicial Interpretation

Various symbols used in elections and statements made in election speeches on different occasions have been examined by the courts to determine if they were within the meaning of 'corrupt practice' as defined by Section 122 of the 1951 Act. Some major rulings given on different symbols used and statements made are summarized below:

- (i) Projecting the duly allotted star symbol as '*Dhruv*' (meaning eternal, firm, guide, determined or devoted to religion) did not amount to corrupt practice - *Ramanbhai v Dabhi* AIR 1965 SC 669.
- (ii) Depicting the allotted symbol of a rooster as a sacred bird chirping that if she was not served 'sons of man will suffer eternal miseries' was symbolic of a religious appeal - *Slnibh Nath v Ram Narain* AIR 1960 SC 148.
- (iii) The symbol of '*Om*' used in an election had high spiritual efficacy but was of no religious significance — *Jagdeo Sidhanti v Pratap Singh* AIR 1965SC 183.
- (iv) The terms '*Hindu*' and '*Hindutva*' have more than a mere religious connotation and did not, therefore, by themselves fall within the scope of 'corrupt practice' as envisaged by the election law of 1951; and promising to establish a 'Hindu state' in this sense could be 'at best a pious hope' - *Mtmohar \oshi v Nitin Bhaurao Patil* (1996) 1 SCC 169; *Ramesh Yeshwant Prabhoo v Sim Prabhakar Knntc* AIR (1996) 1 SCC 130; *Bal Thackray v. PK Kunte* (1996) 1 SCC 130.
- (v) An appeal by the NRI Sikhs to vote for the '*Panth*' was not a 'corrupt practice', since the word seemed to be referring to a particular party, though etymologically it could mean the Sikh religion - *Kultar Singh v Mukhtiar Singh* AIR 1965 SC 141.
- (vi) A statement by a Muslim candidate that his mother was a Hindu was not an appeal to religion - *Abdul Hussain v Shamsul Huda* AIR 1975 SC 1612.

- (vii) A claim by a Muslim candidate that he was better than his adversary as he was opposed to any 'interference with the *Shariat law*' while his adversary belonged to a party which supported changes in that law was a 'corrupt practice' - *ZB Bukhari v Brij Mohan Mehra* AIR 1975 SC 1788.
- (viii) The allegation by a Muslim candidate that a Hindu-dominated party was anti-Muslim and a Muslim party was anti-religion did not amount to an appeal in the name of religion - *Ebrahim Siilaiman Bait v MC Mohammad* AIR 1980 SC 354.

The observations made by the courts in some cases throw light on their general thinking about the meaning and scope of 'appeal to religion' as a 'corrupt practice' under the election law. In one of these cases a Supreme Court judge observed:

It would not be an appeal to religion if a candidate is put by saying vote for him because he is a good Sikh or he is a good Christian or he is a good Muslim, but it would be an appeal to religion if it is publicized that not to vote for him would be against the Sikh religion or against Christian religion or against Hindu religion, or to vote for another candidate would be against a particular religion. It is the total effect of an appeal that has to be borne in mind in deciding whether there was an appeal to religion as such or not - *Shubh Nath v Ram Narain* AIR 1960 SC 148.

In another case a Bombay High Court judge observed:

To take a simple example, the sentence '*garva se kaho Hindu hain*' (say with pride we are Hindu) by itself would be innocent. I would, in fact, say that it is a sentence the sentiments of which are highly laudable and shared by all right-minded citizens of India. There can be no doubt that the race and religion of Hindus has within it great virtues. One of the greatest is its tolerance, love and acceptance of all other races and religions. However, even a sentence as innocent and laudable as above can be converted into a corrupt practice. If such a sentence is made at an election time with the intention of furthering the prospect of election of a candidate or prejudicially affecting the prospect of another on the ground of religion, caste and/or community, it would become a corrupt practice. This would necessarily depend on the context in which it is made, the context of the speech itself and to a certain extent the manner in which it

is said and emphasized – *Damodar Tatyaba v Vamanroa Mahadik* AIR 1991 Bom 373.

An interesting and meaningful observation was made in another election case by India's veteran judge VR Krishna Iyer:

Religion is a terrible Satan in its decadent status when people plunge into spiritual illiteracy, miss the divine essence of the lessons of the sages, prophets and seers and kiss the holy nonsense of 'my religion right or wrong' and 'my religionists alone to me belong'. In this vulgar barbarous degeneracy humanism dies and values of tolerance and compassion perish. In the perverse reversal of higher meanings the man on earth becomes the blind ammunition of divine rivals in the skies. Be that as it may, religions cannot be wished away or wiped out but surely must be humanized and weaned from cannibalistic habits. Comity of denominations, not a zoo of savage faiths, must be the governing code of religious pluralism in the human world - *Abdul Hussain v Sliamsitt Huda* AIR 1975 SC 1612.

CHAPTER IV

RELIGION UNDER LEGISLATION OF GENERAL APPLICATION

4.1. Laws on Religious Conversion & Apostasy

4.1.1. Old Anti-Conversion Laws

Before independence, some princely states had enacted anti-conversion laws meant to protect the local people from religious conversion against their free will. Among these were:

1. Raigarh State Conversion Act 1936,
2. Sarguja State Apostasy Act 1942,
3. Udaipur State Anti-Conversion Act 1946

Since independence several States have introduced local laws imposing restrictions on religious activities (mainly of Christian missionaries, although no law would expressly say it) believed to be aimed at converting people from one to another religion.