

AUTONOMY IN RELIGIOUS MATTERS AND COMMON CIVIL CODE

By

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Outside the range of social reform, denominational autonomy reigns supreme in matters of religion. A collection of individuals commonly referred to under one name is a denomination. A denomination is part of a larger body. This in the Hindu fold there are Madhvas, Vaishnavites.

Our educational institutions do not radiate secularism. Most of the prescribed text-books glorify the good features of one and not of all the communities. There are also prescribed text-books which deal with imaginary ancient wrongs suffered by one community at the hands of another, silently calling for revenge. No educational institution has made a determined effort to inculcate in the youth secular ideals.

The judiciary in India, as in America, has a dynamic role to play not only in creating a wall of separation between Caesar and God but it has to police the process of balancing rights of rival religions to practices which are pregnant with breach of the peace and of rural groups like untouchables and high caste Hindus, *e.g.*, sacrifice of cows on festivals, slaughter of cows, religious processions with music in front of mosques, right of inferior castes to offer worship in shrines, of management of religious trusts and endowments, *etc.*

While communalism and fascism are tightening their hold on the life of the nation, no organized, dedicated and determined effort is being made to loosen that hold and to nourish and strengthen secularism. There are Hindus who identify secularism with Muslim appeasement, and Muslims who dismiss secularism as un-National integration,

which in the Indian setting, means dissolving communal religious divisiveness and defusing blowups is an ineffectual process because the law is left without social invigoration and political will.

At this stage, a formulation of the problems and progress of Law and Religion in the perspective of the Indian Constitution may be appropriate so that the focus of the discussion may be brightened and not blurred. Let us itemize the points :

1. What are the major religious which are extant in India and what is the story of their arrival and survival in the socio-legal cosmos ?
2. What were the inter-religious relations, their peaceful and violent co-existence in the past and why ?
3. What are the pathological problems emanating from the plurality of religions sects and castes ?
4. What is the hold of religious denominations on Indian politics and law, now and before ?
5. How and how far has the Constitution of India solved the gut issues of Religious harmony, secular polity and common civil code for all the citizens ?
6. Have the Courts operated the Constitution to secure the cultural rights of Religious minorities and groups or have they been guilty of over-kill ?
7. How far the legislative has proves enlivened the values of secular law

and Inviolable sacredness of every religion ?

8. What creative suggestions can be made, informed by principled pragmatism and tuned to the cultural ethos of the broad community, to establish an integrated Indian society whose laws and religions reflect a happy family committed to a humanist value system, national solidarity and basic secularity ?

India, confronted by a challenging mosaic of Law and Religion, ancient in origin, angry in diversity, escalating in multitude and yet surviving as a nation with a strangely secular soul and political plurality, is tribute to this political and legal genius. All the great religions are here and their denominational, proliferations and legal emanations too.

India is a secular Republic and its secularity is reinforced by the State being constitutionally committed to a democratic, socialist structure. The British did their best to keep India religiously divided and communally antagonistic. The architects of Free India, differing in the degree of their secular mentality, converged on the national policy of single citizenship amidst diversity of religions. A flexible secularism, with law and Religion supporting, not subverting it, is an imperative of the Indian polity.

Secularism as contemplated by the Constitution of India has the following distinguishing features : (1) The State will not identify itself with or be controlled by any by any religion : (2) While the State guarantees to everyone the right to profess whatever religion one chooses to follow (which includes also the right to be an agnostic or atheist), it will not accord any preferential treatment to any of them; (3) No discrimination will be shown by the State against any person on account of his religion or faith; (4) the right of every citizen, subject to any general condition, to enter any offices under the State and religious tolerance from the hear and

soul of secularism as envisaged by the Constitution. It secures the conditions of creating a fraternity of the Indian people which assures both dignity of the individual and the unity of the nation.

The complex processes of weaving a common civil code must be planned carefully and executed circumspectly if the projects is to be democratic. Dr. *Ambedkar*, a great fighter against casteist tyranny, was the first Law Minister of Free India under the secular giant Jawaharlal Nehru, the first Prime Minister. The less ambitious programme of a Hindu Code, extricating the entire family law of the Hindus from the old religious hold, was attempted by both but the then President of India, Dr. *Rajendra Prasad*, voiced the more orthodox view of 'hands off scared family laws' and resisted the radical move. *Nehru* caved in and instead of the comprehensive code a few legislations on marriage, inheritance, adoption on an guardianship were enacted. More such measures have since been made and the stage is set for a full-spectrum Code with a modern soul. But the goal is resisted because the Muslim fundamentalists are violently opposed to legislative change, even such reforms as the rest of the Islamic world has adopted. Dr. *Tahir Mahammad*, a brilliant academic and enlightened reformist, has brought out a perceptive book setting out the family laws in the Muslim countries. To educate the muslim masses in Operation Common Civil is a delicate task where political tactics matter.

One broad conclusion that emerges from a consideration of the judicial role in interpretation of constitutional rights connected with religion is that the Court has stood by the minorities in the country when whittling down the protection granted by the Constitution. At the same time, the Court has not allowed religion to run amock, but has kept it within the bounds of public morals, public health and public decency plus the sound administration of religious institutions.

Religious extremists have not found the Court bent or bow before the fanaticism and on the whole, the salutary role of Court has made religious rights of all classes a reality.

It did not mean that the importance of religion in social life would be reduced, but it only meant 'the separation of the State from religion'. Repeatedly he emphasized that 'the Hindus must always remember that the interest and the well-being of the minorities are their sacred trust. If they fail in their trust, then they injure not only the country, but themselves. Any narrow and aggressive attitude on the part of the majority community would create a feeling of apprehension in the minds of the minority community would create a feeling of apprehension in the minds of the minority communities. Anything that creates such an apprehension in the minds of any group in India is to be deprecated. It tends to disturb and it is opposed to our secular ideal.' We are reminded of the American constitutional Caesar the things which are Caesar's and unto God the things that are God's." This accords with the Indian cultural heritage of religious fellowship but the Indian State does, constitutionally and statutorily, inter-meddle in religious endowments, among others (Article 26 and laws, for instance where social evils and public order compel disciplining). In practice, State dignitaries—even *Nehru*—did a lot of poojas and ceremonies as in Ram Leela and a host of other naked religious lamp-lighting and chanting at officials

functions. Life is compromise ! Coming to basics, *Nehru* was non-religious and anti-orthodox but he was no monolith.

The functions of law in society are to a great extent shaped and determined by the prevailing system of Government and by the purposes or ends which underlie the decision and in the sense of judicial and administrative adjudication of disputes can be thought of both as a mechanism of social control and of social change. To the extent the standard setting and regulatory functions of the law and popular expectations as to the ends and functions of the law in society converge, there is created an acceptable basis for ordered adjustment of human relations beyond the limited bonds of kinship or of religious, racial or ideological group identification. When individuals secure satisfaction of their personal and social interests within the framework of the established system of law, they tend to accept its legitimacy. As participation in the sense of a social support system satisfying a maximum of human wants becomes universal, the stability of authority structure, which obtain warrant for their operations from the legal system, increases. The key element in this process of building support for consensual authority structures founded on a welfare-State oriented version of the rule of law is the success of the modernizing regime in transforming attitudes and behaviour on the part of the masses in tune with modern and progressive ideas of mass participation in representative institutions of social control.

JUDICIAL ACTIVISM IN INDIA - WITH SPECIAL REFERENCE TO THE SUPREME COURT OF INDIA

By

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"That the law repugnant to the Constitution is void and that the Courts as well as other departments are bound by that instrument. If

there was conflict between a law made by the congress and the provision in the constitution, it was the duty of the Court