'Religion and Jurisprudence'

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By Justice Sunil Ambwani
Judge, Allahabad High Court

INTRODUCTION

1. **Religion** is a matter of faith, belief and doctrine, which concerns the conscience i.e. the spirit of man; it must be capable of expression in words or deed such as worship or rituals. Unlike United States of America, where there is complete separation of Church and State and the French idea of *lacite*-described as essential compromise, whereby religion is relegated entirely to the private sphere and has no place in public life whatsoever, in India though there is no State religion, the Constitution of India protects the religious rights of people and maintains delicate balance between such rights and public order, morality, and health. The Fundamental Rights guaranteed by the Constitution of India protect equality, including freedom of conscience and the right to profess, practice and propagate religion.

2. The laws in our country flow from the Constitution of India, which incorporates and embodies the basic principles of secularism into various provisions of the Constitution. There is blend of secular and religious elements within the text of the Constitution. The admixture defends and determine 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.

3. The independence was achieved from British colonial rule by a peaceful and non-violent freedom struggle, which unfortunately resulted into partition of the country in bitterness and acrimony shedding blood of innocent victims on both sides on religious grounds. A mistrust was created between the two groups, which was looming in the psyche of the political leaders, when the Constitution was being drafted and perhaps for that reason the word 'secular' did not find place in the Preamble of the Constitution as it was enacted and given to the people (ourselves) sixty four years ago on Nov.26th, 1949. The Courts took upon itself and played an active part in expounding the concept of secularism and fully established it through judicial decisions and State practice, to bring about amendments in the Constitution by (42nd Amendment) Act, 1976, inserting the word 'secular', after 'socialist' and declared India to be 'Sovereign, Socialist, Secular, Democratic Republic'.

4. The right to freedom of religion in Arts.25 to 28 along with the Fundamental Rights of equality in Art.14, 15, 16 and 19, and Art.17, which abolishes untouchability have guaranteed freedom of conscience and free profession, practice and propagation of religion (Art.25); freedom to manage religious affairs (Art.26); freedom as to payment of tax for promotion of any particular religion (Art.27); freedom as to attendance at religious instructions or religions, worship and in certain educational institutions (Art.28), all in Chapter-III, which is recognised as the soul of the Constitution of India.

5. The Constitutional (45th) Amendment Bill, 1978 proposed to define the expression 'secular republic' as republic in which there is equal respect for all religions. The Constitutional (80th) 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, could not be enacted. The proposed amendments, however, are ingrained in the existing provisions of the Constitution of India.

6. The guarantees in Art.14, 15, 16 of equality, 17 of abolition of untouchability and in 23 (2), which provides that if the State imposes compulsory service on citizens for public purpose, no discrimination shall be made in this regard on the ground of religion only; the individual rights in Art.25 (1), 27 and 28, and group rights guaranteed to religious denominations under Art.26 and 29, of protection of interest of minorities and in particular a prohibition that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only on religion, race, caste, language or any of them in Clause (2), as well as freedom to establish and administer educational institutions by religious and linguistic minorities and prohibition against the discrimination in the matter of giving aid or compensation in the event of acquisition under Art.30, provide for guidelines for the Union and States in making laws.

7. The chapter of Fundamental Duties, should have been inserted in the Constitution of India from the beginning as these duties are complimentary to the Fundamental Rights; it was, however, enacted by Constitutional (42nd) Amendment Act, 1976 w.e.f. 3.1.1977, providing to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional adversity [Art.51 (A) (e)], to value and preserve the rich heritage of our composite culture [Art.51 (A) (f)], as the duties and obligations for all the citizens.

8. The Fundamental Rights and Fundamental Duties concerning religion and religious affairs of individuals and groups, have to be

kept in mind by the Union and the State Government in making laws. The Parliament has carved out the exclusive fields for Union for making laws relating to religion and religious practices. The pilgrimage to places outside India in Entry-20 of the Union List, and pilgrimage within India fall in Entry-7 of the State list. Entry 10 of the State list gives powers to the State Government to make laws relating to burials and burial grounds, cremation and cremation grounds. The rest of the matters, which concern religion fall in the Concurrent list of subjects on which both Union and State can make laws. Entry 5 of the Concurrent List provides for making laws on marriage & divorce; infants and minors; adoption; wills; intestacy and succession, joint family and partition for people of all religion and all other personal-law matters. Entry 28 provides for making laws of charities, charitable institutions, charitable endowments and on religious institutions.

9. There cannot be any difference of opinion on the proposition that the religion and religious beliefs have strong relationship with jurisprudence, which is the expression used for the study and theory of law and offers deeper understanding of laws, legal reasoning and legal systems. The reason, conscience and conventions, which form the basic tenets of any religion play an important part in law making and help in judicial process in spheres of law concerning religion. The relationship between religion, morality and jurisprudence is so intertwined that it is difficult to separate them in the secular state like India in which the Constitution of India as a source of law making provides for respect and tolerance for all religious beliefs, subject to public order, morality and health.

MORALITY AND LAW

10. **Morality and law** or **morality of law** changes from time to time. Both law and morality are dynamic concepts. Law means the

body of legal rules, which are intended to alter behaviour and that are determined and enforced by the State with legal sanctions. On the other hand morality comes from the Latin word 'moralitas', which signifies manner, character and proper behaviour, the code of conduct, which determines what is right or wrong with reference to society, philosophy, religion or individual conscience; the ideal code of conduct for rational people under special conditions; and is synonymous with ethics, the systematic philosophical study of moral domain. Law and morality have common origin but diverge in their development. Both are regulators of human conduct. The moral principles became equitable principles and then a rule of law in legal systems. Custom considered to be an important source of law has a strong relationship with morality. A custom to be valid should not be immoral. In the name of good custom, the moral principles or morality is enforced.

11. The enterprise of subjecting human conduct to the governance of rules, which is called natural laws is not higher nor is comparable to the worship of God, which in turn may be compared with religion and law. The morality of law has been explained as morality of aspiration, and morality of duty. (The Morality of Law, by Lon. L. Fuller)

12. It has been suggested that the morality of duty relates to man's life in society, while the morality of aspiration is a matter between a man and himself, or between him and his God. This is true only in the sense that as we move up the ladder from obvious duty to highest aspiration individual differences in capacity and understanding become increasingly important. But this does not mean that the social bond is ever broken in that ascent. The classic statement of the morality of aspiration was that of the Greek philosophers. They took it for granted that man as a political animal had to find the good life in a life shared with others. If we were cut

off from our social inheritance of language, thought, and art, none of us could aspire to anything much above a purely animal existence. One of the highest responsibilities of the morality of aspiration is to preserve and enrich this social inheritance.

13. In order to understand legal morality and the concept of positive law it must be kept in mind that the law is the enterprise of subjecting human conduct to the governance of rules. The law can also be understood as an activity and regards a legal system as the product of a sustained positive effort. Prof. Friedmann in an attempt to offer a neutral concept of law that will not import into the notion of law itself any particular ideal of substantive justice proposes:

> "The rule of law simply means 'existence of public order'. It means organised government operating through various instruments and channels of legal comment. In this sense all modern societies live under the rule of law, fascist as well as socialist and liberal estates [Law and Social Change (1951) p.281]

14. The principles of natural justice, fairness and reasonableness in all State actions in administrative law, unjust enrichment, creditors liability to return overpayment, the presumption against retrospective application of laws in Commercial Laws, the Bolam's principle of duty of reasonable care in no fault liability in hit and run cases are all principles of morality of law. If the laws command something, which is harsh, unreasonable, impossible to be performed, the Courts rescue the citizens and societies from the penal actions.

ROLE OF RELIGIOUS TRADITIONS IN CONTEMPORARY JURISPRUDENTIAL PROCESS

15. The age old social and religious traditions have an important role to play in the contemporary jurisprudential processes. In our country we continue to celebrate festivals and have law regulating

holidays such as 'Shivratri', 'Ram Nawami', 'Janmashtami', 'Buddha Jayanti', 'Mahavir Jayanti', 'Ganesh Chaturthi', 'Eid-e-Milad-un-Nabi', Christmas etc. On these days the traditions of taking out religious processions on public streets continues despite the challenges of maintaining law and order and protecting public mobility. Despite judicial pronouncements, the traditions give license for committing nuisance even if it is a crime under the panel laws. The traditions and religious practice protect the right of processionist to observe the religious practice.

16. The worshipers in the mosques or temples blow music whether religious or not beyond the permissible limits under the notified environmental law relating to sound pollution and indulge in blocking of the public passages for worship. The tolerance to this practice, which virtually stops the work and the festivals of birthdays of God and the days of mourning for muslims and Christians continue to haunt the social activity.

17. **The religion and religious practice and traditions have put a great pressure on contemporary law makers in making and enforcing law.** The religious communities with their religious and linguistic minorities, have in order to gain status and opportunities pressurise law makers in enacting laws for affirmative action, and opportunities to be provided by the State. The caste system has divided the social fabric of the society in claiming benefits although the believers of same religion such as Christianity and Islam and some social groups do not recognise such divisions in their societies. In India such class actions on the basis of their religious affiliations are very often challenged on the grounds of violating equality before law and equal protection of laws.

18. In order to get benefits of reservation in services and social benefits, the laws relating to conversion have suffered great strain, similarly the majority and minority status of religious communities

has been a matter of continuous debate for protection of their rights by enacting laws. The National Commission for Minorities and the National Minority Educational Institution Commission Act, 2004 having jurisdiction over both religious and linguistic minorities has been given the task of identifying and protection of minorities. The Jain Community unsuccessfully challenged the notification issued in the year 1993 by the Central Government listing Muslims, Christians, Sikhs, Buddhists and Parsi Zoroastrians, to be minorities for the purposes of the National Minority Educational Institution Commission Act, 2004. The claim for declaration of a community as religious minority to be decided at the state level in pursuance to TMA Pai Foundation's case and DAV College case has led to enactments at the State levels. The State Minority Commissions have been set up in Bihar, Karnataka, Uttar Pradesh, Madhya Pradesh, West Bengal, Andhra Pradesh and Delhi as also non statutory Minority Commissions in Maharashtra and Rajasthan for determining their status and protection of their rights. This leads to stress in their relationship for claiming State protection and State patronage.

19. In the matters of personal laws the protection given by Constitution of India under Art.25 of the Constitution of India has avoided any conflict in laws relating to the rights based on customs and traditions.

20. Hindu Law claims the oldest pedigree of any known system of jurisprudence older than the jurisprudence of Rome and England. It has several schools though it has common source. The personal law of Hindus were treated as laws enforced within the meaning of that expression in Art.372 (1) and Art.13 (1) of the Constitution. The Hindu Laws Act of 1955 and 1956 transformed the Hindu personal law and has played an effective role in protecting laws of succession, marriage, adoption and minority and guardianship without substantively violating fundamental rights.

21. Although Hindu law is regarded as having emanated from the Vedas (Shruti) the truth is that there is scarcely any law in the Veda (Shruti). The Hindu law that has really emanated from the Smritis. There were large number of Smritis of which the surviving ones are of Manu, Yajnavalkya, Vishnu, Narada, Apastamba, Gautam, Parasara, Vashist, Katyayana, etc.

22. The Mitakshara is a commentary on the Yajnavalkya Smriti. There was Manu Smriti which was held in even greater respect than Yajnavalkya Smriti, but Vijnaneshwara preferred to write his commentary on the Yajnavalkya Smriti rather than on Manu Smriti.

23. We can get the answer to this question if we compare Manu Smriti with Yajnavalkya Smriti. Manu Smriti is not a systematic treatise. It does not have a clear-cut division between religion and law, as in Yajnavalkya Smriti. If we read the Manu Smriti, we will find that there is one shloka on religion, the next shloka on law, third on morality. On the other hand the Yajnavalkya Smriti is divided into three chapters. The first chapter is called Achara which deals with religion, the second chapter is called Vyavahara which deals with law, and the third chapter is called Prayaschit which deals with penance. This demarcation between law and religion itself is a great advance over the Manu Smriti. Thus, the Yajnavalkya Smriti marks a tremendous advance in law over the Manu Smriti. Law is now clearly separated from religion. This is analogous to the Roman law or to the positivist jurisprudence in the 19th century of Bentham and Austin.

24. As is well known, the Mitakshara was written by Vijnaneshwara during the reign of Vikramarka, a Chalukya ruler of the 11th century A.D. Although, the Mitakshara was written by a South Indian, its remarkable feature is that its authority spread all over India except Bengal and Assam (where too it has great respect)

and it was accepted as the authoritative text on Hindu law even in North India.

25. Mitakshara was certainly not a law made by Parliament. In fact, in those days there was no Parliament and the law consisted of treatises of learned jurists. The Mitakshara was accepted as an authoritative text on Hindu law not due to promulgation by any sovereign authority such as the King or Parliament, but due to its tremendous scholarship, logical analysis and the sheer force of intellect of its author. ('The Importance of Mitakshara in the 21st Century' by Justice Markandeya Katju. 2005 Vol.VII SCC Journal Section p.1)

26. India is a country with tremendous diversity, innumerable religions, castes, languages, ethnic groups, cultures, and hence only secularism and respect for everybody can keep the country together and make it progress. That is also the mandate of the Constitution, vide Articles 25 to 30 of the Constitution.

27. The muslim laws were not codified and there is great resistance of the codification of Muslim personal laws, which are mostly left to be interpreted by the scholars. The necessities of time, however, permitted legislation in enacting the Muslim Personal Law (Shariat) Application Act, 1937, which gives power to make declaration that person is muslim and rule making power to the State for prescribing the authority before whom and the forum in which declaration under the Act have to be made, Dissolution of Muslim Marriage Act, 1939 to consolidate and clarify provisions of muslim law relating to dissolution of marriage by woman married under Muslim law, Musalman Waqf Act, 1923 to make provisions for better management of waqf property, the Waqf Act, 1984, Muslim Women (Protection of rights on divorce) Act, 1986 as a fall out of Shahbano's case and the Waqf Act, 1995, which repealed the Waqf Act of 1954 and the Waqf (Amendment) Act, 1984.

28. We also have Parsi Marriage Act, 1936; Indian Divorce Act, 1949; Indian Christian Marriage Act, 1872; Special Marriage Act, 1944; Child Marriage Restrain Act, 1929; Anand Marriage Act, 1909; Arya Marriage Validation Act, 1937; Foreign Marriage Act, 1969 and the suits or proceedings relating to Part-B Estates Marriages Validation Act, 1952. Special Courts have been set up under the Family Court Act, 1985 to enforce the personal laws relating to marriage, divorce, custody of children, adoption etc. in respect of all the religions.

RELIGION AND LAW MAKING

29. There is strong relationship between **religion and the law making**. It cannot be denied that even in non-theocratic states, religion plays an important role in law making. The reason, conscience and conventions do not hinder the law making and the judicial process. The traditional religion continue to challenge the law makers. We are not concerned with the religious practices, which may violate the public order, morality and health. These practices continue to challenge the courts in interpreting the freedom of religion guaranteed by the Constitution of India. The religion is a matter of faith. There are many religions such as Buddhism or Jainism, who do not believe in God. The Hindu religion, Islam, Sikhism, Christianity, Judaism are ways of life for the practitioners of these religions. These religions lay down the code of conduct, in the name of God, for the people in society. Each religion is a social institution with its own practice, traditions, customs and rituals and which also include worship faith, which influence the life. All the religions have a common object and carry the same message namely love towards mankind, brotherhood, and non-violence leading to peaceful existence of the society. The religious practice, however, vary from state to state, religion to religion, place to place

and sect to sect. These beliefs and faith of different groups, in democratic societies play an important part in making of laws.

30. The Supreme Court and the High Courts in India have the powers to interpret laws and to maintain rule of law. They also have powers to strike down any law, which has been enacted beyond the powers of the law making authority given and distributed in the Constitution of India and which may violate fundamental rights guaranteed by the Constitution of India. Art.141 mandates that law declared by Supreme Court to be binding on all Courts. The law laid down by the Supreme Court is also source of law, which regulates conduct of people in society and which is binding on all the authorities.

THE JUDICIAL INTERPRETATION OF RIGHT TO RELIGION

31. The Supreme Court has in last 63 years decided many cases to enforce right to freedom of religion. In a secular country like India it is very difficult for the Courts to strike a balance in society in which all religions have equal respect subject to public order morality and health, with certain exception in Clause (2) of Art.25. The Courts have decided cases spreading the secular and temporal activities in religious practices and in regulating the customs and traditions of the religions in such a manner that they do not offend others. The Supreme Court has followed the principle of peaceful co-existence and respect for all religions as the underlying principle in interpreting right to freedom of religion. The freedom of one cannot encroach upon a similar freedom belonging to other persons. This principle was kept in mind in punishing forcible or fraudulent conversion as against voluntary conversion.

32. In the leading cases in **Commissioner of H.R.E. v. Lakshmindra Thirtha Swamiar** the Supreme Court in the year 1954 expressed its opinion that every person has fundamental right

not merely to entertain the religious belief as may be approved by his conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. In **Commissioner of Police and Ors. v. Acharya Jagdishwarananda Awadhoota & Anr., (2004) 12 SCC 770** in the majority judgment allowing the appeal against the judgment of Calcutta High Court permitting the persons belonging to Anand Marg faith to perform 'Tandav' dance in public carrying skulls and tridents, it was held that the essential part of religion means the core belief upon which a religion is founded and the essential practice means those practices that are found to follow a religious belief. It is upon the cornerstone of essential part of or practice that superstructure of religion is built without which a religion will be no religion. The test is that if that part of practice is taken away, it will result in fundamental change in the character of that religion or in its belief. Integral or essential part of a religion has to be determined with reference to the doctrines, practices, tenets, historical background etc. of the given religion. It was held that 'Tandav' dance is not the core of the religion upon which Anand Marg was founded. Anand Marg faith can exist without such dance in public, which offends the moral values of general public. The police power of the States may be used to stop such procession.

33. The ban on the use of noise emitting fire works during Diwali, the sacrifice of animals in the name of customs and traditions of any religion, the right to manage a temple and to elect members to the committee of administration of Gurudwara Property, powers given to Board of religious trust to modify the budget relating to a trust or to give directions to the trustee; prohibiting photograph of women to be taken for electoral purposes; performance of prayers through voice amplifiers or beating of drums have all been held to

be non-essential parts of the religion, which is not saved on account of the restrictions placed on such practice on the ground of maintaining public order, morality and health. Such restrictions have been upheld in M.P. Gopalakrishnan Nair & Ors. v. State of Kerala & Ors., (2005) 11 SCC 45; Shri Jagannath Puri Management Committee v. Chintamani Khuntia, (1997) 8 SCC 422; Pannalal Bansilal Pitti & Ors. v. State of U.P. & Anr., (1996) 2 SCC 498; Bhurinath v. State of J & K, (1997) 2 SCC 745; Sri Adi Visheshwara of Kashi v. State of U.P. & Ors., (1997) 4 SCC 606; N. Adithyan v. Travancore Devaswom Board & Ors., (2002) 8 SCC 106; Guruvayoor Devaswom Management Committee v. C.K. Rajan, (2003) 7 SCC 546. The Supreme Court has in the challenge made in acquisition of the management of the temples separated secular matters from temporal matters. The management of a temple was held to be primarily a secular act. Where the temple authority controls activities of various servants of the temple, manages several institutions and properties including educational institutions, the conduct of servants and management of associated institutions was not held to be religious act but a purely secular act. The Court has also acted as guardians of such societies to manage their affairs under Section 92 of the Code of Civil Procedure on the grounds that right to manage does not carry with it the right to mismanage.

34. The Supreme Court justified the prohibition of deleterious practice such as 'Suttee' or system of 'Devdasi' and also declare the ex-communication a person from religion on non-religious grounds. It held that right of hereditary succession and chief priest is not of religious usage and will be at par with the security activity.

35. In **Bommai S.R. v. Union of India, AIR 1994 SC 1918** a nine judges' Bench got an opportunity to define secularism under the Constitution of India. It held that the Constitution prohibits the establishment of a theocratic state based on the right to govern on

the basis of religion. The State is prohibited in our Constitution to establish any religion of its own and also to favour any particular religion as it is enjoined to give equal treatment to all religions and religious sects or denominations. The secularism does not mean anti-God or atheist society. It means equal status of all religion without any preference in favor of or discrimination against any one of them. The State must attempt to secure the good of all citizens irrespective of their religious belief or practices and one had to hold that secularism is the basic feature of our Constitution, which as held in Keshavanand Bharti's case cannot be violated even by constitutional amendment. A political party it was held in order to participate in the elections to public office must abide by the principles of secularism. The Representative of People's Act was interpreted in the light of secular democracy, which is antithesis to communalisation of politics.

36. The Courts in India have consciously saved the country from turning into a theocratic State or any political party participating in the elections on any religious agenda. In declaring secularism as basic feature of the Constitution of India, the dreams of the people to convert India into Hindu Rashtra or peoples of Muslims that in future with the population of muslims increasing the nation can be converted into Muslim state governed by Shariat law has not received encouragement.

37. The major set back based on political considerations was when the Supreme Court ruled that muslim divorced woman has right to maintenance under the vagrancy clause in Section 125 CrPC. The enactment of Muslim Women (Protection of Rights on Divorce) Act, 1986 to overcome decision of the Supreme Court in Shah Bano's case was a retrogate step taken by legislature. The law could have been struck down, if it was not read down in **Danial Latifi v. Union of India, (2001) 6 SCC 740**.

38. Explaining the meaning of secularism in the preamble and Art.25 of the Constitution of India, the Supreme Court held in **State of Karnataka & Anr. v. Dr. Praveen Bhai Thogadia, (2004) 4 SCC 684** that the religion cannot be mixed with secular activity of the State and fundamentalism of any kind cannot be permitted to masquerade as political philosophies to the detriment of the larger interest of society and basic requirement of welfare state. The welfare of people is ultimate goal of all laws and the State action. The promotion of well being and larger interest of society can be obtained by common harmony, love for each other and hatred for none. The core of religion based on spiritual values, which the Vedas, Upnishads and Puranas have revealed, is love others, serve others, help ever, hurt never 'Sarv Jan Sukhino Bhavantu'. One upmanship in the name of religion would render constitutional designs countermanded and chaos claiming heavy toll on society. The Supreme Court upheld the order of the Addl. District Magistrate of the Dakshina Kannada restraining Dr. Thogadia from making inflammatory speeches, which were likely to disturb the communal harmony and rejected plea of freedom of religion in support of such movement and speeches.

39. The State of Haryana disqualified persons having more than two living children from contesting elections of the office of Sarpanch, Upsarpanch or Panch. The amendments in the Haryana Panchayatraj Act, 1994 were challenged on the ground of freedom of religion, which does not prohibit in Muslim Law to have more than two wives or more than two children from any or more wives. Upholding the restrictions the Supreme Court in **Javed & Ors. v. State of Haryana & Ors., (2003) 8 SCC 369** held that freedom under Art.25 is subject to public order morality and health. The protection under Art.25 and 26 of the Constitution of India is with respect to religious practice, which forms an essential and integral

part of religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. A statutory provision casting disqualification on contesting or holding an elective office is not violative of Art.25 of the Constitution of India. What is permitted or not prohibited by religion does not become a religious practice or a positive tenet of a religion. The disqualification was upheld.

40. Defining 'Hindu' as a comprehensive expression giving the widest freedom to people of all hues, opinions, philosophies and beliefs to come within its fold and is not restricted to those, who believe in temple worship, the Supreme Court in **M.P. Gopalakrishnan Nair & Anr. v. State of Kerala & Ors., (2005) 11 SCC 45** held that the secular activity of any temple, which includes its management or administration can be regulated by the State. The election of member of Guruvayoor Devaswom Management Committee cannot be challenged on the ground that the person elected does not represent the denomination of believers in temple worship. The freedom guaranteed under Art.25 is not unconditional. The religious matters are separable from secular matters of management of temple. The Constitution prohibits theocratic state. The state is prohibited from establishing any religion of its own or favouring any particular religion. Secularism it was reiterated does not mean constitution of an atheist society but means equal status of all religions without preference in favour of or discrimination any one of them.

41. In **Bal Patil & Anr. v. Union of India & Ors., (2005) 6 SCC 690** the Supreme Court explained the guarantees and protection of religious, cultural and educational rights under Art.25 to 30 to be applicable to both majority and minority communities. It was not necessary to define minorities, which was initially based on religion and on national level. The minority community like Sikhs

and Jains were not treated as national minorities. Turning down the demand of Jain community to be treated as religious minorities under the National Commission of Minorities Act, 1992, the Supreme Court held that the identification of minority has to be done on State wise basis. The advice and recommendation of the Commission should be considered on consideration of social, cultural and religious conditions of any community in each state based on statistical data. The protective umbrella of the group of Art.25 to 30 is to be used against possible deprivation of fundamental rights of religious freedoms by religious and linguistic minorities. The Courts do not issue directions to treat any community as minority community. Relying upon the history of modern India in which demand of separate electorates ultimately resulted into partition after independence the Court warned any more division on the basis of religion, and ruled that minorities initially recognised on the basis of religion on national level, should not be so declared to bring any more divisions in the country. In order to declare any society or sect as religious minority, the historical background, language, culture or faith has to be considered. Such claim should not be allowed to lead to similar claims by another group of citizens, which may result into conflict and strife.

42. The history of the mankind has witnessed wars in which more people have died for the supremacy of one religion over the other, than in the wars fought for land, property, women or ideologies. The groups of persons have in the name of God offered more strife in the world, than peace, which is the ultimate aim of every religion. They have with their narrow and parochial objects turned the conflict between law and religion into a fight for supremacy. Such conflicts could not be avoided in the 17th Century Europe struggle for power and regulation of behaviour. The wars in India in 18th and 19th Century were not fought on religion but for occupation and rule

the settlement by the Mughal invaders. With the arrival of Europeans, religious strife was witnessed and has become more visible after independence.

CONCLUSION

43. The conflict between law and religion is bound to resurface and reappear in different ways. We have to deal with such conflicts by secular laws and in refusing to compromise it with any other form of behaviour. Secular law stands for the necessity of legal and political framework. The Constitution of India has ensured such a framework to guarantee human development and social peace. The misunderstanding between religious and non-religious people is a challenge to the secular and democratic state. Tolerance with ethical, political and legal dimensions, is the solution for the **inclusive secularism,** which alone can save the law from being stressed.

44. It is not advisable to draw any lines between law and religion, and to suggest any guidelines governing their relationship. The law and religion should not be allowed to reciprocally contaminate each other. Secular laws must always strive to be the law for everyone while religion by definition should be allowed to be practiced as a way of life of a group, which is culturally defined subject to public order, morality and health. Secular law should be ready to take challenge that it is not biased in favour of any religious group or people and must always be ready to neutralise the bias, on grounds of religion.

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