

## AUTONOMY OF RELIGIOUS DENOMINATION AND STATE REGULATION IN INDIA

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### ABSTRACT

*Religious denomination played a very significant role in our society and in the Indian Constitution. The rights of religious denominations are protected under Article 26 of our constitution; however, the main problem concerns the extent of state regulation of religious denominations. This paper focused mainly on rights protected under the Constitution and on the state's regulation of religious denominations. This paper primarily examines the extent to which the state regulates a religious denomination. Regarding this, there are significant judicial precedents that highlight the rights and limitations of a religious denomination. These precedents suggest how far a state may go in enacting legislation and regulating a religious denomination. This paper examines denominational autonomy and the state's regulation within it. Lastly, a religious denomination played a pivotal role in India, and this paper clearly demonstrates the autonomy conferred on a denomination and the state regulation of that autonomy.*

**Keywords:-** Religious denomination, Article 26 autonomy, state regulation, Essential religious practice, public order, morality and health

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## INTRODUCTION

Freedom of religion is provided under articles 25 to 28, but the main issue concerns state law. In various instances, the parliament frames the law, but it is often unclear to what extent the state exercises its powers. State law often falls within the ambit of this autonomy, thereby violating a denomination's autonomy. For this reason, it is very important to understand the boundaries of a legislature for framing laws. This paper explained the power of a competent legislature to enact laws concerning a religious denomination.

### **Meaning of Religious Denomination: -**

A religious denomination is not properly defined in our constitution, but in S.P. Mittal, the Supreme Court highlighted its nature. Like, if a body has a

1. Common faith
2. Common Organisation
3. Distinctive Name, then it is categorised as a religious denomination.<sup>2</sup>

### **Autonomy conferred to religious denomination:-**

Articles 26(1) to 26(3) of the Indian Constitution protected the autonomy status of religious denominations. However, under this autonomy, various limitations were set by the Supreme Court.

#### **1. Establishment and maintenance of an institution for religious and charitable purposes**

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Article 26 (a) empowers a religious denomination to establish an institution and maintain it. It is important to note that establishing and maintaining an institution must proceed in tandem. A religious denomination has full autonomy to maintain the established institution. A state subject to health, morality, and public order has no right to prohibit a denomination from establishing an institution. Further, it is important to note that an institution, which is not established by a denomination, falls outside the scope of Article 26. In other words, a denomination has no authority over the institution that it never established. In this regard, there was a landmark case titled S. Azeez Badshah v. Union of India. In this case, there was a university named Aligarh Muslim University, which was established by a statute called the 1920 University Act. The

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<sup>2</sup> S.P. Mittal vs Union of India AIR 1983 S.C. 1 (India).

<sup>3</sup> INDIA CONST. art.26, cl.1

major issue arose in 1965, when the government made certain amendments, and the petitioner challenged them. However, the apex court stated that as a statute established the educational institution, the denomination had no right to control it, and the government was entitled to make the amendments<sup>4</sup>.

## 2. **Manage religious affairs**<sup>5</sup>:-

Under Article 26 (b), a religious denomination has the right to manage its own religious affairs. However, it is important to note that 26(b) is not immune from 25(2)(b)<sup>6</sup>; Article 25(2)(b) talks about 2 things:-

1. It empowers the state to frame any law for social welfare.
2. It empowers the state to open a Hindu religious institution of a public character to all classes and sections of Hindus.

Hence, if a legislation is framed with the intention of social welfare, and it infringes Article 26(b), then in that situation, the validity of the act will not be vitiated. Similarly, this article empowers a state to open a Hindu religious institution of a public character to all classes and sections of Hindus. The intention behind this provision is to eradicate untouchability and discrimination in the temple premises. This provision empowers all communities to enter the temple premises. Hence, if a government opens a Hindu institution for a class or section of people, then that class of people cannot prohibit a specific class of people on the shield of Art:- 26(b). Still, it is also clear from 25(2)(b) that a religious denomination can exclude a person from performing a special task, like the job of a pujari or achra<sup>7</sup>. In this regard, there was a famous case titled Sri Venkataramana vs State of Mysore. In this case madras government enacted legislation called madras temple entry authorization act, which allows Harijans to enter the temple premises, but subsequently a private temple trustee opposed this, and contended that as their temple was a private temple, it fell outside the scope of this act, but supreme court rejected this contention and held that Art 26(b) must be subject to 25(2)(b)<sup>8</sup>.

It is also essential to note that the government cannot interfere in a religious activity of a religious denomination under the guise of secular activity. With this respect, there was a

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<sup>4</sup> S. Azeez Basha vs Union of India AIR. 1968 S.C. 662(India).

<sup>5</sup> INDIA CONST. art. 26 cl. 2

<sup>6</sup> INDIA CONST. art.25 cl.2(b)

<sup>7</sup> M.P. Jain, Indian Constitutional Law 1307(8<sup>th</sup> ed. 2018).

<sup>8</sup> Sri Venkataramana Vs State of Mysore, AIR. 1958 S.C. 255 (India).

prominent case named:- The Commissioner, Hindu Religious Endowments, State of Madras vs Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, it was held that:-

“If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or ablations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious. practices and should be regarded as matters of religion within the meaning of Article 26(b)<sup>9</sup>.”

But a government can frame a law to conduct a secular activity, like in the case of Bira Kishore Deb vs. the State of Orissa<sup>10</sup>. There was an act named the Sri Jaganath Temple Act 1954, which took sole control of management from the Raja of Puri to a committee. The act provided that it shall be the duty of the committee to arrange for the proper performance of Sevapuja in accordance with the record of rights. The court held that Sevapuja has 2 aspects: 1. Religious, and 2. The secular aspect, the act deals with secular activity and does not interfere with the religious aspect of the sevapuja. Hence, the court validates the act.

### **Right to acquire property<sup>11</sup>:-**

Article 26 (c) empowers a religious denomination to acquire property. It is important to note that Article 26 (c) only empowers a religious denomination to acquire property. Still, this article does not address the administration of the property, meaning that a religious denomination can only acquire land. Still, the administration must be done in accordance with 26(d). Article 26(d) suggests the administration of property in accordance with the law. Hence, no religious denomination can claim the administration of a property in the broad ambit of matters of religion, which is given under 26(b).

It is further essential to observe the relation between Article 31(2)<sup>12</sup> and Article 26(c). Article 26 (3) is not immune from article 31(2), and subject to the provision of article 31(2). Article 31(2) vests in the state the power of acquisition of land. A religious denomination cannot use

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<sup>9</sup> The Commissioner, Hindu Religious Endowments, State of Madras vs Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR. 1954 S.C. 282 (India).

<sup>10</sup> Raja Birakishore vs State of Orrisa, A.I.R. 1964 S.C. 1501 (India).

<sup>11</sup> INDIA CONST. art.26 cl.3

<sup>12</sup> INDIA CONST. art. 31cl 2

Article 26(3) against the state acquisition. It is also well observed by the apex Court in Acharya Maharajshri v. The State of Gujarat & Ors<sup>13</sup>. In which case, it was highlighted that although a religious denomination has the right to acquire movable and immovable property, this right does not deprive the state of its right of compulsory acquisition. However, the question of acquisition is sometimes controversial: it may affect a denomination's religious practice, and some places may have religious significance. In this regard, the Supreme Court, in the case of Gulam Kadar Ahamad Bhai Menon vs Surat Municipal Corporation<sup>14</sup>, held that A place of worship that has such religious significance must stand on a different footing, and the acquisition of such a place must be avoided if such a place is used in the extension of a religion. But other places of worship, which have no such religious significance, stand on a different footing.

### **State regulation of a religious denomination: -**

Articles 25 and 26 also impose some limitations; A religious denomination has only the power to regulate the management of religious affairs. However, the main point is that the constitution does not explicitly distinguish between a religious and a secular part.

So, there are various limitations of a denomination under Article 26, which are addressed below: -

#### **1. Administration of property<sup>15</sup>:-**

Article 26(d) empowers a government to frame laws for the regulation of the property of a religious denomination. A religious denomination cannot claim that the property affair is falling under the ambit of a matter of religion, and claim protection under 26(b). The administration of property is purely a secular function and regulated by state laws.

It is further important to understand the distinction between Article 26(d) and Article 26(b). Under article 26(b) is subject to public order, health, and morality, but under 26(d), a state has full autonomy to frame laws.

However, it is essential to note that this right to frame law about a religious denomination is not absolute. In many cases, the Supreme Court has set the bar for state laws, as seen in Parvani Sridhar Rao v. State of A.P.<sup>16</sup> In this case, the Supreme Court stated that a law that interferes with a religious denomination must be reasonable.

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<sup>13</sup> Acharya Maharajshri v. The State of Gujarat & Ors AIR 1974 SC 2098

<sup>14</sup> Gulam Kadar Ahamad Bhai vs State of Gujarat, A.I.R. 1998 Guj. 234 (India).

<sup>15</sup> INDIA CONSTI. art.26 cl.4

<sup>16</sup> Parvani Sridhar Rao vs Union of India, AIR. 1996 S.C. 1334 (India).

## 2. Essential religious practice: -

One of the major limitations of religious denominations is the requirement of essential religious practice. Article 26 (b) does not apply to all religious practices of a religion, but it applies only to essential religious practices of a religion. The determining factor is the practices, whether crucial or not; our constitution does not specify any criteria for a religious practice. Therefore, the interpretation of essential religious practices falls entirely under judicial interpretation. Like in the case of *Tilkayat Govindlal Ji Maharaj vs State of Rajasthan*, the court stated that to determine whether a practice is essential or not, the court needs to determine 2 things: 1. Whether the practice is religious or not, 2. Whether that practice is essential to the religion. It is further essential to take into account that the court must decide these factors based on the evidence adduced in court.

The 3-step enquiry is also very important for determining the essential religious practice. The steps are 1. Whether the practice is religious, 2. Whether the practice is essential for faith, 3. Whether the practice complied with public interest and the reformist approach<sup>17</sup>. These tests are analysed and taken by various judgments of the Supreme Court.

Furthermore, it is important to note that the essential religious practice cannot be amended by any particular denomination. In this regard, there was a landmark judgment titled *Acharaya Jagdishwaranda Avadhuta vs Commissioner of Police, Calcutta*<sup>18</sup>. In this case, the Tandava dance was performed by the Ananda Margi sect. The dance includes the use of a skull, a knife, and a trident, so the police denied the dance from performing in a public procession. The Ananda Marga sect claims that the Tandava dance is an integral part of their religious practice. Still, the apex court rejected their argument, holding that it is not an essential spiritual practice. After this judgment, the founder of this sect published their new holy book, named “Carya Carya”, where they stated that dancing is an integral part of their religion. The matter was further taken to the High Court of Calcutta, which ruled in favour of Ananda Marga. Later, the matter was taken to the Supreme Court, which ruled against the religious denomination. The reason advanced was that a religious denomination cannot make a practice essential by a mere amendment. However, there are other criticisms of the essential religious practice, such as the claim that it lacks fixed parameters for determining the essential part of a religion.

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<sup>17</sup> Rajeev Dhavan & Fali S. Nariman, *The Supreme Court and Group Life: Religious Freedom, Minority Groups and disadvantaged communities*, in *Supreme Court but Not Infallible: Essays in honour of the Supreme Court of India* 256 -57(B.N. Kirpal et al. eds., 2000).

<sup>18</sup> *Acharaya Jagdishwaranda Avadhuta Vs Commissioner of Police*, AIR. 1984 S.C. 512(India).

### 3. Law under public order, Morality, and Health: -

Our constitution doesn't confer an absolute right to practice religion because religious practice might undermine law and order in a state or be inconsistent with the state's welfare. So, our constitution explicitly states in Article 26 that a state may enact laws with respect to a religious denomination on the grounds of public order, morality, and health.

#### I. Public Order: -

The religious denomination cannot be inconsistent with the state law and order. A state can enact laws with respect to a religious denomination to maintain public order. Various states enact laws to maintain public order within their states, such as the Places of Worship Act<sup>19</sup>, which was passed by parliament in 1991. The main feature was to freeze the religious status of all religious places. This legislation helps maintain public order by freezing the status of religious denominations and prohibiting arbitrary claims over religious structures.

#### II. Health: -

Religious belief or religious law cannot be inconsistent with public health. A state has an obligation to maintain the country's health and hygiene; it can enact laws, even if they may contravene religious beliefs. Like in BNS under section 271<sup>20</sup> states that the person who spreads the infectious disease must be punished for a term of 6 months. This legislation helps regulate public health by penalising negligent acts that can spread infectious diseases.

#### III. Morality: -

Restriction to a religious denomination is justified if the ground for framing the law is morality. A religious denomination cannot violate a state's public morality. If a religious denomination violates public morality, then state law must take effect and prohibit that practice. Like, the Devdasi practice was banned in Madras by the enactment of the Tamil Nadu Devdasi (Prevention of Dedication) Act 1947<sup>21</sup>. Devdasi means the dedication of a girl to a deity.

### CONCLUSION

The Indian Constitution provides autonomy to religious denominations, but it simultaneously confers power on the state for secular management. The Indian Constitution, along with various judgments of the Supreme Court, sets the boundaries within which a religious denomination may exercise autonomy.

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<sup>19</sup> The Place of Worship (special Provisions) Act, No.42 of 1991, § 3 (India).

<sup>20</sup> Bhartiya Nyaya Sanhita, No.45 of 2023, §271(India).

<sup>21</sup> The Tamil Nadu Devdasi (Prevention of Dedication) Act, No. 31 of 1947 (India).