

JUDICIAL ACTIVISM AND RELIGIOUS REFORM IN INDIA

G. GANESH KUMAR¹ & DR. D. UMA MAHESHWARI²

¹ Research Scholar, The Tamilnadu Dr. Ambedkar Law University, Chennai

¹ Assistant Professor, Chennai Dr. Ambedkar Government Law College, Pudupakkam

² Research Guide & Associate Professor, The Tamilnadu Dr. Ambedkar Law University, Chennai

ABSTRACT

The term "Judicial Activism" refers to the process by which the courts take an active part in influencing religious practices and traditions, in addition to other cultural and legal processes. This article investigates the ways in which religious reform and judicial activism have influenced long-held beliefs, societal conventions, and legal systems. The author has also made an effort to present a summary of the fluid nature of the relationship that exists between judicial activism and the implementation of religious reform in the legal system.

Within the first section of the analysis, the primary focus is placed on key judicial decisions that have been made regarding matters concerning religious observances. Through the use of instances like as constitutional interpretations, legislative evaluations, and human rights considerations, the study investigates the various ways in which the courts have utilized the law to interpret and shape religious standards across the country.

In addition, the paper delves into the potential disagreements that may arise as a result of the involvement of the judiciary in matters pertaining to religion. It takes into consideration the debates that surround cultural sensitivity, the delicate balance that exists between constitutional ideals and religious liberty, and the possibility of an excessively broad judicial authority. Also featured are cases in which successful legal actions have led to the development of progressive religious changes, resulting in a religious environment that is more inclusive and equitable.

The author also analyzes the ways in which judicial activism has influenced efforts to encourage communication among established religious groups, the government, and civil society. The study is conducted with the intention of examining the potential for judicial activism to inspire constructive social change.

Last but not the least, the article provides a concise summary of the most significant findings and aspects that hailed from the research. It draws attention to the complex web of connections that exists between religious reform and judicial activism, as well as the ways in which this has influenced the social and legal landscape of the present day.

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- "The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death."

- Dr. B. R. Ambedkar

INTRODUCTION

Religion acts as a vital component that is deeply connected with other parts of society in a nation as diverse as India. This allows people to keep their individual identities while still being unified under a common bond. Although our Indian Constitution grants us the freedom to practice our religion, it is also regulated by the relevant authorities and the legal system to ensure that every person maintains a harmonic balance between their own Fundamental Rights and those of others. During the course of the COVID outbreak, it became abundantly clear that people, despite the fact that they adhered

to different religious beliefs, came together to show that humanity was the highest possible level of our capacity to suffer. The people came together in support of a theological doctrine that was referred to as Love.

There are numerous aspects of Indian society that have been deeply influenced by religion. These aspects include politics, culture, and the economics. As a result of the Indian philosophy known as "Unity in Diversity," which emphasizes the fundamental oneness of all people despite the numerous disparities that exist between them in terms of their culture, beliefs, and traditions, the nation has garnered universal praise. The fact that all of India's religions are able to coexist peacefully throughout the country's 29 states and 7 union territories is a demonstration of the concept of unity in diversity. It is common for the SC, to make decisions that provide light on the function of religion in Indian law. When interpreting and defining religion in particular circumstances, judges take into consideration a number of elements, including the authenticity of the belief, the presence of regular rituals, and the consistency of the individual's set of views.

According to some, the Indian judiciary, and more specifically the higher courts, engages in what is known as "judicial activism" when they actively construct and interpret laws, policies, and governance in order to reflect their social, political, and economic perspectives, rather than simply delivering interpretations. This is in contrast to the traditional practice of offering interpretations. Public Interest Litigation, also known as PIL, is a legal process that has become increasingly prominent in the judicial system here in India. This provision makes it possible for any person or organization that possesses a strong sense of civic duty to petition the courts on behalf of those who might not otherwise be able to do so. All of these issues, including social justice, corruption, the environment, and human rights, have been considerably advanced as a result of the utilization of this instrument.

An extensive amount of protection has been provided by the Indian court for a variety of rights, including those to equality, life, expression, and religion. These rights have been defined and built upon by some of the most important decisions made by the courts.

RELIGION AND THE JUDICIARY

The Separation of Church and State: The concept of the separation of church and state is frequently used as a lens through which the connection that exists between religious organizations and the judicial hierarchy is examined. The establishment of a margin of separation between the state and religion is the objective of a number of legal systems, particularly those of Western democracies.

Religious freedom: When it comes to practicing "non-interference" in religious concerns in the lives of its citizens, the state has a multitude of obstacles. This is because the nation is characterized by the pervasiveness and dominance of religion. The personal rules of the different religions of Hindus and Muslims control many aspects of life, including marriage, divorce, adoption, succession, and inheritance. One example of a significant social institution that may be traced back to religious ideology is the caste system. This represents just one of many such institutions. When it comes to matters like social justice, public health, morality, order, and public order, the state is frequently required to enact laws that pertain to various segments of society and religious organizations. There have been several instances in which legislation of this kind has been challenged in court on the grounds that it violates the religious freedom of citizens. The courts are the ones who are tasked with the obligation of defending the rights of others and maintaining public order. They are also the ones who are tasked with finding a medium ground between the two competing demands.

There are many different topics that could potentially give rise to legal disputes. Some examples of these concerns

include the legitimacy of school prayer, the acceptability of displaying religious symbols in public settings, and the impact of religious beliefs on the implementation of public policy.

The Distinctive attributes of Judicial activism and Religious reform has two aspects:

1. **Expansive Interpretation:** Activist judges frequently employ a broad approach in interpreting legal texts to tackle current issues or societal concerns.
2. **Policy-Making:** Activist judges have the potential to partake in policy-making, which involves influencing legal precedents that extend beyond the boundaries of the particular case being considered.

It is common for judicial activism to be a reaction to legislative or executive acts that are viewed as encroaching upon individual rights. This is because judicial activism is typically considered to be an emphasis on defending individual rights.

As a result of shifts in the policies and laws of the government, the religious practices of a people can potentially undergo transformations. The freedom to practice one's religious views is considered to be an essential component of religion in the majority of legal systems where it is recognized. International human rights instruments, such as Art 18 in UDHR and the ICCPR, protect the right to freedom of religion. These documents contribute to a global understanding of the legal dimensions of religion.

Throughout the process of interpreting the numerous sections of the Constitution that deal with religious liberty, the meaning and definition of the term "religion" has been a significant problem for the judicial branch. It is not the constitution themselves that has the authority to formulate and interpret laws; rather, it is the judiciary.

One of the problems that arises is picking and choosing which practices should be permitted and which ones should not be permitted. Another issue that arises is the question of who should have the authority to discern between the two types of activity and for what reasons this responsibility should be given.

The "essential religious practice test" that was devised by the Supreme Court as a reaction to this issue was a direct result of this dispute. The principle states that in the event of a disagreement, the only religious acts that should be taken into consideration are those that are deemed to be the fundamental aspects of the faith. It is not appropriate for the Constitution to safeguard things that are not essential to the faith since these things do not have any value. One definition of an important religious practice is one that is required for the religion to function in an appropriate manner; any other form of activity does not qualify as an essential religious practice. As far as the test is concerned, it only protects those practices that are absolutely necessary for the religion. In accordance with the precedents established by the courts, the core religious beliefs are what constitute an essential component of any chosen religion.

A total of three key decisions handed down by the Supreme Court have contributed to the advancement of the theory. It was in the court case known as "The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmidar Thirtha Swamiyar of Shri Shirur Mutt" when the concept for the theory was initially conceived. Within the decision that it handed down, the Supreme Court highlighted that religious principles are the most reliable basis for evaluating what aspects of a faith are basic. The fact that certain Hindu practices, such as giving food to an idol at certain times of the day or performing certain ceremonies at specific times of the year, or even using marketable commodities to perform daily recitals of sacred texts or ablutions to the sacred fire, are considered religious practices and thus fall under the purview of article 26(b) does not change the fact that these activities are religious and not secular. In this particular case, the court went so far as to state

that religious organizations have complete autonomy to decide for themselves whatever rites and ceremonies are essential in line with the principles of their faith, and that no other organization has the ability to interfere in issues of this nature.

In “Sri Venkatarmana Devaru v. State of Mysore”, A significant precedent was established by the Court, which indicated a shift in the approach used by the judiciary, in which it became the obligation of the Court to determine whether or not a practice was essential. The criteria that are used to determine what is "basically religious" (as opposed to secular) are consequently entangled with the criteria that are used to determine what is "essential to religion."

In “Dargah Committee, Ajmer v. Syed Hussain Ali”, The Supreme Court came to the conclusion that there should be a distinction made between religious activities that are basic to the religion and those that are religious but have their roots in superstition. Therefore, in light of the formulations that have been shown thus far, the safeguards afforded by Articles 25 and 26 were restricted to religious actions that were considered to be basic and significant to the spiritual beliefs.

Notably, the Court has made other contradictory pronouncements in subsequent years after using the idea to decide what is "essential" to religion and what is not. Every instance is unique, which is why this is the case. Due to the unique nature of each case and its facts, the court has acknowledged that there is no precedent that can be applied to all situations.

An example would be of the “The Indian Young Lawyers Association & Others. V. The State of Kerala and Others” (Sabarimala Case), where it is important to note that the choice to allow women to enter the temple is unique to that particular temple and does not apply to all temples in the country that typically do not permit women to attend.

In “Shayara Bano case”, “a historic ruling was handed down by the bench, which decided that the practice of triple talaq should be abolished since it violates the constitution and is against the law. The Supreme Court found the practice of immediate "triple talaq" to be unconstitutional, stating that it was arbitrary and not a necessary component of Islamic law. The court made its declaration after stating that "what is bad in theology cannot be good in law." Considering that triple talaq is prohibited in the majority of Islamic nations, the Court stated that it is not possible to determine whether or not it is an important practice. In addition, the Court made the observation that personal laws had to be subjected to the test of constitutional legitimacy and gender equity. Furthermore, Article 25(2) states that the Supreme Court has the authority to invalidate any religious practice that breaches the basic rights of individuals. The court ruled that the practice of triple talaq was objectionable and a breach of Article 14 of the Constitution.”

In the judgment of “Rev. Stanislaus v. State of Madhya Pradesh”, the SC “made several important observations regarding religious freedom. One of the key aspects of the judgment that has been used to support the enactment of anti-conversion laws is the distinction made between "propagation" and "conversion". According to the decision of the Court, the freedom of an individual to freely proclaim, practice, and disseminate their religion does not include an absolute right to convert others to one's own faith. It was pointed out by the Court that the right to disseminate religion does not include the ability to force, mislead, or persuade another individual into embracing one's own faith. By highlighting the distinction between propagation and conversion, there are others who have suggested that anti-conversion legislation is necessary in order to put an end to false and coercive conversions among individuals. The proponents of anti-conversion legislation argue, on the basis of this understanding, that such legislation is necessary in order to protect vulnerable people from the influence of religious conversion pressure.”

THE ROLE SUPREME COURT IN ANTI-CONVERSION LEGISLATION

The Republic of India is a sovereign state that embraces secularism. The concept of secularism, which is outlined in the preamble of the Indian Constitution, is considered to be one of its fundamental principles. In *Satya Ranjan Majhi and Anr vs State of Orissa and Ors.* the petitioners had challenged sections 2 and 7 of Orissa Freedom of Religion Act, 1967 and as well as regulations 4 and 5 of Orissa Freedom of Religion Rules, 1989, in response to a petition for a writ that was filed in accordance with Article 226 of the Constitutions. Through the use of a Special Leave petition, the petitioner attempted to overcome the decision of the Orissa High Court to dismiss the case. This was done in order to get the subject to the highest court in India. According to Article 25 of India's constitution, "What freedom for one is freedom for other, in equal measure," and "there can be no restriction on the free movement of ideas or opinions among citizens," the constitution states. As a consequence of this, no one possesses the implicit right to impose their religious beliefs on another individual. The following statement was also made in addition to this one: "What freedom is for one is freedom for other, in equal measure." According to the Supreme Court, the term "propaganda" does not include the idea of meaning that is conveyed in speech.

When its significant to concentrate on freedom to propagate, anti-conversion laws, at the same time, it's equally important to focus on Blasphemy.

BLASPHEMY

Blasphemy is committed when a person's words or actions demonstrate contempt or disrespect for religious teaching, sacred items, or religious ceremonies. Blasphemy can be committed by anyone. Insults directed at a god, parody of religious ceremonies, or the degradation of sacred writings or items are all examples of things that could be considered instances of this sin. Because of the fact that blasphemy is interpreted differently by various cultures and religions, it is a sensitive subject. Particularly in communities where it is regarded as a major transgression, it frequently results in harsh consequences or social disgrace.

The impact of blasphemy varies significantly depending on cultural, religious, and legal contexts.

Cultural and Social Consequences: Blasphemy is highly stigmatized and seen as extremely insulting in numerous communities. Those who are accused of blasphemy may face feelings of rejection, seclusion, or even physical violence. Discord in families and communities may result from this.

Consequences in the Law: Blasphemy is punishable by law in several nations, with possible fines, jail time, or even the death penalty for very egregious instances. But these regulations varied substantially among countries and legal systems.

Freedom of Expression: Restrictions on free speech and expression may exist due to blasphemy laws or cultural norms. Concerning religion or religious persons, they may stifle free speech, artistic expression, or criticism.

Conflict and Violence: Protests, societal discontent, or even bloodshed might break out in response to blasphemy. Protests, riots, and horrific battles have broken out in various parts of the world as a result of controversial events.

Global Perspectives: when blasphemy occurs in one country and offends religious beliefs in another, it can strain international relations. Diplomatic difficulties or disruptions to international collaboration could result from such events. Psychological Impact Social rejection, threats, or worry for one's safety and well-being can lead to psychological suffering for individuals accused of blasphemy.

There are several different ways in which blasphemy can affect people and societies; these include the law, society, culture, and emotions. The impact of blasphemy is complex and multifaceted, intertwining legal, social, cultural, and emotional aspects that can significantly influence both individuals and broader communities.

REACHING A MIDDLE WAY BETWEEN ENVIRONMENTAL REGULATIONS AND RELIGIOUS PRACTICES IN THE CONTEXT OF JUDICIAL ACTIVISM

When certain circumstances are taken into consideration, it may appear that religious activities or beliefs are in direct opposition to environmental conservation initiatives. It is possible, for instance, that particular rites or practices include the utilization of resources that are seen as being environmentally sensitive. The right to a healthy and safe environment is rapidly climbing the ranks of the most fundamental human rights, despite the fact that it is not always agreed upon by all parties. This includes the right to a healthy environment, which is an integral component of this.

There have been numerous instances in which the Supreme Court of India has been of great assistance in the protection of religious freedom and the environment.

The following case provides a concise overview of the ground breaking legal case, The Green Firecrackers Case, this set in motion a revolution in the pyrotechnics business as it pertains to famous people. Air pollution in Delhi and the National Capital Region was at its worst during the Diwali and wedding seasons. Babies and young children suffered as a result of the change in air quality. The city's inhabitants ground to a standstill as the haze engulfed it; chronic respiratory illnesses were fundamental to their life. The NGT and the Supreme Court have heard cases involving air pollution on multiple occasions. Unfortunately, the air quality has not improved despite the introduction of regulations meant to decrease pollution. In this case, a series of important rules were passed, creating the idea of "environmentally friendly firecrackers" to avoid any interference with people's religious views and ways of life. Environmental protection is intricately connected to the notion of sustainable development, which aims to harmonize economic, social, environmental and religious right factors for the advantage of both current and future generations.

Noise pollution was elaborately discussed in the case of "Masud Alam and Ors. v. Commissioner of Police and Others". As members of the Congregational faith, the petitioners in this case are Muslims who regularly attend the Murgihatta Mosque, which is located on Brabourne Road in Calcutta. Despite the fact that petitioners intended to use loudspeakers for the Azan, the Commissioner did not allow them to do so because of complaints from neighboring residents. The petitioners claim that the lack of authorization constitutes a violation of their fundamental entitlement, which is outlined in Art 25 of the Constitution of India. The respondent, who was the Commissioner of Police, indicated that the refusal of authorization was due to grounds pertaining to public policy. In making its decision, the court emphasized the fact that loudspeakers are fundamentally faulty, taking into consideration the fact that they are both a benefit and a drawback. Another aspect that was brought to light was the significance of music at festivals, specifically in relation to the emotional connection that people had with it. In this particular case, the court did not find any evidence that the executive branch had discriminated against individuals based on their religious beliefs. Consequently, it was ruled that there was no breach of fundamental rights, and the petitioners' allegations were considered to be invalid.

THE IMPACT OF JUDICIAL ACTIVISM ON CULTURAL NORMS: PROMOTING WOMEN'S EMPOWERMENT IN CONSERVATIVE RELIGIOUS SOCIETIES

As a potent instrument for confronting and altering long-established cultural traditions about the roles and responsibilities of women in traditional religious societies, judicial activism in India has grown increasingly prevalent in recent years. This case investigates the significant influence that judicial activism has on cultural norms, with a particular emphasis on the vital role that the courts play in advancing women's empowerment within the context of conservative religious environments.

The significant case of “Shayara Bano v. Union of India and Others”, commonly referred to as the "Triple Talaq Case." Shayara Bano, Talaq-e-biddat, polygamy, and nikah halala were the three practices that the petitioner was resolved to call into question because they were considered to be among the most significant aspects of Muslim Personal Law. Her husband, Rizwan Ahmed, was a real estate dealer from Allahabad, and they had been married for fifteen wonderful years. A legal notice known as a triple talaq was mailed to her by her spouse, which resulted in her having a personal encounter with her spouse and the subsequent argument that ensued thereafter. As a result of the fact that these three activities infringed her rights, which are guaranteed by Articles 14, 15, 21, and 25 of the Indian Constitution, she proceeded to the highest court in the land to have them ruled illegal. Her appeal was supported by the Union of India as well as other organizations that are fighting for the rights of women; however, the All-India Muslim Personal Law Body claimed that this was a fundamental practice that was protected by the constitution. Upon receiving the plea, the Supreme Court established a Constitutional Bench consisting of five judges. On the 22nd of August in 2017, the practice of talaq-e-biddat was found to be unconstitutional by a vote of 3:2.

The key legal matter addressed in the case of “Kantaru Rajeevaru v. Indian Young Lawyers Association and Others” is to The Supreme Court has the authority to refer cases for review to a bigger bench, particularly when it comes to assessing fundamental legal principles. This authority is within the Supreme Court's boundaries. The Supreme Court has broad authority to clarify a misunderstanding of the law in review petitions that emerge from writ petitions, according to a finding that was handed down by a Constitution Bench consisting of nine judges on May 11, 2020 that was published in a judgment. This power originates from Article 137 of the Constitution, as well as Articles 141 and 142 of the Constitution for comparison. This case is of historical significance and sheds light on other significant instances pertaining to women's rights issues.

In the case of “Lily Thomas versus the Union of India”. In order to determine whether or not the prior marriage was legal, Lily had submitted a petition to the Supreme Court. The purpose of this petition was to address a hypothetical scenario in which a non-Muslim spouse does not divorce their wife and subsequently converts to Islam without making significant changes to their beliefs or behaviours. It is important to note that apostasy does not result in the dissolution of the civil responsibilities or the marital link; nonetheless, it does create grounds for a divorce. The verdict of “Sarla Mudgal” was reviewed in this case on the basis of the Indian Constitution's Articles 20, 21, 25, and 26. These articles provide the right to life, liberty, and the ability to follow any religion of one's choosing. In the course of this investigation, this evaluation was carried out to its whole. The court, however, came to the conclusion that the accusers were attempting to avoid justice by laying claim to religious purity, and as a result, the indictment was ruled to be without foundation. In addition, the Supreme Court came to the conclusion that the freedom that is guaranteed by Article 25 of the Constitution is the freedom that does not infringe upon the freedom of other people who have rights that are like or equal to those of the individual in question.

CONCLUSIONS

The Supreme Court and the High Court are the two courts that are accountable for ensuring the Constitution is protected through the functions that they play in their respective jurisdictions. When it comes to the process of preserving the fundamental rights of individuals, such as the right to freedom of religion or belief, the court system has the potential to play a key role in safeguarding these rights. This is due to the fact that the administration of justice has the capacity to safeguard basic rights.

The participation in intervention to avoid coercion, prejudice, or persecution might be regarded action in the framework of protecting human rights. This is because it is a measure that could be considered desirable in the context of defending human rights. When considering the preservation of human rights, this is a very pertinent point. In addition, the utilization of judicial activism was successful in protecting the rights of minority groups, which was a noteworthy achievement. There is a provision in the Constitution of India that states that the "Right to freedom of religion" is a basic right that must be protected. In a nutshell, we might come to the realization that this particular case of judicial activism is yet another attempt to fight against the totalitarian mind-set and protect the fundamental rights of individuals. There is no other way to attain the Rule of Law and Judicial Accountability but via the activism of the judicial system.

Article 141 will ensure that there is uniformity in the legal conflict that incorporates religion in the generation that comes after us. Establishing a precedent will be the means by which this objective will be achieved. Courts are able to settle conflicts in a fast manner because they depend on well-established legal principles that are derived from previous rulings. This allows the courts to resolve issues in a timely manner. The implementation of basic rights is the duty of the Supreme Court of India, which is responsible for ensuring that national legal systems are brought into accord with these universal rules. As a result of this action, the court makes a contribution to the construction of a global framework for the protection of religious rights. For this reason, it is essential to possess this sort of self-assurance in order to maintain a society that is just and unbiased. People can be made aware of the fact that religious rights can be enforced in a court of law gives a number of advantages, is something that can be brought to their attention. It is possible to obtain a number of benefits from this, some of which include the protection of constitutional values, the avoidance of abuses of power, the empowerment of individuals, and the promotion of social justice. Additionally, the administration of democratic government and the preservation of religious rights are both dependent on it.

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