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BOMBAY HIGH COURT ON RIGHT TO DECLARE “NO RELIGION” *

“RELIGION IS THE OPIUM OF THE PEOPLE”

-Karl Marx

INTRODUCTION

To begin with I think I would like to refresh the movie PK and its core idea in our minds i.e. we are not conceived with any skin pigmentation or skin pigmentation broadcasting we are Hindus or Muslims or Sikhs or Christians. It is only that like a child is conceived with no assumptions and is made to take after a certain way of life and perform certain customs. In motion picture , an outsider did not have any thought or ideas about what religion is here on Earth. When they grow up and have their own arrangement of belief systems, they think their ways or techniques are correct and others are incorrect. Now on close reading it is observed that word “religion” has come like 2-3 times and thus plays a crucial role in this controversy. But this is just a small manifestations of the much larger pandemonium endorsed in the name of religion each and every day not only in India but in rest of the world too.

Now these are some clues cum synopsis of this entire piece which will be good enough to ponder over various sub-issues (the topic may give rise to) before reading this particular review. Basically, I have endeavoured to do the critical analysis of the articles related to recent Bombay High court judgement that citizens have the right to declare “no religion”. Further in this light various cases on same principle and dealing with similar issues will be discussed and where will the case go if there is an appeal in Supreme Court. Categorically, this work is divided in 3 main sections. First, brief of the article which is done in three layers- about article, background story of the case, analysis of the drafting of article. Second my analysis which will posit some logical inconsistency in the judgment as well as address the issues still undecided. Finally all this has been mixed together in optimum quantity to get something which is enjoyable as well as contemplating.

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ARTICLE TO BE REVIEWED

Article Source

The article which has been taken for the review deals with some intricate but fundamental questions concerned about an individual's freedom to choose or not to choose to disclose his/her religion anywhere in any official document. To give catchy caption we can call it "Right to Declare No Religion". Firstly, about this article: it is authored by Shibu Thomas, a member of TNN (Times News Network) dated September 23, 2014 at 11.18PM IST on e-paper version.¹ I have also taken news feed from Times of India on this judgment.

Background of the case

"That this hon'ble Court be pleased to issue writ of mandamus or any other appropriate writ, order or direction thereby directing the respondents to recognise "No Religion" as a form of religion and not to insist on writing/mentioning/specifying/quoting religion in any of its forms or declarations."²

This is the prayer of the petitioner, which the Court quotes in its judgment and very lucidly gives the picture of what are the main issues raised in this case. In a brief and interesting judgment delivered on 23 September 2014 in the case of Dr. Ranjeet Suryakant Mohite vs. Union of India³ filed as a Public Interest Litigation No. 139 of 2010 Bombay High Court and held that Article 25 of the Constitution requires the administration to permit persons to pronounce "No Religion" on administrative structures that oblige presentations of religion. The candidates were the individuals from the "Full Gospel Church of God", which has confidence in Jesus Christ, yet not in Christianity, or some other sorted out religion. The Petitioners made an application to the State Government printing press to issue a periodical warning expressing that they were not Christians yet, somewhat, had a place with "No Religion". This application was rejected. Thus, they drew nearer the Court, by means of PIL and here the supplication to God was allowed.

Analysis of the Drafting

Now let's see how the article has been drafted. It begins with the judgement of the court which is very clearly mentioned in the article in few words in simple language i.e. no one can be insisted to declare the religion (short but well covered). In next paragraph facts have been narrated in brief along with the information that first application rejection lead to filing of a PIL in Bombay HC. Now language of Article 25 used by court has been cited. Even in this newspaper article, mainly about the case and its judgement, the politics was somehow inserted by writing that neither Central nor State govt. of Maharashtra is in favour of this decision. Now these types of statement bring the political connotation in such critical issue which worsen the delicate situation created by these judgements.

¹ The Times of India, (2015). Bombay HC: No govt can force anyone to list religion - The Times of India. [online] Available at: <http://timesofindia.indiatimes.com/india/Bombay-HC-No-govt-can-force-anyone-to-list-religion/articleshow/43263028.cms> [Accessed 20 Jan. 2015].

² Dr. Ranjeet Suryakant Mohite vs. Union of India, Public Interest Litigation No. 139 of 2010. Para 11. <http://bombayhighcourt.nic.in/generatenewauth.php?auth=cGF0aD0uL2RhdGEvanVkZ2VtZW50cy8yMDE0LyZmbmFtZT1DUElMMTE0MTYxMC5wZGYmc21mbGFnPU4%3D>.

³ Dr. Ranjeet Suryakant Mohite vs. Union of India, Public Interest Litigation No. 139 of 2010, decided on 23.09.2014.

Then the cultural unity and secularism which basically constitutes the emotional appeal has been made linking it with the supremacy of Fundamental Rights (here Article 25) over all other provisions (section 2 of HMA). Finally, again the significant portion of the decision is reiterated which basically focuses on freedom of individual to claim that he does not belong to any religion and there is no legal provision which proposes contrary. Again the dichotomy between positive and negative liberty comes inter alia. As per the interpretation of Article 25 in deconstructionist sense, the individual has the right to practice, profess or propagate any religion and simultaneously the right not to do the same if (s)he doesn't want the same. The right has been incorporated to give the individual the freedom to adopt or profess any religion or not in case he doesn't believe in any religion. So all in all it is a very concisely expressed form of the judgement in plain language just to make general masses aware about this case.

MY ANALYSIS OF THE JUDGEMENT

Since the essentials of communicating a religion encroached upon the flexibility of heart of irreligionists, the Court held that it was unlawful, and set aside the request of the administration printing press. In this way, so unexceptionable, the Court's judgment takes after the pattern in most liberal popular governments that have a flexibility of religion and inner voice statement: the subject of what constitutes a religion is for neither the courts nor the church to choose, however for the person. The Courts won't ask into whether a singular's conviction framework counts with any of a rundown of endorsed religions, yet will just start an at first sight enquiry into the profundity and truthfulness of her convictions (whether, for occurrence, they are sufficiently focal to her life to legitimately be seen as having "religious" criticalness), and go no further before augmenting established security.

In case that was all, this would be a really direct case. Nevertheless the position is out and out ensnared by the path that all through its judgment, the Court runs together two out and out distinctive thoughts, just as they were one: the privilege to profess no religion, and the privilege against constrained divulgence of religion. In its opening section, the Court states:

“The contention of the petitioner is that the State cannot compel any citizen to disclose his religion while submitting forms and/or declarations. The Contention is that the petitioner has a right to claim that he does not believe in the philosophy of any religion and therefore he does not practice or profess any religion. The contention in short is that a citizen can always claim that he belongs to **No Religion**”⁴

Be that as it may, these are not the same contentions whatsoever! Given that the Court's own particular contention is that religion – in the Article 25 sense – require not be mystical whatsoever, the way that you are expressing, on a structure, that you have a place with "No Religion" does not imply that you are not revealing your religion – indeed, it implies precisely the inverse: you are disclosing your "religion" as being theistic or atheistic. Indeed without this strained perusing of "religion", the qualification ought to be clear. It is the same as the distinction, case in point, between requesting "Other" under the "Gender: M or F" classification, and asking that no one ought to be propelled to pronounce their gender. A surety against forced divulgence of religion would sum not to an additional box stipulating "No Religion", yet either an expulsion of the inquiry from forms by and large, or still an alternate Box expressing "I Prefer Not to Disclose".

The refinement is pivotal, on the grounds that as a matter of fact, the freedom to express "No Religion" – requesting equality of treatment in the middle of theists and atheists – is an Article 25 claim; however the freedom from forced revelation is an Article 21 privacy claim (or, to a lesser degree, an Article 19(1)(a) case against forced speech). The privacy claim – dissimilar to the Article 25 contention – is not confined to religion. It would reach out to different gimmicks of one's identity that are as focal as religion, and which one could, conceivably, need to keep private: ethnicity, race, sex (maybe). That is unquestionably a reasonable argument, however would require the Court to go into the niceties of privacy law, and carve out another idea of privacy, one which goes past privacy as freedom-from-

⁴ Supra note 3. Opening Statement, Para 1.

surveillance⁵, and privacy as a private right against divulgence of sensitive medicinal data⁶. This would be an exciting development, but requires substantially more reasoning and arguments than the Bombay HC has engaged in.⁷

The two separate issues are conflated all throughout the judgment, and even torment the prayer. The court under two conditions of prayer held-

(a) That respondents can't force any individual to declare his religion in any form.

(b) That by ideals of Article 25 of the Constitution of India, each individual has right to claim that he doesn't belong to any religion and that he doesn't practice or profess any religion.

It is very much evident from the context that the Court's intention was (b) in actual sense, and it (erroneously) considered (a) and (b) on an equal footing. So the status quo is that guarantee is furnished against compelled disclosure, and also brought atheists on par with theists in terms of disclosure. It piques my interest to wait and watch if this conflict is subsequently resolved, and if so, where would that go.

⁵ PUCL v. Union of India, AIR 1997 SC 568 and Gobind vs. State of Madhya Pradesh, AIR 1975 SC 1378 line of cases.

⁶ Mr X v. Hospital Z, 1998 Supp(1) SCR 723.

⁷ Indian Constitutional Law and Philosophy, (2014). Bombay High Court on the Right to Declare "No Religion" - and more!. Available at: <https://indconlawphil.wordpress.com/2014/10/03/bombay-high-court-on-the-right-to-declare-no-religion-and-more/> [Accessed 22 Jan. 2015]

RELEVANT LEGAL PROVISION

Article 25

Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II- In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.⁸

Interpretation

Clause (1) of Article 25 of the Constitution of India is in two parts.

The first part confers fundamental right to freedom of conscience. Conscience can be defined as moral sense of right or wrong as applied to one's own judgment and action.

The second part confers a right on a citizen to freely profess, practice or propagate any religion. The full concept and scope of religious freedom is that there are no restraints upon the free exercise of religion. This means the right to worship God according to the dictates of one's conscience. Man's relation to his God is made no concern of the State. Freedom of conscience and religious belief cannot, however, be set up to avoid those duties which every citizen owes to the nation e.g. to receive military training, to take an oath expressing willingness to perform military service and so on.⁹

Section 2(1) (c) of Hindu Marriage Act

To any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Interpretation

⁸ Article 25, Constitution of India 1950.

⁹ Commr. of Police and others v. Acharya Jagadishwarananda Avadhuta and another, (2004)12 SCC 770 at page 802.

In simple parlance, all those in India who are not in the other four religions mentioned above then they are by default Hindu unless proven otherwise through law.



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PRESENT SCENARIO WITH RESPECT TO RELIGION

Every one of these news things are from month of February,2015. I have alluded them for comprehension the present situation in the matter of religious convictions in our nation. Its welcome that the legislature is prepared to discharge the religion based information of enumeration 2011 by March. However information was prepared by mid 2014 yet the prior UPA government postponed its distribution. Distribution of religion based information is needed for both political and scholarly attempts. Discussion over discharging the information is a produced one. Trepidation host emerged in light of the fact that political gatherings have decided to peruse stacked significance into the measurements. However both religion based information and position registration of 2011 will give imperative numbers which are fundamental for the legislature to detail arrangements extending from reservation to budgetary plans for the hindered gatherings. Without hard information for instance the Hindutva periphery could undoubtedly throw together mania about India's Muslim populace surpassing that of Hindus. On the other hand a Certain station gathering could guarantee reservation benefits despite the fact that it constitutes the smooth layer. The scholarly world will be not able to gage India's financial substances. Since numbers don't lie religion and standing based evaluation ought to be discharged soon.

My thoughts on this issue would be that Our mainstream state has no religion, significance while individuals are liberated to be faithful adherents of differing religions, state arrangement must be in light of religiously nonpartisan contemplations, Therefore our statistics ought to have no religion. It specifies the whole nation consistently so that the state can improve occupation of wanting to enhance subject's personal satisfaction. Yet, whether its instruction or medicinal services or streets or whatever other considerable rundown of administrations which the state has a part in supplying, religion should not to be a component for a common state. Lets quit doing this as it just reinforces the social obstructions and bias that the state must work to weaken. With The rank registration shockingly India is moving backward. Apparently this is to enhance reservations however these ought to have been finished decades ago,as was normal by those that issued them conception. Nehru himself had solid sentiments about how they prompted wastefulness and inferior benchmarks. The point here is not to deny the authentic or proceeding with treacheries but rather to say that the current mainstream state ought to handle them by universalizing fundamental procurements, enhancing establishments and administration conveyance for all- as opposed to sustaining the oppression of gathering characters. The developing center of cutting edge character is adaptability and individual decision. Statistics ought to get up to speed.

Another imperative SC decision in such manner, is that it went ahead to say that Polygamy is not a basic piece of Islam. Despite the fact that Muslim individual law allows a man to have four wives, that SC decided that Muslim's essential right to declare Islam does exclude rehearsing polygamy. "What was ensured under Article 25 (privilege to practice and engender any religion) was the religious confidence and not the practice which may run counter to open request, wellbeing or profound quality. Polygamy was not necessary piece of religion and monogamy was a change inside of the force of the state under article 25", said a Bench of J. T.S. Thakur and A.K.Goel.

It further said that practice did not procure approval of religion essentially in light of the fact that it was allowed.

At long last depending On PM's words wherein he says- " My administration will guarantee there is finished opportunity of confidence and that everybody has the certain privilege to hold or receive the religion of his or her decision without intimidation or undue impact", We all expectation for a common India to prosper.

CONCLUSION

The research actually involved studying the newspaper article published in various newspapers to get more precise outlook towards this piece and to be as objective as possible. The newspapers are very much coloured with some or the other ideologies, for instance here the disagreement of central and Maharashtra state govt. from the judgement is incorporated to add the spice of politics in the story.

Coming to the central theme of this article review which is analysing not so novel but very important (from atheists and non-religious individual's perspective) right i.e. Right to Declare "No religion". Now this issue can be looked from constitutional as well as personal law's viewpoint. Since Article 25¹⁰ talks about freedom of religion and section 2(1) (c) of Hindu Marriage Act¹¹ presumes and classifies any individual in India as Hindu if he is not Muslim, Jew, Parsi or Christian (unless proved contrary by law or custom). So this presumption of being Hindu and the prerogative to declare no religion are diametrically opposite. For this the conflict might be decided in Supreme Court if appeal is made regarding this. Being a Fundamental Right, freedom of religion which has been interpreted in broader sense includes not belonging to any religion as freedom under this, clearly supersedes provision of HMA¹². But now indispensable question is which laws will govern Marriage, Divorce, Inheritance of property, maintenance and other crucial concepts of HMA for people belonging to "No religion" category.



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¹⁰ Article 25, Constitution of India 1950.

¹¹ Section 2(1)(c), Hindu Marriage Act 1955.

¹² The full form is Hindu Marriage Act 1955. Hereinafter referred as HMA.