



## Right to Conduct a Religious Procession \*

### INTRODUCTION

Constitutionally, India is a secular country and has no State religion. India's own concept of secularism had been fully established through judicial decisions and state practice - the preamble to the Constitution was amended by the Constitution (Forty-second Amendment) Act 1976 to include the word 'secular' along with 'socialist', to declare India to be a 'Sovereign Socialist Secular Democratic Republic'. The Constitution of India contains in its Chapter on Fundamental Rights several provisions that emphasize complete legal equality of its citizens irrespective of their religion and creed and prohibit any kind of religion-based discrimination between them. Religious freedom as an individual's right is guaranteed by the Constitution to 'all persons' in Article 25(1), Article 27 and Article 28. Thus, the Right to Freedom of religion forms a very important Fundamental right of our country and aims at maintaining the principle of secularism in India. Indian constitution firmly states that all religions are equal before the law and no religion shall be favoured over the other.

The Fundamental Right to religious freedom cannot be enjoyed in an absolutely unrestricted way. There are limitations within which these rights can but exercised, as also lawful restrictions which can be imposed by the State. The Jatindra Narain Commission's Report, published recently, on the Jamshedpur riots which erupted on April 11, 1979, on the occasion of the Ram Navami festival, raises questions about the citizen's right to go in a procession over a public road. These questions were also raised in Justice D.P. Madon's Report on the Bhiwandi riots which broke out in May 1970 during the Shiv Jayanti festival. The central issue in both cases was conflict between the two groups.

The Constitution - Art 19(1) (b) - protects the citizen's fundamental right "to assemble peaceably and with- out arms". The right is subject to "reasonable restrictions" being imposed by the State "in the interests; of the sovereignty and integrity of India or, public order". Under S 144 of the Criminal Procedure Code, processions can be banned if the District Magistrate feels that "immediate prevention or speedy remedy is desirable" and it is necessary to impose the ban to prevent "a disturbance of the public tranquillity, or a riot, or an affray".

The Supreme Court upheld the constitutional validity of Section 144 in *Babulal Parate vs State of Maharashtra*<sup>1</sup> in 1960 and in Madhu Limaye's case in 1970. That was a case where two rival trade unions clashed.

In *Mohammad Siddiqui vs State Of U.P. And Anr*<sup>2</sup>. Qazi Mohammad Siddiq has filed an application against the State of Uttar Pradesh and the District Magistrate of Lucknow, under Article 226 of

\* Mr. Prakash Khinchi & Mr.Suyash Pranay Tripathi, Fifth Semester, BA.LLB(Hons), National Law University and Judicial Academy, Assam.

<sup>1</sup> AIR 1961 SC 884

<sup>2</sup> AIR 1954 All 756

the Constitution that the applicant applied for the taking out of a religious procession, Madhe Saheba. The magistrate dismissed the application because of fear of breach of peace and conflict based on religion.

Lord Justice Scarman, who inquired into the Red Lion Square disorders of June 15, 1974, stated the law in the most explicit terms: "There is a conflict of interest between those who seek to use the streets for the purpose of passage and those who seek to use them for the purpose of demonstration. English law recognises as paramount the right of passage; a demonstration which obstructs passage along the highway is unlawful. The paramount right of passage is, however, subject to the reasonable use of the highway by others. A procession, therefore, which allows room for others to go on their way, is lawful; but it is open to question whether a public meeting held on a highway could be lawful, for it is not in any way incidental to the exercise of the right of passage."<sup>3</sup>

India today faces many crucial problems. On the one hand, the executive is not terribly sensitive about the citizen's rights. On the other, riots have broken out because of certain kinds of processions. He referred to Article 19(1) (b) and said "The people must have a right to voice their dissatisfaction or publicly demonstrate their grievances, particularly when it appears that at times even reasonable demands have not been granted unless there were public demonstrations".

## **FREEDOM OF RELIGION**

India is the birthplace of several religions, Hinduism, Buddhism, Jainism, and Sikhism, and home for thousands of years to Jewish, Zoroastrian, Muslim, and Christian communities. The vast majority of citizens of all religious groups lived in peaceful coexistence and were conscious of religious freedom and minority rights; however, at times, violence between religious groups and organized communal attacks against religious minorities occurred during the reporting period. The Ministry of Home Affairs published in its Annual Report 2009-10 that 826 communal incidents occurred in 2009, in which 125 persons died, compared to 943 incidents in 2008 in which 167 persons died. State governments also reported communal incidents. The country's democratic system, open society, independent legal institutions, vibrant civil society, and free press actively provided mechanisms to address violations of religious freedom when they occurred. The U.S. government discusses religious freedom with the government as part of its overall policy to promote human rights. During meetings with senior government officials, as well as state and local officials, and religious community leaders, senior U.S. officials discussed religious freedom issues including reports of harassment of minority groups and missionaries, the 2002 communal riots in Gujarat, and the 2008 violence against Christians in Orissa and Karnataka.<sup>4</sup>

Freedom of religion in India is a fundamental right guaranteed by the country's constitution<sup>5</sup> which is based on article 25 of Indian Constitution. Modern India came into existence in 1947 as a secular nation and the Indian constitution's preamble states that India is a secular state. Every citizen of India has a right to practice and promote their religion peacefully. However, there have been a number of incidents of religious intolerance that resulted in riots and violence. These incidents have been condemned by the governmental administrations, private businesses, and judicial systems.

---

<sup>3</sup> A G Noorani, "*Right to March in Procession*", Vol - XVI No. 42-43, (October 17, 1981), <http://dev.epw.in/journal/1981/42-43/our-correspondent-columns/civil-liberties-right-march-procession.html>

<sup>4</sup> <http://www.state.gov/documents/organization/171754.pdf>

<sup>5</sup> Article 15, Constitution of India

Religious liberty includes the right to change one's religion or belief without coercion. This is a controversial point in many Muslim countries, where conversion from Islam to another religion is illegal.<sup>6</sup>

Freedom of religion does not require that the state be secular. A state "may declare an official religion," the USCIRF report explains, "provided that basic rights, including the individual right to freedom of thought, conscience, and religion or belief, are respected for all without discrimination." If jobs or government benefits are denied to the adherents of a particular belief, then religious liberty has been violated.<sup>7</sup>

Fundamental right to freedom of religion is guaranteed under Articles 25, 26, 27 and 28 of Part III of the Indian Constitution. It is religious freedom in the background of a secular state. The Supreme Court of India has explained the secular character of the Indian Constitution thus:-

"Secularism is neither anti-God nor pro-God, it treats alike the devout, the antagonistic and the atheist. It eliminates God from the matters of the state and ensures that no one shall be discriminated against on the ground of religion"<sup>8</sup>.

In *St. Xavier's College v State of Gujarat*<sup>9</sup> Court held that - the state is neither pro-God nor anti-God and treats the devout, agnostic and atheist alike and sees all religions equally. No person would be discriminated on grounds of religion. No religion would be favoured over another. Article 14 and 15 holds every religion equal before the eyes of the law and prohibits discrimination on grounds of religion.

The Indian society has nurtured different cultures from times immemorial and has been home to majority of the world religions and having such a historical lineage, the freedom of religion here holds great importance. Though important, it is not an absolute right and is subject to various restrictions.

## **RIGHT TO RELIGIOUS PROCESSION AND CONSTITUTION OF INDIA**

Religious freedom as an individual's right is guaranteed by the Constitution to 'all persons' in Article 25(1), Article 27 and Article 28. Thus, the Right to Freedom of religion forms a very important Fundamental right of our country and aims at maintaining the principle of secularism in India. Indian constitution firmly states that all religions are equal before the law and no religion shall be favoured over the other. So citizens of India have right to follow their religion, conduct religious practise and procession.

In English law, to organise or take part in a procession on a public highway is not necessarily a nuisance. It is only a nuisance when such a procession constitutes an unreasonable user of the highway or would naturally result in an obstruction.

The question with regard to the right of taking out a procession was incidentally considered by Heaton J., both in *Virupaxappa v. Sherif Sab*<sup>10</sup> and in *Venkatesh Appashet v. Abdul Kadir*<sup>11</sup> and according to that learned Judge, a man had the right to use the streets as a thoroughfare, i.e., for

<sup>6</sup> Thomas Reese, "Religious freedom is a fundamental human right", (May 16, 2014), <http://ncronline.org/blogs/faith-and-justice/religious-freedom-fundamental-human-right>

<sup>7</sup> Thomas Reese, "Religious freedom is a fundamental human right", (May 16, 2014), <http://ncronline.org/blogs/faith-and-justice/religious-freedom-fundamental-human-right>

<sup>8</sup> Kirandeep Kaur, "Ambit of Right to Freedom of Religion", (February 28, 2012), <http://www.legalservicesindia.com/article/article/ambit-of-right-to-freedom-of-religion-1048-1.html>

<sup>9</sup> 1974 AIR 1389

<sup>10</sup> 2 Ind Cas 494

<sup>11</sup> (1918) 20 BOMLR 667

the purpose for which streets were made, but he had no right to pass along a street playing music. We may point out that the right to play music has nothing to do with the right of taking out a procession.

Religious processions involve the question of reconciling competing claims of religious freedom. One group may claim the right to take out on a highway a religious procession accompanied by music; the other may stake his claim to offer prayers in a place of worship located on the highway 'in a calm and peaceful manner. Such claims have generated a lot of communal tension and have led to considerable violence. The Government of India Act, 1935 did not guarantee religious freedom. District Magistrates could, therefore easily treat the problems of processions as simple matters of law and order. After the promulgation of the Constitution, the right to take out a religious procession attracts three fundamental rights under Articles 19(1)(b), 19(1)(d) and 25. Clause (b) of Article 19 guarantees the right to assemble peaceably and without arms. A procession, as pointed out by Benson J., is an assembly in motion'. Clause (d) of Article 19(1) establishes the right to move freely throughout the territory of India. The right to freedom of speech and expression under Article 19(1)(a) will also be attracted in cases where the procession carries placards and shouts slogans. These rights are subject to the restrictions under Article 19(3) and 19(5) respectively. The right to assemble peacefully and without arms is subject to any law imposing reasonable restrictions in the interests of the sovereignty and integrity of India or of public order. The right to move freely throughout India is similarly subject to any law imposing reasonable able restrictions in the interest of the general public or for the protection of interests of any Scheduled Tribe. The right to religious freedom under Article 25 is subject to public order, morality and health and to other fundamental rights under Part III of the constitution.<sup>12</sup>

In *Manzur Hasan v. Muhammad Zaman*<sup>13</sup> privy council upheld the right to take out a religious procession, if permitted by district Magistrate, without interfering with traffic on public highways and rights of the public. The Supreme Court has repeatedly upheld the law as settled by the Privy Council in Manzur Hassan's case. It has held that the State cannot impose unreasonable restrictions.' The, law enabling the authorities to make rules to regulate procession is, in fact, in aid of rights under Article (19)(b) and (d). In *Mohammad Siddique v. State of Uttar Pradesh*<sup>14</sup>, the Allahabad High Court observed that difficulties arose when by reason of members of one particular sect or religion doing something in public, the religious susceptibilities of others are hurt and there is a danger of breach of peace. The Court held that the Magistrate could fix the time and route for a religious procession and even prohibit a procession if he was satisfied that a breach of peace could not otherwise be averted. The Court would not sit in judgement over such a prohibition and perform the functions of a Magistrate. In *Himmatlal v. Police Commissioner Ahmadabad*<sup>15</sup> however, the Supreme Court held that the power to regulate did not include total prohibitions, but restrictions would involve partial prohibition, as where a procession is asked to take one route and not another. Courts have also held that where two fundamental rights collided.

In a dispute over playing of music by a procession near a mosque, the Supreme Court held that Manzur Hassan's case had settled the law and right to take out the procession with the accompaniment of music was subject to the orders of the competent authorities on the maintenance of law and order and regulation of traffic. Playing of music cannot also be considered as a part of worship and its suspension even for a few minutes as an intermission of worship. The right has to be reconciled with the right of the other group to offer worship in its own place of worship.<sup>16</sup>

---

<sup>12</sup> S.K. Khanna, *Contemporary Indian Politics*, Discovery Publishing House, 1999, pg. 172-174

<sup>13</sup> (1921) ILR 43 All 692

<sup>14</sup> 1954 CriLJ 1607

<sup>15</sup> 1973 AIR 87

<sup>16</sup>S.K. Khanna, *Contemporary Indian Politics*, Discovery Publishing House, 1999, pg. 172-174

The Fundamental Right to religious freedom cannot be enjoyed in an absolutely unrestricted way. There are limitations within which these rights can but exercised, as also lawful restrictions which can be imposed by the State.

*Chandu Sajan Patil v. Nyahalchand Panamchand*<sup>17</sup>, the question referred to this Full Bench is whether a civil suit will lie to establish the right of members of the public to carry a non-religious procession through the public streets. A suit was filed on behalf of the Hindu community of Sakur against the Muslim community of the same place for a declaration that the Hindu community had a right to conduct religious and social processions accompanied with music along certain public thoroughfares upon which certain Muslim mosques abutted. In 1938 the Muslims attempted to obstruct a Dasera procession from marching with music near one of the mosques. The Magistrate issued an order prohibiting the Hindus from carrying out their procession unless they obtained a declaration of their right from a competent civil Court. The suit was decreed by the trial Court and the decree was confirmed by the learned Extra Assistant Judge at Ahmednagar.

The Jatindra Narain Commission's Report, published recently, on the Jamshedpur riots which erupted on April 11, 1979, on the occasion of the Ram Navami festival, raises questions about the citizen's right to go in a procession over a public road. These questions were also raised in Justice D.P. Madon's Report on the Bhiwandi riots which broke out in May 1970 during the Shiv Jayanti festival. The central issue in both cases was conflict between the two groups.

In *Mohammad Siddiqui vs State Of U.P. And Anr*<sup>18</sup>. Qazi Mohammad Siddiq has filed an application against the State of Uttar Pradesh and the District Magistrate of Lucknow, under Article 226 of the Constitution that the applicant applied for the taking out of a religious procession, Madhe Saheba. The magistrate dismissed the application because of fear of breach of peace and conflict based on religion.

Constitution of India guaranteed right to religion of every citizen of India but sometime this right arise problem and conflict which have unexpected and cruel result. Indian constitution give a privilege to Indian citizen to follow their religion but there are many cases in India where a lot of conflict arise during religious procession.

In Neemuch district of Madhya Pradesh during religious procession on the occasion of Hanuman Jayanti some people throw stone on the crowd. According to police, members of a specified group hurled stones at a religious procession. Soon both sides engaged in fighting and 10 people injured. This incident shows that how an act of a person and group of people during religious procession is harmful to the people as well as to the society.<sup>19</sup>

Indian constitution not infringes any person's right to religion and conduct a religious procession. Main reason for the conflict during religious procession is propagation of religion. Sometime religious procession by a particular group seems to propagation of their religion to other group of people.

Another case on religious procession which took place in Khandwa town of Indore on 29<sup>th</sup> March 2015. A religious procession was attacked in Khandwa. One police constable was injured in violence. Police registered 12 cases against alleged perpetrators violence<sup>20</sup>.

---

<sup>17</sup> AIR 1950 Bom 192

<sup>18</sup> AIR 1954 ALL 756

<sup>19</sup> "10 Injured in Stone-Pelting during Hanuman Jayanti Procession in Neemuch", ( 3 April 2015), <http://www.newindianexpress.com/>

<sup>20</sup> Anuraag Singh, "Khandwa violence: Cops file 12 cases against perpetrators", (March 29, 2015), <http://timesofindia.indiatimes.com/city/indore/Khandwa-violence-Cops-file-12-cases-against-perpetrators/articleshow/46737936.cms>

The right to take out a religious procession on a highway is not a part of the fundamental right and where breach of peace is apprehended, necessary restrictions can be imposed.<sup>21</sup>

## SECULARISM, LAW AND ORDER AND RIGHT TO RELIGION

Secularism in India means equal treatment of all religions by the state. According to Constitution, India not follows any religion or propagates.

With the 42nd Amendment of the Constitution of India enacted in 1976, the Preamble of Constitution asserted that India is a secular nation. India does not have an official state religion. The people of India have freedom of religion, and the state treats all individuals as equal citizens regardless of their religion.

*St. Xavier's College v State of Gujarat*<sup>22</sup> is a landmark case for concept of Secularism in which Court held that - the state is neither pro-God nor anti-God and treats the devout, agnostic and atheist alike and sees all religions equally. No person would be discriminated on grounds of religion. No religion would be favoured over another. Article 14 and 15 holds every religion equal before the eyes of the law and prohibits discrimination on grounds of religion.

Article 25(1), Article 27 and Article 28 guaranteed right to freedom of religion. The concept of secularism of constitution give assurance to the citizen of India that they are not discriminated on religious base, they are free to follow their religion, right of religious practise and procession secure by constitution. So concept of secularism protects the right to religion and also religious procession which is linked with right to religion.

Police powers, despite the provisions of personal laws, also govern the celebration of religious festivities in the name of maintaining public order. Even at present, criminal justice agencies govern the observance of religious actions for all the citizens irrespective of their affiliations. This occurs because of the long standing conflicts between Hindu and Muslim communities. Communal riots causing loss of property and life have been common in the country. The problem usually arises when member of one religion protest against the nature, time, or route of a religious procession organised by the other group, especially when it pass through or near their locality. Regulating crowds during such celebrations in order to avoid communal conflict is an important responsibility for the police. A disturbance during these celebration could ignite large scale rioting, since often thousands of people are involved. The police exercise considerable discretion in handling these situations, since the law provides little discretion

*The narrow lanes and crowded from where these procession pass makes crowd control in these setting an extremely challenging job. In order to control the physical setting, police attempt to regulate the time and place where procession can be taken out by making use of the Police Act 1861 which provides power to manage traffic on public roads....it is through such a device that police insist on the time and route to be followed by the organizers...to ensure that the route does not pass through the localities of other communities, especially in front of temples or mosques, and further that police have space for their deployment and operations.*<sup>23</sup>

Large communal riots have occurred from such small matters as obstructing a procession, playing music when passing before a mosque, or shouting abusive or provocative slogans. Every religious festival is a high strategic event for the police. Not surprisingly, police deployment is heavy and strategic. The objective is to prevent clashes, and in this role the police determine how a religion will be celebrated. Thus, in the name of maintaining law and order, Indian police have been

<sup>21</sup> Kirandeep Kaur, "Ambit of Right to Freedom of Religion", (February 28, 2012), <http://www.legalservicesindia.com/article/article/ambit-of-right-to-freedom-of-religion-1048-1.html>

<sup>22</sup> 1974 AIR 1389

<sup>23</sup> Gerald James Larson, "Religion and Personal Law in Secular India: A Call to Judgment", Indiana University Press, 2001

exercising considerable power and interfering directly in the religious affairs of almost every community.

The Public Order Act 1986 is an Act which defined a number of offenses related to public order and safety of public life. The goal of the act was to clearly define such offenses so that police officers and other members of the law Enforcement community could take steps to protect public order and to address violence. The Public Order Act 1986 also covers assemblies and processions, mandating that police be notified before such events and allowing police to limit such assemblies for safety reasons. The act is structured in a way which is designed to avoid infringing upon the right to peaceful assembly and free association, without utterly limiting police powers. Some critics of the Public Order Act 1986 have argued that there have been instances in which these powers have been abused by overzealous law enforcement and in which legal assemblies have been suppressed.

Public Order Act 1986 also governs action of the public during religious procession. Part 2 of Public Order Act 1986 deals with processions and assemblies in which, "Advance notice of public procession according to this section a six days notice given to police before conduct procession, including details of the intended time and route, and giving the name and address of at least one person proposing to organise it."<sup>24</sup> This act also provides, "Power to police to impose condition on processions to prevent serious public disorder, criminal damage or damage to the life of public"<sup>25</sup> and "Chief police officer has the power to ban public procession up to three month for maintain peace in society."<sup>26</sup>

## CONCLUSION

Constitutionally every citizen has the absolute right to profess any religion of his choice. As constitution of India was not frame on the religious grounds and customs of any particular religion and it is secular in its framework. Though right to religion is absolute right but right to procession and conduct to religious ceremonies by the way of rally, public meetings and by using high voltage sound system is not absolute right at all. As India is a welfare state, state possess the responsibility to maintain public tranquillity, peace, and harmony and law order. Though the rallies which are conducted in the auspicious occasions of Dussehra and Moharrum or any other procession which is of historical importance are not subject to be stopped. By either force or law decree unless the organisation organising these procession took the pre administrative permission. Administration is bound to make the legal framework for conducting those processions. As India is diverse religiously so a Ram Navmi rally amidst the highly Muslim populated area can result in turmoil. Similarly a Muslim procession amidst can give rise to conflict if processed in Hindu majority area so local authority and administration can decide the framework of those procession and in the process of doing so can refrain organisation to perform certain acts. So no one can claim that there is infringement of their fundamental right. So religious procession should be conducted in vigilance of local authorities with some restriction. It should be kept in mind that rights and duties are correlatives if some act of yours infringes some ones right to decent life (which has broad connotation) then your right will be abridged because you have not performed your duties well hence right comes with some duties because if someone is negligent on part of his duty then someone's right is definitely going to be infringed and hence legal restriction by local administration, judiciary by the way of decree and restriction by provision of section 24 of police act of 1861 is constitutionally correct.

---

<sup>24</sup> Section 11, Public Order Act 1986

<sup>25</sup> Section 12, Public Order Act 1986

<sup>26</sup> Section 13, Public Order Act 1986