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STUDY OF RELIGIOUS MINORITIES WITH REFERENCE TO JAIN RELIGION AN ANALYSIS

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ABSTRACT

An exploration of the judicial and legislative responses to the claim for minority status by the Jains in post-independence India reveals the state's deep-seated disquiet about the idea of minority rights. Both the state and the courts, notwithstanding their commitment to these rights, viewed the demand of Jains with suspicion and detrimental to "national unity." This article hopes to demonstrate that the case of Jains is in fact quite central to the way in which definitions and understandings of minority and majority have come to be interpreted in our polity. Here we studies that Jain law developed by Jain law- makers (Jain Tirthankars and teachers) is more suitable for Jainism related to adoption, succession and partition etc., over Hindu laws. Hindu laws are based on work of manu (manusmriti) but Jain have their own legal work in the book vardhmanneeti by hemchandra ji and some other religious texts (kalpasutra etc), according to Jainism rishabhdev the first trithankar of jain's which lives in Indus valley civilization are the first law giver and to took Jains under the realm of Hindu laws is not satisfied.

INTRODUCTION

People sharing culture, a language, a system of beliefs and traditions are called an ethnic group. In the 19th century, some of the ethnic groups came together and proclaimed their nation-states over the territories they live on. Some ethnic groups inhabiting the same territories are quite different and didn't want to change their language, religion or tradition or to unify the nation that had been formed and some groups were forced to change their nationalities due to shifting state borders. These groups may be culturally different for the mainstream society but they want to preserve their identity. They are a set of people who are less in number and evidently distinct and unique from the majority.

In India, we have multiple religions, cultures, traditions and heritage. There are 8 Major religious belief systems with their distinct heritage and culture. From Kashmir to Kanyakumari there are 22 official languages with more than 800 dialects available. In a tight-knit democratic society like India, minority groups are respected for being different and although they enjoy minority rights in community with others belonging to a minority group is an individual choice.

Minority word comes from the Latin word 'Minor' and joins with the 'ity' suffix to make meaning of 'small in number'. According to the United Nations, 'Any group or community which is socially, politically and economically non-dominant and inferior in the population are minorities.' The constitution of India has not defined the word 'minority' anywhere.

In 2014, the outgoing United Progressive Alliance (UPA) government at the centre notified "the Jain community as a minority community in addition to the five communities already notified as minority communities, namely, Muslims, Christians, Sikhs, Buddhists and Zoroastrians". This was a culmination of a long struggle by the Jains to be recognised as a minority-a demand that dates back to 1909. This frenetic mobilisation by Jain organisations has been largely ignored by chroniclers of the period.

CLASSIFICATION AMONGS JAIN RELIGION "HISTORICAL BACKGROUND"

In the early decades of the 20th century, when the British government was mulling a series of reforms in order to increase the involvement of Indians in the governance of British India, Seth Manekchand Hirachand petitioned Lord Minto, the then viceroy and governor general, to include Jains in the category of important minority. Seth was an influential member of the Jain community and the acting president of the Bharatvarshiya Digambar Jain Mahasabha (Patil 2010). Despite an assurance from the viceroy that the Jains' appeal would be considered duly, the Morley-Minto reforms, as the Indian Councils Act 1909 came to be called, made no provision for the representation of the Jains.

More than a decade after Seth had made the claim on behalf of the community, the 1921 Census report for the Punjab returned a curious category, "Jain-Hindus." Paul Dundas (2002: 5) has called this an "unhappy and artificial compromise," and attributed this to the influence of prejudiced enmerators. However, this would be to ignore how the colonial exercises of governance were

shaping identities and providing new means and ways to articulate and think about self and community. Well into the 20th century, campaigns were undertaken by Jain leaders to persuade the community to register themselves as Jains and not Hindus (Carrithers and Humphry 1991: 6).

Through the colonial period, courts opened up an arena where claims to identities were being made. Vigorous litigation over religious practices and pilgrimage sites reached the British courts. Though this was a continuation of the earlier practice of appealing to political authority to resolve religious conflicts, what was distinct now were the new legal and theoretical categories that British jurisprudence had introduced. Right through the later decades of the 19th century and first half of the 20th century, until the Hindu Succession Act, 1956 was in place, the courts in British India saw intense litigation over the right of Jain widows to inherit and dispose of their dead husband's property. The meaning of the terms "custom," "law," and "community" were being forged and contested through legal exercises. the debates around the fate of minorities in British India gained currency. The Constituent Assembly set about the task of drafting the Constitution in great earnest.

In deference to the urgency of attending to the minority question, Govind Ballabh Pant moved a resolution in January 1947 to set up an Advisory Committee on Fundamental Rights and Minorities (henceforth Advisory Committee). Kast urbhai Lalbhai, a prominent mill owner from Ahmedabad and follower of Gandhi, was nominated to the Advisory Committee by Rajendra Prasad as the representative of the Jains. As a trustee of the Anandji Kalyanji Pedhi (Trust), Lalbhai had negotiated with the British over the rights to manage the Shvetambar pilgrim site of Shatrunjaya. It has been argued that the Trust's robust defence of ownership of Shatrunjaya-both in the courts, bureaucracy, and the public are nahad been central to the production of Jain identity, or at any rate that of Murtipujak Shvetambar Jains, in modern Western India (Ku forthcoming).

Lalbhai was inundated with letters and appeals from associations of different Jain denominations-both Shwetambar and Digambar-reminding him of the momentousness of the task that he had been assigned with. One telegram read thus: "Remember heavy responsibility. Jain recognition as independent ancient original minority like Sikhs essential. Essential recognise Digambar monks free movements. Jain rath yatras vihar be unrestricted [sic]" (Piramal 1998: 406-07). Lalbhai's biographer though notes that he found the numerous petitions he received from Jain organisations and individuals tiresome and ignored them most of the time.[1]

HINDUS BY LAW TO HINDUS BY FAITH

At the heart of the Jain demand for minority status were these arguments the religion's antiquity (which challenged the claim that Jainism emerged from Hinduism), beliefs (which contrasted sharply with the Hindu belief in god as a creator). rejection of Vedas and other Hindu scriptures, separate places of worship, and a well-developed system of jurisprudence that applied to every aspect of an adherent's life. In addition to Jainism's distinctive features which differentiated it from Hinduism, those in favour of minority status for Jains cited the demographic profile of the community, which rendered it in their view the only genuine national minority. Standing at less than 1% of the total population, there is not a single district or taluka where the Jains constitute sizeable numbers as to dominate numerically.

However, the Jains failed to secure their inclusion in the central list of national minorities declared through the Government of India (col) notification in 1993. Precisely a year later, hectic lobbying with the NCM resulted in its recommendation for the recognition of Jains as a national minority on par with Muslims, Christians, Sikhs, and Parsees. Neither this recommendation nor its renewal in 1996 led the government to make any announcement to this effect. During the period, the Jain delegations continued to appeal to the government to declare Jains as a national minority.

In the absence of such a recognition, several petitions continued to be filed in high courts of different states over the years, seeking directions for the declaration of Jains as a minority in the state and enable them to enjoy the rights under Article 30. If there is one illustration of the way in which vagueness of the definition of minority plays out in legal con- tests, it is the case which we turn to now.[2]

[1]https://www.researchgate.net/publication/311791404_Minority_claims_and_majoritarian_anxieties_The_Jain_question last seen on 13/11/2022

[2]https://www.researchgate.net/publication/311791404_Minority_claims_and_majoritarian_anxieties_The_Jain_question last seen on 13/11/2022

DIFFERENCES BETWEEN JAIN LAWS AND HINDU LAWS

Werner Menski explores the role of Jain law under British colonial rule as well as in post Independence India. Menski highlights the fact that conciliatory offers by the British to ascertain "Jain Law" through an examination of their sacred texts were largely rebuffed by Jains, and as a result Jains, as a community distinct from Hindus, tended to become functionally invisible; furthermore, Jains showed a marked reluctance to participate in the Anglo-Indian courts. Since the Hindu Marriage Act of 1955-56, in which Jains, Buddhists, and Sikhs were lumped together under so-called Hindu Law, this situation has not changed. Menski suggests, however, that an unofficial "Jain Law" has functioned and continues to function in unreported low-court decisions and in extra-judicial arenas, but so little data have been collected thus far that the extent of application of any such unofficial Jain Law in practice is yet a matter of speculation in Harnabh Pershad v. Mandil Das 27 C. 379 (1899) "the homogeneity of the Jains was recognized by holding that Jain customs of one place were relevant as evidence of the existence of the same custom amongst Jains of other places" .

(a) Oaths and affirmation

We take the view that the question of whether the administration of an oath is lawful does not depend upon what may be the considerable intricacies of the particular religion which is adhered to by the witness. It concerns two matters and two matters only in our judgment. First of all, is the oath an oath which appears to the court to be binding on the conscience of the witness? And if so, secondly, and more importantly, is it an oath which the witness himself considers to be binding upon his conscience? Lord Lane C.J. in R. v. Kemble [1990] 91 Cr. App. R. 178 (emphasis added)Jains May choose either to affirm, or possibly swear an oath. Since there are many different groupings, no single text can be specified, but some may choose to swear an oath on a text such as the Kalpa Sutra. Sometimes such a witness will swear an oath by elevating a holy scripture above their head and swearing by it. If such a witness does not stipulate such a practice and does not have the appropriate text in court, they should affirm of ritual purity may arise. Even in England, Jains have their religious books as kalpa sutra not bhagwat gita.

(b) Law of adoption

Bhadrabahu Samhita: Jain Law by Acharya Bhadrabahu, Translated by J.L. Jaini states more than 100 rules related to adoption, separation, property distribution, partition etc in Jain"s families are as follows in brief:

1. In the world, the existence of a son is such a source of happiness that, in the absence of a son, one's birth if fruitless, and a son is taken in adoption by men.

2. If a man has many brothers, and if they are one mind, it is due to his great punya (religious merit). So the great Risis (ascetics) have said!

3. Because of the decline in religious merit, those many brothers for greed of wealth entertain hostile feelings. To remove this trouble, this Law of Partition in undertaken.

4. On the death of father and mother, all those brothers get together the patrimony and divide it equally among themselves. But during the lifetime of the father (the brothers take only), according to the desire of the father.

(c) Jain law of succession

The leading case is Bhagawandas Tejmal v. Rajmal Bhagawandas Tejmal v. Rajmal (1873 10 Bom HC 241), a succession dispute within a Marwari Jain Agrawal family involving a widow"s right of adoption. Adjudicated by C. J. Westropp at the Bombay High Court, the decision was confirmed by the Privy Council in Sheosingh Rain v. Dakho (1878 ILR Allahabad 688). The final judgment distinguished between 'Jain law' and 'custom', but affirmed Westropp's view that the Jains come under Hindu law unless they are able to provide evidence for the prevalence of different customs: "But when among Hindus (and Jains are Hindu Dissenters) some custom, different from the normal Hindu law of the country, in which the property is located, and the parties resident, is alleged to exist, the burden of proving the antiquity and invariability of the custom is placed on the party averring its existence" (Bhagawandas Tejmal v. Rajmal 1873 10 Bom HC 260).The Jains were and remain exempted from all those provisions of the Indian succession act 1925 which are inapplicable to the hindus, Buddhists and Sikhs. Part VI of the act read with schedule III. If a Jain marries a Buddhist, Sikh or Hindu, whether by religious rites or as a civil marriage, succession to his property is governed (since1976) by the hindu succession act 1956, but by the Indian succession

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act 1925 if he marries a Christian, Muslim, Jew or Bahia. What a disturbance it is creating as of Jain, the earlier 3 religions are also same distant as the later. A Jain succession act was enacted in the madras state in 1930. After the reorganization of states it became applicable to various areas of Andhra Pradesh, Karnataka, Kerala, and Tamil nadu carved out of the former madras state. Its status after the extension of the hindu succession act was not clear. Vardhman Neeti by great Jain teacher Hemchandra deals also with Jain law. No doubt, by long association with Hindus, who form the bulk of the population, Jainism has assimilated several of the customers and ceremonial practice of the Hindus. But this no ground for applying the Hindu Law as developed by Vijayaneshwar and other commentators (succession). Several centuries after Jainism was a distinct and separate religion with its own religious with its own religious ceremonial & legal system, unblock to Jains, and throwing on them the right showing that they are bound by the law as laid down by the Jain law- makers. It seems to me that in considering the question of Jain Law, relating to adoption, succession and partition we have to see what the law expounded by the law gives is, and to throw the onus on those assert that in any particular matter the Jains have adopted the Hindu Law & customs and have not followed the law as laid down by their own Shstras.

(d) Marriages

Among the Jains, the main purpose of marriage is to maintain the continuity of human race by getting legitimate children. Here the institution of marriage is viewed clearly in its social aspect. There is no religious motive whatsoever in the contracting of marriage as such. The necessity of marriage arises to provide a legitimate outlet to sexual feelings and to maintain the continuity of human race. Both purposes are served by regulating the sexual behaviour of people through the institution of marriage. That is why among the Jains, like Hindus, vivaha or marriage is generally considered as obligatory for every person and it is included in the Sarirasamskaras (i.e., sacraments sanctifying the body) through which every man and woman must pass at the proper age and time. Though Jains and Hindus regard marriage as obligatory for every person, there is a great difference in their outlook in regarding so. While Jains look at the problem from a purely social point of view. Hindus treat if from a religions point of view. Among the Hindus marriage is made compulsory for every person because the birth of a son is said to enable one to obtain Moksa. Again, it is believed by Hindus that one's progeny is considerably connected with and instrumental to happiness both in this world as well as hereafter. Moreover, the birth of a son is conceived by Hindus to be especially contributory towards helping the father to execute his obligations due to

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the departed ancestors - one of the three debts or obligations which every Hindu is bound to discharge. A Hindu has to marry and to beget a male child with a view to a void eternal damnation in hell after his death. According to Hindus, there is an intimate connection between marriage and the ultimate object in life viz., Moksa. As marriage has something to do with the emancipation of soul, marriage and religion are very closely connected with one another in Hindu society. Thus, the institution of marriage among Hindus loses its entirely social character, gets mixed up with religious behavior of the people and becomes a religious act as such .In the Jain religion, on the contrary, marriage is not treated as a religious duty but is considered as a purely social act. It is regarded more in the nature of a civil contract than of a religious ceremony. Its object is to maintain the continuity of human race and not to obtain salvation by securing male offspring. Marriages are entered into for purely practical reasons and religion has nothing to order in this respect. It is not ordained in Jain religion to marry for emancipation of soul. Marriage is not concerned with life hereafter. When no offerings are to be made to the forefathers, the question of discharging obligations due to departed ancestors does not arise. Jain scriptures do not lay down elaborate rules and regulations regarding marriage. Marriage is completely based on customs of people designed to adjust the life of persons in this world as it is not concerned with the happiness of persons hereafter. If marriage among Jains would have been based on their Agamas (i.e., basic religious books), it would have been practically the same throughout many centuries and there would not have been great diversity of customs regarding various aspects of marriage throughout the country. Since marriage practices of Jains differ to a considerable extent, it is clear that the institution of marriage is based on local customs and not on Holy Scriptures. From this it need not be inferred that the Jain holy books do not refer to marriage at all. They do discuss the subject of marriage but in this respect their basic stand is that a lawful wife is necessary for a man for the successful completion of his house holder's life. They do not prescribe any rules regarding the matters like her age, qualifications, gotra, caste, race, etc., as these are based on local customs. There is practically little relation between marriage customs and Jain scriptures. It is true that sometimes we notice that in Jain books while narrating particular events, references are made and opinions given on the marriage customs connected with the events. But we cannot accept such opinions as applicable for all places and times since such opinions were given by taking into account marriage customs prevailing at that time. This means that marriage customs referred to in Jain books are not binding on Jains for all time to come and they are free to devise their own customs according to

local conditions. In Hinduism there is a direct connection between marriage and religion. In Jainism, however, there is an indirect connection between marriage, like any other custom, and religion. For Jains the ultimate object in life is the attainment of Moksa, i. e., liberation of soul from worldly bondage. The best way, according to Jainism, to achieve this aim is to perform right action along with right faith and right knowledge. The right action includes proper channelising of sexual practices with a view to lead and useful life which serves as a stepping stone for getting salvation. Moreover, religion depends for its existence on the number of its followers. The strength of the followers can be rightfully maintained through the procreation of legitimate children. Taking into account these considerations it can be stated that the object of marriage in Jainism is twofold, viz., (1) to give a legitimate outlet to sexual feelings so that the human being may rightly live a useful life, enjoying the fruits of Dharma, Artha and Kama, and thus be entitled to attain the great object - the Moksa; and (2) to promote the cause of Dharma (Law) by generating righteous and chivalrous sons and daughters. It is a duty of the householder to be contented with his own life and to contrive for the continuance of the human race.[3]

RECOMMENDATION OF NATIONAL MINORITIES COMMISSION

In 1993, the National Minorities Commission arrived at their recommendation that the Jain community be declared as a minority religious community. It was in consideration of the following:

- The relevant constitutional provisions,
- Various judicial pronouncements,
- The fundamental differences in philosophy and beliefs (theism vs. atheism principally) vis-a-vis Hinduism, and
- The substantial number of Jain population in the country.

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[3] M Werner, Jaina law as an unofficial legal system, in Flugel Peter (Ed.), Studies in Jain history and culture,(London: Routledge, 2006) 417-435.

Equal Treatment Bench Book, chap 3.1 Discrimination on the basis of belief or non-belief, (London: Judicial studies board, 2009)

VA Sangve, Jain Marriage Status of woman, Jain religion and community, (Long beach puhns, 1997)

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It resolved to recommend to the Government of India that the Jains deserve to be recognized as a distinct religious minority, and that, therefore the Government of India may consider including them in the listing of "Minorities."

VARIOUS JUDICIAL PRONOUNCEMENT

1927 - Madras High Court in Gateppa v. Eramma and others reported in AIR 1927 Madras 228 held that "Jainism as a distinct religion was flourishing several centuries before Christ". Jainism rejects the authority of the Vedas which form the bedrock of Hinduism and denies the efficacy of the various ceremonies which Hindus consider essential.

1939 - In Hirachand Gangji v. Rowji Sojpal reported in AIR 1939 Bombay 377, it was observed that "Jainism prevailed in this country long before Brahmanism came into existence and held that field, and it is wrong to think that the Jains were originally Hindus and were subsequently converted into Jainism."

1951 - A Division Bench of the Bombay High Court consisting of Chief Justice Chagla and Justice Gajendragadkar in respect of Bombay Harijan Temple Entry Act, 1947 (C.A. 91 of 1951) held that Jains have an independent religious entity and are different from Hindus.

1954 - In the Commissioner Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt reported in AIR 1954 SC 282 this Court observed that there are well known religions in India like Buddhism and Jainism which do not believe in God, in any Intelligent First Cause. The Court recognized that Jainism and Buddhism are equally two distinct religions professed in India in contrast with Vedic religion.

1968 - In Commissioner of Wealth Tax, West Bengal v. Smt. Champa Kumari Singhi & Others reported in AIR

1968 Calcutta 74, a Division Bench of the Calcutta High Court observed that "Jains rejected the authority of the Vedas which forms the bedrock of Hinduism and denied the efficacy of various ceremonies which the Hindus consider essential. It will require too much of boldness to hold that the Jains, dissenters from Hinduism, are Hindus, even though they disown the authority of the Vedas" lasting impact of the statutes of medieval codified Jain personal laws on the customs of Jain castes is evident in numerous reported cases of the 19th and 20th centuries. These cases cannot

be dismissed as modern fabrications, despite their somewhat artificial identification of modern customs with ancient sastric prescriptions, which was typical for early 19th century Anglo-Indian law, Already the earliest reported case on 'Jain law', Maharaja Govind Nath Ray v. Gulab Chand (1833 5 S.D.A. [Sadar Divani Adalat] Calcutta Sel. Rep. 276), concludes that "according to Jain Sastras, a sonless widow may adopt a son, just as her husband"[4]

ANTI CONVERSION BILL IN GUJARAT

The Anti conversation Bill was a controversial bill passed by the Gujarat state assembly. The bill was passed in 2003. An amendment to the bill was passed on 19 September 2006 which banned the forced conversion from one religion to another. The Anti-Conversion Act passed earlier was not clear on what forced conversion meant and to whom should it apply. Under the amendment Bill, a person need not seek permission in case he/she is converting from one sect to another of the same religion. It clubbed Jainism and Buddhism as denominations of Hinduism, like Shia and Sunnis are of Islam or Catholicism and Protestantism of Christianity. The move evoked strong protests from the state's Jain, Buddhist and Christian communities. The National commission for minorities also criticized the Gujarat Assembly's decision to club Jainism and Buddhism with Hinduism terming it to be in contravention of its 23 October 1993, notification classifying Buddhists as a “minority community.” Ultimately on 31 July 2007, finding it not in conformity with the concept of freedom of religion as embodied in Article 25 (1) of the Constitution, Governor Nawal Kishore Sharma returned back the Gujarat Freedom of Religion (Amendment) Bill, 2006. The Governor held that Jainism and Buddhism are recognized as religions rather than denominations of Hinduism, something that the Amendment Bill sought to wrongly convey. A press release issued by Raj Bhavan, said “the proposed amendment would amount to withdrawing the protection against forceful or inappropriate religious conversions, particularly in case of Jains and Buddhists”. The release cited large scale protests from different religious and social organizations, especially from the Jain and Christian communities, in indicating toward the unacceptability of the proposed amendment. [5]

[4] IOSR Journal of Humanities And Social Science (IOSR-JHSS)
Volume 19, Issue 2, Ver. IV (Feb. 2014). PP 08-19 e-ISSN: 2279-0837, p-ISSN: 2279-0845.

[5] https://www.asianews.it/news-en/Anti-conversion-Bill-in-Gujarat,-a-problem-for-the-Jain-minority-too-7308.html last seen on 15/11/2022

THE BAL PATIL JUDGEMENT

Bal Patil, In 2005, the Supreme Court of India declined to issue a writ of Mandamus towards granting Jains the status of a religious minority throughout India. The Court however left it to the respective states to decide on the minority status of Jain religion. In one of the observations of the Supreme Court, not forming part of the judgment, the Court said:

Thus, 'Hinduism' can be called a general religion and common faith of India whereas 'Jainism' isa special religion formed on the basis of quintessence of Hindu religion. Jainism places greater emphasis on non-violence ('Ahimsa') and compassion ('Karuna'). Their only difference from Hindus is that Jains do not believe in any creator like God but worship only the perfect human-being whom they called Tirthankar. Lord Mahavir was one in the generation of Thirthankars. The Tirathankars are embodiments of perfect human-beings who have achieved human excellence at mental and physical levels. In philosophical sense, Jainism is a reformist movement amongst Hindus like Brahamsamajis, Aryasamajisand Lingayats. The three main principles of Jainism are Ahimsa, Anekantvad and Aparigrah." Supreme Court also noted: " that the State Governments of Chhatisgarh, Maharashtra, Madhya Pradesh, Uttar Pradesh and Uttarakhand have already notified Jains as 'minority' in accordance with the provisions of the respective State Minority Commissions Act." This cast a doubt on the independent standing of Jain religion. Scholars in the Jain tradition, as well as several groups amongst the Jain community protested, and emphasized that Jain religion stands as a religion in its own right. While Hinduism as a mode of living and as a culture is to be found across various religions in India because of several common customs, traditions and practices, but as religions Hindu religion and Jain religion are distinct.U.P. Basic Shiksha Parishad Judgment: In 2006, the Supreme Court opined that "Jain Religion is indisputably is not a part of Hindu Religion".[6]

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6 Bal Patil & Anr v Union of India & Ors (2005): SSC,SC, 6, p 690.

SS Jain Sabha (Of Rawalpindi), ... v Union of India and Ors (1976): ILR, Delhi, p 61.

State of Rajasthan and Ors v Vijay Shanti Education alTrust (2003): RLW, Raj, 4, p 2568.St Stephens' College v University of Delhi (1992): SCC, SC, 1, p 558.

The State of Bombay v Bombay Education Society (1954): AIR, p 561; 1955 SCR, p 568.

JUDICIAL ABROGATION OF MINORITY RIGHTS: Article 30(1) against Article 29(2)

The same bench of the Delhi High Court which had ruled unequivocally that Jains were a minority, a religious community distinct from Hindus in answering the question "who constituted minorities based on religion under 30(1)," was also asked to deliberate on what rights Article 30(1) entailed for minorities so recognised.

S.S. Jain Sabha case: In a separate bunch of writ petitions filed by Jains, Sikhs, and Christians in the Delhi High Court, this right to establish and administer schools under Article 30(1) was given a wide meaning to include their right to admir of their choice. Certain provisions of the Delhi School Education Act, 1973, namely, twin principles of merit and residence in a zone for admission were thus seen as violutioned their righ. The high court ruled the Delhi School Act valid (55 Join Sablauf Rawalpind), Linion of inillo and Ors 1976). Drawing upon the 1954 Supreme Court judgment on the State of Bombay Education Society (1951), the court held that a minority institution's claim to the right to admit students "belonging to the particular religion or language" under Article 30(would run counter to the rights of non-minority students who enjoyed the right to admission to an institution without being discriminated on grounds of religion provided to all citizens under Article 29(2). This article, according to the State of Bombay v Bombay duction Society (1951) judgment, "confers a special right on citizens for admission Luto educational institutions maintained or aided by the State. To limit this right only to citizens belonging minority groups will be to provide a double protection for such citizens

The courts of up a fundamental contradiction between 300, which grams the minorities to run an institution, and between 29(2), which gives a citizen the right to admission to an institution without being discriminated on grounds of religion. Article 20(2) in fact comes to be viewed as a protection afforded to majority from possible minority discrimination. In the end, the imagined legislative intent of the drafters of the Constitution is invoked to abridge group rights:

CONCLUSION AND SUGGESTION

The conclusion that 'religion and linguistic minorities, who (sic) have been put on par in Article 30, have to be considered state-wise'. This equation between the two categories of minorities does not follow logically follow, as the States have not reorganized on religious basis and all religious communities are scattered throughout the country. The Central Government, a respondent, found it convenient to take shelter under this totally illogical presumption of the Supreme Court and refused to exercise its statutory power under the Act, thus making it redundant. The interesting point is the Muslims, Christians, Sikhs, Buddhists, even the Parsis (a minuscule community with less than 0.1 million population) had been notified by the Central Government under the provision of the same Act but the guillotine has fallen on the Jains. Thus, the refusal is a clear case of discrimination against the Jain community. The Judgement does not even classify the number of State notifications which will qualify them to be notified as a minority by the Central Government. The Constitution in Explanation to Article 25 recognizes the existence of the Jain religion but brackets it with Buddhism and Sikhism for the limited purposes of one Section of the Article which deals with a common social aspect. Considering that only 5 days after the promulgation of the Constitution, the then Prime Minister Jawaharlal Nehru, through the letter of 31 June, 1950, signed by his Principal Private Secretary, clarified the misunderstanding and assured a Jain Deputation that the Jains are a distinct religious minority and there is no reason for apprehending that Jains are considered as Hindus. Thus the Judgement is constitutionally unsound and violates an explicit assurance of the executive. The appellants have decided to seek a review of the Judgement. One hopes that the Supreme Court shall realize the basic flaw in the T.M.A. Pai Judgement on the point of relating status of religious minorities to states determines the scope of Article 30 of the Constitution and has nothing to do with the question as to which religious groups form a national minority and come under the purview of the National Commission for Minorities? Having summarily disposed of the Jain demand, the Judgement devotes another 12 pages to what can only be called obiter dicta or the personal views of Justice Dharmadhikari. He gives his version of the history of the Freedom Movement, in particular, the effort for resolving the communal problem, in terms of the constitutional safeguards as demanded by the Muslim community e.g. of separate electorate and reservation of seats in legislatures. Some safeguards were conceded in stages by the imperial power. Finally there was no communal settlement culminating in the Partition of 1947. His historiography is full of flaws; it confuses the sequence of events, it describes India Wins Freedom as the ' personal diary' of Maulana Abul Kalam Azad and attributes to him the role

of 'mediator' between Nehru and Patel, on one side and Jinnah and Liaqat Ali Khan, on the other. Without any quotation from the 'personal diary' the writer attributes Partition to the resolute stand taken by Nehru and Patel and their rejection of the proposal of Jinnah and Liaqat. In effect, the obiter dicta reduces the complex course of negotiation between the Indian National Congress and the All India Muslim League, over 20 years, in which Rajendra Prasad, Nehru, Subhash Bose and Gandhiji all participated (it is doubtful if Azad was directly involved at any stage) for finding a mutually acceptable settlement to a one-shot event! The quotes the eminent jurist H.M. Seervai to place the responsibility for Partition on Gandhi, Nehru and Patel for having destroyed the (Cabinet Mission) Plan. It is true that 'Azad did his utmost to prevent the Partition but he failed to persuade Nehru and Gandhi not to accept Partition' but this relates to the very end of the sad chapter.Secondly, Justice Dharmadhikari's thesis states that in order to allay the fears and apprehension in the mind of the Muslims and the Christians, the Constitution provided them special guarantees and protected their religious, cultural and educational rights in the form of Article 25 to 30. This is an absurd reading of the Constitution. Article 25 – 28 relate to Freedom of Religion and are universal in their application to all citizens. Article 29 and 30 relate to Cultural and Educational Rights of Minorities. Both sets form part of Fundamental Rights. But they are distinct from each other both in scope and purview. Then the obiter dicta says that only Muslims, Christians, Anglo-Indians and Parsis are recognized as religious minorities at the national level and attributes the size of the Muslim and the Christian communities to the duration of the Mughal and the British rule! It hints as if the object of the Mughal State and the British rule was conversion. This is far from the truth. How does it explain that regions which were under the Mughal rule for a very short period, or not at all, have a much high proportion of Muslims as in Bengal and Kerala while the Muslims have a low proportion in the region of the Gangetic Valley and the Deccan which were under Muslim rule for nearly 700 years! How does it explain why the Christian percentage did not exceed 2% during the British rule? The obiter dicta describes the Sikhs and the Jains as 'so-called minority communities', which were not treated as national minorities at the time of framing the Constitution and have 'throughout been treated as part of the larger Hindu community'. It seeks to reduce them to sects or sub-sects of Hindu religion.The fact is that right from 1871, when the decennial Census began, Sikhs and Jains have been recognized as religious communities on par with Hindus and Muslims. And in making of the Constitution, the Sikhs, the Buddhists, the Jains and the Parsis all received attention and were recognized as minorities. The obiter dicta identifies the SC in the Constitution as the Shudras of Hindu society, a view which is

not shared by eminent sociologists. They were basically the Untouchables, outside the pale of Hinduism. They were designated by Gandhiji as Harijans. They now call themselves Dalits. Of course it recognizes ST's as non-Hindus. The Achhuts are distinct from the Shudras and under the Constitution, both the Shudras and the SC's/ST's though both are designated as Backward Classes, are distinct from each other. Justice Dharmadhikari's sociology is as poor as his history! But the real purpose of his travel into the uncharted territories, without a compass, becomes apparent when, in the next para, he identifies Jainism with, what he calls, Hindu Vedic religion, though the Jains reject the Vedas and the Brahminical philosophy as their Tirthankaras and specially Mahavir have charted their own spiritual course, like Buddhism.Then Dharmadhikari J. comes to his final conclusion:

'Hinduism can be called a general religion and common faith of India'. He thus elevates Hinduism above other religions of India and equates Hinduism with Indianness. This is an anti-thesis of the Constitutional principle of equality of all religions which implies that Islam, Christianity and Zoroastrianism, Buddhism or Sikhism and other religions, whatever the number of their followers, are equal before the law and that no distinction can be made among them on the ground of origin i.e. where they were born! This projected hieratical superiority of Hinduism is not only a denigration of Jainism, Buddhism and Sikhism but an affront to the status of Islam and Christianity and 'Other Religions' which are recorded in Census after Census.

Having wandered through philosophy and religion, Dharmadhikari J. propounds his constitutional thesis for redefining the status of various religious groups as minorities and conferring it only to those which had to be re-assured of their religious and cultural rights in the background of the Partition 'in order to maintain the integrity of the country'. He opines that the process of the Constitution did not contemplate any addition to the list of religious minorities other those the identified in the course of independence negotiation or those which are materially well-off.Dharmadhikari J. seems to think that recognition of the identity of a religious group by the State is a favour, within the privilege of the executive or the legislature in accordance with the political compulsion at a given time. Obviously he has not studied the proceedings of the Constituent Assembly. Dr. Ambedkar forcefully argued for recognition of the absolute rights of religious minorities. And the first right of a minority is the right of recognition, followed by right

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to equality before law. The Constitution may have been framed under the shadow of the tragedy of Partition but the fundamental rights enunciated therein are independent of time and place. They represent the finest crystallization of political thought and constitutional theory. Indeed they have provided a model for the emergent world. The Universal Declaration of Human Rights had an impact on our Constitution but the International Covenants and, above all, the UN Declaration of Rights of Minorities, 1993 have all reflected what the Indian Constitution gave to the religious, linguistic, racial and cultural minorities of the country. Today minority rights are universally accepted as an indivisible from and essential to human rights, because almost every nation-state is multi-religious, multi-lingual and multi-cultural. But Dharmadhikari J. sees assimilation in Hinduism as the alternative and desirable goal of all religious groups in India, while the international community recognizes multi-religiosity as the natural state of things. Peaceful coexistence, fraternization, integrity, harmony are indeed laudable but any majoritarian pressure to erase the identity and to absorb and assimilate their distinctive personality goes against the concept of freedom and equality, as Dharmadhikari J. says, for 'gradual elimination of majority and minority classes'. He is apprehensive of rise of multi-nationalism in India but perhaps at the back of his mind he equates multi-religiosity with multi-nationalism and the latter with secessionism. All constitutional safeguards and assurances under the Constitution and in international law shall be reduced to zero if the distinct identity of any religious group, howsoeversmall, is denied and any group is forced to relate to Hinduism as a sect or sub-sect. The Sikhs and the Jains and the Buddhists will not accept Hindu hegemony on the ground that they are all branches of the same tree, which has sprang from the same soil. Dharmadhikari J.'s views clearly reflect the Hindutva philosophy. It is time that the Supreme Court free itself of any lurking intellectual subservience to the Hindutva philosophy.