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A Study on India's Constitutional Law and Religion

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Abstract: Many books have been written about India's secularism and the impact of Hindu nationalism on the country's secular constitution. Instead, it concentrates on cases in which different groups' minority status or rights are questioned. Using three recent cases as examples, the author shows how judicial principles intended to correct discriminatory religious practises or protect the interests of minorities have benefited some groups at the expense of others in this essay. Muslim personal law is sanctified over Muslim women's rights; Hindu Dalits are given preference over Hindu Dalits who converted to other religions, and minority educational institutions are given preference over children from the "weaker" and "disadvantaged" portions of society. It is concluded that India needs a new religious and constitutional law that considers these inequalities and gives meaning to the most disadvantaged people and groups' constitutional rights.
Keywords: Constitution, Secularism, Inequality, Religion, India

Introduction:

Scholars of law and religion have been drawn to India for a long time. Four major faiths originated in India, the world's largest democracy and an interesting case study in how liberal constitutionalism & religious pluralism try to live together harmoniously. As one of only two high Ratios countries, India is frequently used as a case study in comparative studies of law & religion in other countries. "Because Hinduism is a polytheistic faith, India serves as a great counterpoint to countries like the United States and Israel, which have majority monotheistic populations.

India has a unique approach to religion at the constitutional level, balancing pluralist, privileges, and reformist objectives [1]. The Constitution of India 1950 (Constitution) does not create an official religion or give special status to any faith. Proclaiming, practising and propagating religion is protected by this law. In addition, the Constitution safeguards the ability of religious minorities, including those who identify as religious, to operate their own academic institutions. According to reformers, India's constitution 'throws open' Hindu religious institutions to 'all classes and sectors of Hindus, to promote social welfare, and regulates commercial, financial, or political activity that impacts religious practice [3].

An increasing number of experts are questioning the internal consistency and intellectual coherence of Indian secularism. When it comes to Indian secularism, Mathew John claims that the Supreme Court jurisprudence does not reflect an authentically Indian understanding of secularism. Deepa Das Acevedo examines the academic debate and constitutional jurisprudence on law & religion in India and finds that India is no longer a secular state and was never designed to be. Although Acevedo acknowledges that secularism will take on many forms

ISSN- 2394-5125 VOL 7, ISSUE 03, 2020

around the world, she maintains that to maintain conceptual clarity, the idea of secularism must have a single, continuous meaning. Both the formal quasi and the aim to keep religion and the state separate are considered secularism by her According to this conception, India was never meant to be a secular nation.

Legal and non-legal experts have analysed the challenge to Indian secularism posed by the emergence of Hindu nationalism and the so-called "Hindutva" cases. According to this research, the Mandal Commission, which proposed that a percentage of government jobs & public university seats be reserved for Other Backward Castes, has been implicated in the rise of Hindu nationalist parties in the 1990s, according to this research (OBCs). The belief that the Commission was trying to split Hindus based on caste sparked a nationalist movement. The Babri Masjid mosque in Ayodhya was their aim. The Ram Janmabhoomi movement, sponsored by the right-wing nationalist Vishwa Hindu Parishad (VHP), sought to demolish the mosque and erect a shrine to the Hindu god Ram in its place. The VHP and its supporters claim that the mosque was built in the birthplace of Lord Ram. Hindu rioters demolished a mosque in December 1992 after months of anti-Muslim vitriol from the VHP and its sympathizers, as well as overt requests to build a temple on its location. As a result, four Indian states were placed under a state of emergency by the President. In the case of SR Bommai v Union of India, the constitutionality of this pronouncement was questioned. After the Supreme Court ruled that secularism was an integral part of the Constitution's "fundamental structure," it was made apparent that Hindutva ideology & communal violence had no place in a secular India.

This essay takes a new angle in light of the substantial literature on secularism in India and related studies on the effects of Hindu nationalism. Strictly speaking, it does not offer a particular understanding of secularism or give a detailed analysis of how religion influences constitutional practise. As an alternative, it concentrates on cases in which minorities' rights are at stake or their minority status is being contested by others. To illustrate how legal theories aimed at reforming discriminatory religious practises or protecting minority interests have, ironically, favoured certain minority groups at the expense of others [4], this article cites three examples from recent cases:

It is concluded that India needs a new religious and constitutional law that considers these inequalities and brings purpose to the most disadvantaged people and groups' constitutional rights.

Fundamental rights in private law:

In particular, the justices couldn't agree on whether or not the constitutionality of triple talaq should be considered when deciding cases. Article 13 of the Constitution declares unconstitutional any law that conflicts with or violates the fundamental rights outlined in Part III [2]. An early Supreme Court precedent concluded that laws do not constitute "law" for the meaning of Article 13 and are therefore not subject to constitutional review. State of Bombay v NarasuAppa Mali was that conclusion. 35 Despite their reservations and a great deal of critical academic criticism, none of the judges in ShayaraBano tried to overturn this precedent. 36 However, there was a solution to this situation, and it worked. Because of Article 13 of the Constitution, it appeared as though there had been a codification of the Muslim Personal Law (Shariat) Application Act of 1937 (the 1937 Act). 'Notwithstanding any custom or usage to the contrary. The dissolution of marriage, including talaq. The rule of determination in circumstances where parties are Muslims should be the Muslim Personal Law (Shariat).'

ISSN- 2394-5125 VOL 7, ISSUE 03, 2020

However, three out of the five judges in ShayaraBano denied the extension of fundamental rights review into personal law, but Justice Nariman (supported by Justice Lalit) was agreeable. A decision written by Justice Kurian, who was concurring, stated that Section 2 of the Act essentially stated that Muslim personal law (Shariat) would apply to the Muslim community concerning specific issues, including the dissolution of marriage. This clause failed to'regulate' the practice of triple talaq because it failed to specify thespecific grounds and processes [5].' But he didn't explain why this restriction was necessary. Triple talaq appears to have been 'struck' by Article 13 of the Constitution since the Act gives a statutory foundation for it, as Justice Nariman phrased it.
Dissenting judgment by Chief Justice Khehar and Justice Nazeer increased personal law's protection to an unprecedented level. Apart from stating that Article 25 of the Act, which safeguards religious freedom, does not codify talaq, the Chief Justice made a novel claim because personal law is protected. A fundamental right that is safeguarded against "invasion and breach" is referred to as "the stature of personal law," according to him. According to Gautam Bhatia, the idea that 'personal law' is entitled to the same fundamental safeguards as individuals is unfounded and nonsensical.

In the context of women's rights:
The most troubling feature of the ShayaraBano decision is its lack of regard for Muslim women's rights. Supreme Court Justice Nariman disagreed with Chief Justice Khehar& Justice Kurian that the 1937 Act codified triple talaq as a 'law' under Article 13 of the Constitution. To put it another way, if it infringed any of the Constitution's core rights, it was illegal. However, only Justice Nariman's opinion examines the constitutionality of the triple talaq provision, and it does so in great detail. Article 15, which forbids discrimination based on gender, was the most obvious choice, as it was put out by the petitioner and those who intervened on her behalf. This is a precise instance of sexism because the Muslim man can unilaterally divorce his wife through the practice of triple talaq. There is a strong argument to be made that the practice exacerbates gender inequality in light of the socioeconomic obstacles that many Muslim women confront, especially the limitations on post-divorce support.

In the end, ShayaraBano maintained the Court's precedent in Shamim Ara holding triple talaq was unlawful. Still, it did not declare that the practice was unconstitutional or a form of sex discrimination. Justice Nariman and Justice Lalit were willing to apply fundamental human rights in this context, but even he declined to extend this review to all personal legislation. When Muslim women's rights were overlooked, this case was an excellent opportunity to promote gender equality in the law. That's all we can say about the impact of ShayaraBano's case thus far: Article 13, the "essential practise test," and religious liberties are given precedence over women's rights. At the same time, personal law continues to be exempt from Article 13.

Among the Dalits, there are many divisions
Constitution (Scheduled Tribes) and Constitution (Scheduled Castes) Orders were enacted by the President of India following India's independence in 1950, shortly after the Constitution had been established. Even though India's constitution forbids the practice of "untouchability," it nevertheless acknowledges the reality of caste prejudice and the need for affirmative action to combat the injustice it causes. As a result, while Article 15 prohibited initially discrimination based on caste, it was later revised to clarify that this would not 'limit the state from making any particular provision for the advancement of any backward groups of people or for the Scheduled

ISSN- 2394-5125 VOL 7, ISSUE 03, 2020

Castes and Tribes' (SCSTs) [6]. More than 1,000 castes & 700 tribes were recognized for reservations in public service jobs and public universities under these laws. Since colonial times, they've had legal protection, when the British referred to them as dalits&adivasis (ie, original residents). Government of India (Scheduled Casts) Order 1936 was the first contemporary attempt to categorise these groups, culminating in the first modern schedule of castes and tribes for which government seats would be reserved (or a list) [7].

Article 25(1) of the Constitution refers to the right to "freely profess, practise, and spread" one's faith, and the Supreme Court had to decide if that included the right to convert others. Article 25(1) does not offer a person the freedom to convert another person to their religion, but rather the right to transmit or disseminate one's faith by explaining its doctrines, writes Chief Justice Ray. It was argued that Article 25 of the Constitution preserves the freedom to spread religious ideas if done "for the edifications" of others. As a result, the Stanislaus decision holds that the constitution protects religious propagation if the goal is to better the lives of people rather than convert them.

These are meaningless distinctions. Conversion to religion may be encouraged by exposing the beliefs of one's faith. So even if they do not use coercion, fraud, or 'allurement' to achieve their purpose, those who engage in religious propagation are likely motivated by the desire to spread their faith. Proselytizing religions are unfairly burdened by the Court's conflation of actual religious practice with criminal action. Proselytization is a core tenet for Christians and Muslims, and the Stanislaus decision indirectly favors Hinduism, which does not encourage conversion. Members of Dalit groups, who are the most likely to convert to these religions to avoid the worst aspects of caste discrimination, are the ones who suffer the most as a result of this discrimination.

Identification of Oneself as a Member of a Minority

The Supreme Court's reluctance to allow minorities to self-identify can be seen in the Babu case. As long as he claimed to be a scheduled caste member, the postal clerk's claim was irrelevant to the Court. Self-declared minority status is rarely taken into account when assessing whether groups are eligible for minority protections by the Supreme Court. As part of Bal Patil v Union of India, the Supreme Court debated whether the Jain group should be classed underneath the National Commission for Minorities Act 1992 as a "minority" (NCMA) [8]. Muslims, Christians, Sikhs, Buddhists, and Parsis were classified as minorities. An appeal was filed in the High Court of Bombay for a mandamus order to India's Central Government to include Jains in this list. TMA Pai Foundation v Union of India, a case involving constitutional protection for religious minorities, was still continuing when the High Court dismissed the petition. Bal Patil's appeal to the Supreme Court was postponed until the TMA Pai decision was released.

An eleven-judge court set a precedent in the case of TMA Pai, which dealt with a wide range of fundamental rights problems. It is critical when it comes to minority institutions and the right to education. Bal Patil's argument, on the other hand, revolved around the question of whether or not he would be classified as a minority. The term "minority" is not defined in the Indian Constitution, yet the term is used in two fundamental rights sections. According to Article 29 on Minority Interests, residents have the right to preserve their language. They cannot be denied entrance to any state-run or state-funded academic institution based onreligion, race, castelanguage. The right to education is guaranteed to all citizens." It is explicitly stated in Article 30 that minorities have the right to create and control educational institutions. The meaning & content of this provision were decided by Chief Justice Kirpal, who wrote the

ISSN- 2394-5125 VOL 7, ISSUE 03, 2020

majority judgement in TMA Pai. To him, "the unit will be the state but not the entire of India" when it comes to figuring out who qualifies as a minority under Article 30 because of the way Indian states were rebuilt linguistically.

As a result of the Supreme Court's decision in Bal Patil, state governments must determine whether the Jain community is a'minority' under NCMA on an individual basis, even though Bal Patil did not include Article 30 of the Constitution. These issues are not moot because of what they said the TMA Pai case had done. According to them, the Central Government still has the power to declare the Jain group a national-level minority [9]. After hearing these arguments, the Bal Patil bench offered some additional commentary on the standards for minority status.

The Supreme Court aimed to identify national minorities in historical context. There was a reference to British colonialism & British efforts to segregate the Hindu and Muslim communities. By including fundamental protections for religious liberty, the framers of the Constitution hoped to "allay the apprehensions and worries of Muslims." As a result of the presence of Anglo-Indians and "large-scale intermarriages and conversions" that occurred during the colonial era, these protections extended to Parsis 'who had migrated from their native State Iran,' and Christians, who were treated separately from Hindus or Muslims because of Anglo-Indians and "large-scale intermarriages and conversions." However, Jainism has long "been treated as part of the wide Hindu community," according to the Court. Jainism is a'special religion founded based on quintessence' of the 'generic' Hindu religion, even if the Court acknowledged that Jains have distinct beliefs & religious practices, including the fact that they do not 'worship deity statues or pictures.

Right to education:

This right to education is protected in several ways by the Indian Constitution, which includes religious considerations. Minorities have fundamental constitutional rights that forbid the state from discriminating against them in education. There is no discrimination against citizens based on religion, race, caste or language in state-run or state-funded educational institutions under Article 29. At the same time, Article 30(1) grants minorities, including minority religions, the right to establish and administer their educational institutions.

The Constitution outlines a series of non-justiciable Directive Principles to guide the state toward better socioeconomic equity, among other things. Within the first ten years following the start of this Constitution, the State shall endeavour to offer free and obligatory education for all children until they reach the age of fourteen years old, as stated in Article 45. Within ten years of the Constitution's inception, the state was mandated to provide free elementary education to all children. This provision was time-limited, unlike earlier Directives.

Article 21 of the United States Constitution guarantees that all citizens have the right to a decent standard of living, including the right to an education. According to the Supreme Court, Article 45 of the Directive Principles must be taken into account while determining the scope of this right. Because it had been more than 40 years since the Constitution was passed, the Supreme Court ruled that Article 45 had effectively been transformed from a quasi principle into an enforced fundamental right. The Eighty-sixth Amendment Act of 2002 solidified Unni Krishnan's precedent-setting verdict. 'The State shall provide free and education to all children of the age of six through fourteen years in such a manner as the State may, by law determine,' read Article 21-A of the Constitution added by it.

ISSN- 2394-5125 VOL 7, ISSUE 03, 2020

Parliament passed the RTE Act seven years later to put Article 21-A into action. Children from the "weaker segment and disadvantaged group [sic] in the neighbourhood" must be given at least 25% of the seats in schools, according to Section 12(1)(c) of the RTE Act. Each state can define the term "weaker and disadvantaged" differently, but it often refers to minorities, particularly Dalits. India's schools were to be more diverse under this law.
In Association for Un-Aided Private Colleges of Rajasthan v Union of India, the legality of Section 12(1)(c) was questioned. All of the Act's rules and regulations applied to these institutions because of Section 2(n) of the Act. The Supreme Court's Division Bench of three justices had to decide whether or not this clause violated the Constitution as applied to minority educational establishments.

Article 19(1)(g) of the Constitution, which enumerates the ability to 'perform any profession, occupation, trade, or business,' protects all individuals' right to create private educational institutions. The Supreme Court ruled in TMA Pai. When Article 19(6) is read in conjunction with Article 19(1)(g), it limits this right by saying that the state can enact reasonable restrictions on this right in the interests of the general public, which is a reference to the general public. TMA Pai further argued that Article 30(1) of the Constitution grants minorities the freedom to establish educational institutions, but this right is not absolute. National interest legislation governs this. Section 12(1)(c) of the RTE Act was an appropriate regulation on Article 30(1) of the Constitution's right to establish & administer educational institutions by minority groups, as the Court had to decide in Society for Un-Aided Private Schools. For the Supreme Court, Justice Kapadia distinguished between aided and unassisted minorities' schools. A quarter of seats should be reserved for children from other origins, according to him, because doing so will change the schools' character. The reservation was illegal as applied to unaided minority schools since the goal of these institutions is to perpetuate the 'language, script, or culture' of a particular minority group. According to a Constitutional provision, all people have a right to be admitted to any state-funded educational institution, including private schools. Because Section 12(1)(c) of the RTE Act applied to assisted minority schools, it was constitutionally permissible.

Later, in Pramati, this case was referred to a five-judge Supreme Court Constitutional Bench. Expressly, the Constitutional Bench affirmed that the RTE Act infringed the unaided minority schools' Article 30(a) right to self-governance. It did, however, overturn the Division Bench's ruling in favour of minority-affiliated institutions. Minority institutions receive a significant endorsement from Chief Justice Patnaik in his ruling for the Court. It was his position that Article 30(1) of the Constitution gives linguistic and religious minorities the "unique constitutional right" to set up and run the schools of their choice and that the "State cannot interfere." Non-minority students can't be 'forced' into these institutions as to alter the minority character' of these institutions, according to state legislation. Since the RTE Act was founded upon Article 21-A, which established that all children have an inalienable right to adequate schooling, according to Justice Patnaik, the constitutional provision would "abrogate" Article 30(1) rights for minorities if it were applied to their schools, whether they were state-funded or not
Backward classes will be disproportionately affected by Pramati. 'Significant exploitation of the RTE's exemption for minority schools' is what Kothari and Ravi argue is the result of a lack of criteria or norms for what constitutes a minority educational institution. As a result of Pramati, many schools have taken advantage of the opportunity to avoid accepting and educating children from the "weaker" and "disadvantaged" societal groups. Because of this, they are discriminating

ISSN- 2394-5125 VOL 7, ISSUE 03, 2020

against minorities like the Dalits and the vulnerable. Because of this Supreme Court should reconsider this matter and ensure that students from the "backward classes" can attend any schools, including minority ones.

Conclusion:

The purpose of this paper was to take a fresh look at the Indian Supreme Court's religious constitutional jurisprudence. Minority groups' claims to constitutional recognition & rights protection have been examined instead of secularism's impact on case law or its emergence and influence as a political ideology. Judgment favors those who have more power: Muslim women, Hindus who converted to other religions, and minorities who attend minority-affiliated schools. 'Weaker' and 'disadvantaged' elements are ignored to favor more powerful interests. The following are some ways in which the Court's jurisprudence on these matters needs to be reoriented going ahead. In the first place, it should be acknowledged that each of these regions has competing interests. In personal law matters, women's rights must be fully considered. Still,the socioeconomic position should not simply be utilised to deny minority status to specific groups, such as Christian Dalits and Jains. Other settings, such as the right to education in minority institutions, should also be considered when making decisions.

The Court should try to accommodate opposing interests in its decisions for the second time. Case law involving Articles 30 and 25 of the Constitution is particularly problematic in this regard. A minority educational institution, as defined by the TMA Pai decision, is not a "special" right, as stated in Article 30. Instead, it is governed by fair rules that serve the entire country's interests. RTE Act Section 12(1)(c), reserving 25% of the seats in these institutions for disadvantaged children, is appropriate — it still allows these schools to fill a substantial majority of their seats with students from the relevant minority groups. Personal law must be constitutionally scrutinised, and the Court must forgo the "essential practice test" when considering Article 25. Much like in the case of Article 30, the Court should not interpret personal law as a "special" category that transcends other fundamental rights or depend on religious scriptures – rather than the Constitution – to establish which acts are protected by the Constitution.

To wrap up, the Supreme Court should analyse how religious laws & minority categorization affect the most disadvantaged groups in society. For example, in ShayaraBano, the petitioner alleged that triple talaq was part of a more extensive religious and cultural practices that systematically marginalized women. As in Babu and Soosai, the Supreme Court appeared to be unaware of the extent of discrimination faced by Dalits or the fact that such discrimination does not go away merely because they convert to a different faith. However, it has been over 30 years since the Supreme Court made the Soosai ruling, and it has not changed its position on the treatment of Christian Dalits. It's been less than a decade since Congress passed the RTE Act, but there's already been a lot of study done on its influence and effectiveness. As a result of continuous attention and empirical data, the Court may rethink its decision in Pramati and better acknowledge the right to education for the most vulnerable children. It's significantly less clear if this will hold in the context of personal law and the Dalit community.

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