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**Is it the time to reinterpret the term 'Religious Denominations' in the light of
growing State control over Temples?**

Suraj T.N.

ABSTRACT

By virtue of Article 26 of the Indian Constitution, religious denominations have the power to establish and maintain institutions, manage their own religious affairs, and acquire property and administer property. A religious denomination is a sub-group within a religion, and not the religion itself. As a result, the rights under Article 26 apply only to sub-groups. Hence, if the state arbitrarily takes control of a temple that belongs to the Hindu public in general, then the rights stated under Article 26 cannot be enforced. On the other hand, if the state takes control of a temple that belongs to a religious denomination (a sub-group of the religion), then the rights under Article 26 can be enforced. This leads to an ironic situation where the state is free to control huge and famous temples as they are not of denominational character. This article focuses on the present situation and examines the need to reinterpret the term in the light of growing state control of temples.

INTRODUCTION

Out of many of the unique features that India is known for, religious diversity stands out as one of the most prominent ones. The country has not only been the birthplace of many religions but has also sheltered and nurtured the growth of several other religions. These religions have slowly embedded themselves into Indian culture due to the country's tolerance and belief in unity. Taking cognizance of this unique feature, the framers of the constitution added the Right to Religious Freedom (under Articles 25 to 28 of the Indian Constitution, 1949) as one of the many rights guaranteed by the Indian constitution under Part III¹.

Article 26 gives religious denominations the power to exercise certain rights such as managing religious affairs, establishing and maintaining institutions, and acquiring and administering property². It also prevents the state from interfering into the religious affairs of such denominations³. One more important point that must be taken into consideration is that the article extends only to religious denominations or sections of such denominations.

¹ <https://www.legalbites.in/right-to-freedom-of-religion-articles-25-28/>.

² 26. Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

³ <https://blog.ipleaders.in/religious-denominations-indian-constitution/>.

WHAT IS A RELIGIOUS DENOMINATION?

The Oxford Dictionary defines a denomination as, ‘a branch of a Christian church’⁴. A religious denomination, in a sociological context, has been defined as a subgroup within a religion that operates under a common name, tradition, and identity⁵. The constitution does not define the term. As a result, it was expected that the Supreme court would step in and give it a definition. The first case where the Supreme Court had to define the term was in the case of Commissioner, Hindu Religious Endowments V. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt⁶ (hereinafter referred to as Shirur Mutt). The court referred to the Oxford Dictionary and defined a religious denomination as a group having a ‘common faith, common organization and a common name’. The Supreme Court further clarified this term in SP Mittal V. Union of India⁷ (hereinafter referred to as SP Mittal), where the it elaborated on the aforementioned essentials.

Another very significant aspect is **that a religious denomination must arise from a particular religion**. Hence, a group of people having a set of common beliefs that do not arise from a particular religion cannot be deemed to constitute a religious denomination for the purpose of Article 26⁸. The court also made this clear in SP Mittal when it held that the followers of Sri Aurobindo do not constitute a religious denomination, as the followers do not come together for the purpose of one religion.

Moreover, the common system of beliefs followed by the religious denomination must include religious tenants or principles peculiar to itself⁹. This means that the denomination must also follow practices and beliefs that are not exclusively a part of that religion but are followed in addition or in the place of other practices and beliefs of that religion.

For example, in the case of Ratilal V. State of Bombay¹⁰, the Supreme Court had to decide whether the Svetambar Jains constitute a separate religious denomination or not. The Svetambar Jains constitute one of the two main branches of Jainism. Though the group is a part of Jainism, in addition to the practices prescribed by Lord Mahaveer, the group follows practices that are unique and different

⁴ <https://www.oxfordlearnersdictionaries.com/definition/english/denomination>.

⁵ <https://www.financialexpress.com/india-news/sabarimala-temple-case-why-religious-denomination-is-key-to-womens-entry-debate-in-supreme-court/1256427/>.

⁶ 1954 AIR 282.

⁷ AIR 1983 SC 1.

⁸ Nallor Marthandam Vellalar V. Commissioner, Hindu Religious and Charitable Endowments , (2003) 10 SCC 712.

⁹ Sri Adi Vishweshwara of Kashi Vishwanath Temple V. State of Uttar Pradesh, (1997) 4 SCC 606.

¹⁰ 1954 AIR 388.

from the practices followed by the other branch of Jainism- the Digambara¹¹. The court held that the Svetambar Jains satisfy the three conditions laid down in order to be called a religious denomination. Similarly, the followers of Madhavacharya¹², the followers of Ramanuja¹³, the Gowda Saraswat Brahmins¹⁴, the Dawood Bohras¹⁵, and the followers of Vallabha¹⁶ have been termed as religious denominations by the Supreme Court. Whether a particular community constitutes a religious denomination or not is a mixed question of law and question of fact¹⁷.

Moreover, Article 26 also uses the words 'any section thereof'. This means that a group within a denomination is also entitled to the protection given by Article 26 of the constitution.

CAN THE FOLLOWERS OF A RELIGION ITSELF BE TERMED AS A RELIGIOUS DENOMINATION UNDER ARTICLE 26?

From the aforementioned discussion, it is clear that only subgroups of a particular religion and its followers can be classified as religious denominations and not followers of the entire religion itself. For example, the Svetambar Jains are seen as constituting a religious denomination for the purpose of Article 26, but the followers of Jainism itself do not get classified as a religious denomination.

In 1958, the Orissa High Court, in Ramchandra Deb V. State of Orissa¹⁸ (hereinafter referred to as Ramchandra), had to decide on the constitutional validity of the Sri Jagannath Temple Act 1955. The government of Orissa, through this act, took control of the administration and properties of the temple. The petitioner urged that the followers of the temple constituted a separate denomination, and that they were entitled to the protection of Article 26. The government of Orissa responded by submitting that Hindus, in general, happened to visit the temple and that they do not constitute a religious denomination. This led the court to consider whether the followers of Hinduism itself constitute a separate religious denomination or not. The court made the following observations:-

"16. A question arises as to what is the precise significance of the expression "religious denomination" occurring in Article 26. Does it apply to Hindus in general or is it restricted only to sects or subjects amongst Hindus?"

¹¹ [Dalal and Roshen, *The Religions of India: A Concise Guide to Nine Major Faiths*, ISBN 978-0-14-341517-6.](#)

¹² The Commissioner, Hindu Religious Endowments V. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 AIR 282.

¹³ See *supra* footnote 5.

¹⁴ See *supra* footnote 3.

¹⁵ Taher Saifuddin Saheb V. State of Bombay, AIR 1962 SC 853.

¹⁶ Tilkayat Shri Govindalji Maharaj V. State of Rajasthan, AIR 1963 SC 1638.

¹⁷ Arya vyasa Sabha V. Commissioner, HRE, AIR 1976 SC 475.

¹⁸ AIR 1959 Ori 5.

In 1954 SCR 1055: (AIR 1954 SC 388)...their Lordships of the Supreme Court held that the followers of Zoroastrian religion would also form a "religious denomination" within the meaning of [Article 26](#).

If the followers of Zoroastrian religion can be held to form a separate religious denomination for the purpose of [Article 26](#), there seems no special reasons why the followers of Hindu religion also should not be held to form a religious denomination within the meaning of the same Article. The fact that the adherents of Hindu religion are very large in number compared to those who profess Zoroastrian religion or the fact that amongst the Hindus there are innumerable sects and sub-sects whereas amongst the Parsees there are presumably no sects at all, will not affect the legal position.

I am not therefore inclined to accept the Advocate-General's contention that the followers of the Hindu religion in general will not form members of a religious denomination within the meaning of [Article 26](#)..... An Article conferring a fundamental right should not be so narrowly construed as to exclude institutions of the Hindu Public in general, from the benefit of that Article."

The Orissa High Court further went on to cite the judgment of the Madras High Court in Shirur Mutt¹⁹:-

"There being several religions in India such as Islam, Christianity, Zoroastrianism and Hinduism it may not be wrong to take Hinduism and the members of that religion as constituting a religious denomination in a larger sense, if it should be taken in a limited sense, Advaita, Dvaita, VisMshadwaita and Saivite, may be another classification and the members of each faith may be treated as members of one denomination."

In Ramchandra, the court also noted that the Supreme Court did not overrule this part of the judgment of the Madras High Court when it heard the matter on appeal. Even the Ramchandra case was heard on appeal by the Supreme Court in the name of Bira Kishore Deb V. State of Orissa²⁰, but the court did not specifically deal with this question.

In later cases, the Supreme Court never really considered this point of view to be substantial in nature. In Indian Young Lawyers' Association V. State of Kerala²¹ (hereinafter referred to as the Sabarimala Case), the court had to decide on whether the followers of Lord Ayyappa constitute a religious denomination. In this regard, the majority of the judges held that the followers of Lord Ayyappa, "are just Hindus and do not constitute a separate religious denomination.". The Supreme Court could have probably taken this stand because the judgment in Shirur Mutt was delivered by a seven-judge bench, and the bench in the Sabarimala Case was a five-judge bench. However, even if the court had accepted that the followers do constitute a religious denomination, it would have declared the practice as

¹⁹ AIR 1952 Mad 613.

²⁰ AIR 1964 SC 1501.

²¹ 2018 KHC 6760.

unconstitutional. The court would have harmonized Articles 14²², 15²³, and 21²⁴ with Article 26(b) like it had done in *Shayara Bano V. Union of India*²⁵. By harmonizing these articles, the court in *Shayara Bano*, struck down the practice of talaq-e-biddat, despite stating that Sunni Muslims (who followed the practice) did constitute a separate religious denomination.

Nevertheless, this goes on to emphasise that courts since then have not taken up the issue of whether the followers of an entire religion can be deemed as a religious denomination, complete in itself. Therefore, it is safe to say that the term is being used in a very narrow sense.

EFFECT OF THIS NARROW INTERPRETATION ON STATE CONTROL OF TEMPLES

For several years, the country has witnessed the acquisition of temples and temple properties by state governments. This is a practice that originated in independent India due to the passing of the Hindu Religious and Charitable Endowments Act, 1951 by the Parliament. The act gives state governments the power to take control of temples. Out of 9 lakh temples in the country, about 4 lakh temples are under the control of state governments²⁶. 15 state governments across the nation have control over

²²Article 14- Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

²³ Article 15-Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribe.

²⁴ Article 21- Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

²⁵ (2017) 9 SCC 1.

²⁶ <https://www.sundayguardianlive.com/news/demand-free-temples-government-control>.

temples in their respective states²⁷. This is something that the Supreme Court has frowned upon on several occasions²⁸. In *Ratilal V. State of Bombay*²⁹, the Supreme Court made it clear that transferring administrative powers of a temple from a religious denomination to secular authority is in violation of Article 26. The state can pass a law to regulate the affairs of a religious institution, but it cannot extinguish the right all together³⁰.

However, what must be seen here is that the court has taken this stand only with respect to ‘religious denominations’. Therefore, the definition given in *Shirur Mutt* will apply. This was pointed out by the Orissa High Court in *Ramchandra*. This stand has not been applied to all temples and institutions that are there for the Hindu public in general. For eg., if the followers of Ramanuja construct a temple for themselves, and if the government takes over the administration of the temple, then the acquisition of the temple by the state can be challenged on the ground of it being in violation of Article 26. This is because the followers of Ramanuja constitute a religious denomination (as noted in *Shirur Mutt*). However, a private entity that constructs a temple for the Hindu public, in general, cannot claim the protection of Article 26 if the government takes over the temple and its properties, as those who visit the temple are ‘Hindus in general’, and do not constitute a religious denomination under Article 26. This leads to an ironic situation where the religion does not get the protection of the article, but the sub-sections of the religion do.

Temples that are there only for denominations do not attract huge sums of donations and people. Therefore, state governments do not get attracted to such temples. On the other hands, large temples like the Lord Venkateshwara Temple in Tirupati, the Lord Jagannath Temple in Puri, the Lord Ayyappa Temple in Sabarimala, etc. are beneficial for state governments as they attract large number of devotees, which in turn, attracts large sums of donations and revenue. An ideal example of a state government having control over a temple is in the Lord Venkateswara Temple in Tirupati, where the chairman of the Tirumala Tirupati Devasthanams (the trust which oversees the operations of the temple) is always appointed by the state government³¹. And so are the other members of the trust. In the wake of the global Coronavirus pandemic, the Government tried to auction all the gold stored in the temple to meet the said contingency, but the government decided to withdraw the plan due to

²⁷ Ibid.

²⁸ <https://timesofindia.indiatimes.com/india/temples-should-be-managed-by-devotees-not-government-sc/articleshow/68781876.cms>.

²⁹ See supra footnote 8.

³⁰ *Sri Govindlalji Vs. State of Rajasthan*, 1963 AIR 1638.

³¹ <https://theprint.in/talk-point/tirupati-controversy-should-large-temples-be-run-by-government-trusts-or-traditional-owners/61797/>.

severe opposition³². The temple received a staggering amount of Rs. 1214 crores from donations to its corpus during the financial year of 2018-2019³³, which makes the reason behind the government's interference understandable. Even if the temple administrators want to challenge the control of the government, they cannot rely on Article 26, as the fundamental issue will be whether the devotees of the temple constitute a separate religious denomination or not. To answer this question, the court will look back to its judgment in the Sabarimala case and will use the same reasoning that the devotees who visit the temple are only followers of Hinduism and do not constitute a religious denomination for the purpose of Article 26. By taking this stand, the court will effectively cut a way of reprieve for the temple to stake its claim as an independent institution. This problem arises for all other major temples, too. It will be very difficult for such large temples to prove that the devotees constitute a religious denomination as such temples are visited by devotees from Hinduism, irrespective of which sub-sects they belong to.

The larger the temple, the tougher it is to prove that the devotees who visit the temple constitute a separate religious denomination.

ANALYSING THIS INTERPRETATION IN THE CONTEXT OF THE BILL TO FREE RELIGIOUS INSTITUTIONS FROM STATE CONTROL

On 22nd November 2019, Dr. Satyapal Singh, Member of Parliament, tabled a bill to amend the constitution for the purpose of freeing temples from the control of state governments³⁴. The bill seeks to amend Articles 15, 26, 27, 28, 29, and 30 of the constitution. With regards to Article 26 of the constitution, the bill seeks to add the following provisions³⁵:-

- (2) Notwithstanding anything contained in article 25, the State shall not control, administer or manage, whatsoever, any institution, including its properties, established or maintained for religious or charitable purposes by a religious denomination or any section thereof;
- (3) All laws in force in the territory of India in so far as they are inconsistent with the provisions of this article shall, to the extent of such inconsistency, be void.

³² <https://www.timesnownews.com/india/article/amid-backlash-andhra-govt-stays-auction-of-tirumala-properties-asks-ttd-to-take-decision-after-consultation/596859>.

³³ <https://www.indiatoday.in/india/story/rs-507-crore-in-donations-deposited-at-tirumala-venkateswara-temple-trust-in-2018-19-1495052-2019-04-05>.

³⁴ <https://indiafoundation.in/wp-content/uploads/2019/12/5-Arjun-Singh-Kadian.pdf>.

³⁵ <https://www.organiser.org/Encyc/2019/11/25/Bill-to-free-temples-from-government-control-introduced-in-Lok-Sabha.html>.

(4) The State shall not make any law which enables it to control, administer or manage, whatsoever, any institution, including its properties, established or maintained for religious or charitable purposes by a religious denomination or any section thereof, and, any law made in contravention of this clause shall, to the extent of such contravention, be void.

(5) In this article the expressions "law" and "laws in force" have same meaning as respectively assigned to them in clause (3) of article 13."

The bill has clearly been tabled with the bona fide intention to free Hindu religious institutions from state control as it has been stated in the objects and reasons. However, it only puts down in writing what has already been declared by the Supreme Court in *Ratilal V. State of Bombay*. Clause 2 states that the state shall not control any institution (including its properties), which has been established or maintained by a religious denomination or any section thereof. Hence, even if the constitution is amended accordingly, institutions that are available for the public, in general, will have no other option, but to try and substantiate that the institution is being maintained by a denomination. The definition given by the Supreme Court in *Shirur Mutt and SP Mittal* will be applied by the court to answer the question pertaining to denominations. Further, the government (the respondent) will also point out the approach taken by the Supreme Court in the *Sabarimala Case* to buttress its arguments that followers of the religion themselves do not constitute a religious denomination. The same applies to clause 4, too. Therefore, there isn't much chance for standalone temples to get religious freedom, because even after this amendment, they must prove that the followers do constitute a religious denomination. A change will transpire only if the Supreme Court changes its interpretation of the term.

CONCLUSION

Article 26 is a very important fundamental right that must be protected at all costs. The fact that the Constituent Assembly did not define the term 'religious denomination' can be seen as the reason behind the Supreme Court having to try and define the term on several occasions. **However, one cannot deny that the definition and outlook that have been given to the term by the Supreme Court has led to a very ironic situation where a religion itself isn't entitled to the protection of Article 26, but subgroups within the religion are getting the protection of Article 26.** Such an interpretation is discriminatory against those people who do not belong to any particular sub-sect. The Orissa High Court and the Madras High Court, however, saw through this irony and pointed out that followers of a religion do constitute a religious denomination on their own. What must be noted is that the particular portion of the judgment of the Orissa High Court has not been expressly overruled by the Supreme Court. As a matter of fact, it has not even been taken into consideration by the Supreme Court. The same applies to the judgment delivered by the Madras High Court in Shirur Mutt. Even if the present amendment bill does get passed, the amendment will extend to only those institutions that are being established and maintained by religious denominations. Therefore, it is up to the Supreme court to take up the matter and decide whether the followers of the religion constitute a religious denomination. Or else, the parliament must make a radical change by replacing the term "religious denomination" with "religion", which is unlikely.

However, if the change is made, then it will usher in a new era where religion will be given freedom. Even the use of the Doctrine of Essential Religious Practices will reduce significantly because the main question will be whether the impugned state action is in violation of any of the rights under Article 26.

The ideal time to take this into consideration will be during the hearing of the Sabarimala review petitions as the matter has been transferred to a nine-judge bench, which can examine the Shirur Mutt case, if required. Moreover, it will also be a case where the court goes on to answer the question posed by a larger issue about religious freedom of temples and other religious institutions, which is the need of the hour.