

## Removing State Control from Religious Institutions: Constitution (Amendment) Bill, 2019 (Amendment of Article 26)

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India is a secular state, premised on equality to all its nationals. However, certain provisions of the Constitution however tend to discriminate against the majority community, especially in matters dealing with religion. One such is Article 26 of the Indian Constitution. Designed to provide protection to the minority communities, in its application it discriminates against the majority community.

To rectify this anomaly, Constitution (Amendment) Bill, 2019 (Amendment of Article 26) was introduced in Parliament by Lok Sabha Member of Parliament from Baghpat (Uttar Pradesh), Dr Satya Pal Singh. The Statement of Objects and Reasons of the Constitution Amendment Bill brought into the proceedings of the Parliament the following:

“As per our constitution, the state has no religion. The state has to treat all religions and religious people equally and with equal respect without, in any manner, interfering with their right to freedom of religion, faith and worship”<sup>1</sup>

A similar Bill had earlier been introduced in parliament in 2017, but had lapsed and was introduced for the second time on 22 November 2019. After tabling the Bill, Dr Satya Pal Singh, addressing the media, stated that post-Independence, care was taken by the Constitution to allow the minorities to control their educational and religious institutions so that their fears were

allayed. However, Hindus were not extended the same treatment, generating an unhealthy feeling of discrimination among the majority community.

A cursory reading of the bill would be enough to understand the reasons why the honourable Member of Parliament (MP) has moved for introduction of the Bill in Parliament. In support of his Bill, Shri Satya Pal Singh stated, “Over the last seven decades, it has come to mean that the majority community cannot enjoy the same rights as the minorities in a secular country. Hindus cannot manage their institutions, as exclusive rules and regulations are imposed only on Hindu institutions. This is discrimination and hence my bill is introduced to ensure that everyone is equal before the eyes of the law”<sup>2</sup>.

As per Koenrad Elst, a well-known Indologist and advocate for the cause, “The Private Bill and the present initiative will surprise a part of the Indian public and the vast majority of the foreign India-watchers, as they don’t know (or the knaves among them feign not to know) that there exists any anti-Hindu discrimination at all”<sup>3</sup>.

The case for the bill is a fairly old one and has off late permeated into the national consciousness. The bill, introduced by the honourable MP intends to correct some historical injustices perpetrated in the name of secularism, seeks to amend the Constitution and free temples and Hindu religious institutions from state control. It demands that the

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state shall not frame laws that allow it to control a religious institution, and put a hold on misappropriation of temples' income in the name of secular practices. Further, the bill tries to correct the majority-minority distinction and the practices that follow.

### **The Case for the Bill**

Before we delve into provisions of the bill and the stated objectives behind them and the reasoning, it is important to dig into the history of the three subjects it broadly deals with. These subjects are:

- Hindu Religious Institutions
- Educational Institutions
- Minority-Majority Segregation

### **Hindu Religious Institutions**

The government control over Hindu temples and religious institutions derives its teeth from colonial laws and was thoughtlessly continued post-independence. Traditionally, Hindu Temples have acted as religious and cultural hubs for the Hindu society, being centers of dance, art and providing jobs and patronage to a host of people. Temples also managed their properties which were given as donations to it by the community. Administration within the temple would establish *pathshalas*, *gaushalas*, rest-houses and other institutions for the poor, destitute and needy.

It is now popularly understood that the British ruled India for no charity. Sanjeev Sanyal, economist and historian, Shri Shashi Tharoor, MP, and others too have written and spoken in great detail about the drain of wealth from India during the colonial era. Further, for the British agenda of colonisation and conversions to succeed, the hold

of temples on the Indian society had to be weakened. Temples were brought under government control mainly in south India because not too many temples in the north possessed such massive property or wealth. The British introduced the Madras Regulation VII of 1817 to do this.<sup>4</sup>

The Religious Endowments Act 1863 handed over the temple administration to the trustees from the British government. With this, numerous temples in the Madras Presidency went under the control of the respective trustees and the role of government in supervising them decreased. It was on the trustees now to run the temple according to the traditions and tenets of the temple and the community. This tradition continued for a few decades. However, in 1925 The Madras Religious and Charitable Endowments Act was introduced by the British affecting the administration of these temples. Seemingly, the act faced stiff resistance from Muslims and Christians communities and under prevalent duress; the act was renamed as Madras Hindu Religious Endowments Act.<sup>5</sup>

In 1925, the Madras Hindu Religious Endowments Act, 1923 (Act I of 1925) was passed by the local Legislature with the object of providing for better governance and administration of certain religious endowments. A radical change was introduced, however, by Act XII of 1935. The Government was not satisfied with the powers of the Board then existing and they clothed the Board with an important and drastic power by introducing a new Chapter, Ch. VI-A, by which jurisdiction was given to the Board to notify a temple for reasons to be given by it.<sup>6</sup> This was one of the most radical moves by the British government in temple administration laws. The Hindu religious

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endowment Board (three to five members) was now armed with powers to take over and administer temples.

In 1951, the Tamil Nadu government passed the Hindu Religious and Charitable Endowments Act and took over the control of temples and their funds. The provisions of the act were opposed and challenged in the High Court and later taken to Supreme Court in the *Shiru Math* case. Many of the core provisions of the act were struck down yet some years later, the Tamil Nadu government passed a new law, The Tamil Nadu Hindu Religious and Charitable Endowments Act, in 1959. The Bill was passed and placed on the Statute Book as the Act XXII of 1959.<sup>7</sup> Sri Patanjali Sastri, Second Chief Justice of India, publicly expressed his view that the bill violated the principles and implications of a secular state, which require that the state should not actively or passively associate itself with the religious life of the people.<sup>8</sup>

The new Act abolished the Hindu Religious Endowments Board and vested its authority in the Hindu religious and charitable endowments department of the government headed by a commissioner. It also mandated that if the government believes that any Hindu public charitable endowment is being mismanaged, it may direct the commissioner to inquire and bring the endowment under government control. This provision of mismanagement does not apply to Muslim and Christian communities.<sup>9</sup>

It was said that the purpose of the Act was to manage the funds of the temple properly and to improve the general management of the institution. However, the Act set a precedent for other states to follow. Soon, temples across the country were

taken over by different governments through sequential legislations.

### **Educational Institutions**

After coming to power in 2004, the Indian National Congress-led United Progressive Alliance (UPA) Government passed a Constitution Amendment Bill. The Constitution (Ninety-third Amendment) Act, 2005 added clause (5) in the Constitution which allowed the state to make special provisions for the advancement of socially and educationally backward classes of citizens or Scheduled Castes or the Schedule Tribes. However, this clause did not apply to minority educational institutions, separating minority institutions from others and escaped from providing for disadvantaged citizens of the country.

### **Minority-Majority Segregation**

Article 30 confers on all minorities—religious or linguistic—the right to establish and administer educational institutions of their choice. These words have been interpreted by the courts to mean that the founding fathers of the Indian Republic wanted to give the minorities’ unbridled freedom to run educational institutions with bare minimum interference from the government. But with Article 15(5), the Indian state regulates private institutions heavily. Since minorities remain largely free, these regulations only stifle the Hindu-run institutions leading to unprecedented financial and regulatory advantage to minorities over majority-run institutions.

STEPS TOWARDS AN EQUAL FUTURE  
Dr Satya Pal Singh’s Bill, introduced in the Parliament, is an attempt to correct the biases in

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the Constitution which have been enumerated above. The Bill is called the Constitution (Amendment) Act, 2019. It seeks to amend/add/delete certain provisions of Articles 15, 26, 27, 28, 29 and 30. The reasons thereof are discussed in subsequent paragraphs.

## ARTICLE 15

The Bill seeks to omit Clause 5 of Article 15 of the Constitution. The provisions of Article 15 are:

**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, and 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 concerning with regard to—(a) access to shops, public restaurants, hotels and places 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 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 the Scheduled Castes and the Scheduled Tribes. [By the 1<sup>st</sup> Amendment Act, 1951]

(5) Nothing in this article or sub-clause (g) of

clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.] [By the 93<sup>rd</sup> Amendment Act, 2005]

(6) Nothing in this article or sub-clause (g) of clause (1) of Article 19 or clause (2) of Article 29 shall prevent the State from making,— (a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category. Explanation-For the purposes of this article and article 16, “economically weaker sections” shall be such as may be notified by the State from time to time based on family income and other indicators of economic disadvantage.[By the 103<sup>rd</sup> Amendment Act, 2019]

### Explanation:

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Article 15 of the constitution prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. However, clause (5) which is proposed to be omitted was added by the Congress-led United Progressive Alliance (UPA) government in 2004 by the 93<sup>rd</sup> Amendment Act. It is the *basis* of sectarian laws in education, the most important being the Right to Education Act (RTE). This clause paved the way for the government to reserve seats for students from socially and educationally backward classes in private educational institutions other than those run and managed by religious and linguistic minorities. Omitting the clause would free minority educational institutions and under the Right to Education Act, it would open doors to students from disadvantaged communities regardless of their minority status.

## ARTICLE 26

The provisions of Article 26 are as under:

**Article 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 affairs in matters of religion;
- (c) To own and acquire movable and immovable property; and
- (d) To administer such property following the law.

## Explanation

The Bill seeks to amend Article 26 by adding four clauses to the Article as under:

The existing article 26 of the Constitution shall

be renumbered as clause (1) thereof and after clause (1) as so renumbered, the following clauses shall be inserted, namely—

(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.

(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 the same meaning as respectively assigned to them in clause (3) of Article 13.

Article 26 of the Constitution bestows rights on all religious denominations, *irrespective of majority or minority*. In a catena of judgments, the Supreme Court iterated the same. Significantly, in *Pannalal Bansilal Pitti vs. State of Andhra Pradesh*, the Apex Court opined, “While Articles 25 and 26 granted religious freedom to minority religions like Islam, Christianity, and Judaism, they do not intend to deny the same guarantee to Hindus. Therefore, protection under articles 25 and 26 is available to the people professing Hindu religion,

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subject to the law therein. The right to establish a religious and charitable institution is a part of religious belief or faith and, though law made under clause (2) of Article 25 may impose restrictions on the exercise of that right, the right to administer and maintain such institution cannot altogether be taken away and vested in another party; more particularly, in the officers of a secular government.”

We also find a contradiction in Article 25, Freedom of conscience and free profession, practice, and propagation of religion, between Clause 1 and Clause 2 of the Article. These clauses are:

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

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

- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- (b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

We hence find a contradiction, wherein Clause (1) of Article 26 that provides for the freedom of profession, practice and propagation of religion, seeks to liberally interfere vide Clause (2) in the institutions of Hindus while allowing unlimited

religious freedom to members of other faiths. Clause (1) of Article 25 states that all persons are equally entitled to freedom of conscience; Clause (2) takes that away from Hindus, specifically.

As discussed in detail above with respect to Hindu religious institutions, the government has routinely taken over temple administration since independence on the pretext of mismanagement, maladministration, etc. whereas mosques and churches are exclusively managed by respective communities. Temples receive massive donations in wealth and properties yet all of it is not utilized for the betterment of the Hindu community.

## **ARTICLE 27**

The provisions of Article 27 are as under:

Article 27: Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

The Bill proposes that the existing Article 27 of the Constitution shall be renumbered as Clause (1) thereof and after clause (1) as so renumbered, the following clause shall be inserted, namely:-

“(2) No moneys out of the Consolidated Fund of India, the Consolidated Fund of a State, the Contingency Fund of India or the Contingency Fund of a State or out of the fund of any public body shall be appropriated for advancement or promotion of a section of citizens solely or primarily based on their religious affiliation or belonging to one or more religious or linguistic denomination.”

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## Explanation

There are many schemes, programs, etc., that the government has undertaken in the last few decades of independence that serve exclusively for a sect or religion. There are exclusive scholarships programmes for minorities and they are given lucrative loans via specific organisations like the National Minorities Development and Finance Corporation. Besides, the government, through its Multi-sectoral Development Programme (MsDP), gives special grants to districts where the concentration of minorities is 20 per cent and more. Similarly, many other sectarian schemes exist whose beneficiaries decided primarily based on religion are reflecting India's bogus claims of secularism.

The bill proposes to free the state from taking such steps. The additional clause ensures that no money is taken from government coffers to specifically address the interest of a section of citizens based on their religious affiliation or belonging to one or more religious or linguistic denomination. This essentially takes the 'Religion' out of the financial resource distribution. Any sectarian schemes by the government would then be deemed unconstitutional. Along with previous Articles, this frees Religions from being treated as a mere vote bank.

## ARTICLE 28

The provisions of Article 28 are as under:

Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions.—(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

The Bill proposes to insert an additional Clause after Clause 3 as under:

“(4) Nothing in this Constitution shall be deemed to forbid the teaching of traditional Indian knowledge or ancient texts of India in any educational institution, wholly or partly maintained out of State funds”.

## Explanation

Clause (4) which is proposed to be inserted displays respect for the Indian traditional knowledge system which flows out of ancient Indian philosophical systems and tries to push its education. The first page of the Report of the Committee on Integration of Culture Education in the School Curriculum notes, “All of us are concerned about diminishing moral values...” The committee is ‘bothered’ about the declining awareness among our children about their cultural backgrounds.<sup>10</sup>

Dr Satya Pal notes, that it was never the intention of the framers of the Constitution to keep the study and learning of traditional knowledge

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systems and civilisational heritage including study of such great texts like the Vedas, the Upanishads, the Mahabharata, the Ramayana, etc. from out of the public education system, yet, these have been completely kept out of education system leading to deracination of Indians from their cultural and civilisational moorings which does not augur well for the future of the country.’ Hence, an introduction of Clause (4) allows the teachings of traditional knowledge and values imbibed in ancient Indian texts to improve the state of education in India.

### **ARTICLE 29**

The provisions of Article 29 are as under:

Article 29: Protection of interests of minorities.—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

The Bill proposes a change in Article 29 of the Constitution, in the marginal heading, as under:

for the words “interests of minorities”, the words “cultural and educational rights” shall be substituted.

### **Explanation**

The heading of this Article does not suit its body. While the heading talks of interest of minorities, the two clauses in the Article talk of conserving distinct language, scripts or culture[29(1)], or admission into educational

institution[29(2)]. By substituting the words ‘cultural and educational rights’ the Bill aims to put a stop to this incongruity. This incongruence has the potential for misunderstanding as if these rights are conferred only on minorities.

### **ARTICLE 30**

The provisions of Article 30 are as under:

Article 30: Right of minorities to establish and administer educational institutions.—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

The Bill proposes a change in Article 29 of the Constitution, as under:

(a) in the marginal heading, for the word “minorities”, the words “all sections of citizens, whether based on religion or language”, shall be substituted;

(b) in clause (1), for the word “minorities”, the words “sections of citizens” shall be substituted;

(c) In clauses (1A) for the words “a minority”, the words “a section of citizens” shall be



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substituted; and

(d) In clause (2), for the words “a minority”, the words “a section of citizens” shall be substituted.

#### Explanation

The Article in its present form, confers rights on minorities without speaking about the rights of the majority community. Dr Satya Pal notes, “the aspirations for conserving and communicating religious and cultural traditions and language to succeeding generations is legitimate and applies to all groups, big or small. It is, therefore, felt that the scope of Article 30 of the Constitution should be widened to include all communities and sections of citizens who form a distinctly religious or linguistic group”.

### CONCLUSION

The Bill introduced by the honourable MP proposes to amend articles 15, 26, 27, 28, 29 and

30. This is an issue of great public import, as the Preamble to the Indian Constitution talks of securing for all its citizens, JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation.

By discriminating against the majority community, the objectives of the Constitution will be hard to realise as such provisions create a feeling of separateness and militate against the principles of Justice, Equality and Fraternity as enshrined in the Preamble. However, it is to be noted that the said bill is a Constitution Amendment Bill and would require consensus among different parties, which may not be forthcoming. It is hence necessary to evoke public consciousness on this issue and raise awareness levels, to see that the Bill gets the requisite support for its passage.

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