

SOUTH ASIAN JOURNAL OF LAW AND POLICY REVIEW

VOL.1

December 2015

ISS.1

ARTICLES

TAHER SAIFUDDIN SAHEB V STATE OF BOMBAY

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INTRODUCTION AND FACTS OF THE CASE

This case deals with the power of the head of religious group to excommunicate members of the religious community he heads, and whether this right can be abridged by an Act enacted by a State legislature. The facts of the case are as follows:

The Dawoodi Bohra Community consists of Muslims of the Shia sect. The head of this community is called the Dai-ul-Mutlaq. The Dai, as a citizen of India and also the Head Priest of the Community of the Dawoodi Bohras has not only civil powers as head of the sect and as trustee of the property, but also ecclesiastical powers as a religious leader of the community. It is the right and privilege of the petitioner as the Dai to regulate the exercise of religious rights in places where such rites and ceremonies are carried out and in which religious exercises are performed. One of his duties as the Dai-ul-Mutlaq (apart from being the religious leader and trustee of the property of the community) is to manage the properties which are all under his directions and control. He also has the right to excommunication (which is the right in question). This power of excommunication is not absolute, arbitrary and untrammelled, and it has to be exercised in accordance with the usage and customs of the community. Apart from exceptional circumstances, expulsion from the community can be effected only (1) at a meeting of the Jamat, (2) after the person concerned is given due warning of the fault

complained of, (3) an opportunity of mending and (4) after a public statement of the grounds of expulsion. The result of excommunication properly and legally effected involves exclusion from the exercise of religious rights in places under the trusteeship of the Dai-ul-Mutlaq. The legislature of the State of Bombay enacted an Act called the "Bombay Prevention of Excommunication Act, 1949"¹, which came into force on November 1, 1949. The Dai-ul-Mutlaq, who is the petitioner, claims that as the head of the Dawoodi Bohra community and as the Dai, he has the right and power, in a proper case, and subject to the conditions of the legal exercise of that power, to excommunicate a member of the Dawoodi Bohra community, and this power and right is an integral part of the religious faith and belief of the community. The petitioner also affirms that the exercise of the right to excommunicate is a matter of religion, and that the right is an incident of the management of the affairs of the community in matters of religion. He asserts that the community constitutes a religious denomination within the meaning of Article 26 of the Constitution, and the said right of excommunication is a guaranteed right under Articles 25 and 26 of the Constitution of India. The petitioner approached the Supreme Court under Article 32 challenging the constitutionality of this Act on the ground that the provisions of the Act infringe his rights as the head of the community under Article 25 and 26 of the Constitution.

During the pendency of the proceedings in the Supreme Court, one member of the Dawoodi Bohra community made an application either to be party to the writ petition or be granted leave to intervene in the proceedings, to argue about the invalidity of the practice of excommunication.

ARGUMENTS OF THE PARTIES

(A) ARGUMENTS ON BEHALF OF THE PETITIONER

The First contention of the petitioner was that the Act violates his right and power, as Dai-ul-Mutlaq and the religious leader of the Dawoodi Bohra community, to excommunicate such members of the community as he may think fit and proper to do so, and that the said right of excommunication and the exercise of that right by the petitioner in the aforesaid manner (mentioned in the facts) are matters of religion within the meaning of Article 26(b) of the Constitution. The provisions of this Act infringe both Articles 25 and 26 of the Constitution, and also, after the coming into force of the Constitution, the Act has become void under Article 13 of the Constitution.

Counsel also contended that insofar as the Act interferes with the said right of the petitioner, it is ultra vires the legislature. He also challenged the Act on the grounds of legislative incompetence of the legislature of Bombay since such a power was not contained in any of the entries in the Seventh Schedule of the Government of India Act, 1935².

¹ Bombay Prevention of Excommunication Act, 1949

² Government of India Act, 1935

The application of the intervener was disposed by the Court, but the intervener had asserted that the *Holy Koran* does not permit excommunication, since it is against the spirit of Islam, and the Dai-ul-Mutlaq had no right or power to excommunicate any member of the community; and assuming the fact that the Holy Koran did permit so, it was totally out of date in modern times and deserves to be abrogated, which was rightly done by the impugned Act. It was also asserted by the intervener that the right of excommunication was opposed to the universally accepted fundamentals of human rights as embodied in the “Universal Declaration of Human Rights”. Lastly, the intervener raised the point that the rights to belief, faith and worship and the right to a decent burial were basic human rights and were wholly inconsistent with the right to excommunicate as claimed by the petitioner. In response to this, the petitioner challenged the right of the intervener to intervene or to be added as a party-respondent, and said that the practice of excommunication was essential to the purity of religious denominations because it could be secured only by removing persons who were unsuitable for membership in the community. Therefore, the petitioner asserted that those who did not accept the headship of the Dai-ul-Mutlaq must go out of the community and anybody defying the authority of the Dai-ul-Mutlaq would be liable to be excommunicated. The intervener’s application was rejected despite the arguments raised and responded.

The Counsel for the petitioner further argued that the Dawoodi Bohra community is a religious denomination within the meaning of Article 26 of the Constitution³, and that such a religious denomination is entitled to ensure its continuity by maintaining the bond of religious unity and discipline, which would secure the continued acceptance by its adherents of the essential tenets, doctrines and practices.; and in order to ensure all this, the petitioner as the religious head is invested with such powers, especially the right to excommunication, and this power is a matter of religion within the meaning of Article 26(b) of the Constitution. It was also contended that the person who has been excommunicated as a result of his non-conformity to religious practices is not entitled to use the communal mosque or the communal ground or other property, thus showing that he was no more to be treated as a member of the community and that he is an outcast. The other consequence of excommunication is that no other member of the community can have any contacts, social or religious, with the person excommunicated.

Counsel had relied on the case of *Commissioner, H.R.E., Madras V. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*⁴, which laid down that the guarantee under the Constitution not only protects the freedom of opinion, but also protects acts done in pursuance of such religious opinion, and it is the denomination itself which has the right to determine what are essential parts of its religion, as protected by Articles 25 and 26 of the Constitution. Moreover, it was contended that the right to worship in the mosque belonging to the community and of burial dedicated to the community

³ Article 26, Constitution of India 1949

⁴ *H.R.E., Madras V. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282

were religious rights and could not be enjoyed by a person who had been rightly excommunicated; and the impugned Act had deprived the petitioner of his rights. What was emphasized on in this argument was that if the intention of the impugned Act was to bring about religious reform, and it could not do so as it was outside the ambit of Article 25(2) (b) of the Constitution.

Counsel for the Petitioner had presented three case laws to prove their stand. The first two cases were those of *Advocate-General ex relatione Dave Muhammad v. Muhammad Husen Huseni*⁵ and *Advocate-General of Bombay v. Yusufali Ebrahim*⁶. However, these two cases only discussed the history of the Dawoodi Bohra community and had no points to prove their case on validity of excommunication. However, Counsel presented one case which dealt directly with the point in this litigation and this was the case of *Hasanali v. Mansoorali*⁷. This case dealt directly with the powers of the Dai-ul-Mutlaq to excommunicate. In this case, certain orders of excommunication were being challenged, and as a result of those excommunication orders, the plaintiffs had been obstructed from entering the property in suit for the purposes of worship, burial and resting in the rest house. It was held in this case that the power of the Dai-ul-Mutlaq was not unrestricted, absolute, arbitrary and untrammelled, and has to be done in a manner which was indicated in the case. But however, it had decided that the power to excommunicate was a religious power exercisable by the Dai.

Counsel for the petitioner, in the present case, had contended that the Right guaranteed under Article 25 is available not only to an individual, but to the community at large, acting through its religious head, the petitioner as the religious head has the right to excommunicate any person who goes against the beliefs and practices connected with those beliefs. In support of this, Counsel had presented the case of *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*, where it was quoted that

“A religion may not only lay down a code of ethical rules for its followers to accept, it might also prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might even extend to matters of food and dress. The guarantee under our Constitution not only protects freedom of religious opinion but it protects acts also done in pursuance of a religion and this is made clear by the use of the expression ‘practice of religion’ in Article 25.”

On the basis of this judgement, Counsel argued that this practice of excommunication is a part of the religion of the community, and that matters of religion are outside State interference. It was also stated in the above case that under Article 26(b), a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according

⁵ *Advocate-General ex relatione Dave Muhammad v. Muhammad Husen Huseni*, AIR 1962 SC 853

⁶ *Advocate-General of Bombay v. Yusufali Ebrahim*, 84 Ind Cas 759

⁷ *Hasanali v. Mansoorali*, (1948) 50 BOMLR 389

to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters.

In response to Justice Sinha's opinion that the petitioner must not withhold the civil rights of the excommunicated member, Counsel argued that the Petitioner's right to excommunicate is bound up with religion and is not a civil right. This right is protected by Art. 26(b) and is thus completely out of regulation of law.

Further, Counsel argued that the guaranteed right of a religious denomination to manage its own affairs in matters of religion (Art. 26(b)) is subject only to public order, morality and health and is not subject to legislation contemplated by Article 25(2) (b).

(B) ARGUMENTS ON BEHALF OF THE RESPONDENT

The first contention of the Respondent was that the power of the Dai-ul-Mutlaq, as the head of the community, to excommunicate any member of that community was not in conformity with the policy of the State. The petitioner may have the right to regulate religious rights at appropriate places and occasions, but those rights do not include the right to excommunicate any person and to deprive him of his civil rights and privileges. Moreover, what defeats the purpose of the aforesaid right was that it was denied that the right to excommunicate springs from or has its foundation in religion and religious doctrines, tenets or faith of the Dawoodi Bohra community. Even if it was the case that the right to excommunicate was a part of their religious practice, it ran counter to public order, morality and health.

Counsel for the Respondent added to his opening argument that the impugned Act was a valid piece of legislation enacted by a competent legislature and it was within the limits of Articles 25 and 26 of the Constitution. The right to manage its own affairs vested in a religious community is not an absolute or untrammelled right but is subject to a regulation in the interest of public order, morality and health.

Counsel for the Respondent had submitted that the right to excommunicate, which was rendered invalid by the impugned Act, was not a matter of religion within the meaning of Article 26(b) The Article's intention was to stop the practice indulged by a caste or a denomination to deprive its members of their civil rights as members, and this is different from matters of religion which were protected under Articles 25⁸ and 26. Alternatively, Counsel submitted that even if the right were a matter of religion, the Act would not be void because it was a matter of reform in the interest of public welfare. What Counsel asserted further was that there was no evidence on record to show that excommunication was an essential matter of religion. The right to worship at a particular place and the right of burial in a particular burial ground were questions of civil nature which was within the

⁸ Article 25, Constitution of India 1949

cognizance of civil courts. It was further contended that Article 26(b) was controlled by Article 25(2) (b). Therefore, even if excommunication had touched certain religious matters, the impugned Act, insofar as it had abolished it, was in consonance with modern notions of human dignity and individual liberty of action even in matters of religious opinion and faith and practice.

To summarize his position, the counsel for the Respondent, who was the learned Attorney- General had, in his submissions, submitted three points: (1) In the petition, there was no pleading that the deprivation of civil rights of a person excommunicated was a matter of religion or religious practice. (2) The word “excommunication” defined in the Act deals only with the rights of civil nature and not with those of religious or social nature, and with the civil consequences of excommunication does not violate the freedom protected under Article 25 and 26. (3) Even if the civil consequences of excommunication are a matter of religion, it still constitutes as a measure of social reform and the legislation would be protected under Article 25(2) (b).

In order to prove that the impugned Act could be sustained as a measure of social welfare and reform under Article 25(2) (b), Counsel had relied on the decision in *Venkataramana Devaru v. State of Mysore*⁹, where it was stated that the right guaranteed under Article 26(b) is subject to the law protected by Article 25(2) (b). In this case, it was held that notwithstanding the exclusion of these communities from worship in such a temple was in essential a part of the “practice of religion” of the denomination. Counsel sought support from this ruling, but unfortunately it was rejected as there was a special saving as regards to laws providing for “throwing open of public Hindu Religion Institutions to all classes and sections of Hindus”.

THE DECISION (VERDICT)

The case was decided by a 5 judge bench comprising of Chief Justice Bhuvaneshwar Prasad Sinha, Justice A.K. Sarkar, Justice K.C. Das Gupta, Justice N. Rajagopala Ayyangar and Justice J.R. Mudholkar. Only three judges had delivered their judgement. The case was decided in favour of the Petitioner with the decision being in a 2:1 ratio. Justice Sinha had a dissenting opinion, and Justice Das Gupta and Justice Ayyangar had decided in favor of the Petition. The reasons for the judgement given by the judges are in the following pages.

REASONS GIVEN FOR THE DECISION

REASONS GIVEN BY CHIEF JUSTICE SINHA

After hearing the initial arguments from both sides about the practice of excommunication being/ not being a religious one and its interference with a person’s civil rights, Counsel for the intervener had reopened the question of whether or not the petitioner, as the Dai-ul-Mutlaq, had the power to excommunicate. But since Their Lordships had disposed of the application to intervene in the

⁹ *Venkataramana Devaru v. State of Mysore*, AIR 1958 SC 255

proceedings, His Lordship had proceeded with the assumption that the petitioner had the power to do so.

His Lordship had referred to an Act called the Caste Disabilities Removal Act, which provided that a person shall not be deprived of his rights or property by reason of his or her renouncing or exclusion from the communion of any religion or being deprived of caste, and that any such forfeiture shall not be enforced as the law in the courts. This Act had aimed at ensuring higher human dignity, had given full effect to the modern notions of individual freedom to choose one's way of life and to do away with all the undue and outmoded interferences with liberty of conscience, faith and belief. The impugned Act was in the same lines as the Caste Disabilities Removal Act.

His Lordship also assessed the argument with respect to the incompetency of the Bombay legislature to enact such a provision, and opinionated that the enactment would come within entries 1 and 2 of the List III of the Government of India Act 1935. No other argument was addressed by either of the parties to show that the above mentioned entries come/ don't come under the purview of the aforementioned entries in the List.

There were some cases which Counsel for the petitioner presented to prove their stand. But the only case relevant to the issue in question was that of *Hasanali v. Mansoorali*.

His Lordship stated that it was undisputed fact that the petitioner is the head of the Dawoodi Bohra community or that the Dawoodi Bohra community is a religious denomination within the meaning of Article 26 of the Constitution, and also that the petitioner as the head of the community has the right to excommunicate and in the manner indicated in *Hasanali*

His Lordship opined that the Bombay Legislature was competent to enact the Act. His Lordship expounded that law in Section 25, and further stated that the right guaranteed under Article 25 is not absolute and it is subject to public order, morality and health. Any existing law regulating an economic/financial/political or secular activity which may be associated with religious practice, laws providing social reform and any law made by the State to regulate or restrict the aforesaid activities or providing social reform would come under the scope of Article 25.

His Lordship also mentioned that nobody can be compelled, against his own judgement, to hold any particular creed or follow a set of religious practices. A person is free to worship God according to the dictates of his conscience, so long as it does not come in conflict with any restraints imposed by the State in the interest of public order. Moreover, a person cannot be questioned as to his religious beliefs by the State or any other person. The laws made by a competent legislature in the interest of public order would come within the regulating power of the State. His Lordship drew a parallel to religious practices of sacrifice of human beings or animals, and how the State can intervene to stop such delirious practices.

In response to the argument of the right of excommunication being a religious one, His Lordship opined that the judgement of the Judicial Committee of the Privy Council had clearly laid down that excommunication was not purely a religious right. A matter which was purely religious could not come within the purview of the courts. His Lordship also said that the effect of excommunication is that the expelled person is excluded from the exercise of rights not only in places of worship but also from burying the dead in the community burial ground and other property rights belonging to the community, which are all disputes of civil nature and not purely religious matters.

In the aspect as to whether the legislature was competent to enact such a law, His Lordship said that though the Act may have its repercussions on the religious aspect of excommunication, insofar as it protects the civil rights of the members of the community it has not gone beyond the provisions of Article 25(2) (b).

His Lordship had also opined that the main intention of the Act was to do away with all mischief of treating a human being as a pariah, and depriving him of his human dignity. Every human should be allowed to follow the dictates of his own conscience. His Lordship had compared the consequences of excommunication to that of untouchability, and that untouchability was abolished under Article 17. The Act had aimed at fulfillment of individual liberty of conscience guaranteed under Article 25(1) and insofar as the Act has any repercussions on the right of the Petitioner, the Act could come under the protection of Article 26(d) that he has to administer the property in accordance with law.

Since His Lordship felt that it had not been established that the Act was passed by a legislature which was not competent to do so, or that the impugned Act infringes any provision of the Constitution, the Act must be upheld and the petition must fail.

REASONS GIVEN BY JUSTICE DAS GUPTA

His Lordship had placed reliance on an article in the “Encyclopedia of the Social Sciences” written by Prof. Hazeltine. Prof. Hazeltine which had stated that excommunication is a principal means of maintaining discipline within religious organizations. This was not only followed in the Dawoodi Bohra community, but it was also followed in early Christian communities. Even among the Muslims, the right of excommunication appears to have been practiced from earlier times, and was exercised by the Dais on a number of occasions.

His Lordship had also mentioned that there was a *Mishak* which every Dawoodi Bohra takes at the time of his initiation, which includes an oath of unquestioning faith in and loyalty to the Dai.

His Lordship clarified that whenever there is a breach of some practice considered an essential part of the religion, excommunication can be held to maintain the strength of the religion. From this, His Lordship had opined that this Act clearly interferes with the right of the Dawoodi Bohra community under Art. 26(b) of the Constitution.

His Lordship had also opined that excommunication of a member from the community will affect many of his civil rights, and will lose his rights of enjoyment of such property. However, the right given under Article 26(b) has not been made subject to civil rights, but has been made only subject to public order, morality and health.

His Lordship also opined that the Act cannot be regarded as a law regulating or restricting any economic, financial, political or other secular activity. The mere fact that the civil rights which might be lost by members of the community as a result of excommunication, even though on religious grounds, does not offer sufficient basis for a conclusion that the law provides for social welfare and reform. Barring of excommunication on grounds other than religious grounds might be a measure of social reform, but barring of excommunication on religious grounds cannot be considered to promote social welfare and reform. As the impugned Act invalidates excommunication on any ground whatsoever, it was held by His Lordship that it was a clear violation of the right of the Dawoodi Bohra community under Article 26(b) of the Constitution.

Therefore, His Lordship had allowed the petition and declared the Act to be void.

REASONS GIVEN BY JUSTICE AYYANGAR

His Lordship had concurred with the reasoning given by Justice Das Gupta, thereby allowing the Petition and declaring the Act void.

His Lordship opined that various doctrines, creeds and tenets of a religious denomination are intended to ensure the unity of the faith which its adherents profess and the identity of the religious views are what bind the community together. As stated by Lord Halsbury, in the case of *Free Church of Scotland v. Overtoun*,

“In the absence of conformity to essentials, the denomination would not be an entity cemented into solidity by harmonious uniformity of opinion, it would be a mere incongruous heap of grains of sand, thrown together without being united, each of these intellectual and isolated grains differing from every other, and the whole forming a but nominally united while really unconnected mass; fraught with nothing but internal dissimilitude, and mutual reciprocal contradiction and dissension.”

His Lordship interpreted the purpose of excommunication by saying that a denomination within Article 26 and persons who are members of that denomination are under Article 25, and they are entitled to ensure the continuity of the denomination and such continuity is possible only by maintaining the bond of religious discipline which would secure the continued adherence of its members to certain essentials like faith, doctrine, tenets and practices. Excommunication, his Lordship stated, is one of the suitable actions that could be taken against those who deny the fundamental bases of the religion.

His Lordship refused to accept any of the three contentions put forward by the Attorney –General who was Counsel for the State. In response to the first contention, His Lordship stated that the consequence of deprivation of the use of these properties by persons excommunicated would be a logical and would flow from the order of excommunication. If the property belongs to the community and if a person by excommunication ceased to be a member of that community, the divorce of his right to enjoyment of the denominational property is a sure and logical consequence.

His Lordship then addressed the second submission of the Attorney General. His Lordship said that although the intention of the impugned Act was to deal with the consequences of civil rights, it does interfere with consequences having religious significance, i.e., religious rights. He opined that the attorney General was not right in the submission that the Act is concerned only with the civil rights of the excommunicate person.

His Lordship also emphasized on the two rights under Article 26, which are relevant in the present context, and they are (1) “To manage its own affairs in matters of religion” and (2) “To administer such property in accordance with law”. Since Religious denominations are possessed of property which is dedicated for definite uses and which it has the right to administer, it has the right to use that property for the purpose it has been dedicated to, subject to limitations such as public order, morality and health. His Lordship did not accept the argument of the Attorney General that a valid law could be enacted which would permit the diversion of those funds, as such an enactment wouldn’t be a law contemplated by Article 26(d). Moreover, if the Dai permitted use of a property by an apostate, he would be committing a dereliction of his duty as the supreme head of the religion.

His Lordship opined that the fundamental point to be considered in the attack on the constitutionality of the Act is that the practice of excommunication is of ancient origin. Excommunication bore two aspects (1) That it is a punishment for crimes which the religious community justifies and (2) judicial exclusion from the right and privileges of the religious community to whom the offender belongs. The second aspect has more to do with maintenance of discipline and integrity in the community, than a punishment. If everyone were at liberty to deny the essentials of the community, then the community as a group would cease to exist. Thus, the impugned Act is a violation of the right to practice religion guaranteed by Article 25(1) and also Article 26 (in that it interferes with the rights of the Dai to exclude dissidents and excommunicated persons from beneficial use of the community property). So the Dai’s power and right to excommunicate is valid as long as it is done subject to the procedural requirements indicated in the judgement of the Privy Council in *Hasanali v. Mansoorali*.

His Lordship then addressed the question as to whether the impugned Act could be sustained as a measure of social welfare and reform under Article 25(2) (b). His Lordship opined that the phrase “laws providing for social reform” was not intended to enable the legislature to “reform” a religion out of its existence or identity.

With these reasons, His Lordship opined that the petitioner is entitled to relief and the petitioner should be allowed

ANALYSIS AND COMMENTS ON THE CASE

This case poses a very interesting argument between the clash of civil rights of a man, and the religious rights of a community. The arguments from both sides are very strong and powerful, one arguing from a religious rights perspective, while the other arguing from a civil rights perspective.

The Bombay Prevention of Excommunication Act was brought into force to order to do away with the Act of excommunication, which was a religious practice within the Dawoodi Bohra Muslim community. This was done because the existing practice of excommunication had deprived the members of the community of their legitimate rights as members of the community.

In my opinion, I agree with the decision of the majority, not just for the reason of it being given by the majority, but rather for the reasoning and interpretation given by them. I believe that that although, Justice Sinha's reasoning had some interesting points about the overlapping of civil liberties and religious liberties, the points given by the majority had a better interpretation of Articles 25 and 26.

In my view, the legislature should not be allowed to regulate the religious activities and practices which have been carried on over a long period of time, and they should not be permitted to enact such Act. It has also been mentioned in Article 25(2) (a) that nothing shall prevent the State from making any law regulating the economic, financial, political or other secular activities of a religion and its religious practices, but however, this provision does not permit the State to pass an Act which can control and restrict the religious practices of a religious group, and what is more important here is that this is not only a long standing practice, but it is also an important component of the religion. As has been stated by Justice Das Gupta from the Encyclopedia of Social Sciences, which I find very convincing, excommunication is a principal means of maintaining discipline within religious organizations. From this meaning, we can ascertain that excommunication is primarily a religious practice done with an objective of maintaining discipline within the community.

It has also been pointed out that every member of the community takes an oath called a *mishak* on joining the community, and this oath includes giving his/her unquestioning loyalty to the Dai. A religious community isn't just a group of people having the same thoughts and mindset who come together to practice it, but when they come together, they must also ensure that their conduct is in going with the general rules and tenets of the religious community. If a person acts, behaves, or does something contrary to the laid down rules, he should be liable to receiving excommunication, and this is only a measure of maintaining discipline within the community and ensuring its continued strength and integrity.

One important point of observation which has to be made here is that although the Counsel for the Petitioner had argued largely on the grounds of deprivation of civil rights through such a practice, a

closer reading of Article 26 would explain that such rights of administration of the community are not subject to civil rights, but has been made only subject to public order, morality and health. Therefore, even if the practice of excommunication had overlapping effects with and deprives a person of his civil rights, the act cannot be done away with by the passing of legislation as from a legal standpoint, the rights are not subject to a person's civil rights. Although the Act was brought into force to protect the civil rights of the members of the community, it did touch certain religious aspects and significance of the practice of excommunication, which could not be done as per Article 26 of the Constitution of India.

Another look at the case and the judgement would show that the Respondent did not have many authorities cited and used to support his argument. Although that is not the basis for deciding who should win a case, but the authorities cited by the Petitioner had clarified, or rather suppressed most of the arguments raised by the Respondent. Nevertheless, the arguments out forward by the Petitioner were more convincing to me, than those of the Respondent.

There are certain measures which are a must to be taken in order to ensure solidarity and harmonious uniformity within the community. Excommunication is one of them. When there is an absence of conformity to the essential tenets of the religious practice, the religious denomination would be merely an incongruous heap of sand grains thrown together, although without being united. Each of these sand grains would not have a similar line of thinking, which leads to a nominally united but unconnected group, where there is internal dissimilitude and mutual contradiction. Therefore, in my opinion, in order to maintain the required levels of unity, integrity, harmony and conformity, it is necessary to have certain disciplinary measures such as excommunication.

The concept of social welfare and reform is another debatable provision in its applicability in the present context. The legislature can be allowed to bring about social welfare and reform, but I believe that it cannot do so when it interferes with the essential practices of a religion, which are not just essential to the religion, but are also long standing practices. Excommunication, as has been stated in the arguments of the Petitioner, is an essential practice in the religious denomination, and social reform cannot be applied to something, which if not present would defeat the unity, integrity, and uniformity of the denomination, for which they might as well, do away with the religious denomination altogether.

One example which could be compared to in this case is that of membership in a club. When a person wants to join and take membership in a club, he must agree to abide by all the terms and conditions laid down by them. Any disorderly conduct which is not in going with the prescribed rules and behavior laid down can call for immediate removal and disqualification from the club, following which he or she would not be entitled to the benefits which had been conferred while he/she was a member.

Therefore, in my opinion, I agree with the arguments put forward by the Petitioner, and agree with the judgement of Justice Das Gupta and Justice Ayyangar, and I believe that the court was correct in striking down the impugned Act.

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