

One nation, many religions

“It was not in contemplation of the framers of the constitution to add to the list of religious minorities,” said the Supreme Court in the Bal Patil case (2003) refusing recognition of the Jains as a religious minority. In one of the most regressive judgments, the court, following the oft-repeated rightist argument, went on to observe that the “ideal of a democratic society, which has adopted right of equality as its fundamental creed, should be the elimination of majority and minority and so-called forward and backward classes.”

The apex court further directed the Minority Commission to eliminate minorities when it shockingly said that “commissions set up for minorities have to direct their activities to maintain integrity and unity of India by gradually eliminating the minority and majority classes”. Through these kinds of judgments, the highest court of India has given legitimacy to those who believe in the “one nation, one religion” slogan.

Religion is an indispensable part of human existence. Indians are essentially religious. Religion is still the alpha and omega of Indian life. The recommendation of the Karnataka government to the central government for the recognition of the Lingayats as non-Hindus and as a distinct religious minority has once again revived this debate. Though the Congress may win the small battle in Karnataka with this controversial decision, it is bound to lose the war in the Hindi belt. No one will remember that this demand is more than a hundred years old and that the Lingayats are distinct from Hindus in several fundamental beliefs.

But then, does the Indian Constitution really prohibit the addition of any new religion? Does freedom of religion mean following only existing religions? Does freedom of religion not include freedom within religions and freedom to establish a new religion? Is recognition by law necessary before a new religion is born?

Article 25 gives freedom to every individual to profess any religion of her choice. Freedom of religion includes freedom from religion as well. Thus there is no bar in the establishing or forming of new sects within a religious denomination. When the Constitution was drafted, Indic religions were included within the definition of Hindu and thus the Sikhs, Jains and Buddhists were considered as Hindus. The Hindu Marriage Act, 1955, too, gave a negative definition to the term Hindu by saying that anyone who is not a Muslim, Christian, Jew, Parsi etc will be considered Hindu.

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The Lingayats are explicitly included as Hindus. The Jains protested immediately after the commencement of the Constitution on January 26, 1950, and Nehru on January 31, 1950, clarified in writing that the Jains were a distinct religious minority. The Sikhs under Parkash Singh Badal have been burning copies of Article 25 opposing inclusion of the Sikhs as Hindus. Freedom within religions will include freedom to go out of that particular religion and establish new religions.

Every individual, as part of her right to dignity, is free to pursue her own conscience and truth. Religion is basically what an individual does with her loneliness. Thus religious experience is a personal experience for those who want to believe in it. In *Ratilal Panachand Gandhi v. State of Bombay* (1954), the Supreme Court admitted that “every person has fundamental right to entertain such religious beliefs as may be approved by his judgment or conscience.” Thus, the Indian Constitution gives full autonomy to each individual to have a belief system or religion of her choice. If some others follow a similar belief system, they may assert it as a right of a new sect or distinct religion. No state or law can interfere with this individual freedom. Fundamental rights are

not dependent on constitutional recognition.

This writer has been opposing even the court's power to decide essential or non-essential features of any religion. It is the right of the individual to decide what she considers essential and in the US it is called the "assertion test". As Justice Hugo Black of the US Supreme Court rightly held in *Engel v. Vitale*, "religion is too personal, too sacred, too holy to permit its 'unhallowed perversion' by a civil magistrate." Thus, if the Lingayats think that they are distinct from Hindus, they are entitled to believe that they are a different religious community in their own right. No one has the right to force a Hindu identity on them. In fact, generally such groups continue to assert membership of the original religion and followers of the original religion consider them as apostates.

The Lingayat leadership is under an erroneous belief that the status of a religious community is dependent on its recognition by law. As early as 1930, the Permanent Court of International Justice, in an advisory opinion in the *Graeco-Bulgarian community case*, defined community not in terms of numbers, but in terms of shared religious, racial and linguistic traditions, traditions that the group wished to preserve and perpetuate through rituals, education and socialisation of the young.

The existence of a community, ruled the court, is not dependent upon recognition by law. If a community exists in the shape of a group of members united by a host of cultural factors that are distinctive to them, and if this community is intent on maintaining these cultural markers, this is more than enough reason to regard that group as a distinct community.

In fact, in *N. Ammad vs The Manager, Emjay High School & Ors (1998)*, even our Supreme Court had held that minority status is a matter of fact and does not require state recognition. In fact, the Centre has no role in defining minorities, which are to be defined at the level of the state.

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