

THE INEXORABLE WHEELS OF JUSTICE

Relevant for: Indian Polity & Constitution | Topic: Judiciary: Structure, Organisation & Functioning

The recent hearings in the Supreme Court relating to the Sabarimala case have turned the spotlight on the status of religious faith in a system governed by the rule of law and the Constitution. Any attention bestowed on such discussions by a person of faith and belief appears to leave the observer with an uneasy feeling that the Constitution is the prime suspect in these proceedings. It leaves him with the uncomfortable thought that from the time of the advent of the Constitution, no religious practice has been safe in a system of Constitution-controlled governance. Nothing could be farther from the truth. The clash between religious faith and the law is not of recent origin and it would be unfair to lay the blame at the doorstep of the Constitution. On the other contrary, it is an inevitable consequence of human evolution.

For centuries, religious faith and the principles it enunciated were the “law” that regulated society. But in a democracy with the Constitution as a guiding force, it is natural that the new order would challenge the old, and the litigative battles that we see in court today are the struggles between that old order and the new in the path of human evolution.

This is, however, not to say that the struggle between the law and religious faith did not exist before the Constitution came into existence. There were people who asserted the supremacy of the law over religious belief even in the pre-Constitution days. One such example was the “Tirupathi Mahant case” in the Madras High Court.

Its facts are as follows. The East India Company, till the middle of the 19th century, oversaw the management and administration of the properties of the deity, Venkateswara or Srinivasa (or Balaji). After the Madras Regulation of 1817 was passed, the temple came under the Board of Revenue which supervised it through the District Collector. However, a movement in England (around 1840) disapproved a Christian company (the East India Company) administering Hindu and Muslim religious institutions. Consequently, the administrative reform management of the temple was handed over to a mahant who, as the head of that mutt, had his headquarters in Tirupathi. He was also commonly referred to as the Mahant of Tirupathi.

When a flagstaff for the temple was erected, devotees donated large sums of money to acquire gold coins. These were to be placed in a vessel which was then buried at the base of the flagstaff. But soon a charge of criminal breach of trust and misappropriation was made against the mahant, with the allegation that the coins had been substituted with copper coins.

Such a charge could have been proved or disproved only by digging up the base of the flagstaff. But religious faith proved to be an obstacle. The mahant pleaded that the flagstaff could not be dug up after it had been sanctified and installed and such a course would prove calamitous to the sentiments of worshippers.

Interestingly, the high priest, much against public sentiment, persevered and filed an application to have the vessel produced. The Magistrate ordered the application as prayed for. Against the order of the Magistrate, a revision petition was filed before the Madras High Court which in turn led to one of the most sensational cases in its history.

A legal battle ensued between two of the greatest legal luminaries. Subramania Iyer (who went on to become a judge of the Madras High Court) appeared for the high priest, while Eardley Norton, a formidable barrister, appeared for the mahant. The case was heard by the Bench of

Chief Justice Arthur Collins and Justice Muthusami Iyer.

P.S. Sivasamy Iyer, an advocate general and another High Court luminary, had a ringside view of the proceedings. In his memoirs he recalled: "He (Norton) invoked the religious sanctity of flagstaff and he appealed to the court to avoid a sacrilege, which could ring throughout the orthodox world, and he advanced every possible argument against digging up the site of the flagstaff. Norton went on for three hours. Sir Subramania Iyer's turn then came. He spoke for less than an hour, but the effect was electric. All of Norton's arguments were smashed completely within the span of less than half an hour. He wound up his magnificent speech, a speech of real eloquence, with that well-known saying, *Fiat justitia ruat caelum* which means as you know, 'Let justice be done even though the heavens fall'. It was one of the best speeches I have ever heard from him, compact, condensed, and full of vigour and eloquence, just like him."

The Bench upheld the Magistrate's order, (with the judgment delivered by Justice Muthuswami Iyer). It was a revelation. The vessel had no gold, just base metals.

Therefore, even before the adoption of the Constitution, our legal history is replete with interesting cases of religious faith versus the law. If for any reason the Sabarimala case were to induce heartburn among its ardent devotees, whatever be their sentiments, they must bear in mind that the Constitution cannot be blamed. For in the ultimate analysis, as Subramania Iyer appropriately observed, "*Fiat justitia ruat caelum*."

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