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THE SIGNIFICANCE OF THE CHAR DHAM BOARD VERDICT

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

In a major setback to Hindutva arguments on the state's control of Hindu temples, the Uttarakhand High Court on July 21 upheld the constitutionality of the Uttarakhand Char Dham Devasthanam Management Board Act, 2019 that was surprisingly enacted by the Bharatiya Janata Party government though Hindtuva forces are opposed to such kind of laws.

All religious reforms are resisted. Thus the Sabrimala judgment (2018) saw huge public protests similar to those after the Shah Bano judgment (1985). From the bogey of 'minority appeasement', the nation has now moved to injustices against Hindus. Hindus are under threat is the new battle cry. This writer favours grant of autonomy to Hindu temples in managing their religious affairs as state control of temples is neither constitutionally permissible nor desirable. But in the last six years, the central government has not taken any initiative to release temples from the clutches of the state.

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The Uttarakhand law allegedly takes control of four of the most sacred places in the State including Kedarnath and Badrinath, which was challenged by MP and former Minister Subramanian Swamy. Such laws are in place for a number of temples such as Jagannath Puri (1955), Vaishno Devi(1988), Shrinathji at Nathdwara (1959), Mahakal at Ujjain (1982), Kashi Vishwanath (1983), and Tirupati Balaji temple (1987). Interestingly even Manu's code provided that priests do not have the absolute right in temple management; instead, kings (state) in ancient India had a vital say in temple management. Even Kedarnath and Badrinath were under state management as prescribed by the Shri Badrinath and Kedamath Temples Act, 1939. The newly enacted law merely replaced this Act. The Chief Justice of the Uttarakhand High Court, Ramesh Ranganathan-led Bench in its 129 page order not only cited 144 judgments but also examined all issues connected with the violation of religious rights of Hindus in temple management.

Though Hindutva forces blame the Congress party and secularism for these laws, these laws were upheld by courts. Thus, the Shri Jagannath Temple Act was upheld by the Supreme Court of India in *Raja Birakishore vs The State Of Orissa* (1964), the Nathdwara Temple Act in *Tilkayat Shri Govindlalji Maharaj vs The State Of Rajasthan And Others* (1963), the Tirupati Balaji law in *Shri A.S. Narayana Deekshitulu vs State Of Andhra Pradesh & Ors* (1996) and the Uttar Pradesh Sri Kashi Vishwanath Temple Act in *Sri Adi Visheshwara Of Kashi ... vs State Of U.P. And Ors* (1997). There are consistent judgments of the Supreme Court such as *State Of Orissa And Sri Jagannath ... vs Chintamani Khuntia & Ors* (1997) and *M.P. Gopalakrishnan Nair & Anr vs State Of Kerala & Ors* (2005) holding that the management of temple is primarily a secular act.

Chief Justice Ranganathan (he retired on July 27, 2020) accordingly held that though offerings (of money, fruits, flowers or any other thing) are given to the deity, religious practice ends with these offerings, and that collection and distribution of these offerings for the maintenance and upkeep of temple are secular activities.

The Supreme Court in *Nar Hari Sastri And Others vs Shri Badrinath Temple Committee* (1952)

had already held Badrinath to be a public temple of Hindus and not confined to any family or denomination, and that secular activities of these temples can be regulated by the state. The Court explicitly said that legislature is not bound to demonstrate mismanagement of temples while enacting such laws.

One of the major arguments of Hindutva victimhood is that this kind of state control is absent for Muslim waqfs and Sikh gurudwaras. But then as many as 27 waqf laws have been enacted so far. The Shiromani Gurudwara Parbandhak Committee Act too was enacted in 1925. In the latest judgment, Chief Justice Ranganathan rightly observed that it is not necessary that the legislature should make a law uniformly applicable to all religious or charitable institutions or endowments. Acknowledging the diversities of our society, he went to say in paragraph 34 that 'enactment of a uniform law in one go, though desirable, may perhaps be counter-productive'. Thus, the concept of one nation, one law was impliedly rejected.

Moreover the right to management under Article 26 (Freedom to manage religious affairs) can only be claimed after the fact of establishment has been proved. Dr. Swamy could not prove 'who established the Badrinath temple after Hindu temples were destroyed by Buddhists' and who has been deprived of right to management. The judgment thus acknowledges that the history of temple destruction in India certainly pre-dates Muslim invasion.

The court held that Article 26 cannot be invoked if the denomination never had the right to manage temple properties. It merely acknowledges the pre-existing right. Dr. Swamy failed to convince the court about any denominational sect having managerial rights in respect of these temples. Relying on earlier decisions, the court clarified that 'in matters of religion', right to management is a guaranteed fundamental right under Article 26(b) but in respect of properties, the right to administer properties under Article 26(c) is to be exercised in 'accordance with law'. Thus, the state is entitled to regulate administration of religious or temple properties by means of validly enacted law. But a law that completely and permanently takes away the right to management will clearly be violative of Article 26(c).

The biggest setback to the Hindutva group is the rejection by the High Court of recognising Sanatan Dharma as a Hindu denominational sect. In paragraph 83, the court observed that the "Hindu dharma is said to be 'Sanatana', i.e. one which has eternal values: one which is neither time bound nor space bound." Since all Hindus by and large have faith in Sanatan Dharma, they cannot be equated to any religious denomination, for the chord of a common faith and spiritual organisation which unites the adherents together, is absent. Citing the *Sabrimala* judgment (2018), the court observed that Hindu believers including those of the Shaivite and Vaishnavite forms of worship, are not denominational worshippers. No caste or sub-caste or sect of the Hindu religion, who worship mainly a particular deity or god, can be termed as a religious denomination.

The judgment is likely to be stayed on this point by the Supreme Court as a nine-judge Bench of the court is reviewing the *Sabrimala* verdict on the rights of denominational sects.

Finally, the plea based on Article 31-A(saving of laws providing acquisition of estates) was also rejected though the 2019 Act indeed vested the administration of these temples in the Char Dham board in 'perpetuity' rather than for the limited duration as is permissible under Article 31A(b) because properties of these temples will continue to be owned by the deities and mere possession will be vested with the board.

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