



FAIZAN MUSTAFA

# RELIGION AT STATE EXPENSE

*SC verdict in the Gujarat shrines compensation case raises important questions*

B.R. AMBEDKAR TERMED Article 32 as the “soul of the Constitution” as citizens seek enforcement of their fundamental rights under it. Should the court give relief in writ jurisdiction only when one’s right to life or personal liberty under Article 21 is violated, or can the state be held liable even with respect to violation of other fundamental rights such as the freedom of religion? Will an order for the payment of compensation for the repair of religious places be contrary to Article 27 of the Constitution, which prohibits the state from imposing any religious tax and the imposition of any tax whose proceeds are used for the maintenance of any particular religion? These questions become pertinent in the wake of a decision of the new Chief Justice of India, Dipak Misra, on August 28.

In the 2002 communal riots in Gujarat, as many as 567 religious places including mosques, dargahs, khankahs etc. were either desecrated, damaged or destroyed. On February 8, 2012, the Gujarat High Court ordered the state government to get these religious places repaired and reimburse their owners/managers if they had already got them repaired. The Gujarat government appealed to the Supreme Court. It argued that for any loss of property, the remedy is in civil law and that the HC, in its writ jurisdiction under Article 226, cannot pass such an order as the right to property after the 44th Amendment is not a fundamental right but simply a constitutional right. The state government admitted that for the violation of the right to life and personal liberty, writ ju-

---

All fundamental rights are to be now read together. The latest verdict of the larger bench also read the freedom of religion in Article 21. In any case, the writ jurisdiction of high courts is wider than the apex court’s powers as while the SC can issue writs just for the violation of fundamental rights, the HCs can do it additionally for the violation of other rights.

isdiction of high courts can be invoked. But for the violation of other fundamental rights like the right to equality or freedom of speech, the remedy is striking down of the law which violates those rights. It argued that since India is a secular state it can’t spend government money for any religious purpose due to Article 27.

The respondents based their case on the joint reading of the fundamental rights and said if religious places of weaker sections of population are especially targeted, it not only violates the freedom of religion but also the right to equality and right to personal liberty. It adversely affects their dignity as well. Fundamental rights are woven together and cannot be compartmentalised in a strait jacket. The maintenance of law and order is the primary duty of the state government. They also argued that compensation is not being sought for the maintenance of any particular religion but for the failure of the government in fulfilling its basic duty.

The SC accepted the argument that the power of the writ court to award compensation is limited. It appears the two-judge bench did not take into account the recent nine-judge bench judgment on privacy, which clearly rejected the view of treating fundamental rights as independent islands. All fundamental rights are to be now read together. The latest verdict of the larger bench also read the freedom of religion in Article 21. In any case, the writ jurisdiction of high courts is wider than the apex court’s powers as while the SC can issue writs just for the violation of fundamental rights, the HCs can do it addi-

tionally for the violation of other rights.

The court was not properly informed about the money governments routinely spend on religious activities. The court did not notice Article 290A, under which the State of Kerala provides Rs 46.5 lakh annually to the Travancore Devaswom Fund and Tamil Nadu gives Rs 13.5 lakh to the Devaswom fund for the “maintenance of Hindu temples” out of the consolidated fund. Justice Misra did notice an earlier judgment, where the court had held if a small amount is spent for religious purposes it will not be hit by Article 27.

The Indian government spent Rs 100 million in developing infrastructure on the Amarnath yatra route. Chief ministers make huge offerings to Tirupati Balaji on behalf of their governments. The Haj subsidy has not been withdrawn despite the SC’s ruling. The BJP government in Rajasthan, in its last tenure, gave Rs 260 million for temple renovations and training Hindu priests. The Congress government of the erstwhile Andhra Pradesh allocated Rs 600 million for the welfare of priests. Gujarat pays salaries to Muslim imams. The Madhya Pradesh government sponsors senior citizen’s trips to Ajmer and other religious sites. Recently, the Indian Army advertised for 82 imams.

Besides, the apex court expressed satisfaction on the Gujarat government’s scheme of payment of compensation with the maximum amount restricted to Rs 50,000.

*The writer is vice chancellor, NALSAR University of Law, Hyderabad. Views are personal*

