

AS INTRODUCED IN THE RAJYA SABHA
ON THE 3RD DECEMBER, 2021

Bill No. XX of 2020

THE CONSTITUTION (AMENDMENT) BILL, 2020

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BILL

further to amend the Constitution of India.

Be it enacted by Parliament in the Seventy first Year of Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 2020. Short title.
2. In article 12 of the Constitution, after the words, "Government of India" the words, "but does not include any religious institution administered or funded wholly or partly by the State" shall be inserted. Amendment of article 12.
3. After article 12 of the Constitution, the following articles shall be inserted, namely:— Insertion of new articles 12A and 12B.
 - "12A. All the rights enumerated in this Part shall be read harmoniously, and no right shall be so interpreted as to extinguish or abridge any other right. Harmonious coexistence of rights.

Residual rights
of the people.

"**12B.** The enumeration in this Part of certain rights, shall not be construed to deny or abridge other rights retained by the people".

Amendment of
article 25.

4. In article 25 of the Constitution,

(a) for the marginal heading, the following shall be substituted, namely:—

"Freedom of religion and the practice thereof by means of rituals, rites 5
festivals, customs, traditions etc."

(b) for sub-clause (b) of clause (2) the following shall be substituted, namely:—

"(b) providing for:

(i) the access to the Hindu religious institutions of public character
to call classes and sections of Hindus with due regard to the religious 10
customs of each such institution;

(ii) the management of the Hindu religious institutions and
administration of their properties through a body consisting of religious
persons and representatives of Hindus, elected for the purpose for each 15
such institution or for a group of such institutions, as may be prescribed
in that behalf by or under any law made by parliament, with the State
exercising no control over the management of such institutions or
administration of their properties;

(iii) the appropriation of the funds, properties and all resources of
the Hindu religious institutions only for the purposes of maintenance and 20
development of the Hindu religious institutions; for the general religious
well being of the Hindus and Hindu community and for the preservation,
promotion and propagation of Hinduism;

(iv) the prohibition of non-Hindus from taking part in the
management, administration or any other activity whatsoever, of the Hindu 25
religious institutions and their properties;

(v) the protection by the State of all Hindu religious institutions and
their properties from encroachment of illegal destruction;

(vi) the creation of national, state, regional, district and local level
Hindu Dharma Sabhas consisting of both religious and elected 30
representatives of Hindu religious institutions as may be prescribed in
that behalf by or under any Law made by Parliament, for the purposes of
guidance, preservation, promotion and propagation of Hinduism;"

(c) after clause (2) the following clause shall be inserted, namely:—

"(3) Subject to public order, all persons shall have the right to celebrate 35
religious festivals, observe cultural practices and take part in sporting activities."

Amendment of
article 26.

5. In the Constitution, the existing article 26 shall be renumbered as clause (1) thereof
and after clause (1) so renumbered, the following clauses shall be inserted, namely:—

"(2) The State shall not control, administer or manage, whatsoever, any institution
including its properties, established or maintained of religious or charitable purposes 40
by a religion or any section thereof.

(3) In making any law providing for the compulsory acquisition of any property
of a religious or charitable institution established or maintained by a religion or
any section thereof, referred to in clause (1), the State shall ensure that the amount fixed by
or determined under such law for the acquisition of such property is such as would 45
not restrict or abrogate the right guaranteed under that clause."

STATEMENT OF OBJECTS AND REASONS

Amendment of article 12, insertion of a new articles 12A and 12B, and a new clause (3) in article 25 aims to protect indigenous religious festivals, customs and practices from undue denial, curtailment or interference. The indigenous religious, spiritual and cultural practices of Hinduism have evolved over several millennia with no one founder, no specific set of binding scriptures and no central ecclesiastical organisation. Hindu customs and rituals while subtly conveying ethical, metaphysical and philosophical values also bind families and communities together. Hinduism acknowledges vast diversity within humans and accordingly evolved a system which allowed diversity in forms of devotions, worship and traditions. These ancestral traditions do not necessarily find justification in any particular scripture but from the lifeblood of popular amorphous religions and spiritual traditions collectively known as Hinduism. Hindu religious and cultural practices are a result of the collective wisdom and experience of thousands of generations of people of this sacred land.

2. However, there are some aspects of the Constitution that give space to forces to deracinate people from their indigenous religious and cultural moorings,—

Firstly, by subjecting indigenous traditions and customs that have come into being over several millennia of unbroken and unwritten practice to the test of 'essential practice' of religion, which would lead to Hinduism falling woefully short as opposed to the religions of the Book, where the Book defines the essentials etc.

Secondly, since Hindu religious and charitable endowments have been taken over by Governments, they are regarded as effectively being part of 'the State' as defined by article 12 of the Constitution, and as a result any Hindu religious custom or practice can be challenged as violative of one or other fundamental rights.

Thirdly, article 25(2) (b) which provides for 'social welfare and reform' was intended by the framers of the Constitution as an antidote to certain untenable social discrimination in the Hindu society but was never meant to be an enabler for legislative or judicial interference or destruction of ancient religious customs, festivals and practices of Hindus.

Fourthly, the Constitution gives a bouquet of fundamental rights and freedoms, all of which have been designed to harmoniously co-exist. Therefore, it is anathema to interpret one set of fundamental rights and freedoms in a manner that extinguishes or abridges the other set of fundamental rights and freedoms.

Fifthly, the 'morality' that the framers of the Constitution envisaged in articles 19, 25 and 26 was the societal morality which is entirely different from the construct of 'constitutional morality'. The unwarranted interference in the age old indigenous festivals, customs and practices not only disrupts social and cultural cohesion and fabric but also generates avoidable social strife as happened in the cases of Jallikattu, Dahi Handi, Sabarimala, Shani Mandir, Kambala etc.

3. Fundamental rights as enumerated in Part-III of the Constitution, are essentially restrictions imposed on the State from unduly interfering in the lives and activities of the people. The people possess all freedoms and rights, only a certain of which are enumerated in the Constitution. The enumeration of certain rights and freedoms in our Constitution does not mean that the people do not possess or can be deprived of those that are not mentioned therein.

4. United Nations Declaration on the Rights of Indigenous Peoples-2007 (UNDRIP) to which India is a signatory, imposes certain obligations on Member-States to Protect, preserve, nurture and promote indigenous religious, spiritual, cultural, traditional and knowledge systems by suitable legislative, governance and public policy interventions. Article 253 empowers Parliament to make laws for the whole of India on any subject to implement international conventions etc.

5. Amendment of sub-clause (b) of clause (2) of articles 25 and insertion of two new clauses in article 26 aims to prohibit State control and management of Hindu temples and religious institutions, and to facilitate their management by Hindu society in a democratic manner.

6. Article 26 bestows fundamental right on all religions, irrespective of majority or minority, to establish and maintain institutions for religious and charitable purposes, to manage their own affairs, and to own, acquire and administer property thereof. In a catena of judgements, the Supreme Court reiterated the same.

7. A secular State by definition cannot control and manage religious institutions that too of only one religion. However, most of the Hindu charitable and religious institutions have long been and are regularly being taken over by the secular State Governments. This completely cripples the resource ability of Hindu communities in being self-sufficient and in presenting a unified front to address and find solutions to the religious problems of the Hindu community.

8. Despite the constitutional provisions and judicial decisions, Hindu temples are routinely taken over by the State Governments. The State control of Hindu religious institutions is doubly disadvantageous for Hindus in that they have not only lost control of their religious institutions to the Government but because of that very reason of their religious institutions being under the control of Government their centuries-old religious customs, festivals and practices also get challenged and interfered.

9. Further, the State Government have been diverting properties of Hindu religious institutions for secular purposes without paying adequate compensation. For full enjoyment of the right guaranteed by article 26, it is necessary to ensure payment of adequate compensation, if, any property of a religious or charitable institution established or maintained by a religion or any section thereof, is acquired by the State.

The Bill seeks to achieve the above objectives.

Y.S. CHOWDARY

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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PART III

FUNDAMENTAL RIGHTS

General

12. Definition.—In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

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Right to Freedom of Religion

25. Freedom of conscience and free profession, practice and propagation of religion. — (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I. —The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II. —In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

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RAJYA SABHA

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further to amend the Constitution of India.

(Shri Y. S. Chowdary, M.P.)