# *ROLE OF COMMUNAL VIOLENCE AND ORGANISED CRIME IN INDIA*

**A Dissertation to be submitted in partial fulfillment of the requirement for the award of degree of Master of Laws**

**SUBMITTED BY**


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**Session: 2020-21**

***Role of Communal Violence and Organized Crime in India***

# CERTIFICATE

This is to certify that the dissertation titled, *"Role of Communal Violence and Organized Crime in India"* is the work done by *Km. Kavita* under my guidance and supervision for the partial fulfillment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

I wish her success in life.

Date: - 15/06/2021

Place: - Lucknow

**Ms. Sarita Singh**
(Assistant Professor)
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**LL.M (2020-21)**

CRIMINAL AND SECURITY LAW

# ACKNOWLEDGEMENT

This Dissertation is the end of my journey in obtaining my **MASTER OF LAWS**. This Dissertation has been kept on track and been seen through to completion with the support and encouragement of numerous people including my well-wishers, my friends, colleagues and various institution. At the end of my Dissertation I would like to thank all the people who made this Dissertation possible and an unforgettable experience for me.

**I want to thank Ms. Sarita Singh, Assistant Professor, School of Legal Studies, Babu Banarasi Das University, Lucknow** for her excellent cooperation, guidance and support; she gave me to conduct my research as Dissertation. Besides the intellectual debts, I owe my teacher and Supervisor personal debts for all she did for me.

I deeply thank my parents and a special friend for their unconditional trust, timely encouragement and endless patience.

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# LIST OF CASES

# LIST OF ABBREVIATIONS

| | |
|---|---|
| Acc. | According |
| AIR | ALL India Report |
| AP | Andhra Pradesh |
| Anr. | Another |
| Art. | Article |
| COI | Constitution of India |
| CJ | Chief Justice |
| CJI | Chief Justice of India |
| DPSP | Director Principle of State Policy |
| ICCPR | International Convention on Civil and Political Rights |
| ICERD | International Convention on the Elimination of all Forms of Racial Discrimination |
| IPC | Indian Penal Code |
| J. | Justice |
| Ltd. | Limited |
| MP | Member of Parliament |
| Ors. | Others |
| PM | Prime Minister |

# CHAPTER I

# INTRODUCTION

Organized Crime in India The core organized crime activity is the supply of illegal goods and services to countless numbers of citizen customers. It is also deeply involved in legitimate business and in labour unions. It employs illegitimate methods-monopolization, terrorism, extortion and tax-evasion to drive out or control lawful ownership and leadership, and to extract illegal profits from the public. Organized crime also corrupts public officials to avert governmental interference and is becoming increasingly sophisticated. In India, in addition to its traditional spheres of activities which included extortion, seeking protection money, contract killing, boot-legging, gambling, prostitution and smuggling, now added is drug trafficking, illicit arms trading, money laundering, transporting illegitimate activities based essentially on its readiness to use brute force and violence. By corrupting public officials and thereby monopolizing or near monopolizing, organized crime aims to secure for itself power. Later, the money and power it begets are used to infiltrate legitimate business and several other related activities.

## Meaning of organized crime

Organised crime is defined as "those involved, normally working with others, in continuing serious criminal activities for substantial profit, elsewhere". Organised criminals that work together for the duration of a particular criminal activity or activities are what we call an organised crime group. Organised crime group structures vary. Successful organised crime groups often consist of a durable core of key individuals. Around them, there's a cluster of subordinates, specialists, and other

more transient members, plus an extended network of disposable associates. Many groups are in practice loose networks of criminals that come together for the duration of a criminal activity, acting in different roles depending on their skills and expertise. Collaboration is reinforced by shared experiences (such as prison), or recommendation from trusted individuals. Others are bonded by family or ethnic ties – some 'crime families' are precisely that. Organised criminals make use of specialists who provide a service, sometimes to a range of crime gangs. Services include transport, money laundering, debt enforcement, or the provision of false documentation (identity crime underpins a wide variety of organised criminal

## Legal Position in India on Organized Crime

Organized crime has always existed in India in some form or another. It has, however, assumed its virulent form in modern times due to several socio-economic and political factors and advances in science and technology. Even though rural India is not immune from it, it is essentially an urban phenomenon.

**Criminal Conspiracy Sec. 120-A of the Indian Penal Code defines criminal conspiracy** as: "When two or more persons agree to do, or cause to be done-
(1) An illegal act, or

(2) An Act which is not illegal by illegal means. Such an agreement is designated as criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursunce thereof.merely incidental to that object". Section 120-B of the India Penal Code provides for punishment for criminal conspiracy.

## *Role of Communal Violence and Organised Crime in India*

It is no exaggeration to say that the average Indian in an atmosphere pregnant with Organised belief and superstitions. From early infancy his mind is trained in strictly organised channels. Ignorant and deeply organised he is prone to accept, unquestioned, superstitions and folk tales of the most grotesque kind. This Organised susceptibility makes him an easy victim for wandering mendicants.

Crime in India may be said to originate from three main sources: Organised controversies, practices, Women and Land disputes. Organised controversies are the most prolific factors in crime affecting persons. To it may be traced the majority of murders, dacoities and assault that fill our police records. The separatist group National Liberation Front of Tripura (NLFT) seeks to convert all tribe‘s in the state of Tripura, who are mostly Hindu or Buddhist, to Christianity. It has proclaimed bans on Hindu worship and has attacked animist Rings and Hindu Jagatai tribesmen who resisted. Some resisting tribal leaders have been killed and their womenfolk raped. The RSS has attempted to counter Christian separatist groups by backing Rang and Jamatiatribal‘s and has called for the central government to help arm and fund them. Hindu nationalists, upset with the rapid spread of Christianity in the region, link the overt Christian religiosity of the groups and the local churches' liberation theology-based doctrine to allege church support for ethnic separatism. Vestal Vedanta identifies statements from the American Baptist Churches USA as endorsing the Naga separatist cause. The history of modern India is densely spotted by the communal violence which, in most cases, proved to be state-backed, and police played an active and biased role in carrying out cold blooded massacres, acts of rape and damaging properties of the minority communities especially Muslims, Christians and Sikhs. Tensions between Hindu and Muslim started coming to light a few years before the independence of the Indian-sub continent and as per the Pakistani historians, anti-Muslims riots were one of the reasons which led to the creations of Pakistan. These

riots were provoked by colonizers and Indian politicians for personal gains and vested interests. India have risen and has led to several major incidences of Organised violence such as Hashimpura massacre(1987), Bombay riots, 1993 Bombay bombings, Gadara Train Burning, and 2002 Gujarat violence.

## Organised Crime

Over the past decades the topic of organised crime has become an increasingly popular in the U.K. Its growing recognition as a subject for serious academic discussion has been provoked by a growing awareness of organised crime on an international scale, that is sometimes referred to as 'transnational' organised crime.

**Organised Crime Control Act, title IX is called RICO (Racketeer Influenced and Corrupt Organisation), 1970,**

***"****Organised Crime is an illegal activity for profit through illegitimate business. Organised crime or criminal organisations are transnational, national or local groupings of highly centralised enterprises run by crime for the purpose of engaging illegal activity*[1] *".*

**Accordingly to Article 2 of the United Nations Convention**,

*"an organised criminal group must have at least three members operating in concert to commit a serious crimes as part of an internally structured organisation which have been in existence over period of time preceding and subsequent to the commission of the criminal act".*[2]

[1] Retrieved From: www.organised -crime.de/organised crime definition/, visited on 30-07-16

[2] Chris Hale, *Criminology* 323, (Oxford University Press, New York, 2009).

**Maharashtra Control of Organised Crime Act, 1999,**

*"Section 19(1) (e), organised crime means, "any continuing unlawful activity by an individual singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other advantage for himself or promoting insurgency".*

*According to Clark Mark, "organised crime consists of illegitimate loci of*

*social power, from within a Organised, ethnic, industrial or other minority class or group in a society, that have acquired and utilize the knowledge of coercion, compensation and persuasion in a systematic manner to perpetuate or protect their organisation and to gain advantage by acts of criminal victimization in local, national and transnational environments."*[3]

## Definitions

According to Rosanna's definition, "Organised as a set of beliefs or actions predicated on the existence of supernatural entities or forces with powers of agency that can intervene in categories of Organised- related crime: theologically based crime, reactive/defensive crime and abuse of Organised authority."

Theologically based crime stems from dissonance secular law and organised principle; when the dissonance is significant enough, secular law is rejected in favour of the organised belief or practice.

Reactive/ defensive crime is generally committed by organised followers who perceive a threat to their organised community from some external sources. These crimes may be committed to foment change in the larger society or to protect the existing organised group from external forces and are more likely to be violent.

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[3] Retrieved From, www.O.C.de/O.C DEF/.Htm, visited on 30-07-16

Abuse of Organised authority is when organised leaders or officials abuse their authority for personal or institutional gain or when the organised institution itself acquiesces in the abuse through acts of omission or commission.[4]

## Organised Crime

*According to Mike Hermann, "Organised Organised is Organised Crime; it preys on people's weakness, generates huge profits for its operators and is almost impossible to eradicate".*

Organised Criminal - In the Christian west, the main organised criminal offences have been Blasphemy (defamation of Christianity), Heresy (expression of unacceptable organised views) and Desecration (damage or destruction of sacred objects and buildings).

Blasphemy is a long established offence in English Common Law, and in the law of many other countries. Every publication is said to be blasphemous which contains any contemptuous, reviling, scurrilous matters relating to God, Jesus Christ, the Bible or the formularies of the church of England as by law published.[5] However, some old offences involving disorder in churches or cemeteries remain on the statue book and in 2001 a new category of organisedly aggravated offences was created.

[4] Retrieved From, www.FEDERLE.REV.DOC, visited on 30-07-16

[5] Retrieved From, www.Myspace.com/justinismagnifyingdude/blog/. visited on 30-07-16

**LAWS ON ORGANISED OFFENCES**

**Indian Penal Code, 1860**

CHAPTER VIII contains two sections- 153A and 153B

**SECTION 153 A:**

The jurisdiction of this Section is widened so as to make promotion of disharmony, enmity or feelings of hatred or ill-will between different Organised, racial, language or regional groups or castes or communities punishable. Offence on moral turpitude is also covered in this section. The offence is a cognizable offence and the punishment for the same may extend to three years, or with fine, or with both. However, the punishment of the offence committed in a place of worship is enhanced up to five years and fine.

**Ingredients of Section 153A:**

- The act of promoting enmity between different groups on grounds of Organised, race, place of birth, residence, language, caste, community or any other group.
- Acts prejudicial to the maintenance of harmony between different groups or castes or communities, if the acts disturb public tranquility.
- Acts causing fear or alarm or a feeling of insecurity among members of any Organised, racial, language or regional group or caste or community by use of criminal force or violence against them.

**SECTION 153-B:**

(i) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,

(ii) makes or publishes any imputation that any class of person cannot, by reason of their being members of any Organised, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(iii) asserts, counsels, advises, propagates or publishes that any class of person shall, by reason of their being members of any Organised, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(iv) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any Organised, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

**CHAPTER XV: This chapter contains five sections – ss 295, 295a, 296, 297 and 298.**

The offences under this chapter can be broadly classified under three divisions:

- Defilement of places of worship or objects of veneration (ss 295 and 297)
- Outraging or wounding the Organised feelings of persons (ss 295A and 298)
- Disturbing Organised assemblies (s 296)

**SECTION 295:**

Section 295 of the I.P.C makes destruction, damage, or defilement of a place of worship or an object held sacred, with intent to insult the Organised of a class of persons, punishable with imprisonment which may extend to two years, or with fine , or with both. This section has been enacted to compel people to respect the Organised susceptibilities of persons of different Organised persuasion or creeds.

Ingredients of Section 295:

- The accused must do such an act with the intention of insulting the Organised of any person, or with the knowledge that any class of person is likely to consider such destruction, damage or defilement as an insult to their Organised.
- The accused must destroy damage or defile any place of worship or any object which is held as sacred by any class of persons.

**SECTION 297: Trespassing on Burial Places, etc**

Whoever, with the intention of wounding the feelings of any person, or of insulting the Organised of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the Organised of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sculpture, or any place set apart from the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**SECTION 295-A:**

The object of Section 295-A is to punish deliberate and malicious acts intended to outrage the organised feelings of any class by insulating its Organised or the organised beliefs. This section only punishes an aggravated form of insult to Organised when it is perpetrated with deliberate and malicious intention of outraging the organised feelings of a class.

- The accused must insult or attempt to insult the Organised or Organised beliefs of any class of citizens of India.
- The said insult must be with a deliberate and malicious intention of outraging the organised feelings of the said class of citizens.
- The said insult must be by words, either spoken or written, by signs or by visible representation or otherwise.
- The offence under Section 295-A is cognizable and a non-bailable and non- compoundable offence.
- The police have a power under to arrest a person charged under Section 295-A without a warrant.

**Air Forces Laws, 1950**

Section 66 miscellaneous offences.—any person subject to this act who commits any of the following offences, that is to say,—

(b) By defiling any place of worship, or otherwise, intentionally insults the Organised or wounds the organised feelings of any person; shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

**Armed Forces Laws, 1950**

Section 64 miscellaneous offences. - Any person subject to this act who commits any of the following offences, that is to say:-

(b) by defiling any place of worship, or otherwise, intentionally insults the Organised or wounds the Organised feelings of any person; shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as it in this Act mentioned.

**Orissa Communal offenders Act, 1993**

In Orissa a Prevention of Dangerous Activities of Communal Offenders Act has been in force since 1993. The expression 'communal offenders' is defined in the Act as follows:

"Communal offender" means a person who, either by himself or as a member of or as a leader of a gang or an organization, commits or attempts to commit or abets or incites the commission of an offence punishable under Section 153-A or 153-B of the Indian Penal Code of 1860 or under Chapter XV of the said Code (Sections 295-98) or under subsection (2) of Section 505 thereof - Section 2(b).The Act empowers the State government to order preventive detention of any communal offender so defined for a period up to one year and makes several related provisions - Sections 3-7, 14-15, 17-18.

The Act also makes provisions for tracing absconding communal offenders and creation of an Advisory Board for its purposes - Sections 8-13.

**The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bills, 2005**

This is a bill to empower the State Governments and the Central Government to take measures to provide for the prevention and control of communal violence which threatens the secular fabric, unity, integrity and internal security of the nation and rehabilitation of victims of such violence and for matters connected therewith or incidental thereto. Unfortunately, this bill was not came into exist.

**Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011**

Prevention of Communal Violence (Access to Justice and Reparations) Bill is a bill To respect, protect and fulfil the right to equality before law and equal protection of law by imposing duties on the Central Government and the State Governments, to exercise their powers in an impartial and non-discriminatory manner to prevent and control targeted violence, including mass violence, against Scheduled Castes, Scheduled Tribes and Organised minorities in any State in the Union of India, and linguistic minorities in any State in the Union of India; to thereby uphold secular democracy; to help secure fair and equal access to justice and protection to these vulnerable groups through effective provisions for investigation, prosecution and trial of offences under the Act; to provide for restorative relief and reparation, including rehabilitation and compensation to all persons affected by communal and targeted violence; and for matters connected herewith and incidental thereto. This bill also has been rejected by the parliament.

**PROBLEM PROFILE**

India is a secular country and different kind of Organised is divested there from time immemorial. Secular means Equality of Organised‘or India without any particular Organised. In general sense, India does not adopt one particular Organised. Everyone has a right to adopt any Organised. Anyone can propagate or profess any Organised according to his or her own wish.

But, if we see on the parameters of give a reality, then question arises that does secularism really exist? Existence of Organised violence can be traced back easily from our history. Organised Violence in general is understood as, _violence by one organised group against the other organised group. In other words, it could be understood as, one or more organised groups are intolerant of the other ones i.e. are it about the rituals, teachings, beliefs and history of any Organised as well.

Now, the question is what actually organised violence is? Or what can be included or excluded in organised violence? The attack on organised places is a kind of organised violence? Or attack by one organised group on other organised groups can be included in organised violence?

Can we use the word communal violence‘instead of organised violence‘? In general sense, one of the same thing. If we read the concept communal violence, we find that communal violence‘is violence by one community against the other community or violence by one community member against other community member. What is the difference between these two and how could they be described with legal point of view.

If we read the prevention of communal and targeted violence (access to justice and reparations) bill, 2011, its quiet complicated. imposes duties on the Central Government and the State Governments, to exercise their powers in an impartial and

non-discriminatory manner to prevent and control targeted violence, including mass violence, against Scheduled Castes, Scheduled Tribes and Organised minorities in any State in the Union of India, and linguistic minorities in any State in the Union of India; to thereby uphold secular democracy; to help secure fair and equal access to justice and protection to these vulnerable groups through effective provisions for investigation, prosecution and trial of offences under the Act; to provide for restorative relief and reparation, including rehabilitation and compensation to all persons affected by communal and targeted violence; and for matters connected herewith and incidental thereto. The question is what about the majority groups? What is the status about other caste people?

- What type of crimes can be added in organised crimes?
- The crimes which occurred at the organised places or which happen in the name of Organised or the crimes by members of one Organised group against the member of other organised group?
- There are various issues on which research is needed. Important ones are; which type of crimes are organised Organised crimes?
- What laws or provisions should be for these kinds of crimes?
- How far have our present laws been able to handle the organised crimes?
- Or some violent acts enter into organised beliefs?

## OBJECTIVES OF RESEARCH

The objectives of this research are as follows:

1. To study the historical development of crimes in the name of Organised.
2. To look into the research problem from comparative point of view.
3. To find out the socio-political and other reasons of Organised organised crimes.
4. To find out the fallacies of law to prevent organised crimes.
5. To find the suppressive and preventive measures to eradicate this problem.
6. To study the constitutional aspects of freedom of Organised and secularism.
7. To give suggestions to justify the problem profile.

## RESEARCH HYPOTHESIS

1. Pseudo – Secularism is evolving as a threat to secularism.
2. There are fallacies in law to prevent the crime in the name of Organised.
3. This normally leads to the ascertainment of, firstly the reasons for ever increasing organised crimes in India as well as outside. Secondly the impact of organised crimes on individuals, socio-economic, political structure and security of the state. Thirdly the effectiveness of existing criminal policy and lastly ascertainment of various shortcomings in the existing legal and institutional setup.

## RESEARCH QUESTIONS

a) What are organized crimes?
b) Whether the prevailing laws are effectively applicable for the problem of organised intolerance?
c) How the acts of terrorism are linked with Organised crimes?
d) Is there any need to formulate any Act to suppress/ prevent communal violence?

## LIMITATION OF THE RESEARCH

In this present research researcher finds that there is a need to make strict rules and laws for tackling such activities. Although there are some rules for these kinds of activities, but need to implement such rules in a proper way. There should be an act for these heinous crimes.

## RESEARCH METHODOLOGY

The present research is based on Doctrinal Study which is non-reactionary method of data collections from the certain area in which expression of reactionary views of people is absent. The Reactionary way of data collection by Questionnaire, interviewing, observation, survey etc. was not restored to. In order to conduct this research primary as well as secondary documents like reports. Acts, Conservations, Protocols, Books, Journals, Proceedings of seminars. Authoritative books,' Research Journals, Judicial verdicts, Authentic Official Records, Magazines, Newspapers and Websites etc. is the basis of study. This research study included the historical records of relevant documents including Parliamentary debates, objects and reasons of passing the relevant enactments etc. This methodology includes the philosophy and practices as relied on by the researcher to integrate data and research conclusion.

# CHAPTER II

# ORGANISED CRIMES AND LEGISLATIVE PROVISIONS

**INTRODUCTION**

Organised crime is diversified and widespread activity that annually drains billions of dollars from the global economy by unlawful conduct and illegal use of force, fraud and corruption. Organised crime derives major portion of its power through money obtained from such illegal endeavours as drug trafficking, human trafficking, money laundering, terrorism, illegal arms trade and other forms of social exploitation. Organised criminal activities weakens the stability of the nation's economic system, harm innocent investors and competing organisations, interfere with free competition threaten the domestic security and undermine the general welfare of the nation and its citizen. Organized crime is the product of a self- perpetuating criminal conspiracy involving the ruthless exploitation of the social, political and economic institution of the society.[6]

To understand the meaning of organized crime firstly we need to understand the meaning of crime. As commonly understood, crime include many different kinds of activities such as: theft, fraud, robbery, corruption, assault, rape and murder. Crime is often, therefore, related to morality.

[6] Ahmed Siddique, *Criminology* 433 *(*Eastern Book Company Lucknow, 2007).

The simplest way Crime is, ―Something which is against the criminal law‖ and common characteristic of ―Crime‖ is made subject to the criminal law. This involves private enforcement and punishment.[7]

Over the past decades, the topic of organized crime has become an increasingly popular addition to criminology courses in the UK, previously attracting little more than a passing reference. Its growing recognition as a subject for serious academic discussion has, in part, been provoked by a growing awareness of organized crime on an international scale, what is sometimes referred to as transnational‗organized crime.[8]

*Organized Crime Control Act*, 1970, Title IX is called RICO (Racketeer influenced and corrupt organization), ―Organized Crime is an illegal activity for profit through illegitimate business. Organized crime or criminal organization are transnational, national or local groupings of highly centralized enterprises run by crime for the purpose of engaging illegal activity, most commonly for monetary relief‖.

Organized crime is a complex and thought provoking phenomenon, which too often finds itself subject to exaggeration and over –simplification. The crime is a universal phenomenon and primary concerns to every member of human society. The concept of crime has undergone radical changes; it has today become multi faceted, both qualitatively and quantitatively. Today, the norms of society have been revolutionised and socio-cultural patterns of society have created many complex situation with

[7] Haring Sabhapati, *Crime and Society* 45 *(*Dominant Publishers,New Delhi, 2007).

[8] Retrieved from <www. Organized – Crime .de / organized crime Definition /.htm> visited on 12-09-2017 at 2:00 p.m.

society failing to keep up with the changing patterns of behaviour of individuals or groups.

Crime has become a common phenomenon in the day to day life of the individuals and majority of these wrongful acts have been accepted without being condemned. White collar crimes have become very common. It has become a profession and even an art. It is a global phenomenon, that by this word they can be termed organised criminals'and their acts as, Organised Crimes'.

**NATURE OF ORGANISED CRIME**

Organised Crime as a concept is synonymous with certain historical organisations, such as mafia etc. It has a broader and encompassing definitional connotation in terms of its nature, pattern and functional criteria. The term organised crime has always been used to indicate that, professional criminals distinguish themselves not only by the business, but also by the close relations they have amongst themselves. They formed with each other a separate social word i.e.; an illegal, undesirable, despicable world an underworld with its own hierarchical relations, its own division of rights, duties and tasks, its own language[9].

The essential characteristic of the term –organised crimes‖ is that it denotes a process or method of committing crimes, not a distinct type of crime itself, nor even a distinct type of criminal[10].

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[9] Adamoli, Sabrina, Andrea D Nicola, *Organised Crimes around the world* 4 (Helsinki, Finlnd: United Nations, 1998).

[10] H.E.Alexnder and G.E.Caiden, *The Politics and Economics of Organised Crimes14* ( D.C.Health and Company, 1986)

**CONCEPT OR MEANING**

Organized crime seems to changing definitions of illegality and when it has been defined it has enlarged or changed the definition due to a new adventure or expansion of their known activities. It is a difficult task to define organized crime, as it evolved in new dimensions according to time and place. The concept of organized crime has long been a source of controversy and contention, because of differences in the way different persons and countries approach various aspects of the problem. It is vital for the understanding of the organized crime issue to decide whether or not a certain category of crime should be determined to be organized crime and then decide how to delineate that category and finally to decide how resources should be allocated and assess how effectively they have been used in preventing and controlling it.

*The Omnibus Crime Control and Safe streets Act, 1968, "Organized Crimes means the unlawful activities of members of a highly organized, disciplined association engaged in supplying illegal goods and services, including prostitution, loan sharking, narcotics, labour racketeering and other unlawful activities of members of such associations".*

*The Racketeer Influenced and Corrupt Organizations Act* [9] , makes it a crime to infiltrate, participate in, or conduct the affairs of an enterprise is similar to racketeering. A racketeering act is defined as virtually any serious federal felony and as most state felonies. A second statute addressed to organized criminal activity in the United States is the continuing Criminal Enterprise statute is designed to counter the threat raised by large-scale drug trafficking organizations.

Quite often the base of organized crime is provided by the deadly combination of criminals and politicians; Criminals themselves taking up the role of politicians is not

an altogether unusual phenomenon. One area where such a nexus is most dangerous and quite prevalent is the one relating to the elections to Parliament, State Assemblies and local bodies. This was apparently done in the aftermath of the serial Mumbai bomb blasts, occurring shortly after the demolition of the Barbie Mosque in Ajodhya for which certain dons of the underworld; both within and outside India, were believed to be responsible.

**Maharashtra Control of Organized Crime Act , 1999 definition, (1) (e) –**Organized Crime‖ means ― any *continuing unlawful activity by an individual singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate , by use of violence or threat of violence or intimidation or coercion, or other advantage for himself or promoting insurgency".*

**According to Clark Mark, Organized Crime** consists, *"of illegitimate loci of social power, from within a Organised, ethnic, industrial or other minority class or group in a society, that have acquired and utilize the knowledge of coercion, compensation and persuasion in a systematic manner to perpetuate or protect their organization and to gain advantage by acts of criminal victimization in local, national and transnational environments".*[11]

The above definitions of organized crime tend to converge, so that the term denotes a method of conducting criminal operations which is distinct from other forms of criminal behavior. Its silent features are: violence, corruption, ongoing criminal activity and the precedence of the group over any single member. Organized criminal groups are characterized by their continuity over time regardless of the mortality of their members. They are not dependent on the continued participation of any single individual. At the national and international level, for understanding organized crime, should take account two significant changes which will have a major impact on law enforcement. First, organized criminal groups have broadened their operational range.

[11] Retrieved from <www. O.C. de/ O.C DEF/. Htm> visited on 10-09-2017 at 12:25 p.m .

Second, they no longer operate wholly in competition with each other but have demonstrated willingness and an ability to work collaboratively. Number of governments has also emphasized the threat raised by organized transnational crime, rather than the activities in which criminal organizations may be engaged at any given point in time. This appears to stem from the understanding that the flexibility and diversity displayed by organized transnational crime makes it more productive to focus on characteristics than on activities[12].

**HISTORICAL PERSPECTIVE**

Many of the activities those are associated with contemporary. Organized crime, such as prostitution, gambling, theft and various form of extortion were also evident in the frontier communities of the 19th century American West. However, most observers locate the origins of the distinctly American style of organized crime in the urban centers of the late 19th and early 20th centuries. In a fundamental way, urban conditions provided the kind of environment in which organized crime could flourish. The population sizes provided a –critical mass‖ of offenders, customers and victims and thereby facilitated the development of profitable market in illicit goods and services.[13] While most forms of criminal organization prior to World War 1 was relatively small- scale operations, the situation changed dramatically with the introduction of prohibition. In 1950, organized crime became a highly visible part of American popular culture. A series of televised congressional hearings chaired by Senator Estes Kefauver sought not only the testimony of law enforcement experts but also of supposed members of organized crime networks. In general, the latter type of witness tended to remain silent or to otherwise express an unwillingness to provide

[12] G.W.Potter, *Criminal Organizatons, Vice, Racketeteering and Politics in an American City* 19 , (New York: Waveland Press, 1994)

[13] Retrieved from <J Rank Articles http: // law. Jrank> visited on 13-10-2017 at 8:45 p.m.

evidence. These refusals made for startling television viewing and were interpreted by many observers an unambiguous proof of the problem of organized crime.

The concern in the 1980s and 1990s about the emergence of new organized groups was accompanied by a concern about the increasingly transnational character of organized crime. This crime trend has been understood, in large part, as an outcome of post- cold war reconfiguration of national and economic boundaries. The reduction in trade restrictions the development of global systems of finance and telecommunications, the increasingly transparent nature of national borders and in many nations made it easier for criminal conspirators to expand their operations internationally. Such operations are tracked, investigated and prosecute with great difficulty since effective enforcement requires levels of international cooperation among policing agencies from different nations that often vary markedly regarding their enforcement priorities and the resources available to them. Today, crime is sometimes thought of an urban phenomenon, but for most of human history it was the rural interfaces that encountered the majority of crime. For the most part within village members kept crime at very low rates, however outsides, such as Pirates, Highwaymen and Bandits attacked trade routes and roads at times severely disrupting commerce raising costs, insurance rates and prices to the consumer.

**Lunde states**, *"Barbarian conquerors, whether Vandals, Goths, Norsemen, Turks or Mongols are not normally thought of as organized crime groups, yet they share many features associated with thriving criminal organizations. They were for the most part non- ideological, predominantly ethnicaltyly based, used violence and intimidation and adhere to their own codes of law".*

# CHAPTER III

# COMMUNAL VIOLENCE IN INDIA

## INTRODUCTION

Communal violence since 1990s needs to be seen in the light of the changing political equations in the country. The decline of the Congress and the emergence of the BJP as a strong political force resulted in shifting patterns of communal riots. Communal violence in the last two decades is a result of the manipulation of the Organised sentiments of people by the Hindu right-wing organizations for political gains. The politicization of the Mandir-Masjid issue and the subsequent demolition of the Mosque gave the BJP the opportunity to consolidate its vote bank. But in the process the controversy created a communal divide, and frequency of riots also increased during this time. Since partition, never before has one particular incident resulted in the emergence of violence in almost all the states. From the 1960s till 1980 local factors played a very important role in the emergence of riots, but since the late 1980s this trend seems to be changing. Communal violence has always occurred when the BJP has wanted to expand its base. In the recent years the South Indian states, particularly Kerala and Tamilnadu, have also witnessed communal violence and are slowly growing into communally sensitive areas. This is primarily because of the recent entrance of BJP in the political arena of these states. Apart from Godhra, the other incidences of communal violence in the 90s have been minor, yet they cannot be dismissed. These eruptions of communal violence have not been spontaneous, but are organized, and often have the support of the local administrations. The state support to riots is a long established feature in India, yet the state has never been such an active

participant in the violence before the Gujarat riots. Communal violence has entered a new phase with the Christians and members of other minority Organised being made the victims of planned attacks. Communal riots in this decade have been both urban and rural features, but the extent of damage is always greater in the thriving centres of trade and commerce. Tribal population in the rural areas is being forced to get involved in the attacks on Christians and Muslims by bringing them within the Hindutva framework. Apart from economic reasons, the call for Hindu unity which is primarily a means to achieve political advantage is the main source for communal violence in this decade.

Political parties have always had a hand in instigating and exploiting communal violence so as to meet their electoral interests. Though communal riots are condemned in various quarters, there is still complete inaction both from the administration and the ruling governments in many states. Though Organised festivals and processions are generally the starting points of communal riots, still sufficient security is not provided during these times. There is also not much response against incidents of communal violence from the civil society. Till the time the political parties which instigate communal riots are voted to power, the incentives to combat communalism will not be able to develop fully.

## CONCEPT OF COMMUNALISM

### Meaning

Communalism", is a derivation of the word, „communal" which in itself a derivation of the words, „commune" and „community". The word „commune" in general sense, is a group of persons acting together for purposes of self-government. Word

„community" is a body of persons living together, practising more or less community of goods or having a common objective and interest.

Some would equate the concept of communal identity with ethnic or organised identity, but as conceived here the definition is purposefully left more open, since group identity can be considered as socially constructed rather than a static phenomenon. Instead, communal identity is conceptualised as subjective group identification based on, for instance, a common history, a common culture or common core values. Affirming that identity refers to ethnic or organised identity would make the term less flexible, and unable to capture other forms of possible communal identity. For instance, in local conflicts where the dividing line is between „original" inhabitants of an area („indigenes") and more recent „settlers", as is often the case in parts of West and Central According to Asghar Ali Engineer,

*"Communalism is described as a tool of mobilize people for or against by raising an appeal on communal lines*".

**According to Abdul Ahmed,**

"*Communalism is a social phenomenon, characterized by the Organised of two communities, often leading to acrimony, tension and even riots between them. In its latest manifestation, communalism amounts to discrimination against a Organised group in matters of employment, education, commerce, politics, etc*".[14]

**According to Bipan Chandra,**

"*Communalism is the product of a particular society, economy and polity, which divides people on the basis of Organised and economic differences. Thus, communalism is an ideological tool for propagation of economic and political interests. It is an instrument in the hands of the upper class to concentrate power by dividing people[1] ".*

[14] http://www.universityofcalicut.info/SDE/BA_sociology_indian_society.pdf

## Nature

Communalism is a virtue which has been accepted by people of various shades of opinion. It can be regarded as tradition which impress the attitude of all members of society and also imposes on the behaviour of most members of the society. It has a curious way of developing into a unifying and disputing influence.

Generally, term communalism has always been used to signify communal tension. It fails to donate its higher aspect and has ordinarily come to signify communal conflict and tension.

It is neither the privilege of any one age nor of any one society, it is an unavoidable phenomenon which not only that manifests itself in curious ways, in different forms but is in consequences the same.

## HISTORY

The concept of communalism was not developed or practiced in ancient period or in the medieval periods. It was modern phenomenon which arose as a result of British colonial impact and the response of several Indian social strata[15].

Many have asserted the fact that it is development of the late colonial period arising concurrently with nationalism if not being brought forward as a counterweight to it[16].

Communalism began to spring up in colonial and capitalist society and reached in the democratic society. It all began with the establishment of British rule in India and so,

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[15] Bipan Chandra, *Communalism in Modern India*7 *(*Vikas Publishing House Pvt. Ltd. New Delhi, 1984).

[16] Azgar Ali Engineer, "On Sociology of Communalism", Retrieved from: http://www.caaa-isla.com, 19-04-2018.

communalism is a modern phenomenon[17]. Mostly communal feelings are aroused because of the destruction of Organised places. The major root cause of communal riots in India, the Rammjanam Bhoomi- Babri Masjid issue is of that nature. The Hindu communalist organizations allege that the Babri Masjid is built on the ruins of a temple demolished by Babar at the time of his invasion in 1528, but the genesis of communal conflicts cannot be traced back to medieval periods. The Hindu communalists gave some examples of Muslim rulers demolishing Hindu temples; they are silent about Hindu demolishing each other ‟s place of worship. It was Hindu King of Patliputra who cut down the Bodhi Tree‟, beneath which the Gautama Buddha attained enlightenment, and constructed a Hindu temple there. It also ignored that some of the Muslim rulers destroyed Masjid. Mohammad Ghazni destroyed Masjid in Multan. Aurangzeb destroyed a Masjid. He gave Jagirs too many temples in Banaraz, Ujjain etc.[18]

After 1857 mutiny, the British established the colonial rule, adopted the policy of divide and rule which cause the communal clashes. The active participation of Hindu community in taking western education and the acquisition of government offices by Hindu community widened differences between Hindu and Muslims. All sorts of employment were being snatched away from Muslims and given to others particularly the Hindus[19].

The formation of Indian National Congress and the wave of national movement is another reason of communalism. The root work of communalism in the 19th century

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[17] Azgar Ali Engineer, *Communalism in India-A Historical and Empirical Study* 51 *(*Vikas Publishing House, New Delhi, 1995).

[18] Khan Muhammed Afaque, *Gandhian Approach to Communal Harmony-A Critical Study*11 *(*Ajanta Publications, New Delhi, 1986).

[19] N. Jayapalan, *The Origin and Growth of Communalism* 97*(* Atlantic Publishers, 1997).

was prepared by Sir William Hunter, Mr. Beck and Sir Syed Ahmed Khan. Sir Syed Ahmed Khan propagated the idea of separate electorates. A meeting of Indian Muslim leaders was called and they met on 30th December, 1906 and resolved to establish a Muslim political organizations of Indian Muslims i.e; Muslim League. The competition for elected posts and powers is the reason that makes hostilities between Hindu and Muslims. The democratic measures and elections to provinces strengthen the communal feelings. The urge for political power increased the communal struggle between two communities. The fear of domination of the majority community in the minds of Muslims also gave fuel to the separatism and communalism[20].

## CAUSES OF COMMUNALISM

Different scholars have different perspectives towards the problem of communal violence and suggesting different measures to counter it. The Marxist school relates communalism to, "economic deprivation and to the class struggle between the haves and the have-not to secure a monopoly control of the market forces". Sociologists see it as, "phenomenon of social tensions and relative deprivations. The Organised experts perceive it as a diadem of violent fundamentalists and conformists".

**Ten major factors have been identified in the etiologic of communalism i.e.:**

(1) Social,

(2) Organised,

(3) Political,

(4) Economic,

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[20] Sarveppally Gopalakrishnan, *Anatomy of Confrontation-The Babri Masjid Rammjanmabhoomi Issue* 113 *(*Viking Publishers, New Delhi, 1990).

(5) Legal,

(6) Psychological,

(7) Administrative,

(8) Historical,

(9) Local and

(10) International.

The Social Factor includes: social traditions, caste/class ego, inequality and Organised based social stratification.

The Organised factors includes: decline in organised norms and secular values, narrow and dogmatic organised values, use of Organised for political gains and communal ideology of organised leaders.

The Political factors includes: Organised based politics; Organised dominated political organizations, canvassing in elections based on Organised considerations, political interference, instigation or support to agitations by politicians for vested interests, political justification of communal violence and failure of political leadership.

The Economic factors includes: economic exploitation and discrimination of minority Organised communities; lop sided economic development, competitive market, non expanding economy, displacement and non-absorption of workers and the influence of gulf money in provoking Organised conflicts.

The Legal factors includes: absence of common civil code, special provisions, special status of certain states and special laws for different communities.

The Psychological factors includes: social prejudices, stereotyped attitudes, distrust hostility and apathy against another community, rumour, fear psychosis and the misinformation/misrepresentation by mass media.

The Administrative factors includes: lack of coordination between the police and other administrative units, ill-equipped and ill-trained police personnel, inept functioning of intelligence agencies, biased policemen and police excesses and inaction.

The Historical factors includes: alien invasions, damage to Organised institutions, proselytization efforts, divide and rule policy of colonial rulers, partition trauma, past communal riots, old disputes on land, temples and mosques.

The Local factors includes: Organised processions, slogan raising, rumours, land disputes, local anti-social elements and group rivalries.

The International factors includes: training and financial support from other countries, other countries mechanizations to disunite and weaken India and then support to communal organizations.

The mass media also sometimes contribute to communal tensions in their own way. Many times the news items published in papers are based on hearsay, rumours or wrong interpretations. Such news items add fuel to the fire and fan communal feelings. This is what happened in Ahmedabad riots (1969) when sevak reported that several Hindu women were stripped and rapped by Muslims. Although this news was contradicted the next day, the damage had been done.

One issue which has been agitating both Muslims and Hindus in recent years is the Muslim Personal law. *In the Shah Bano case*[21]*, Supreme Court advised that it should*

[21] *Mohamad Ahmed Khan v. Shah Bano Begum,* AIR 1985 SC 945

*be Uniform Civil Code*. The Muslims fear that their personal law is being interfered with. Politicians charge the social atmosphere with communal passion by their inflammatory speeches, writing and propaganda. They plant the seeds of distrust in the minds of the Muslims, while the Hindus are convinced that they are unjustly coerced into making extraordinary concessions to the Muslims in the economic, social and cultural fields. They exploit the deep Organised traditions of both the communities and highlight the differences in their respective practices and rituals.

The Role of Police in communal violence is to arrest trouble shooters, disperse rioters congregated at one place, protest public property from loot, prevent the spreading of rumours and maintain public order. The bureaucrats in our country are ritualists, politicians function on the basis of vested interests, and judicial officials are traditionalists and people have no confidence in the police. The police have to face many constraints in paying the roles expected of them. The prevention of communal violence requires a check on the symptoms of tension building and tension management in riot prone areas. The police have to identify riot prone structures in states, districts and cities where communal riots took place frequently and keep a watch on the various polarity based cluster of population in the city layouts[22].

It is true that in any society, cultural advancement and communal tension proceed side by side. Communalism is *an attribute of community has come to denote intercommoned rivalry so the result is social tension.* There are three fundamental factors, viz. Material, Mental and Moral.

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[22] *Ibid.*

Another important cause of communalism is tendency of minorities. The Muslims fail to intermingle with the national mainstream. Many of them do not participate on the nationalistic politics and insist in maintaining their separate identity.

The members of minorities feel that they have distinct entity with their own cultural pattern, personal laws and thoughts. Such feeling ahs prevented them from accepting the concept of secularism and Organised tolerance.

The main biggest reason of communalism in India is the leaders of both Hindu and Muslim communities desire to flourish it in the interest of their communities. The demand for separate electorate and the organization of Muslim league were the practical manifestations of this line of thought. During the British rule, separate electorate on the basis of Organised strengthened the basis of communalism in India.

Muslims due to their educational backwardness have not represented sufficiently in the public service, industry and trade etc. This cause the feeling of relative deprivation ad such feeling contain the seeds of communalism.

The social institution, customs and practices of Hindu and Muslim are so different that they think themselves to be distinct communities.

Provocation by enemy countries is big cause of communalism in India. Pakistan has played a great role in creating communal feeling among the Muslims of our country. This country has been encouraging and promoting communal riots by instigating the militant sections of Indian Muslim community.

Last but not least, Negative impact of Mass Media is also playing big role for creating communal tension. The messages of communal riots in any part of the country spread through the mass media. Communalism was rooted in modern economic, political and social institutions where new identities were emerging in a haphazard manner. A clash of this dichotomy gave rise to a communal ideology.

## COMMUNAL VIOLENCE IN INDIA

The communal violence is a conjectural aspect it may break out here or there in a virulent form. It is still pervading on a large scale in an entire Indian Society. It is in the form of riots or terrorism draws our attention in a dramatic manner but the long term cause of violence is spread of communalism.

The communal violence is linked to communal ideology. Communal violence cannot exist without communal ideology. A communal ideology consist of three element one succeeding the other. According to communal ideology people who follow the same Organised having common secular interest with the common political, economic, social and cultural interest. A person who talks about Hindu community or Muslim community is already taking the first step towards communalism. The first stage is beginning of communal ideology. The second stage is a liberal or moderate communalism and the third and final stage is reached when secular interests of the followers of one Organised are counterpoised to the secular interests of the followers of another in a hostile form. So, the communal violence is only conjectural manifestation of the communalization of society and politics. Communal ideology leads to politic and psychology differentiation and competition along Organised line. Later it leads to mutual hatred to violence.

Communal violence in the last two decades is result of changing of the Organised sentiments of people by the Hindu right wing organizations for political gains. Politics of Mandir Masjid issue gave the BJP the opportunity to consolidate its vote bank.
It has entered in new phase with the Christians and members of other minority Organised being made the victims of organised attacks. Tribal peoples in the rural areas is being forced to get involved in the attacks on christens and Muslims by bringing them within the hindutva. In the name of Hindu unity, which means to achieve political advantage is main source for communal violence in the era.

# CHAPTER IV

# THE ORGANISED CRIME AND TERRORISM

## INTRODUCTION

Some of today‘s terrorist group‘s can no longer specially be considered as secular Marxist organizations with specific nationalist and socialist goals. While calling for socio-economic betterment for their people, their motivation is Organised. Violence in the name of Organised has been used since Herod the Great, but there has been a recent re-emergence of organised terrorism. Both the Inquisition in the 15$^{th}$ and 16$^{th}$ centuries and Oliver Cromwell practiced terror in the name of Organised. Indian Sikh terrorism is also based on Organised. The Sikhs are acting in reaction to Hindu repression of their aspiration of Indira Gandhi, subsequent Sikh-Hindu bloodshed, and threatened international terrorism, share some of the more extreme qualities associated with Shiite violence. In India, Hindu fundamentalism has led to violent clashes and massacres which have reverberated internationally. In Israel Jewish fundamentalist have used Arab Jewish peace negotiations.

Over the past decade there has been an increase in Organisedly motivated terrorism in countries as far apart as Algeria where thousands have died or been injured to Japan, where Organised cults have utilized gas agents to kill and injure and strike terrible fear into the populace. Palestine Sunnis flock to Hamas and Palestine Islamic Jihad. Hamas has undertaken a spiritual and political declaration of war on Israel, Zionism, allies of Israel and others opposed to creating an organised state throughout Palestine.

## TERRORISM

Although many people have a good idea of what terrorism is. It has frequently stated that; ‒one person‘s freedom fighter is another person‘s terrorist. People have tendency to brand those who use violence for purposes that they disagree with as terrorist while they regard those using the same kinds of violence in a _just cause‘ as freedom fighters. The terrorism includes all kind of groups should not blind us to the fact that what might be defined as terrorism by virtually everyone, could be acceptable to others in some circumstances.

Terrorism is a part of the human condition in the sense that, like the poor, it is always with us. It seems that whenever we break into the historical record some form of terrorist activity is likely to be found. Terrorism means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear.

There are many definitions of terrorism that have been used. The definitions are created to identify certain groups as falling within the definitions since the term terrorist ahs a very negative association. There are number of basic components necessary in order for a group to be considered as a terrorist organization. The following characteristics combine to provide a useful and usable definition of terrorism.

‒Terrorism involves political aims and motives. It is violent or threatens violence. It is designed to generate fear in a target audience that extends beyond the immediate victims of the violence. The violence is conducted by an identifiable organization. The violence involves a non-state actor as either the perpetrator, the victim of the violence. Finally, the acts of violence are designed to create power in situations in

which power previously had been lacking, i.e.; the violence attempts to enhance the power base of the organization undertaking the actions[23].

According to section 1 of the *Terrorism Act*, 2000:

I. *"Terrorism means the use or threat of action where-*

a. *The action falls within subsection (2),*

b. *The use or threat is designed to influence the government or to intimidate the public or a section of the public, and*

c. *The use or threat is made for the purpose of advancing a political, organised cause.*

***In Maxim lien Robespierre words*****:** *„Terror is nothing other than justice, prompt, severe, inflexible; it is therefore an emanation of virtue; it is not so much a special principle as it is a consequence of the general principle of democracy applied to our country's most urgent needs[24]".*

***The 'Academic Consensus Definition' of terrorism is a case in point:*** *"Terrorism is an anxiety-inspiring method of repeated violent action, employed by clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly or selectively from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorist, victims, and main targets*

[23] B. Hoffman, *Inside Terrorism 2* (Columbia University Press, New York,2006)

[24] Retrieved From, Centre for Defence Information. A Brief History of Terrorism. 2003.

*are used to manipulate the main target turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought[25]".*

The United States (US) government has experienced similar problems in defining terrorism. The US Department of Defence has defined terrorism as: *„The calculated use of unlawful violence or the threat of violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, Organised, or ideological[26]."*

***The European Union sees as terrorism acts those that aim at****: • seriously intimidating a population;*

- *Unduly compelling a government or international organisation to perform or abstain from performing any act;*
- *Seriously destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation[27]".*

## TYPES OF TERRORISM

It is vital to bear in mind, however, that there are many kinds of terrorist movements, and no single theory can cover them all. One popular typology identifies three broad classes of terrorism: revolutionary, sub revolutionary, and establishment terrorism. It provides a useful framework for understanding and evaluating terrorist activities.

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[25] Retrieved From; United Nations Office on Drugs and Crime. Definitions of Terrorism. 2007. <http://www.unodc.org/unodc/terrorism_definitions.html>, IST 18-06, On 4-10-2018

[26] EU Terrorism Situation and Trend Report 2007**.** Hague: Europol, 2007, p. 9.

[27] *Ibid.*

Civil disorders, Political Terrorism, Non-political Terrorism, Quasi- terrorism, Limited Political Terrorism, officials or State Terrorism.[28]

The basic elements of terrorist environments are uncomplicated, and experts and commentators normally agree on the forms of terrorism observed in present day political environments. For example, the following environments have been described by way of academic experts:

- Barkan and Snowden describe vigilante, transnational and nation terrorism.
- Hoffman discusses ethno-nationalist, international, non secular terrorism.
- While task the mission of defining the new terrorism, Organised, state, exclusive and crook terrorism.

**State Terrorism**: It is Terrorism dedicated by means of authorities towards perceived enemies. State terrorism can be directed externally in opposition to adversaries in the international domain or internally in opposition to domestic enemies.

**Organised Terrorism**: Terrorism motivated via an absolute faith that an otherworldly strength has sanctioned- and commanded- the utility of terrorist violence for the larger glory of the faith. Organised terrorism is typically conducted in defense of what believers think about the one proper faith. International Terrorism: Terrorism that spills over onto the world‘s stage. Targets are chosen because of their cost as symbols of international interests, either within the domestic country or throughout nation boundaries[29].

[28] V.T Patil. *New face of Terrorism 22* (Delhi: Author press, 2008).

[29] *Ibid.*

## ORGANISED CRIME AND TERRORISM

The dominating, not least controverter, job of Organised is one of the most significant, yet, unexpected marvels of the new century. As the twenty first century unfurls and witnesses more psychological militant occurrences strict supports stay in the spotlight. Thinking about both the causes and the impacts of this new reality Bruce Hoffman reasons that it is maybe not astonishing additionally that Organised ought to turn into an undeniably increasingly well known inspiration for psychological oppression in the post–cold war period as old belief systems falsehood defamed by the breakdown of the Soviet Union and socialist philosophy, while the guarantee of big-hearted profits by the liberal-law based, entrepreneur state, obviously triumphant at what Francis Fukuyama in his popular apothegm has named the "finish of history," neglects to emerge in numerous nations all through the world . Organised is viewed as one of the focal highlights and the transcendent model for what has been marked the 'new psychological oppression' (in spite of the fact that specialists in fear based oppression exhort that the other common inspirations, ought not be totally disposed of from the image). Past signs of savagery and demonstrations of fear mongering connected to Organised could be followed far back ever; indeed, they speak to the primary indications of psychological oppressor acts. David Rapport, reliably contention that until the nineteenth century the avocations for fear based oppression was given by Organised. The most refered to models are in association with the fanatics, the hooligans, the professional killers. Their activities, business as usual and effect are like those we are seeing in the twenty-first century; an examination of the Zealots-Sicarii's demonstrations of viciousness shows that they were intended to have mental repercussions a long ways past the quick casualties of the psychological militant assault and accordingly to send an incredible message to a more extensive, watching objective group of spectators to be specific, the Roman occupation

organization and Jews who worked together with the intruders. For a superior comprehension of present day strict fear mongering one needs to follow its underlying foundations, back to the Iranian insurgency of 1979 with its message of opposition against the Western intercession in the Middle East, and bid to the educating of Quran; its development was quick and complex, traversing from the 1994 commandeering of an Air France traveler fly by Islamic psychological oppressors having a place with the Algerian Armed Islamic Group, the 1995 sarin nerve gas assault on the Tokyo metro framework by a whole-world destroying Japanese strict faction, the 1993 besieging of New York City's World Trade Center by Islamic radicals, the 9/11 psychological oppressor assault, to just name a couple of the most type ones. A top to bottom examination of their causes, points and indications would subsequently prompt the end that they epitomized in different degrees strict components.

For Olivier Roy the strict articulation of fear based oppression has a twofold measurement: (1) The Muslim foundation of the greater part of the radicals, which 'makes them open to a procedure of reislamisation (practically none of them being devout before entering the procedure of radicalisation)'; (2) 'in the event that you murder peacefully, it will be accounted for by the neighborhood paper; on the off chance that you slaughter shouting "Allahuakbar", you make certain to make the national features. The ultra-left or radical nature is excessively "middle class" and scholarly for them'.

The jargon utilized by Bin Laden to express al Qaeda's demonstrations of fear is basically Organised. For Hoffman this is a reasonable marker that, " when the unoriginal powers of financial determinism and globalization were thought to have submerged the capacity of a solitary man to influence the course of history, receptacle

Laden has adequately merged the strands of strict intensity, Muslim devotion, and a significant feeling of complaint into an incredible ideological power .

The rhetoric utilized by Bin Laden inferred a strictly mixed legitimization dependent on the battle between the devotees and the heathens, and the essentialness of jihad for all Muslims. Subside Berger, one of the most steady voices in dissecting the complexities of the strict marvel holds that 'radical Islam is a cutting edge wonder as in each fundamentalist Organised is an advanced marvel, regardless of whether you take the first significance of "fundamentalism" in American Protestant.

## Islam links to Violence

Many of the terrorist groups that have appeared had objectives than have been based in their organised views. Al Qaeda has sought policy changes within Islamic countries and changes in their political system and changes in the foreign policies of other countries. In some cases, the organised groups may have sought or may be seeking to reduce secular influences and to introduce more organised laws into the land.

Extreme Islamic groups in a number of countries have sought to force the incorporation of more Islamic prescriptions into national legal codes. Other Organised groups have sought to gain autonomy for their Organised or greater rights for their group within a country where they might have been facing discrimination due to their minority position. Protestants in New Guinea and Indonesia, Muslims in southern Thailand, Sikhs in India, Christians and followers of traditional Organised in southern Sudan have all relied on violent attacks and terrorism in what they perceived as efforts to protect their organised groups. Anti-abortion groups in the United States have also been motivated by organised beliefs.

It is also possible for members of the dominant Organised groups to use violence against minority Organised groups, often in efforts to drive them out of the country. Muslims in Indonesia have attacked the Christian minorities in some areas of the country since they are seen as obstacles to creating a more Islamic state[30].

The ancestry of the Islamic individuals starts with Abraham and his first child, Ishmael. The Islamic confidence emerged somewhere in the range of 2,700 years after the fact, in seventeenth century Saudi Arabia, from the coming to of "the Prophet." The exercise of the Prophet was passed down to adherents through his followers, known as the "caliphate," who were the pioneers of the universal network of Islam.

Similarly as with different beliefs, it isn't hard to discover references to Islam both as a Organised of harmony and as one of brutality. Numerous Muslims have come to revere the mujabideen, or sacred warriors, for attempting to secure the enthusiasm of Islam not just in the wars against heathen's somewhere else. The essential connections from Islam to brutality by and large and to fear based oppression specifically are through people who have consolidated fundamentalism with destructive narrow mindedness and militancy.

Salafist and Wahhabist schools draw in enormous quantities of powerless young men and youngsters, who commonly have no open door for mainstream instruction. The schools fill them with red hot thoughts that give their lives new importance; at that point the schools regularly orchestrate them to be sent our into fight against the unbelievers, regardless of authentic Saudi debilitation of savagery as a real way to accomplish consecrated finishes.

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[30] Lutz J.B, *Global terrorism23* (Routledge, London, 2008).

# CHAPTER V

# INTOLERANCE IN INDIA

## INTRODUCTION

Human birth is an ascription of sorts, ascription to a certain race, status, caste and Organised. Whether such ascriptions are capable of revision and if so then to what extent have been a subject of human inquiry, a social project as well as contemporary political philosophy.

Any discussion on Organised in public sphere in India automatically brings the spotlight on secularism or more specifically Indian model of secularism[31]. There can be no universal model of secularism as there is no universal Organised[32].

*Donald E. Smith explains that, "To most Indians, secular means non- communal, or non-sectarian, but it does not mean non-Organised". The basis of secular state is not a „wall of separation" between state and Organised but rather „no preference doctrine" which requires that no special privilege be granted to any one Organised. The secular state includes the principle that the function of the state must be non-Organised[33]".*

Organised put out great influence in south Asia. It has a force bonding people into a community as well as a carrier of customs and traditions. The growing influence is evident in celebration of festivals and observation of rituals. Organised enters every

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[31] United States Commission on International Organised Freedom, Special report on Constitutional and Legal Challenges Faced by Organised Minorities in India1 (Feb. 2017). *Retrieved From*: www.uscirf.gov., IST 19:17, on 20-09-2018.

[32] Talal Asad, *Formations of the Secular 222* (Stanford University Press, Stanford, 2003).

[33] Donald E. Smith, *India as a Secular State 381* (Princeton University Press, New Jersey, 1963).

sphere of life from birth to death the conception of ideal society, what one eats and wears, what are one"s duties in life towards others, procreation; life hereafter and numerous other aspects are determined by Organised[34].

## RIGHTS TO ORGANISED CIMES

Indian constitution in its Part III provides endorsement to freedom of Organised Crime in India. This freedom is reserved not just for Indian citizens but is also conferred on anyone who resides in India. It becomes amply clear from the words of Article 25 of the Indian Constitution, which states that,

*"All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate Organised, Subject to public order, morality and health and to the other provisions of this Part".*

India is secular country and has no state Organised. It has developed over the years its own unique concept of secularism. It is fundamentally different from the parallel American concept of secularism, requiring complete separation of church and state. It is also different from the French ideal of Laicite[35].

Freedom of Organised has always been recognized by liberal regimes as a fundamental right. A right intended to enable believers to carry out their organised practices without interference.

The framer of Indian Constitution envisaged a model of secular political system. It protects all Organised with equal regard, but under the framework of an egalitarian social order, governed by the principles of welfare state consistent with the

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[34] Rajeev Bhargava, ed., *Secularism and its critics 477* (Oxford University Press, New Delhi, 1998).

[35] *SP Mittal vs. Union of India* AIR 1983 SC 1

progressive enhancement of human dignity. The state's approach towards Organised is that it maintains a principled distance from Organised. This does not prohibit the state to intervene when practice of Organised contravenes public order, morality, health, egalitarian social order and objectives of the welfare state intended for integrated development of the individuals and communities. State intervention or non-intervention in the practice of Organised depends upon which of the two better promotes substantive values like Organised liberty, egalitarian social order, social justice and Organised harmony which are constitutive of a life worthy of human dignity for all.

In this context, the courts in India have taken upon themselves the task of giving judicial definition to Organised" protected under the secular provisions of the country"s constitution. The Indian courts have the burden of doing the sensitive job of differentiating matters of Organised protected under the same provisions from matters of secular interest added or associated with Organised practices, which may be liable to the action of the state when needed to maintain common good and to promote social welfare and reform. The contribution of courts is very useful for us to understand the fundamental principle underlying the political philosophy of Indian secularism. Article 25 to30 and 325 of the Indian constitution contain the secular provisions. The centre provisions are given in article 25 and 26 which deal with individual and corporate freedom of Organised.

One of the rights guaranteed by the Indian Constitution is the right to Freedom of Organised. As a secular nation, every citizen of India has the right to freedom of Organisedm i.e. right to follow any Organised. As one can find so many Organised being practiced in India, the constitution guarantees to every citizen the liberty to follow the Organised of their choice. According to this fundamental right, every

citizen has the opportunity to practice and spread their Organised peacefully. And if any incidence of organised intolerance occurs in India, it is the duty of the Indian government to curb these incidences and take strict actions against it. Right to freedom of Organised is well described in the Articles 25, 26, 27 and 28 of Indian constitution[36].

Freedom of Organised has been recognised by liberal regimes as a fundamental right. Now a day, this concept has acquired additional freedom of Organised Crime and also including freedom from Organised.[37]

The concept of freedom of Organised crime assumes a symmetry between the need to protect believers in the practice of their Organised crime , and it need to protect non-believers in the pursuit of a non- Organised life style. It is assumed that, believers should be allowed to worship beliefs so non-believers should not have their life style by organised demands. It has been argued that road running through an orthodox Jewish neighbourhood were to be closed to traffic on the Sabbath, it would be violate the right from Organised of the non- observant whose use of the road2 would be restricted. Similarly, a law prohibiting the sale of goods on the Sabbath would violate, would be vendor"s freedom from organised crime[38].

Freedom of Organised crime is usually perceived as narrower and different focus than freedom from Organised Intolerance. The former concerns a right to engage in some practice while the latter concerns a right to be free of laws motivated by a certain set of reasons. Laws enjoining a wide range of behaviours, including, Organised

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[36] V.D.Mahajan, Constitutional Law *232 (Eastern Book Company, Lucknow, 1984)*

[37] Kathleen Sullivan, *Organised and Liberal Democracy197* University of Chicago Law Review 59 (1992),

[38] *Horev v. Minister of Transport* (H.C. 5016/96) 51(4) Piskey Din (1997)93

practices. The freedom from Organised in some sense parallel or analogous to freedom of Organised is freedom from organised practice. The concept of freedom from Organised as freedom of conscience is to be found in the "Canadian ruling", "this company was accused of selling goods on Sunday, in contravention of the Lord"s Day Act". The company claimed that this act violates of Section II of the Canadian Convention of Rights and Freedoms, which guarantees, freedom of conscience and Organised. The Canadian Supreme court accepted this argument, claiming that the freedom of Organised mentioned in the convention applies principally to the freedom to maintain Organised beliefs and practices, but also includes, freedom of Organised, which means, freedom from state coercion that is motivated by some Organised view. The court claimed that, "the law required that all citizens, remember that the day is holy to Christians and even non-believers are obliged to protect its sanctity, demand that is incompatible with section II of the convention[39]".

In the prevalent position, freedom of Organised does not include freedom from Organised. Symmetry between these two freedoms, the protection of consciousness occurs only when secular people are coerced to participate actively in Organised ceremonies. In such cases, secular people can claim to their conscience as a result of the restriction of their freedom.

Interpreting the constitutional provisions relating to freedom of Organised the Supreme Court has observed:

*"The right to Organised guaranteed under Articles 25&26 is not an absolute or unfettered right; they are subject to reform on social welfare by appropriate*

[39] *R. VS. Big M Drug Mart Ltd.* (1985) SCR 295.

*legislation by the state. The court therefore while interpreting Article 25 and 26 strikes a careful balance between matters which are essential and integral part and those which are not and the need for the State to regulate or control in the interests of the community"*[40].

## Freedom to Adopt, Change or Renounce a Organised or belief UDHR

*"Everyone has the right to freedom of thought, conscience and* Organised*; it includes freedom to change his Organised or belief".*

**ICCPR**

Article 1

*"Everyone shall have the right to freedom of thought, conscience and* Organised*. This right shall include freedom to have pr adopt a Organised or belief of his choice".*

**Declaration of the General Assembly, 1981**

Article 2

*"Everyone shall have the right to freedom of thought, conscience and* Organised*. It shall include freedom to have a Organised or whatever belief of his choice".*

**Human Rights Committee General Comment 22**

*Para 3:"Article 18 does not permit any limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a Organised or belief of one"s choice".*

*Para 4:*

[40] *AS Narayana Deeshitalyu v. State of Andhra Pradesh* (1996) 9 SCC 548.

*"The Committee observes that the freedom to „have or to adopt" a Organised crime or belief necessarily entails the freedom to choose a Organised intolerance or belief, including the right to replace one"s current Organised or belief with another or to adopt atheistic views, as well as the right to retain one"s Organised or belief".*

**International Covenant on Civil and Political Rights, 1966**

*Article 5:*

*"to have or to adopt a Organised of one"s choice".*

**Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Organised or Belief**

**General provision for them,**

*"Freedom to have a Organised or whatever belief of one"s choice".*

The right to Organised guaranteed under Article 25 and 26 is not an absolute right; they are subject to reform on social welfare by appropriate legislation by the State. The Supreme Court while interpreting Article, give numerous other rulings, explaining the scope and connotation of the Organised liberty provisions in the Constitution.

*Sardar Suedna Taiiir Saifiiddin vs. State of Bombay, "Articles 25-30 embody the principles of Organised tolerance that has been the characteristic feature of Indian civilization from the start of history. They serve to emphasize the secular nature of Indian democracy which the founding fathers considered should be the very basis of the Constitution"*[41].

Ratilal Panachand Gandhi v State of Bombay,

[41] AIR 1962 SC 853

*"Freedom of conscience connotes a person's right to entertain beliefs and doctrines concerning matters which are regarded by him to be conducive to his spiritual well being*[42].

Punjab Rao v DP Meshram,

*"To profess a Organised means the right to declare freely and openly one's faith"*[43].

*Ratilal Panachand Gandhi v State of Bombay,* "Organised practices or performances of acts in pursuance of organised beliefs are as much a part of Organised as faith or belief in particular doctrines"[44].

*Seshammal v State of Tamil Nadu,* "What constitutes an integral or essential part of a Organised or Organised practice is to be decided by the courts with reference to the doctrine of a particular Organised and includes practices regarded by the community as parts of its Organised"[45].

*Ismail Paruqi v Union of India, "The right to profess, practise and propagate Organised does not extend to the right of worship at any or every place of worship so that any hindrance to worship at a particular place per se will infringe Organised freedom*[46].

Commissioner, Hindu Organised Endowments, *Madras v Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, "Under Article 25 to„propagate" Organised means „to*

[42] AIR 1954 SC 388

[43] AIR 1965 SC 1179

[44] AIR 1954 SC 388

[45] AIR 1972 SC 1586

[46] (1994)6 SCC 360

*propagate or disseminate his ideas for the edification of others' and for the purpose of this right it is immaterial 'whether propagation takes place in a church or monastery or in a temple or parlour meeting'"*[47].

*SK Mittal v Union of India, "To claim to be a Organised denomination a group has to satisfy three conditions: common faith, common organization and designation by a distinctive name"*[48].

*Jagannath Ramanuj Das v State of Orissa*, "The expression 'matters of Organised' in Article 26 extends to acts done in pursuance of Organised and covers rituals, observances, ceremonies and modes of worship"[49].

*Dargah Committee v Husain, "*The expression 'matters of Organised' in Article 26 extends to acts done in pursuance of Organised and covers rituals, observances, ceremonies and modes of worship"[50].

Ramanuj v Tamil Nadu State, "A Organised denomination has the right to lay down the rites and ceremonies to be performed by its members"[51].

*Govt. of Tamil Nadu v Ahobila, "*A 'common burden' (e.g., land revenue) which is imposed on all does not violate the right of a Organised denomination"[52].

*Narendra v State of Gujarat, "*Property of a Organised denomination violating the agrarian reform and land ceiling laws can be lawfully acquired by the State"[53].

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[47] AIR 1954 SC 282

[48] AIR 1983 SC 1

[49] AIR 1954 SC 400

[50] AIR 1961 SC 1402

[51] AIR 1972 SC 1586

[52] AIR 1974 SC 245

[53] AIR 1974 SC 2098

*Ratilal Panachand Gandhi v State of Bombay, "*A law which takes away the right of administration from a denomination and vests it in a secular body would infringe upon the Constitution"[54].

*Commissioner, Hindu Organised Endowments v LT Swamiar, "*Since the State is secular and freedom of Organised is guaranteed both to individuals and groups, it is against the constitutional policy to pay out of public funds any money for the promotion or maintenance of a particular Organised"[55].

**Organised Conversion**

The freedom of Organised starts getting murky over the issue of Organised conversion. What further compounds the issue is the absence of any explicit right to convert in the provisions relating to the concerned fundamental right in the Constitution. The apex court was, in a number of cases before it, presented with an opportunity to delve upon whether the right to propagate entails the right to convert because the former is a fundamental right and the latter becomes illegal if done forcibly.

*Ratilal Panachand Gandhi* v. *State of Bombay*[56], "Supreme Court of India said that under article 25 of the Indian Constitution, "every person has a fundamental right under our Constitution not merely to entertain such Organised belief as may be approved of by his judgement or conscience but to exhibit his belief and ideas in such

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[54] AIR 1954 SC 388

[55] AIR 1954 SC 282

[56] Grover Varinder, *Trends and Challenges to Indian political system* 159 (Deep and Deep Publication, New Delhi, 1990)

overt acts as are enjoined or sanctioned by his Organised and further to propagate his Organised views for the edification of others".

**Origin of Secularism**

Secularism as a concept is very intensely rooted in Indian history. It has been there in Indi since time immoral. Different Organised have been practice in India by different communities of India and the ruling persons in society were restricted from imposing any particular Organised on any community. After the Mughals as well as colonial era, Ashoka (The Great) and Harshvardan about 2200 years and 1400yers respectively, accepted and practiced various Organised. More over Ellora cave temple which was built next to each other during 5th and 10th century depicted a coexistence of organised faith and its spirit[56]. Furthermore it was seen that there was also a trend of tolerance because of state policies by different kings like: Ashoka and Akbar. Various Organised sects and practices entirely ignored the stubborn Organised forms. But however, various examples of forced conversion to Islam during period of Aurangzeb and other rulers as well as Organised tax Jizya" were also introduced[57].

**Indian Constitution**

The Constitution of India defines secularism as not discriminating against any individual or community on the basis of Organised[58]. The words "socialist, secular" were inserted by the Constitution (Forty Second Amendment Act), 1976 on the recommendations of the Swaran Singh Committee. In practice, the word "Secular" had come to mean impartiality by the Government in matters of faith

[57] Chandra Parkash, *Indian politics and state "Secularism* 279 (Chandra Lok Prakasan Kanpur, 1999)

[58] Anand ShankarPandya, *Indian Secularism: A Travesty of Truth and Justice*10 (Aswad Prakashan Pvt. Ltd., Mumbai, 1998)

and Organised in contrast to a theocratic State[59]. The makers of the Indian constitution conceived of India as a secular state, although as a result of the considerable ambivalence of the Constitution makers, the document promulgated in 1950 nowhere mentioned the term "secular"[60]. *S.R. Bommai* v. *Union of India*[61], A.M. Ahmadi, J Observed that, *"There is no need to define the word "secular" in view of the various constitutional provisions which make it amply clear that India is a secular country. Every citizen, whatever his or her Organised may be, is entitled to the same fundamental rights and is subject to the same fundamental duties and obligations".*

In the constituent Assembly Prof K.T Shah moved an Amendment which proposed that it should be provided in the constitution that under Article28 No Organised instruction shall be provided by the state in any educational institution wholly or partly maintained by state fund. In order to understand the full implication of the Article we can classify the educational institution into 4 types. Firstly, there are purely private Institutions which are neither receiving any aid from state funds nor recognised by it. There is no bar of being given Organised instructions in this institution. The second types of institution are those which are run by the state or wholly maintained by the state. All government school and colleges are coming under this category and no organised instruction can be imparted in this institution. The third types refer to educational institution which are administered by the state by the state

[59] Subhash C. Jain, *The Constitution of India: Select Issues and Perceptions*18 (Taxmann Publications, 2000),
[60] Satish Chandra, *The Indian National Movement and Concept of Secularism* 15 (New Delhi: Segment,2000)
[61] 1994 3 SCC 1

but has been established under any endowment or trust. In such institution imparting of organised instruction is not prohibited[62].

## The Evaluation

The Indian constitution makes the state to observe Dharma Nirpeksh. But our country is stepped in Organised. Organised feeling govern our mode of thinking and observance of Organised festivals and rituals as part of our day to day life[63].

Uniform civil code introduce in the Directive principle of state policy of Indian constitution but unfortunately till now no progress has been made for its evolution and today its adoption appears to be more problematic than it was at the time when the constitution was framed. Some section of minorities claims it is a way of imposing majority view on them. In spite of the case won by Saha Bano against her husband in the year1978, different organised communities have different personal laws which led to politicization[64]. The failure of the government to evolve a just economic order and eliminate poverty also gave a serious setback to secularism. The common masses suffering from poverty could not develop any faith in polity which failed to provide them basic necessities and consequently did not attach any importance to secular value[65]. Secular ideas and minds of young students and promote feeling of mutual give and take has encouraged by defective education system. It is however apprehended that since, student will remain in dark about different Organised because no instruction is given about any Organised in schools. The consequent of general

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[62] *Ibid*

[63] Vasundhara,Mohon, *Problems of Secularism in India* 4 (Aswad Prakashan, Pvt. Ltd, Mumbai, 1998)

[64] Chandra,Prakash, *Indian Govt. and Politics" A study of Indian Political System* 515 (Cosmos Book Hive Pvt. Ltd., 2000)

[65] Puja Mandal, *Problems of Secularism in India 521* (Cosmos Book Hive Pvt. Ltd., 2000)

ignorance and misunderstanding about various Organised may create conflict and tension among the citizens[66].

The distortion of constitutional and democratic Institution has also greatly contributed to the weakening of secularism in India. The constitution and political institution have not worked the way they were enriched by the framer of the constitution. For example: though the use of Organised is not permitted for votes. Yet certain organised political parties have made free use of use of factors like organised, caste etc to secure votes[67].

BJP maintains that our present Secularism is pseudo secularism, as it is appeasement of the minorities. Our political leaders have been help less prisoner of electoral politics and vote arithmetic. Their first concern has been to create favourable vote bank

.According to their understanding Muslim constitute the biggest vote bank as they generally vote as a community, while the Hindu consciousness at political level gets fragmented along caste, linguistic and regional lines. Therefore these politicians under the covers of secularism try to appeal to organised sentiments of Muslim by raising bogey of majority communalism and Hindu chauvinism etc. Their secularism has always been negative in character[68].

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[66] *ibid*

[67] Mandal Puja, *Problems of Secularism in India* 10 (Oxford University Press, New Delhi, 1998)

[68] Mahatab , Alam Razvi "Secularism in India Retrospect and prospect" "The Indian Journal of political science Vol-66,No-$,Oct to Dec.2005 P.P-901-914 Published by Indian Political Science Association.

## SECULARISM IN INDIA

Some conceptual clarifications of secularism are in order before delving into theoretical framework of this paper. Secularism has generally been understood to mean the separation of Organised from the policy and practice of the state. However, there has been debate about precisely what this „separation" entails. For some, the secularity of the state requires that no support be given to Organised in any form, while for others it entails supporting all organised to the same degree. In India, secularism takes the latter form where the state assumes a more interventionist role in the organised domain. For example, it has attempted to promote reform and progress within Organised so that discrimination, conflict, and persecution are prevented[69].

It is useful to utilize a distinction between secularism and secularization from Achin Vanaik"s book *The Furies of Indian Communalism*. By secularism, he means the specific practices and policies the state uses to assert its independence from the organised domain. On the other hand, secularization is used to refer to a more general process of decline in organised influence and organised identity in modern life. Pierre Van Den Berghe presents a strong critique of policies that seek to recognize ethnic communities through the conferral of group rights and special privileges. He argues that such a predicament has "generated a spiral of escalating stridency and frequently, violence. India has become the country where caste and communal violence are the most routine, institutionalized order of the day." It is important to note that Van Den Berghe is making an indirect critique of the interventionist practices of secularism in India. He draws a link between the Indian secular practice of recognizing Organised identity on the basis of group rights and the escalating levels of Organised violence,

[69] Rajeev Bhargava, *Secularism and its Critics* 8 (Oxford University Press, New Delhi, 1998)

since „ethnic consciousness is increased and social cleavages deepened" by such policies.

## ORGANISED INTOLERANCE

Organised intolerance is on the rise in India, despite its founding as secular democracy. A leading Hindu praised attacks on Christian churches, saying they are not places of worship but rather "factories for conversion of Hindus into Christianity". He went on to urge the central government to protect those who carry out attacks. The Catholics Bishops Conference of India strongly condemned these remarks as "highly provocative and irresponsible". They highlighted the escalating violence against Christians and other minorities. India is a land where different faiths were born and have long thrived. It is believed that the Apostle Thomas introduced Christianity in the first centaury AD and Islam arrived in the 7$^{th}$ century. India now has the third largest Muslim population in the world. The 1950, Indian Constitution declared the country to be a secular republic guaranteeing freedom of Organised Intolerance.

When facing beliefs of which one disproves. On the other hand, tolerance implies a basic acceptance, not of other faiths, but of other people"s right to hold and manifest their faiths.

# CHAPTER VI

# JUDICIAL PRONOUNCEMENT

**Supreme Court of India**

**A.R. Antulay vs R.S. Nayak & Anr on 29 April, 1988**

**Equivalent citations: 1988 AIR 1531, 1988 SCR Supl. (1) 1**

**Bench: Mukharji, Sabyasachi (J), Misra Rangnath, Oza, G.L. (J), Ray, B.C. (J) Venkatachalliah, M.N. (J), Venkatachalliah, M.N. (J) Rangnathan, S.**

## Introduction

This is a case between a Chief Minister whose fundamental right has been violated, and a person with political affiliation, where the Supreme Court gave the landmark judgment stating that the directions given by the court breached Section 7(1) of the Criminal Law (Amendment) Act, 1952 and was violative of Fundamental Rights of the appellant under Article 14 and 21 of the constitution.

## Background of the case

Before the landmark judgment of A.R Antulay v. R.S Nayak, the court did not have the awareness on the nature of the jurisdiction of the Special court and gave directions. But after the judgment in 1988, it was specified that the Supreme Court cannot transfer corruption case to a High court judge. Later, in 2014 in Sahara's case, Supreme Court found that Antalya's case to be an irrelevant precedent for that case and the 1988 judgment should be used as a precedent, confined to the facts and circumstance of the cases.

## Facts

The appellant was the Chief Minister of Maharashtra from June 1980. On 1st September 1981, a person from Bharatiya Janata Party applied to the Governor of the state under Section 197 of the Criminal Procedure Code of, 1973 and Section 6 of the Prevention of Corruption Act, 1947 for the sanction to bring the suit against the appellant. Subsequently, the respondent filed a complaint in the Additional Metropolitan Magistrate, Bombay opposing the appellant and others for offences under Section 161,165 and also 384 and 420 read with Sections 109 and 120 B of the Indian Penal Code and Section 5 of the Prevention of the Corruption Act. The Magistrate refused to take the judicial notice for the offences without the sanction for prosecution. After this, a revision was filed in the High Court of Bombay. Thereafter the appellant on 12th January 1982 resigned the position of Chief Minister with respect to the judgment given by the Bombay High Court.

Then in July 1982 the Governor Sanctioned 3 subject out of five items and refused to sanction all other items. Then a fresh complaint was lodged before the Special judge with many more allegations including the allegation rejected by the Governor. The Special Judge, Shri P.S. Bhutta issued processed to the appellant without depending on the sanction order gave by the Governor. On 28th October 1982, Shri P.S. Bhutta rejected the appellant's objection regarding the jurisdiction and specified 3 Special Judges of that area to try such cases. The State Government appointed R.B.sule as a Special Judge. The Special judge discharged the appellant stating that a member of the Legislative Assembly is a Public Servant and there was no valid sanction to bring legal proceedings against him.

# ARUNA RAMCHANDRA SHANBAUG V. UNION OF INDIA: CASE ANALYSIS

## INTRODUCTION

The Constitution of India guarantees 'Right to Life' to all its citizens. The constant, ever-lasting debate on whether 'Right to Die' can also be read into this provision still lingers in the air. On the other hand, with more and more emphasis being laid on the informed consent of the patients in the medical field, the concept of Euthanasia in India has received a mixed response.

The Hon'ble Supreme Court of India, in the present matter, was approached under Article 32 of the Indian Constitution to allow for the termination of the life of Aruna Ramchandra Shanbaug, who was in a permanent vegetative state. The petition was filed by Ms. Pinki Virani, claiming to be the next friend of the petitioner. The Court in earlier cases has clearly denied the right to die and thus legally, there was no fundamental right violation that would enable the petitioner to approach the court under Article 32. Nonetheless, the Supreme Court taking cognizance of the gravity of the matter involved and the allied public interest in deciding about the legality of euthanasia accepted the petition.

## FACTS

It was stated that the petitioner Aruna Ramachandra Shanbaug was a staff Nurse working in King Edward Memorial Hospital, Parel, Mumbai. On the evening of 27th November, 1973 she was attacked by a sweeper in the hospital who wrapped a dog chain around her neck and yanked her back with it. He tried to rape her but finding that she was menstruating, he sodomized her. To immobilize her during this act he twisted the chain around her neck. The next day, a cleaner found her in an

unconscious condition lying on the floor with blood all over. It was alleged that due to strangulation by the dog chain the supply of oxygen to the brain stopped and the brain got damaged.

## FINDINGS OF THE COURT APPOINTED DOCTORS

The respondents, KEM Hospital and Bombay Municipal Corporation filed a counter petition. Since, there were disparities in the petitions filed by the petitioner and respondents, the court decided to appoint a team of three eminent doctors to investigate and report on the exact physical and mental conditions of Aruna Shanbaug.

They studied Aruna Shanbaug's medical history in detail and opined that she is not brain dead. She reacts to certain situations in her own way. For example, she likes light, devotional music and prefers fish soups. She is uncomfortable if a lot of people are in the room and she gets distraught. She is calm when there are fewer people around her. The staff of KEM Hospital was taking sufficient care of her. She was kept clean all the time . Also, they did not find any suggestion from the body language of Aruna as to the willingness to terminate her life. Further, the nursing staff at KEM Hospital was more than willing to take care of her. Thus, the doctors opined that that euthanasia in the instant matter is not necessary.

## ANALYSIS

To be able to adjudicate upon the aforementioned issues, the court explained as to what is euthanasia. Euthanasia or mercy killing is of two types: active and passive. Active euthanasia entails the use of lethal substances or forces to kill a person e.g. a lethal injection given to a person with terminal cancer who is in terrible agony. Passive euthanasia entails withholding of medical treatment for continuance of life,

e.g. withholding of antibiotics where without giving it a patient is likely to die, or removing the heart lung machine, from a patient in coma.

A further categorization of euthanasia is between voluntary euthanasia and non-voluntary euthanasia. Voluntary euthanasia is where the consent is taken from the patient, whereas non-voluntary euthanasia is where the consent is unavailable e.g. when the patient is in coma, or is otherwise unable to give consent. While there is no legal difficulty in case of the former, the latter poses several problems. The present case dealt with passive non-voluntray euthanasia.

**Supreme Court of India**

**Ms. Aruna Roy And Others vs Union Of India And Others on 12 September, 2002**

**Bench: M.B. Shah**

CASE NO.: Writ Petition (civil) 98 of 2002

PETITIONER:
Ms. Aruna Roy and others

Vs.

RESPONDENT:
Union of India and others

DATE OF JUDGMENT: 12/09/2002BENCH:

**JUDGMENT**

In this public interest litigation filed under Article 32 of the Constitution of India, it has been mainly contended that the National Curriculum Framework for School Education (hereinafter referred to as the "NCFSE") published by National Council of Educational Research and Training (hereinafter referred to as "NCERT") is against the constitutional mandate, anti-secular, and without consultation with Central Advisory Board of Education (hereinafter referred to as "CABE") and, therefore, requires to be set aside. Admittedly, CABE is in existence since 1935 and it is submitted that uptil now before framing the new NCFSE, the CABE was always consulted.

1. The respondents have not sought the approval of the Central Advisory Board of to the National Curriculum Framework for School Education 2000 and without obtaining the approval of the CABE, the NCFSE cannot be implemented.

2. The NCFSE and the Syllabus framed thereunder are unconstitutional as the same are violative of the rubric of secularism which is part of the basic structure of our Constitution. The NCFSE and the Syllabus are also violative of the fundamental right to education, fundamental right to development, fundamental right to information (which has all been read into the right to life under Article 21) and also Articles 27 and 28 of the Constitution of India.

Non-Consultation with CABE We would first deal with the contention that non-consultation with CABE before framing National Curriculum is unjustified and, therefore, it cannot be implemented. It is submitted that the CABE is a pivotal and the highest body in the matters pertaining to education and has always played an important role in evolving any national document/policy pertaining to education as it not only has the required expertise but also an effective mechanism for State-Centre coordination.

As per the Resolution dated 10th April, 1986 issued by the Ministry of Human Resource Development (Department of Education), Government of India, the functions of the CABE are as under :-

"**1**. The Central Advisory Board of Education was last constituted in April 1982 and its term expired in September, 1985. In view of the widespread demand throughout the country recently voiced in the context of the formulation of New Educational Policy for more effective role of the Central and State Governments and between State Governments and local bodies and non- governmental agencies; importance being given to human resource development; and the decision to formulate the New Education Policy, it has been felt necessary to redefine the functions of CABE.

**2. The revised functions of CABE would be:**

(a) To review the progress of education from time to time;

(b) To appraise the extent and manner in which the education policy has been implemented by the Central and State Governments, and other concerned agencies; and to give appropriate advice in the matter;

(c) to advise regarding coordination between the Central and State Governments/UT Administrations, State Governments, non- governmental agencies, for educational development in accordance with the education policy; and

(d) to advise, suo moto, or on a reference made to it by the Central Government or any State Government or by a Union Territory Administration on any educational question.

# Ayodhya Case: India's longest running Dispute

## Introduction

India is a unique country which is adopting advancement rapidly and is also known for its diversity at the same time. In India, people have strong feelings and respect for their religion and religious ceremonies. It is good as well as bad for them also. Normally, we think that we should be loyal towards our god, respect our religion. But at the same time, politicians take advantage of these feelings. They use to connect their policy and agenda with religion and try to influence people to vote. Politicians use the concept of "Divide and rule" by influencing and manipulating people with the help of their religious feelings and emotions towards their god. We have also heard about religious violence. It is not a hidden phenomenon in a country like India. India has adopted the principle of secularism in the Constitution in order to preserve, protect and maintain the culture and traditions of all the religions. Notwithstanding, varying mindsets and different beliefs of people leads to disharmony in the society which further leads to violence and disturbance. Some disputes are very prolonged which require trial in the court of law. One such dispute arose in the case of M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors, popularly known as Ayodhya Dispute Case. You may also hear the slogan and song "Mandir wahi banayenge" in your society. Now we will try to discuss history, background, issues raised and verdict passed in this case.

**M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors**

This case is popularly known by the name of "Ayodhya Dispute Case". This case witnessed all the Prime Minister of Independent India. This dispute is a social, religious, historical and political debate in India which centred on a plot of land in the

city of Ayodhya, Uttar Pradesh. This was a very prolonged case and finally, the Supreme Court passed a verdict for case on dated 9th November 2019.

## Facts of the Case

It was the story of an Ayodhya city which cohabits both, Hindu (who claim birthplace of Lord Rama) and Muslim (who see it as a city which locates Babri Mosque which was built by first Mughal emperor, Babur in 1528). First religious violence in Ayodhya occurred in the year of 1850 over a nearby mosque at Hanuman Garhi. In this process, the Babri Mosque was attacked by Hindus. Local Hindus always demand occasionally for the possession of the land where Babri mosque was established and they should be allowed to build a temple on that land. They believed that the Babri mosque was built by breaking a Hindu Temple. But, their demand was always refused by the Colonial Government. On 22nd December 1949, an offshoot of Hindu Mahasabha called Akhil Bharatiya Ramayana Mahasabha (ABRM) organised 9 days continuous recitation of Ramcharitmanas. At the end of which, Hindu activists broke into the mosque and established idols of Rama and Sita inside. Jawaharlal Nehru ordered to remove idols but the same was refused by a local official, K.K.K. Nair (known for his Hindu nationalist connections), claiming it would lead to communal riots. The Police locked the gates and entry was banned for both, Hindu as well as Muslim. Priests were allowed to enter for daily worship as idols were present inside and Mosque had been converted into a de facto temple. Both Sunni Waqf Board and AMRM filed a civil suit in local court claiming their religious rights on site.

## Issues Raised

The issue of this case revolved around the possession of land traditionally regarded as the birthplace of Lord Rama and the history of Babri Mosque.

One of the major issues of this case was:-

Whether a previous Hindu temple was demolished or modified to construct a mosque by Babur?

Written submission of parties to the case

After the long hearing of 14 days, the Supreme Court has given 3 days to all the parties of this case to give written submission and clear what are they actually praying. Following are the summary of written statements by different parties to this case:-

Nirmohi Akhara

- In the event that the verdict comes in favour of one of the Hindu parties, the Akhara should retain the right to serve the deity.
- The authorization to build a Ram temple on the disputed site and Nirmohi Akhara should be authorized to manage the premises once the temple is built.
- If the court decides to confirm the verdict of the High Court of Allahabad in 2010 and the Muslim parties declare that they will not do any construction on the disputed site, the court should ask the Muslim parties to give their share of the land to the Hindu parties. on a long-term lease so that a large Ram temple can be built. (The verdict of the High Court of Allahabad had divided the disputed land into three parts: the Sunni Waqf Council, the Nirmohi Akhara and Ram Lalla)
- The court should order the government to provide land to the Muslim side to build a mosque outside the conflict area.

**Ram Lalla Virajman**

- The written submission on behalf of Ram Lalla Virajman says that the court should give all of the lands in dispute to Ram Lalla.

- The statement stated that no part of the disputed land should be given to the Nirmohi Akhara or the Muslim parties.

**Ram Janambhoomi Punar Sudhar Samiti**

- Only a Ram temple should be allowed to be built on the disputed site in Ayodhya.
- Once the temple is built, a trust must be formed to manage it.

**Gopal Singh Visharad**

- Gopal Singh Visharad, whose ancestors would have performed rituals on the temple site for centuries, argued that it is his constitutional right to offer prayers to Ram Janmabhoomi.
- His statement said that there should be no compromise in the Ram Janmabhoomi case.

**Sunni Waqf Board**

- The Commission has stated that it wishes to obtain the same remedy as that invoked at the hearings. During the hearings, Commission counsel, Rajeev Dhawan, requested that the Babri Masjid regain its form before being destroyed on December 6, 1992.

**Hindu Mahasabha**

- The Supreme Court is expected to form a trust to oversee the management of the Ram temple to be built on the disputed site in Ayodhya.
- The Supreme Court should appoint an administrator to deal with this trust.

**Shia Waqf Board**

- During their relief casting before the High Court of Allahabad, they said that the Muslim parties should give up their claim on the disputed land and hand it over to the Hindu parties to build a Ram temple.
- In a written submission, the Shia Waqf board of directors said that a Ram temple should be built on the disputed site in Ayodhya.

- He stated that the Waqf Shiite council is the lawful owner of the disputed land, not the Waqf Sunni council.
- The land that was given to the Sunni Waqf Council in the High Court order should now be given to the Hindu parties.

## Judgement

The bench of five judges of the Supreme Court heard the litigation cases on the title from August to October 2019. On 9th November 2019, the Supreme Court, led by Chief Justice Ranjan Gogoi, announced its verdict; he quashed the previous ruling and ruled that the land belonged to the government on the basis of the tax records. He further ordered that the land be turned over to a trust for the construction of the Hindu temple. He also ordered the government to donate another five-acre piece of land to the Waqf Sunni Council to build the mosque.

**Following are the top ten points that were highlighted in the Judgement of this case:-**

- The Supreme Court granted the entire 2.77 acres of disputed land in Ayodhya to the deity Ram Lalla.
- The Supreme Court ordered the government of Central and Uttar Pradesh to allocate 5-acre alternative land to Muslims in a prominent location to build a mosque.
- The court asked the Center to consider giving some sort of representation to Nirmohi Akhara for setting up a trust. Nirmohi Akhara was the third party to the Ayodhya conflict.
- The Supreme Court rejected the plea of Nirmohi Akhara, who sought to control all of the disputed lands, claiming that it was its custodian.
- The Supreme Court ordered the Union government to create a trust in 3 months for the construction of the Ram Mandir on the disputed site where Babri Masjid was demolished in 1992.

- The Supreme Court said that the structure below the disputed site in Ayodhya was not an Islamic structure, but the Assistant Sub-Inspector (ASI) did not establish whether a temple was demolished to build a mosque.
- The court also declared that the Hindus regard the disputed site as the birthplace of Lord Ram while the Muslims also say the same thing about the site of Babri Masjid.
- The court also declared that the Hindus' belief that Lord Rama was born on the disputed site where Babri Masjid was once, cannot be challenged.
- The Supreme Court also declared that the 1992 demolition of the 16th-century Babri Masjid mosque was a violation of the law.
- While reading its judgment, the Supreme Court declared that the UP's Waqf Central Sunni Council had not established its cause in the Ayodhya dispute and that the Hindus had established that they were in possession of the outer courtyard of the site in dispute.

A brief timeline from the occurrence of the dispute to the end of the dispute

1. 6th December 1992:- The Babri mosque was demolished by a gathering of nearly 200,000 Karsevaks. Community riots across India followed.
2. 16th December 1992:- Ten days after the demolition, the Congressional government at the Center, led by PV Narasimha Rao, set up a commission of inquiry under the leadership of Judge Liberhan.
3. 6th August 2019:- The 5-judge constitutional bench, headed by Chief Justice Ranjan Gogoi, of the Supreme Court, began the final hearing on the case.
4. 16th October 2019:- The final hearing before the Supreme Court ends. The bench reserved the final judgment. The court gave the parties to the conflict three days to file written notes on the "shaping of the remedy" or on the issues on which the court must decide.

5. 9th November 2019:- Final judgment rendered. The Supreme Court ordered the surrender of the land to a trust for the construction of the Temple of Ram. It also ordered the government to donate 5 acres of land within the city limits of Ayodhya to the Sunni Waqf Council to build a mosque.
6. 12th December 2019:- All petitions for review of the verdict dismissed by the Supreme Court.

# The Durgah Committee, Ajmer ... vs Syed Hussain Ali And Others on 17 March, 1961

## Bench: Gajendragadkar, P.B., Sarkar, A.K., Wanchoo, K.N., Gupta, K.C. Das, Ayyangar, N. Rajagopala

PETITIONER:

THE DURGAH COMMITTEE, AJMER ANDANOTHER

Vs.

RESPONDENT:

SYED HUSSAIN ALI AND OTHERS

DATE OF JUDGMENT: 17/03/1961

Durgah Endowment-Enactment for administration and management of Property-If violative of denominational rights of Chishtia Soofies-Provisions, if infringe fundamental rights- Durgah Khwaja Saheb Act, 1955 (XXXVI of 1955), SS. 2(d)(v), 45, II(f) and (h), 13, 14, 16, 18--Constitution of India, Arts. 25, 26, 19(1)(f) and (g), 14, 32.

**JUDGMENT:**

The Judjment of the Court was delivered by GAJENDRAGADKAR, J.-In.the High Court of Judicature for Rajasthan at Jodhpur a writ petition was filed under Art. 226 of the Constitution by the nine respondents who are Khadims of the tomb of Khwaja Moinud-din Chishti of Ajmer challenging the vires of the Durgah Khwaja Saheb Act XXXVI of 1955 (hereafter called the Act). In this petition the respondents alleged that the Act in general and the provisions specified in the petition in particular are ultra vires and they claimed a direction or an appropriate writ or order restraining the appellants the Durgah Com- mittee and the Nazim of the said Committee from enforcing any of its provisions. The writ petition thus filed by the respondents substantially succeeded and the High Court has made a declaration that the impugned

provisions of the Act are ultra vires and has issued an order restraining the appellants from enforcing them. The appellants then applied for and obtained a certificate from the High Court and it is with the said certificate that they have come to this Court by their present appeal.

Thus the respondents challenged the vires of the Act on the ground that its material provisions take (1) A.I.R. 1938 P.C. 71. Away and/or abridge their fundamental rights as a class and also the fundamental rights of the Muslims belonging to the Soofi Chishtia Order guaranteed by Arts. 14, 19 (1) (f) and (g), 25, 26, 31(1) and (2) as well as 32. According to the case set out in the petition all Hanafi muslims do not necessarily believe in Soofism and do not belong to the Chishtia Order of Soofies, and it is to the latter sect that the shrine solely belongs; the maintenance of the shrine has also been the sole concern of the said sect. It is this sect which has to maintain the institution for religious purposes and manage its affairs according to custom and usage. That is why the respondents alleged that the material provisions of the Act, were violative of their fundamental rights. In regard to s. 5 of the Act under which the Durgah Committee is constituted the respondents' objection is that it can consist of Hanafi Muslims who are not members of the Chishtia Order and that introduces an infirmity which makes the said provision inconsistent with Art. 26 of the Constitution. On these, allegations the respondents claimed a declaration that certain specified sections of the Act Were void and ultra vires which made the whole of the Act void and ultra vires avid they asked directions or orders or writ in the nature of mandamus or any other appropriate writ to the appellants restraining them from enforcing in any

manner the said Act against them. The claim thus made by the respondents was disputed by the appellants in their detailed written statement.

They averred that the circle of devotees of, and visitors to, the shrine was not confined to the Chishtia Order; but it included devotees and pilgrims of all classes of people following different religions. According to them the largest number of pilgrims and visitors 'were Hindus, Khoja Memons and parsis. It was denied that the Durgah was looked after by the descendants of Syed Fukhuruddin and Mohamad Yadgar. The allegations made by the respondents in respect of their occupation, duties and rights were seriously challenged and the case made out by them in regard to the receipt of the offerings and Nazars was disputed.

According to the appellants the religious services at the tomb were and are performed by the Saiiadanashin of the Durgah and the respondents had no right to look after the premises, to keep the keys of the tomb, to attend to the pilgrims visiting the shrine or to receive any offerings or Nazars. Their case was that the Khadims were and are no more, than servants of the holy tomb and their duties are similar to those of chowkidars.

On these pleadings the High Court proceeded to consider the history of the institution, the nature of the rights set up by the respondents and the effect of the impugned legislation on those rights. The High Court has found that the offerings made before the tomb for nearly 400 years before the tomb was rebuilt into a pucca structure must have been used by the Khadims for themselves. It also held that the Khadims were performing several duties set out by the respondents and that it was mainly the Khadims who- cir- culated the stories of miracles performed by Khwaja Saheb during his lifetime and thus helped to spread the reputation of the tomb. Even after the tomb was rebuilt and endowments were made to it the Khadims looked after the tomb, performed the necessary rituals and spent the surplus income from the offerings for

themselves. In due course Sajjanashins came to be appointed, but, according to the High Court their emergence on the scene merely enabled them to become sharers in the offerings. It has further been found by the High Court on a review of judicial decisions pronounced in several disputes between the parties that the offerings made at the tomb are governed by the customary mode of their utilisation and the history of the institution proved that the said offerings have been used according to a certain custom which had been upheld by the Privy Council in the case of Syed Altaf Hussain (1). 'this custom showed that the offerings made before the shrine are divided between the Sajjadanashin and the Khadims in the manner indicated in the said decision. It is in the light of these broad findings that the High Court proceeded to examine the vires of the impugned provisions of the Act. Thus considered the High Court came to the conclusion that the several sections challenged by the respondents in their writ petition are ultra vires. It has held that s. 2(b)(v) violates Art. 19(1)(f), s. 5 violates Art. 26, s. 11(f) Arts. 19(1)(g) and 25(1), ss. 11(b) and 13(1) Art. 25, s. 14 Art. 19(1)(f) and as. 16 and 18 Art. 14 read with Art. 32. Having found that these sections are ultra vires the High Court has issued an order restraining the appellants from enforcing the said sections. In regard to s. 5 in particular the High Court has found that the said section is ultra vires inasmuch as it lays down that the Committee shall consist of Hanafi muslims without further restricting that they shall be of the Chishtia Order believing in the religous practices and ritual in vogue at the shrine. It may be added that since s. 5 which contains the key provision of the Act has thus been struck down, though in a limited way, the whole of the Act has in substance been rendered inoperative.

Before dealing with the merits of the appeal it would be relevant and useful to consider briefly the historical background of the dispute because, in determining the rights of the respondents and of the sect which they claim to represent, it would be necessary to ascertain broadly the genesis of the shrine, its growth, the nature of the

endowments made to it, the management of the properties thus endowed, the rights of the Khadims and the Sajjadanashin in regard to (1) A.I.R. 1938 P.C. 71.

the tomb and the effect of the relevant judicial decisions in that behalf. This enquiry would inevitably take us back to the 13th Century because Khwaja Moin-ud-din died either in 1236 or 1233 A.D. and it was then that a kutcha tomb was constructed in his honour. It appears that in the High Court the parties agreed to collect the relevant material in regard to the growth of this institution which has now become scarce and obscure owing to lapse of time from the Imperial Gazetteer dealing with Ajmer, the Report of the Ghulam Hasan Committee (hereafter called the Committee). appointed in 1949 to enquire into and report on the administration of the present Durgah as well as the decision of the Privy Council in Asrar Ahmed v. Durgah Commitee, Ajmer (2). The Committee's report shows that the Committee'examined a large number of, witnesses belonging to several communities who were devoted to the shrine, it considered the original Sanads and a volume of other documents produced before it, took into account all the relevant judicial decisions to which its attention was drawn, and passed under review the growth of this institution and its management before it made its recommendations as to the measures necessary to secure the efficient management of the Durgah Endowment, the conservation of the shrine in the interest of the devotees as a whole. Presumbly when the parties agreed to refer to the historical data supplied by the Committee's report they advisedly refrained from adopting the course of producing the original documents themselves in the present enquiry. The political history of Ajmer has been stormy, and through the centuries sovereignty over the State of Ajmer has changed hands with the inevitable consequence that the fortunes of 'the shrine varied from time to time. it is true that the material which has been thus placed before the Court is not satisfactory, as it could not but be so, because we are trying to trace the history of the institution since the 13th Century for nearly 600 years thereafter; but the picture which emerges as a result of a careful consideration of the (2) A. I.R 1947 P.C.I.

At his death the saint could not have left any property and so there was no question of management of the property belonging to his tomb. No doubt the tomb itself was constructed immediately after his death but it was a kutcha structure and apparently for several years after his death there does not appear to have been endowment of property to the tomb, and so its financial position must have been of a very modest order. Persons belonging to the affluent classes were not, attracted for many years and so there was hardly any occasion to manage any property of the tomb as such. After his death the family of the saint remained in Ajmer for some time but it appears that the members of the family were driven out of Ajmer for some years and they came back only centuries later. This was the consequence of the change of rulers who exercised sovereign power over Ajmer. The construction of a pucca tomb was commenced in the reign of one of the Malwa Kings whose dynasty ruled over Ajmer up to 1531. There is no evidence to show that any property was dedicated to the tomb even then. It, however, does appear that one of the Malwa Kings had appointed a Sajjadanashin to look after the tomb; this Sajjadanasliin was in later times called Dewan. The construction of the tomb took a fairly long time but even after it was completed there is no trace of any endowment of property.

In or about 1560 Akbar defeated the Malwa Kings and Ajmer came under Moghul rule and so the Moghul period began. Akbar took great interest in the tomb and that must have added to the popularity of the tomb and attracted a large number of affluent pilgrims. It was about 1567 A. D. that the tomb was rebuilt and re-endowed by Akbar who reigned from 1556 to 1605. A Farman issued by Akhar ascribed to the year 1567 shows that eighteen villages were granted to the Durgah. According to the report of the Committee which had access to the original Sanad and other relevant documents the year of the Sanad was not 1567 but 1575. The report also shows that the object of this first endowment was not one for the general purposes of the Durgah but for a specific purpose, namely, 'langar khana'. It appears that during this period a descendant of the saint functioned as a Sajjadanashin and he also performed the duties

of a Mutawalli. There is no reliable evidence in regard to the position of the Sajjadanashin, his duties and functions before the date of Akbar, but it is not difficult to imagine that even if a Sajjadanashin was in charge of the tomb he had really very little to manage because the tomb had not until 1567 attracted substantial grants or endowments. The Committee's report clearly brings out that the appointment of a Sajjadanashin in the time of Akbar was purely on the basis of an appointment by the State because it is pointed out that as soon as Akbar was not satisfied with the work of the Sajjadanashin appointed by him in 1567 he removed him from office in 1570 and appointed a new incumbent in his place This new incumbent carried on his duties until 1600. Similarly in 1612 Jehangir appointed a Sajjadanashin to function also as Mutawalli. During Jehangir's time (1605-1627) some more villages were endowed to the Durgah.

During Shahjehan's time (1627-1658) some significant changes took place in the management of the Durgah. , The office of the Sajjadanashin was separated from that of the Mutawalli under the name of Darogah; the Mutawalli was put in charge of the management and administration of the secular affairs of the Durgah. It would also appear that some of the Daro- gahs were Hindus. In his turn Shahjehan endowed several villages in favour of the Durgah. This endowment, unlike that of Akbar, was for the general purposes of the Durgah. According to the Committee Shahjehan's endowment was in supersession of the earlier grants though it is difficult to decide as to whether it was in supersession of Akbar's grant or of an earlier grant made by Shahjehan himself However that may be, it is quite clear that at the very time when Shahjehan made his endowment he separated the office of the Sajjadanashin from that of the Mutawalli and left it to the sole charge of the Mutawalli appointed by the Ruler to manage the properties endowed to the Durgah. The later history of the institution shows that the separate office of the Mutawalli who was in sole management of the administration of the properties of the Durgah continued ever since, and that throughout its history the Mutawallis have been appointed by the State and were as

such answerable to the State and not to the sect represented by the respondents. This state of affairs continued during the reign of Aurangzeb (1659-1707).

As we have already indicated the Government of India appointed the Committee under the Chairmanship of Mr. Justice Ghulam Hasan in 1949 to enquires into and report on the administration of the Durgah Endowment and to make appropriate recommendations to secure the conservation of the shrine by efficient management of the said Endowment. The Committee made its report on October 13, 1949, and that led to the promulgation of Ordinance No. XXIV of 1949 which was followed by Emergency Provisions Act, 1950, and finally by the Act of 1955 with which we are concerned in the present appeal. The Committee held an exhaustive enquiry, considered the voluminous evidence produced before it, reviewed the conduct of the Sajjadanashins and the Khadims, examined the manner in which the offerings were received and appropriated by them, took into account several judicial decisions dealing with the question of the rights and obligations of the said parties and came to the conclusion that "the historial review of the position leads only to the inference that the Sajjadanashins and the Khadims between themselves came to an agreement for mutual benefit and to the detriment of the Endowment and adopted a kind of a practice to realise offerings from visitors to the Durgah on a show of some charitable object and led the ignorant and the unwary into the trap" (1). The Committee has observed that most of the spokesmen before it candidly admitted the existence of many malpractices indulged in by Khadims and a majority of them showed a keen desire to introduce radical social reform in the community provided they are backed by the authority of law (2). The Committee then commented on the agreement entered into between the Sajjadanashins and the Khadims as ampunting to' an unholy alliance among unscrupulous persons to trade for their (1) Report of the Durgah Kbwaja Saheb (Ajmer Committee of Enquiry dated October 13, 1949, Published.-by Government of India in 1950, personal aggrandisement in the name of the holy saint, and it noticed with regret that the interest of the community had suffered more from

the superstitious, ignorant and the reactionary hierarchy than from the doings of zealous reformers (1). According to the Committee "tinkering with the problem will be a remedy worse than the disease and it had no doubt that no narrow and technical considerations should stop us from marching forward". As a result of the findings made by the Committee it made specific recommen- dations as to the manner in which reform should be introduced in the management and administration of the Durgah Endowment by legislative process. Speaking generally, the Act ha; been passed in the light of the recommendations made by the Committee.

Thus it would be clear that from the middle of the 16th Century to the middle of the 20th Century the administration and management of the Durgah Endowment has been true to the same pattern. The said administration has been treated as a matter with which the State is concerned and it has been left in charge of the Mutawallis who were appointed from time to time by the State and even removed when they were found to be guilty of misconduct or when it was felt that their work was unsatisfactory. So far as the material produced in this case goes the Durgah Endowment which includes movable and immovable property does not appear to have been treated as owned by the denomination or section of the devotees and the followers of the saint, and its administration has always been left in the hands of the official appointed by the State.

In this connection it may be relevant to refer to the decision of the Privy Council in the case of Agrar Ahmed (2). The appeal before the Privy Council in that case arose from a suit filed by Syed Asrar Ahmed against the Durgah Committee, in which he claimed a declaration that the office of the Mutawalli of the Durgah Khwaja Saheb, Ajmer, was hereditary in his family and that the Durgah Committee was not competent to question his status as a hereditary Muta- walli in succession to the last holder of that office. (5) Ibid. P. 64. (2) A.I.R. 1947 P.C. I.

The District Judge who tried the said suit passed a decree in favour of Asrar Ahmed but on appeal the Judicial Commissioner. set aside the decree and dismissed Asrar Ahmed's suit. On appeal by Asrar Ahmed to the Privy Council the decision of the Judicial Commissioner was confirmed. In dealing with this dispute the Privy Council has considered the genesis and growth of the shrine along with the' stormy history of the State of Ajmer to which we have already referred. In the course of his judgment Lord Simonds observed that it was not disputed that in the reign of Emperor Shahjehan the post of Mutawalli was separated from that of Sajjadanashin and had become a Government appointment, whereas the Sajjadsnashin remained and continued to be the hereditary defendant of the saint. Then he referred to the firman of Shahjehan issued in 1629 by which the Emperor ordered that the Mutawalli appointed by the State was to sit on the left of the Sajjadanashin at the Mahfils. Similarly the firman issued by Aurangzeb in 1667 directed the order of sitting at the Mahfils by laying down that Daroga Balgorkhana, i.e., Mutawalli of the Durgah or anyone who is appointed by the State do sit on the left of the Sajjadanashin. It is significant to note that Daroga Balgorkhana was a Hindu in Akbar's time. Having thus held that the office of the Mutawalli was an office created by the State and the holder of the office was a State servant the Privy Council examined the evidence on which Asrar Ahmed relied in support of his plea that by custom the office was hereditary and held that the said evidence did not justify the claim. This decision, supports the conclusion that the Durgah Endowment and its administration have always been in charge of the Mutawalli appointed by the State and that on occasions the post of the Mutawalli was held by a Hindu as well.

Having thus reviewed brosoly the genesis of the shrine, its growth and the story of its endowments and their management, it may now be relevant to enquire what is the nature of the tenets and beliefs to which Soofism subscribes. Such an enquiry would serve to assist us in determining whether the Chishtia sect can be regarded as a

religious denomination or a section thereof within Art. 26. According to Murray T. Titus (1) "Islam, like Christianity, has its monastic orders and saints, the underlying basis of which is 'the mystic interpretation of the religious life known as Sufiism". According to this author, the men imbued with soofi doctrine came very early to India is not disputed; but who those earliest comers were or when they arrived cannot be definitely ascertained. He also expresses the opinion that though Soofism is found so extensively "it is not the religion of a sect, it is rather a natural revolt of the human heart against the cold formalism of a ritualistic religion, and so while Sufis have never been regarded as a separate sect of muslims they have nevertheless tended to gather themselves into religious orders". These have taken on special forms of Organisation, so that today there is a great number of such orders, which, curiously enough, belong only to the Sunnis. The author 'then enumerates fourteen orders or families (khandan); amongst them is the Chishtia Order.

According to the report of the Committee, however, the Soofies are divided into four main silsilas; amongst them are Chishtias. The report expresses the definite opinion that the Soofi silsilas are not sects (p. 13). The characteristic feature of a particular silsila is confined to a few spiritual practices, like Aurad or Sama, to certain festivals, institutions like veneration of shrines and the devotion to certain leading personalities of the order. Soofism really denotes the attitude of mind, that is to say, a soofi while accepting all that orthodox Islam has to offer, finds lacking in it an emotive principle. According to Soofies a clear distinction has to be drawn between the real and the apparent, and they believed that the ultimate reality could be grasped only intuitively (Ma'arifat or gnosis). A special feature of Soofi belief is divine love. An intellect, according to Soofies, performs a restricted function. The centre of spiritual life is the Qalb or the Rooh (p. 16).

In Piran v. Abdool Karim (1), Ameer Ali, J., had occasion to consider the functions of the Sajjadanashin and the Mutawalli. He observed that the Sajjadanashin has certain

spiritual functions to perform. He is not only a Mutawalli but also a spiritual preceptor. He is the curator of the Durgah where his ancestor is buried and in him he is supposed to continue the spiritual line (silsila). As is well known these Durgahs are the tombs of celebrated dervishes, who in their lifetime were regarded as saints. Some of these men had established Khamkahs where they lived and their disciples congregated. These dervishes professed esoteric doctrines and followed distinct systems of initiation. They were either Soofies or the disciples of Mian Roushan Bayezid who flourished about the time of Akbar and- who had founded an independent esoteric brotherhood in which the chief occupied a peculiarly distinct position. The preceptor is called the pir, the disciple a murid. On the death of the pir his successor assumes the privilege of initiating the disciples into the mysteries of dervishism or Soofism. This privilege of initiation is one of the functions of the Sajjadanashin (p. 220-221). Thus on theoretical considerations it may not be easy to hold that the followers and devotees of the saint who visit the Durgah and treat it as a place of pilgrimage can be regarded as constituting a religious denomination or any section thereof. However, for the purpose of the present appeal we propose to deal with the dispute between the parties on the basis that the Chishtia sect whom the respondents purport to represent and on whose behalf--(as well as their own)-they seek to challenge the vires of the Act is a section or a religious denomination. This position appears to have been assumed in the High Court and we do not propose to make any departure in that behalf in dealing with the present appeal. The next point which needs to be considered is the duties of the Khadims and their rights on which their claim for an appropriate writ is based in the present (1) (1891) I.L. R. 19 Cal. 204.

**The Commissioner, Hindu ... vs Sri Lakshmindra Thirtha Swamiar ... on 16 April, 1954**

**Equivalent citations: 1954 AIR 282, 1954 SCR 1005**

Author: B Mukherjea

**Bench: Mahajan, Mehar Chand (Cj), Mukherjea, B.K., Das, Sudhi Ranjan, Bose, Vivian, Hasan, Ghulam & Bhagwati, N.H. & Aiyyar, T.L. Venkatarama**

## ACT:

Constitution of India, arts. 19(1)V), 25, 26, 27-Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act XIX of 1951), ss. 21, 30(2), 31, 55, 56 and 63 to 69,

76--Whether ultra vires the Constitution-- Word "property" in art. 19(1)(f) meaning of--Tax and fee, meaning of- Distinction between.

## JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 38 of 1953. Appeal under article 132(1) of the Constitution of India from the Judgment and Order dated the 13th December, 1951, of the High Court of Judicature, Madras, in Civil Miscellaneous Petition No. 2591 of 1951.

V.K.T. Chari, Advocate-General of Madras (B. Ganapathy Iyer, with him) for the appellant.

B. Somayya and C.R. Pattabhi Raman (T. Krishna Rao and M.S..K. Sastri, with them) for the respondent. T. N. Subramania Iyer, Advocate-General of Travancore- Cochin (T. R. Balakrishna Iyer and Sardar Bahadur with him) for the Intervener (State of

Travancor,Cochin). 1954. March 16. The Judgment of the Court was delivered by MUKHERJIA J.-This appeal is directed against a judgment of a Division Bench of the Madras High Court, dated the 13th of December, 1951, by which the learned Judges allowed & petition, presented by the respondent under article 226 of the Constitution, and directed a writ of prohibition to issue in his favour prohibiting the appellant from proceeding with the settlement of a scheme in connection with a Math, known as the Shirur Math, of which the petitioner happens to be the head or superior. It may be stated at the outset that the petition was filed at a time when the Madras Hindu Religion Endowments Act (Act II of 1927), was in force and the writ was prayed for against the Hindu Religious Endowments Board constituted under that Act, which -was the predecessor in authority of the present appellant and had initiated proceedings for settlement of a scheme against the petitioner under section 61 of the said Act.

Under section 103 of the New Act, notifications, orders and acts under the Earlier Act are to be treated as notifications, orders and acts issued, made or done by the appropriate, authority under the corresponding provisions of the New Act, and in accordance with this -provision, the Commissioner, Hindu Religious Endowments, Madras, who takes the place of the President, "Hindu Religious Endowments Board under the Earlier Act, was added as a party to the proceedings.

So far as the present appeal is concerned, the material facts may be shortly narrated as follows: The Math, known as Shirur Math, of which the petitioner is the superior or Mathadhipati, is one of the eight Maths situated at Udipi in the district of South Kanara and they are reputed to have been founded by Shri Madhwacharya, the well-known exponent of dualistic theism in the Hindu Religion. Besides these eight Maths, each one of which is presided over by a Sanvasi or Swami, there exists another ancient religious institution at Udipi, known as Shri Krishna Devara Math, also

established by Madhwacharya which is supposed to contain an image of God Krishna originally made by Arjun and miraculously obtained from a vessel wrecked at the coast of Tulava. There is no Mathadhipati in the Shri Krishna Math and its. affairs are managed by the superiors of the other eight Maths by turns and the custom is that the Swami of each of these eight Maths presides over the Shri Krishna Math in turn for a period of two years in every sixteen years. The appointed time of change in the headship of the Shri Krishna Math is the occasion of a great festival, known as Pariyayam, when a vast concourse of devotees gather at Udipi from all parts of Southern India, and an ancient usage imposes a duty upon the Mathadhipati to feed every Brahmin that comes to the place at that time.

The petitioner was installed as Mathadhipati in the year 1919, when he was still a minor, and he assumed management after coming of age some time in 1926. At that time the Math was heavily in debt. Between 1926 and 1930 the Swami succeeded in clearing off a large portion of the debt. In 1931, however, came the turn of his taking over management of the Shri Krishna Math and he had had to incur debts to meet the heavy expenditure attendant on the Pariyayam ceremonies, The financial position improved to some extent during the years that followed, but troubles again arose in 1946, which was the year of the second Pariyayam of the Swami.

Owing to scarcity and the high prices of commodities at that time, the Swami had to borrow money to meet the expenditure and the debts mounted up to nearly a lakh of rupees. The Hindu Religious Endowments Board, functioning under the Earlier Act of 1927, intervened at this stage and in exercise of its powers under section 61 -A of the Act called upon the Swami to appoint a competent manager to manage the affairs of the institution. The petitioners case is that the action of the Board was in stigated by one Lakshminarayana Rao, a lawyer of Udipi, who wanted to have control over the affairs of the Math. It appears that in pursuance of the direction of the Board, one

Sripath Achar was appointed an agent and a Power of Attorney was executed in his favour on the 24th of December, 1948. The agent, it is alleged by the petitioner, wanted to have his own way in all the affairs of the Math and paid no regard whatsoever to the wishes of the Mahant. He did not even submit accounts to the Mahant and deliberately flouted his authority. In this state of affairs the Swami,, on the 26th of September, 1950, served a notice upon the agent terminating his agency and calling upon him to hand over to the Mathadhipati all account papers and vouchers relating to the institution together with the cash in hand. Far from complying with this demand, the agent, who was supported by the aforesaid Lakshminarayans Rao, questioned the authority of the Swami to cancel his agency and threatened that he would refer the matter for action to the Board. On the 4th of October, 1950, the petitioner filed a suit against the agent in the Sub,Court of South Kanara for recovery of the account books and other articles belonging to the Math, for rendering an account of the management and also for an injunction restraining the said agent from interfering with the affairs of the Math under colour of the authority conferred by the Power of Attorney which the plaintiff had cancelled.

The said Sripath Achar anticipating this suit filed an application to the Board on the 3rd of October, 1950, complaining against the cancellation of the Power of Attorney and his management of the Math. The Board on the 4th October, 1950, issued a notice to the Swami proposing to inquire into the matter on the 24th of October following at 2 p.m. at Madras and requesting the Swami either to apppear in person or by a pleader. To this the Swami sent a reply on 21st October, 1950, stating that the subject-matter of the very enquiry was before the court in the original suit filed by him and as the matter was sub judice the enquiry should be put off.

A copy of the plaint filed in that suit was also sent along with the reply. The Board, it appears, dropped that enquiry, but without waiting for the result of the suit, initiated

proceedings suo moto under section 62 of the Earlier Act and issued a notice upon the Swami on the 6th of November, 1950, stating that it had reason to believe that the endowments of the said Math were being mismanaged and that a scheme should be framed for the administration of its affairs. .

The notice was served by affixture on the Swami and the 8th of December, 1950, was fixed as the date of enquiry. On that date at the request of the counsel for the Swami, it was adjourned to the 21st of December, following. On the 8th of December, 1950, an application was filed on behalf of the Swami praying to the Board to issue a direction to the agent to hand over the account papers and other documents, without which it was not possible for him to file his objections As the lawyer appearing for the Swami was unwell, the matter was again adjourned till the 10th of January, 1951.

The Swami was not ready with his objections even on that date as his lawyer had no t recovered from his illness and a telegram was sent to the Board on the previous day requesting the latter to grant a further adjournment. The Board did not accede to this request and as no explanation was filed by the Swami, the enquiry was closed and orders reserved upon it. On the 13th of January, 1951, the Swami, it appears sent a written explanation to the Board, which the latter admittedly received on the 15th On the 24th of January, 1951, the Swami received a notice from the Board stating inter alia that the Board was satisfied that in the,, interests of proper administration of the Math and its endowments, the settlement of a scheme was necessary.

A draft scheme was sent along with the notice and if the petitioner had any objections to the same, he was required to send in his objections on or before the 11th of February, 1951, as the. final order regarding the scheme would be made on the 15th of February, 1951. On the 12th of February, 1951, the peti- tioner filed the petition, out of which this appeal arises, in the High Court of Madras, praying for a writ of

prohibition to prohibit the Board from taking further steps in the matter of settling a scheme for the administration of the Math. It was alleged inter alia that the Board was actuated by bias against the petitioner and the action taken by it with regard to the settling of a scheme was not a bona fide act at all. The main contention, however, was that having regard to the fundamental rights guaranteed under the Constitution in matters of religion and religious institutions belonging to particular religious denominations, the law regulating the framing of a scheme interfering with the management of the Math and its affairs by the Mathadhipati conflicted with the provisions of art- icles 19(1) (f) and 26 of the Constitution and was hence void under article 13. It was alleged further that the provisions of the Act were discriminatory in their character and offended against article 15 of the Constitution. As has been stated already, after the New Act came into force, the petitioner was allowed to end his petition and the attack was now directed against the constitutional validity of the New Act which replaced the earlier legislation. The learned Judges, who heard the petition, went into the matter with elaborate fullness, both on the constitutional questions involved in it as well as on its merits. On the merits, it was held that in the circumstances of the case the action of the Board was a perverse exercise of its jurisdiction and that it should not be allowed to proceed in regard to the settlement of the scheme. On the constitutional issues raised in the case, the learned Judges pronounced quite a number of sections of the New Act to be ultra vires the Constitution by reason of their being in conflict with the fundamental rights of the petitioner guaranteed under articles 19(1)(f), 25, 26 and 27 of the Constitution. In the result, the rule nisi issued on the petition was made absolute and the Commissioner, Hindu Religious Endowments, Madras, was prohibited from proceeding further with the framing of a scheme inregard to the petitioner's Math. The Commisioner has now come up on appeal before us on the strength of a certificate granted by the High Court under article 132(1) of the Constitution.

# CHAPTER VII

# CONCLUSION AND SUGGESTIONS

The rapid scientific and technological developments of recent years have facilitated the growth of organised criminal networks that move across boarders in order to expand their illegal business and to maximise their profits. Modem criminal organisations have acquired considerable financial power and political clout enabling them to juggle human and capital resources. The criminal economy is an organised activity capable of producing wealth and power in the same way as any other business more quickly than legitimate businesses and the consequences of organised crime are far reaching as its impact is felt in social, economic and political spheres.

The economic power of organised criminals is derived mainly form drug trafficking, human trafficking, money laundering, arms trade, trade in contraband, extortion and related offences; and the money earned is used to finance terrorist and other disruptive activities which has become a global concern.

The impact on society of drug trafficking is very destructive. Promoting drugs ultimately creates further crime, though the exact links are still debated. With time, drug users become addicted.[70]

[70] According to UNODC World Drug Report, 2005,25 million problemdrug users are their in the world.

'The drug situation is still in a benign stage in India, though moving in dangerous directions".[71] While cultural norms in rural areas effectively restrict drug use to traditional forms and drug-related HTV is still relatively low within the national context of drug use, current trends suggest increasing levels of problematic non-traditional use and addiction.[72] Drug related problems in India are not only legal but also social and cultural, so the Indian drug policy could be made far more effective and appropriate to national realities.[73]

A number of transnational organized crime groups are heavily involved in human trafficking; it is also carried out by actors who are not part of TOC groups or even nontransnational organized crime groups. Different criminal groups operate in different criminal structures; how groups are organizationally structured can give an indication of 4 how activities are pursued. For instance, it has been established that the more hierarchical the group is, the more likely it is to engage in violence as an essential element in undertaking their activities.[74] Furthermore, higher structural

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[71] Charles, M and Britto, G (2002) Culture and the Drug Scene in India, in Christian Geffary, Guilhem Fabre, Michel Schiray, Scientific Coordinators, Globalisation, Drugs and Criminalisation, (Paris: UNESCO MOST and UNDP, 2002), 1:4-30

[72] Molly Charles, Dave Bewley-Taylor and Amanda Neidpath Drug Policy in India: Compounding Harm? Briefing Paper TenThe Becldey Foundation Drug Policy Programme 2005, p.6 www.beckleyfoundation.org

[73] Bewley-Taylor, et al, (2005) Incarceration of drug offenders: costs and impacts, Beckley Foundation Drug Policy Programme, Briefing Paper 7. www.beckleyfoundation.org

[74] "Results of a Pilot Study of Forty Selected Organized Crime Groups in Sixteen Countries", UNODC, September 2002, www.imodc.org/pdfyCTime/publications/Ptfot_survey.pdf, p.30.

rigidity has also been shown to correlate to higher propensity for corruption and transborder activities. The groups involved may be categorized in to three, namely:-

- Amateur or low-level traffickers who are most likely to be involved in the recruitment and trafficking of nationals in their own country. They are likely to be paid for their services as opposed to receiving profit directly through exploitation of their victims.
- Small groups or medium level traffickers who are likely to be permanent members of the operation, operating at all stages of trafficking through exploitation and retrafficking, and are likely to profit directly from the exploitation

# SUGGESTION

It has been observed that the existing system appears to be not efficient enough to protect citizens and the society from die ill effects of organised crime. Therefore, on the basis of the study, the following suggestions may be taken into consideration while combating organised crime

1. There is a need to establish a conceptual or theoretical framework for understanding the nature of organised crime by clearly distinguishing ordinary crime form organised crime. The attempt made by National Crime Record Bureau (NCRB) appears to be restricted to certain criminal acts and therefore inadequate to develop specific policies relating to combating organised crime.

2. Even the current studies on organised crime concentrates on some specific crimes like drug trafficking, illegal arms trade, human trafficking, etc., ignoring certain other aspects of crime like land grabbing, loan sharking, food adulteration rackets, counterfeiting of currency notes and creating fake documents, political graft. To acquire political power and to ensure party's victory at polls; politicians generally seek the support of organised criminals and utilize their services to accomplish their political ends. These aspects should also be seriously looked into while evolving effective organised crime control policy.

3. The present classification of organised crime makes it difficult to separate the legal and illegal business and profits of crime is being invested into legitimate business;

such as stock markets, real estate business and entertainment industry. Unless such investments are effectively prevented organised crime continues to prosper.

4. Tracing the money trail, including the origin offunds and its transfer involves combating money laundering and it can be done through reduction of bank secrecy requirements and seizures of assets acquired through money laundering. The legislation on forfeiture and confiscation of properties acquired through criminal activities with extensive use of modem technology is the need of the hour. International cooperation is the key to succeed against money laundering as the money is stashed away in foreign tax heavens and banks such as Swiss bank and the like.

5. In the Indian context legislations such as Money Laundering Act needs to be strictly implemented. This requires a special cell on the lines of Economic Intelligence Council (EIC) exclusively dealing with economic offences. There is a need to increase the role ofstate governments in combating money laundering.

- The political interference, lack of professionalism and training has made the police force less effective and therefore there is a need to introduce reforms into police system such as, periodical training, freedom from political and administrative interference and above all creation of highly professional police cells to combat specific organised crimes consisting ofspecially trained and equipped police personnel.

- The existing prosecution system consisting ofthe so-called independent professional lawyers appears to be not accountable to the judiciary and therefore many a time fails to prosecute organised criminals effectively. The prosecution system must be strengthened through hiring of highly skilled, trained and professional attorneys.

- Organised crime often thrives on account of glorification of crime by media and public and through entertainment programmes. There is a need to evolve a code of conduct discouraging them from glorifying crime as an adventurous activity

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