

Bill No. 205 of 2019

THE CONSTITUTION (AMENDMENT) BILL, 2019

By

DR. SATYA PAL SINGH, M.P.

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BILL

further to amend the Constitution of India.

BE it enacted by Parliament in the Seventieth Year of Republic of India as follows:—

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| 1. | This Act may be called the Constitution (Amendment) Act, 2019. | Short title. |
| 2. | In article 15 of the Constitution, clause (5) shall be omitted. | Amendment of article 15. |
| 5 | 3. The existing article 26 of the Constitution shall be renumbered as clause (1) thereof and after clause (1) as so renumbered, the following clauses shall be inserted, namely:—

"(2) Notwithstanding anything contained in article 25, the State shall not control, administer or manage, whatsoever, any institution, including its properties, established | Amendment of article 26. |

or maintained for religious or charitable purposes by a religious denomination or any section thereof.

(3) All laws in force in the territory of India in so far as they are inconsistent with the provisions of this article shall, to the extent of such inconsistency, be void.

(4) The State shall not make any law which enables it to control, administer or manage, whatsoever, any institution, including its properties, established or maintained for religious or charitable purposes by a religious denomination or any section thereof, and, any law made in contravention of this clause shall, to the extent of such contravention, be void.

(5) In this article the expressions "law" and "laws in force" have same meaning as respectively assigned to them in clause (3) of article 13."

Amendment of article 27. **4.** The existing article 27 of the Constitution shall be renumbered as clause (1) thereof and after clause (1) as so renumbered, the following clause shall be inserted, namely:—

"(2) No moneys out of the Consolidated Fund of India, the Consolidated Fund of a State, the Contingency Fund of India or the Contingency Fund of a State or out of the fund of any public body shall be appropriated for advancement or promotion of a section of citizens solely or primarily on the basis of their religious affiliation or belonging to one or more religious or linguistic denomination."

Amendment of article 28. **5.** In article 28 of the Constitution, after clause (3), the following clause shall be inserted, namely:—

"(4) Nothing in this Constitution shall be deemed to forbid the teaching of traditional Indian knowledge or ancient texts of India in any educational institution, wholly or partly maintained out of State Funds."

Amendment of article 29. **6.** In article 29 of the Constitution, in the marginal heading, for the words "interests of minorities", the words "cultural and educational rights" shall be substituted.

Amendment of article 30. **7.** In article 30 of the Constitution—

(a) in the marginal heading for the word "minorities", the words "all sections of citizens, whether based on religion or language", shall be substituted;

(b) in clause (1), for the word "minorities", the words "sections of citizens" shall be substituted;

(c) in clause (1A) for the words "a minority", the words "a section of citizens" shall be substituted; and

(d) in clause (2), for the words "a minority", the words "a section of citizens" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

As per our Constitution, the State has no religion. The State has to treat all religions and religious people equally and with equal respect without, in any manner, interfering with their right to freedom of religion, faith and worship. As evident from the sub-text of the debates of the Constituent Assembly, the rights assured for the majority were only made explicit to the minorities as an assurance to the latter in the backdrop of the peculiar circumstances then prevailing in the aftermath of partition. In any case, it was never the intention of the makers of our Constitution to deny to the majority the rights expressly provided to the minority. Yet, it gradually led to interpretations that only the minorities were given rights withheld from the majority generating an unhealthy feeling of discrimination among the majority community. It goes without saying that nursing any real or perceived grievance against the State by any section of citizens, majority or minority, is detrimental to the unity and integrity of the country.

Article 26 bestows rights on all religious denominations, irrespective of majority or minority, to establish and maintain institutions for religious and charitable purposes, to manage their own affairs, and to own, acquire and administer property thereof. In a catena of judgements, the Supreme Court iterated the same. In *Ratilal Panachand Gandhi v. State of Bombay*, it was held "in regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but here again it should be remembered that under article 26(d), it is the religious denomination itself which has been given the right to administer its property in accordance with any law which the, State may validly impose. A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by article 26(d) of the Constitution". The apex Court in *Pannalal Bansilal Pitti v. State of Andhra Pradesh* opined "While articles 25 and 26 granted religious freedom to minority religions like Islam, Christianity and Judaism, they do not intend to deny the same guarantee to Hindus. Therefore, protection under articles 25 and 26 is available to the people professing Hindu religion, subject to the law therein. The right to establish a religious and charitable institution is a part of religious belief or faith and, though law made under clause (2) of article 25 may impose restrictions on the exercise of that right, the right to administer and maintain such institution cannot altogether be taken away and vested in other party; more particularly, in the officers of a secular Government".

There has been widespread legitimate grievance and feeling of discrimination among Hindus that despite the Constitutional provisions and judicial decisions, Hindu temples and religious and charitable institutions are routinely taken over by the secular State on the pretext of maladministration, mismanagement, etc., whereas mosques and churches of the minorities are allowed to be exclusively managed by the respective communities even though article 26 confers right equally upon all sections of citizens. Hindus also genuinely feel that such State control results in despoiling the Hindu religious centres, large scale misappropriation of the temples' income and properties and its redirection to secular purposes by the State, which is a major factor in the grinding poverty afflicting most Hindu temples, priests and their families. In order to maintain the secular character of the State and prevent it from usurping the religious and charitable institutions of any religious denomination or a section thereof, it is felt necessary to amend article 26 of the Constitution.

Article 27 provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. Hon'ble Prime Minister Shri Narendra Modi as the then Chief Minister of Gujarat had in his speech to the National Developmental Council on 19th December 2007 took the stand that discrimination amongst the eligible beneficiaries based on religion will not help the cause of taking the people of India together on the path of development, and the correct criteria for flow of funds for various schemes and programmes should be based on principles of equity by taking only socio-economic criteria alone. In the interest of maintaining true secular character of the State, there is imperative need for amendment of article 27 forbidding expenditure from the Consolidated or Contingency Fund of Union or any State or from the funds of any public body for any purpose premised solely or primarily on the religious affiliation or language. Language as a primary or sole consideration should also be excluded as certain languages have exclusive association with certain religions which may be used as subterfuge to circumvent the proposed embargo.

Article 28 rightly keeps religious instructions out of public educational system in the country. However, it was never the intention of the framers of the Constitution to keep the study and learning of traditional knowledge systems and civilizational heritage including study of such great texts like the Vedas, the Upanishads, the Mahabharata, the Ramayana, etc. from out of public education system, yet, these have been completely kept out of education system leading to deracination of Indians from their cultural and civilizational moorings which does not augur well for the future of the country. There is thus a case for amendment of article 28 to provide for teaching of our traditional knowledge and ancient texts.

Article 29 confers cultural and educational rights to all sections of citizens, majority or minority, having distinct language, script or culture of their own. However, the word 'minorities' in the marginal heading of article 29 is incongruent with the body of its contents as also with the group heading 'cultural and educational rights'. Such incongruence has the potential for misunderstanding as if these rights are conferred only on minorities. It is, therefore, felt necessary to amend article 29 to remove any doubts.

Our Constitution mandates that the State shall not discriminate on grounds only of religion, race, caste, language or any of them. Article 30, as it stands, confers educational rights on religious and linguistic minorities without saying anything about the majority. If it had not assumed the same rights for the majority, it would not have been passed by the Constituent Assembly. An eleven-Judge Bench of the Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka* expressed an expansive opinion when it said, "The right to establish and maintain educational institutions may also be sourced to article 26(a), which grants, in positive terms, the right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health". Further, the aspirations for conserving and communicating religious and cultural traditions and language to succeeding generations is legitimate and applies to all groups, big or small. It is, therefore, felt that the scope of article 30 of the Constitution should be widened to include all communities and sections of citizens who form a distinct religious or linguistic group. Consequent to such proposed amendment, clause (5) of article 15, inserted by the Constitution (Ninety-third) Amendment Act, 2005, loses its relevance and accordingly it is proposed to omit clause (5) of article 15 of the Constitution.

Hence this Bill.

NEW DELHI;

SATYA PAL SINGH

July 18, 2019.

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

* * * * *

15. (1) This State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

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(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

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

Freedom to manage religious affairs.

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

27. No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Freedom as to payment of taxes of promotion of any particular religion.

28. (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

Protection of interests of minorities.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Right of
minorities to
establish and
administer
educational
institutions.

30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

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(Dr. Satya Pal Singh, M.P.)