

## The Evolution of 'Dharma' Under Indian Legal System

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### Abstract

Dharma as law is the widest interpretation given to this term. 'Dharma' and 'law' have been used interchangeably. Dharma was the only sanction present in the society. Dharma negatively affects Supreme Court decisions in more ways than one. For instance, a judge's personal identity, in terms of religion might have an effect on his judgement. Moreover, his political ideology might also get reflected. The author wants to highlight the Supreme Court's decisions, which is already doing a commendable job by not blindly basing its judgements on dharma and carefully scrutinising such issues.

**KEYWORDS:** Dharma, Supreme Court, Constitution.

**Introduction:** The concept of Dharma is in existence since time immemorial. Over the years, various interpretations have been attributed to the term 'Dharma' so much so that it has acquired contradictory meanings for different classes of people.

**Meaning:** Dharma is a Sanskrit word. There is no English equivalent for this term because it has multiple meanings. Some understand it on the lines of 'duty', some call it 'religion', while others understand it as 'law'. Dharma is anything which is right, just and moral.

To quote Justice Rama Jois,

"Dharma is that which sustains progress and welfare of all in this world and eternal bliss in the other world."<sup>1</sup>

According to Gujarat High Court,

"Dharma and Religion are two different things, if some practises are not prevalent in some religions, it does not make them as adharmic in the same manner, Dharma embraces every religion. In other words, following of Dharma is secular and not contradictory to constitution."<sup>2</sup>

**The Indian Supreme Court:** The Supreme court of India is the highest constitutional court in India. The present Supreme Court came into being on 28<sup>th</sup> January, 1950. Before that, the system of courts set up under the British was responsible for

<sup>1</sup>Legal and Constitutional history of India (vol1) 2010 ISBN-8175342064 Universal law publishing co.

<sup>2</sup>Rajesh Himmatlal Solanki v. Union of India, through secretary ;GHC 2011

dispensing justice. Prior to that, during the Mughal reign as well as during the Hindu period, King was the fountain of all justice. In all these systems of administration of justice, Dharma plays a significant role- though with different interpretations as to its meaning.

**Dharma and Supreme Court:** Dharma is reflected in various decisions of Supreme Court. Two broad approaches may be attributed to Dharma based on Supreme court judgements-Dharma as law and Dharma as Religion.

- **Dharma as law:** Dharma as law is the widest interpretation given to this term. 'Dharma' and 'law' have been used interchangeably. Dharma was the only sanction present in the society. People considered Dharma as a duty, derogation of which was not only punishable but also a sin. Kings looked into Dharmashastras for trying cases. The King was respected as the lord of Dharma. In the modern times, Supreme Court may be accorded the status of ultimate authority in law. It is for this reason, that it is referred to as the Apex Court. In fact, the modern court structure bears semblance with the court system in ancient times.

The performance of one's duties even in partial disregard of ones rights and privileges has been traditional in this country. Since time immemorial, the emphasis in the Indian society in accordance with the dictates of the ancient scriptures has been the individuals kartavyaa, that is, performance of one's duty towards the society, the country and especially one's parents. The Gita and Ramayana enjoin the people to perform their duties without caring for their rights or fruits.<sup>3</sup>

Even in modern times, when there are a number of statutes and laws for various issues, the Supreme Court has time and again referred to different texts of Dharmashastra and in some instances, even based an entire judgement upon it. Especially in cases relating to Stridhan, marriage, adoption etc. in Hindu law. in the famous case of Guramma versus Malappa<sup>4</sup>

The Supreme Court took up the problem in Anglo Hindu law, went into the background in dharmashastra terms and relied upon a proposition in the vyavharamayukha of Nilakantha.<sup>5</sup>

The judges as well as advocates have to keep looking into Dharmashastra and its commentaries, either to understand or interpret the modern laws, the case before it or to explain old Privy Council judgements. Whichever way, knowledge of these ancient texts in law is important for Judges as well as advocates and that is why, it has also been included in the curriculum of law colleges throughout the country.

However, it is not always that the Supreme Court has stuck to the statements and law contained in the Dharmashastras. It has dissented from such decisions and also modified it when required. For instance, Sati was not only permitted but also to some extent promoted in the Dharmashastras. However, it is a crime under the provisions of Sati(prevention) Act, 1987. Similarly, only a male Hindu could be adopted under

<sup>3</sup>Dr. J.N. PANDEY the Constitutional law of India pg.456

<sup>4</sup>(1964)4 SCR497:AIR 1964SC510

<sup>5</sup> JOHN DUNCAN,MARTIN DERETT A want of legal History in Supreme Court, Essays in classical and modern Hindu law

Dharmashastra, but under the provisions of Hindu Adoptions and Maintenance Act, 1956, no such distinction between a male and female has been made.

In the ancient times, it was Dharma which prevented anarchy. People did and abstained from doing anything in the name of Dharma. Not much has changed, as people in India still do a lot in the name of Dharma. If not in the sense of law, then in the sense of religion.

- **Dharma as religion:** Religion has not been defined anywhere precisely. The Supreme Court in various cases, has given it a very broad definition. In *Commr., H.R.E. versus L.T. Swamiar*<sup>6</sup> “it will not be correct to say that religion is nothing else but a doctrine of belief. A religion may only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral part of religion, and those forms and observances might extend even to matters of food and dress”<sup>7</sup>

The preamble to the Indian Constitution affirms India as a secular state. Secularism literally means an ideology which does not propagate any religion. No other provision of any other law prescribes for secularism and in such situation, it becomes the duty of Apex Court to interpret the constitution in such a way that the policy of secularism adopted by our constitution makers gets promoted. However, in a multi religion country like India, adhering to the principle of secularism in the practical sense is a difficult task and it becomes even more difficult to implement such provisions in a country which is driven solely by religion and where religion plays a pervasive role in the lives of people. This is where the Supreme Court should rope in as a promoter of secularism and to determine the essence of secularism.

In *KeshavnandaBharati versus State of Kerala*<sup>8</sup> the 13 judge constitutional bench held secularism to be the basic structure of the constitution.

“There is no mysticism in the secular character of the state. Secularism is neither anti God nor pro God, it treats alike the devout, the antagonistic and the atheist. It eliminates God from the matters of the State and ensures that no one shall be discriminated on the ground of religion”<sup>9</sup>

Also in *SR Bomnai versus Union of India*<sup>10</sup> a 9 judge bench held that secularism is a basic structure of the constitution and the framers intended to separate politics from religion.

However, in practicality, Dharma forms an inseparable part of politics. The Supreme Court, again by its various judgements has tried to draw a line between the two

### **Dharma, politics and Supreme Court:**

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<sup>6</sup>AIR 1954 SC 282

<sup>7</sup>Dr. J.N. PANDEY The Constitutional law of India pg.351

<sup>8</sup>1973(4)SCC225

<sup>9</sup>St Xavier's college versus State of Gujarat AIR1974 SC 1389 at 1414

<sup>10</sup> AIR SC, Dec 1994

In *ZiyannidinBurhanuddin Bukhari versus BrijmohanRamdassMehra and others*<sup>11</sup>the Supreme Court set aside the election of ZiyannidinBurhanuddin Bukhari as he had urged Muslim voters to vote for him.

In *Ram Kapse versus HR Singh*<sup>12</sup>The Supreme Court held that a BJP MP was not to lose his seat merely because he was present in a congregation where a religiously inflammatory speech was made on his behalf.

Even though religion or Dharma is undeniably a part of Indian politics, especially minority politics, the SC has played an active role in ensuring that religion based politics or dharma motivated speeches, displays etc. do not cross the line of reasonableness. The Supreme Court has tolerated demonstration and inclusion of religion in politics, but only to a reasonable extent. Again, the decisions and judgements vary from case to case. The recent JNU row in Delhi is also one of the many examples of the possible outcomes when religion and politics are mixed. It would be interesting to note the Supreme Court's take on the issue.

### **Communal riots and Supreme Court:**

Dharma's most extreme and probably the most ghastly manifestation is communal riots. Violence, killing, looting, raping and all sorts of unlawful practises committed in the name of religion or on communal lines is probably the worst form that any religion can take. Unfortunately, India has a long list of such riots on the basis of religion starting right from independence to the Muzaffarnagar riots in 2013.

In the case of Gujarat riots, 2002, SC stepped in to decide the case in March 2008 and it ordered the setting up of a special investigating team (SIT) to re investigate all the violence that had spread during the riots. As of april 2013, 249 convictions have been secured, 184 Hindus and 65 Muslims<sup>13</sup>

### **Article 25 and Supreme Court:**

The Indian Constitution has adopted a positivistic approach towards secularism. That is, it is neither anti nor pro religion and treats all religions equally. The Constitution under article25, allows a freedom of religion to its citizens as a fundamental right. However, this right of conscience and to profess, practise and propagate any religion is not absolute and subject to public order, morality, health and other provisions read into it by various judgements of the Supreme Court. For instance, untouchability, human traffic, system of Devadasis, forced conversions were not accepted by the SC to be a part of freedom of religion under Article 25

In *Rev. Stainislaus versus State of M.P.*<sup>14</sup> Acts passed to prohibit forceful conversions were not held by Supreme Court to be violative of Article 25 of the constitution.

The right of Sikhs to wear Kirpanis recognised as a religious practise by SC

In *Church of God(Full Gospel) in India versus K.K.R.M.C. Welfare Association*<sup>15</sup>causing noise pollution in the name of religion was held not to be a part of article 25.

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<sup>11</sup>1975AIR1778,1975SCR453

<sup>12</sup>AIR 1996SC 817

<sup>13</sup>Source:wikipedia

<sup>14</sup>AIR1977SC908

### **Reservations and Supreme Court:**

Casteism is yet another dimension of religion or dharma since ancient times. Every religion is divided into various castes and sub castes. Due to various reasons, some castes tend to be more prosperous. The other castes, under the name tag of 'minorities' or 'downtrodden', demand reservations. Even though, it is the authority of legislatures to grant reservation to a particular class, the decisions of SC in various cases plays an important role as whenever there is a conflict regarding such reservations, the interested communities move to the Supreme Court.

For instance, in the case of P.A. Inamdar versus State of Maharashtra<sup>16</sup> the Supreme Court observed that reservations cannot be enforced on Private educational institutions

The Supreme Court has taken a neutral stance when it comes to reservations. At such a time, when the nation is divided between those who support and those who are against reservations and in the light of recent events like the Jat agitation over reservations, the SC needs to play an active role in the matter.

### **Uniform Civil Code and Supreme Court:**

It is quite a paradox that despite being a secular state, there are different personal laws relating to marriage, adoption, maintenance etc for different religions in India. Article 44 under the chapter Directive Principles of state policy enshrined in the Constitution is the only provision which requires the state to secure a uniform civil code for its citizens

The court, in many judgements has stressed on the need to give effect to provision under article 44 and implement a Uniform Civil Code.

In SarlaMudgal versus Union of India<sup>17</sup> the Supreme Court directed PM Narsimha Rao to incorporate UCC which is imperative for both protection of oppressed and for promoting national unity and integrity. However, the judgement of Supreme court in sarlamudgal's case is only an obiter dicta and not binding on the government and this is the reason why a UCC still remains a far-fetched dream .

### **Self proclaimed gurus and Supreme Court:**

Another aspect of modern dharma is self proclaimed gurus. People have attached so much faith in such religious institutions that they are becoming powerful day by day in terms of money, political power and support of the people. Their followers come out in their support even when such gurus commit heinous crimes. It is at such point that it is expected out of the judges of SC to be fearless in rendering such judgements. It is commendable that in all such cases, the Supreme Court has lived upto its expectations.

### **Dharma versus Supreme Court:**

The Supreme Court has rendered innumerable judgements on Dharma. However, there are times when dharma has an effect on Supreme Court and its judgements,

<sup>15</sup>AIR2000SC2773

<sup>16</sup>AIR1993 SC477:1992Supp(3)SCC217

<sup>17</sup>(1995)3SCC635

when instead of supporting its judgements, it has a negative impact on society through such decisions.

Dharma negatively affects Supreme Court decisions in more ways than one. For instance, a judge's personal identity, in terms of religion might have an effect on his judgement. Moreover, his political ideology might also get reflected.

One of the most important duties of a judge is to act as a peacekeeper. Sometimes, in order to maintain peace, the judges have to go against their conscience and render a judgement, which even though is incorrect but restores peace and avoids rioting and other such communal problems.

**Conclusion:**

In a country like India, which is solely driven by Dharma, a need of active involvement of Supreme Court in such issues is felt.

The Supreme Court through its decision is already doing a commendable job by not blindly basing its judgements on dharma and carefully scrutinising such issues.

The role played by Supreme Court in exposing misuse of Dharma by different classes, mitigating and preventing communal riots in various situations and in giving a true and reasonable interpretation to the term Dharma is praise worthy and it is hoped that it would continue to do so. It can thus be said that:

‘The Supreme Court of India has truly lived up to its Dharma’