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Case Comment: Acharya Jagadishwarananda Avadhuta and Ors. v Commissioner of Police, Calcutta and Anr.

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INTRODUCTION

Article 25[1] of the Constitution of India states that every person is entitled to freedom of conscience and the right to freely profess, propagate and practise the religion of their choice subject to public order, morality, and health. This clearly signifies that if any practise or any activity which is carried away in the name of religion abrogates morality, health, and public order at large, then the state can absolutely strike down that ritual. Also, Article 26[2] of the Indian Constitution states that any religious denomination has the right to administer and manage religious affairs keeping intact the morality, health, and public order at large. Hence, it has rightly been highlighted that India adopted a positive approach to secularism where the state has a positive role in maintaining peace and communal harmony among various religious sects and the state can reasonably interfere in the same if it feels necessary, unlike other nations where secularism is rigid and absolute.

[1] Constitution of India 1950, art. 25
[2] Constitution of India 1950, art. 26

Speaking about the aforementioned case, the main conflict before the apex court was whether the Tandava dance, performed by the Ananda Margis, was constitutionally valid and whether it is hampering public order or not. The concerned High Court had already decided that the prohibitory orders of the police made under Section 144 of the Code of Criminal Procedure which forbids the performance of the Tandava dance in public were intra vires. Also, the apex court was left to decide whether Ananda Marg is a religious denomination under Article 26[3] or not. This case[4], in the history of the Indian Judiciary, is popularly known as the **First Ananda Margi Case**.

BACKGROUND

Sri Ananda Murti founded a socio-spiritual institution named Ananda Marga in the year 1955 which aimed to carry out a service towards humanity and towards the betterment of mankind. They teach spiritual and yogic science to their followers. In the year 1966, Anand Margis (followers of Ananda Marga) started performing a Tandava dance which includes a dance performance carrying lethal weapons like Trishul, knives, sticks, lathis, blood, and even a human skull. According to them, It is explained that the knife or the sword symbolises the force which cuts through the fetters of the mundane world and allows human beings to transcend towards perfection; the Trishul or the trident symbolises the fight against static forces in the three different spheres of human existence- spiritual, mental and physical; the lathi which is said to be a straight stick stands out as the symbol of straightforwardness or simplicity; the damroo is the symbol to bring out rhythmic harmony between eternal universal music and the entitative sound, and the skull is the symbol of death reminding every man that life is short.

They claimed that this Tandava dance was an essential religious rite which is highlighted under Article 26 of the Indian Constitution. But they used to perform that Tandava dance with all those lethal weapons in public places. As a result of which, prohibitory order under section 144 of the Code of Criminal Procedure was passed by the magistrate forbidding the performance of the Tandava Dance on roads or other public places from August 1979 directing that "no member of a procession or assembly of five or more persons should carry any firearms, explosives, swords,

[3] *Ibid*

[4] *Acharya Jagadishwarananda Avadhuta & Ors v Commissioner of Police, Calcutta & Anr* AIR 1984 SC 81

spears, knives, tridents, lathis or any article which may be used as a weapon of offence or any article likely to cause annoyance to the public for example skulls....".

The petitioner, who is a member of Ananda Marga, offended by this order filed a writ petition under Article 226[5] in the High Court of Calcutta asking for uplifting the prohibition on the performance of Tandava dance in public. But the High court validated the prohibitory order and dismissed the writ petition. As a result, the petitioner filed a writ petition under Article 32[6] in the Supreme Court asking for permission to perform their essential religious rituals in the form of the Tandava Dance.

ISSUES RAISED

The following issues were raised before the apex court concerning the petition:

- Whether Ananda Marga was a religious denomination that is mentioned under Article 26?
- Whether performing the Tandava dance in a public place falls under an essential religious ritual of the Ananda Margis?
- Whether the prohibitory order of the magistrate made under section 144 of the CrPC was constitutionally valid?

CONTENTIONS

ARGUMENTS ON BEHALF OF THE PETITIONER

Acharya Jagadishwarananda Avadhuta, who was an active member of the Ananda Marga argued that Ananda Marga was a religious denomination recognised under Article 26 and it has its own exclusive religious rites and rituals which are needed to be performed as a part of worshipping. They pleaded that Ananda Marga paves the way to spirituality and compels man to perform his responsibilities and duties in the form of dharma. They pointed out that the Tandava dance is a dance form of Lord Shiva and out of his 64 main dance forms, 7 are commonly accepted and need to be performed on a regular basis.

[5] Constitution of India 1950, art. 226
[6] Constitution of India 1950, art. 32

Their argument stated that Ananda Murtiji is the Supreme patron of all Ananda Margis, and the holy literature of Ananda Marga highlights that it is customary and also one of the main prescriptions of the followers of this religious denomination to perform Tandava Dance in public carrying some lethal and deadly weapons like lathis, blood, human skull, daggers, sharp pointed knives, etc. By the prohibitory order of the magistrate, the very crude essence of Article 25 and Article 26 of the Constitution is getting violated by not allowing them to profess and practise their religion.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

The Commissioner of Police, who is the respondent along with the state, contended that first and foremost, the Tandava Dance is not an essential religious rite of the Ananda Margis. Ananda Marga was founded in the year 1955 and the advent of the Tandava Dance was marked in the year 1966 which substantiates the argument that the Tandava Dance was not a part of the essential religious rituals of the Ananda Margis. Moreover, that dance form includes carrying lethal weapons and using those as props, and performing that dance in public places is strictly violative of Articles 25 and 26 as it hampers public and social order. It is also against the morality and health of the general public at large as those lethal weapons may incite them and creates annoyance to them which also intended to disturb peace and tranquillity in society. Respondents also contended that Ananda Marga continues to propagate militancy. Hence, a prohibitory temporary order under section 144 of the CrPC was essential to implement to maintain harmony in society.

But despite that decree, Ananda Margis did carry out a procession on the following day in the city of Calcutta carrying daggers, Trishul, blood, human skulls, etc. which disrupted peace in the society. The procession was held unlawfully and accordingly, the police need to intervene because of which many police personnel were injured. Hence, a counter affidavit was filed by the Deputy Commissioner of Police.

RATIONALE AND RATIO DECIDENDI

The apex court in the case of The Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sri Srirur Mutt, Mukherjee[7] said, "The word 'denomination' has been defined in the Oxford Dictionary to mean 'a collection of individuals classed together under the same name: a religious sect or body having a common faith and organisation and designated by a distinctive name'." In S. P. Mittal etc. v Union of India & Ors[8] and in Sastri Yagnapurushadji and Ors. Vs Muldas Bhudar Das[9], the court stated that a religious 'denomination' must satisfy three conditions:

- It must have a designated name
- It must be a common organisation
- It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith.

The Apex Court found out that Ananda Marga satisfies all these three conditions and hence it can be called a "religious denomination" under Article 26 and hence it can have its distinctive religious rites. Essential practice means those practices that are fundamental to following a religious belief. But the Tandava dance cannot be termed as one of its essential religious rites as it was a recent addition to the rituals of Ananda Marga. Moreover, no religious texts of Ananda Marga highlight the vitality of performing the Tandava dance with lethal weapons in public. Moreover, the Tandava dance created disturbance and havoc in society; showcasing blood, human skulls, sharp knives, daggers, etc. in public violates not only public order and health but also disrupts the peaceful living of the public.

Moreover, large processions on roads create havoc and make them more congested. Hence, keeping all the reasonings in mind, the apex court held that performing Tandava Dance in public is constitutionally invalid. Finally, the court also pointed out that the prohibitory order made under section 144 CrPC forbade only those proceedings and activities which are concerned with

[7] *The Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sri Srirur Mutt* (1954) SCR 1005
[8] *S P Mittal Etc v Union of India & Ors* (1983) SCR (1) 729
[9] *Sastri Yagnapurushadji & Ors v Muldas Bhudar Das* (1984) SCR (1) 447

carrying lethal weapons and blood and human skulls and not performing the Tandava dance as a whole. The court highlighted that the provision under section 144 is inserted to meet contingencies and such a prohibitory order can be extended to a maximum of 6 months.

DEFECTS OF THE LAW

Religion has always been a matter of controversy in India since independence. Though by the 42nd Amendment, 1976, Indian adopted the positive aspect of socialism, communal tensions are still an everyday thing in this land of diversity. Religion has always been a very sensitive issue that is accompanied by various activities and rituals which differ from religion, but as stated earlier, all those activities should be in accordance with public order, morality, and health. Despite this, there are countless rituals of various religions which are still contravening social welfare and other societal aspects of the public.

Tandava dance was among those activities. Some other activities include the immersion of idols in rivers or other water bodies. Statistics tell us that one of the major reasons for river pollution in India is the immersion of idols and the most affected river in this regard is none other than The Ganges. Other activities include the slaughter of domestic animals like cows, goats, etc. During Muharram, which is one of the most prominent religious events of the Muslims, people injure themselves with chains or pointy knives as a mark of mourning. This activity has a lot of religious significance, but such an activity is performed on the streets in front of the public which may contravene public order. Though the government has formulated various statutes and provisions for regulating all those activities, they are still left to be implemented properly.

INFERENCE DRAWN: CONCLUDING REMARKS

One's right ends at the tip of the neighbour's nose. Every person has certain rights and duties conferred to him, but he/she also must understand the nature, scope, and objective of others' rights and duties. The Constitution has established a two-way relationship between the state and its citizens in the way that the state confers certain rights to the individuals, some of which are fundamental in nature, and on the other hand, the citizens have certain duties towards the well-being of the society which leads to peaceful co-existence of all sects of people. India is a

proponent of religious diversity which accommodates various religious sects and rituals. But one should make sure that his/her conduct must not create annoyance to others.

Tandava Dance was not only disrupting public order and health but performing it on the streets hampering the peace in the society and the processions create problems in mobility. Moreover, carrying deadly weapons and blood also incites the people at large and hampers harmony as prima facie it symbolises violence and brutality. Hence such a practise should definitely be declared unconstitutional. This landmark judgement sets a benchmark for all and compels everyone to ponder again the fact that social welfare, social good, and public order is the supreme goal of the Indian Constitution, and it would never be influenced by diversity or social stratification.