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LEGAL PROVISIONS TO CONTROL COMMUNAL VIOLENCE IN INDIA

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ABSTRACT

The Constitution of India provides for protecting of life and personal liberty as the fundamental rights to every person. Article 21 enshrines the principle that no one should be deprived of his life or personal liberty except according to procedure established by law. This article, though couched in negative language, confers on every person the FR to life and personal liberty, which has become an inexhaustible source of many other rights. Article 25 declares, subject to public order, morality and health and to other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. The logic underlying the constitutional guarantee regarding 'practice' of religion is that religious practices are as much a part of religion as religious faith or doctrines.

KEYWORDS:

Section, Law, Constitution

INTRODUCTION

'Propagation' is concerned with right to communicate beliefs to another person to expound the tenets of one's religion, but does not include a right to forcible conversions

Article 28 prohibits compulsory religious instruction at educational institutions maintained out of the State funds. Under this article, the State kept itself away from the charge of promoting religious instructions of whatever denomination.

Article 29 gives the right to every citizen, which has a distinct language, script or culture of its own to conserve it; and no

one can be denied admission into any educational institution maintained by the State or receiving State funds on the grounds only of religion, race, caste, language or any of them.

Article 30 provides rights of minorities, which include both linguistic and religious minorities, to establish and administer educational institutions of their choice. The State cannot discriminate against such institutions either in granting recognition or in providing aid. These articles of the Constitution are of fundamental importance for preserving the religious practices and identities of minority communities based on religion or language and culture. For the Muslims in particular, who constitute the largest religious minority, these provisions are of special importance.

The Constitution sets out in article 32, the right of victims and their families to have access to remedies for the enforcement of FRs when they appear to have been violated, as in the case of the alleged abuses committed during the riots in Gujarat in 2002.

The article 38 (1) says that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. This article incorporates part of the Preamble within it concerning 'justice, social, economic and political'.

According to Article 39 A, The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

According to Article 46, The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes (SCs) and the Scheduled Tribes (STs), and shall protect them from social injustice and exploitation.

Under article 356, the President may impose President's rule in a State, if the government of the State cannot be carried on in accordance with the provisions of the Constitution. Thus, it is evident that the framers of the Indian Constitution had

explored various areas where human rights and civil liberties could be infringed upon and therefore, enunciated the rights of citizens and provided for their constitutional protections.

Under s. 76, a person believes himself bound by law to do a thing and thereby feels that he is under legal compulsion to do a thing. While under s. 79 a person acts because he thinks that he is justified in doing so and thereby believes that there is a legal justification for his action. The purpose of these two sections is thus, to provide protection from conviction to persons, who are bound by law or justified by law in doing a particular act, but due to mistake of fact, in good faith, committed an offence.

RESEARCH STUDY

The object of protection given under these sections to the judges and their ministerial staffs, who are executing the orders of the judges, is to ensure the independence of the judges and to enable them to discharge their duties without any fear of the consequences. The protection is based on public policy.

A State is under duty to protect life, limb and property of its people. At the same time, a State cannot extend its help to all and in all cases. Therefore, every person has a right to defend his 'own' body and the body of 'other' person against any offence affects the human body, and his 'own' property and the property of 'other' person movable or immovable. This right is based on the principle that it is the primary duty of a person to help him. The

right of private defence is provided under ss. 96 to 106 of IPC.

Section 96 lays down the general rule on the right of private defence. Section 97 deals with the subject-matter of the right of private defence of body and property and lays down the extent of the right of private defence, and proclaims that every person, subject to restrictions contained in s. 99, has a right to defend his own body and the body of another person, against any offence affecting human body, and right to defend property of his and of any other persons. Section 98 gives the right of private defence against certain acts of persons whose rights are exempted from criminal liability.

Sections 102 & 105, deal with the commencement and the continuation of right of private defence of body and property respectively. Sections 100 & 101; 103 & 104, deal with the extent of the harm (including voluntary death) that may be inflicted on the assailant in exercise of the right of body and property respectively. Section 106 allows a person to take the risk of harming innocent person in order to, in exercise of the right of private defence of body, save himself from mortal injury.

The right of private defence is fundamentally a defensive right and it is available only when the situations clearly justify it. It is exercised only to keep away unlawful aggression and not to punish the aggressor for the offence committed by him.

Every person is bound to assist a Magistrate or police officer demanding his

aid in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorized to arrest; or in the prevention or suppression of a breach of the peace; or in the prevention of any injury attempted to be committed to any public property.

Under section 40, every person residing in a village shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, any information which he may possess in respect of any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate (DM) has directed him to communicate information.

Under section 43, any private person has right to arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, and to make over or cause to be made over any person so arrested to a police officer or take person to the nearest police station. The right of arrest is also applicable where the attempt to commit an offence is itself an offence and such attempt is made in view of the person arresting. The law authorizes a private person 'to use all means necessary to effect the arrest'. The words 'all means' are very wide and include the taking of assistance from others in effecting the arrest.

DISCUSSION

Section 51 empowers a police officer to make a search of the arrested person under certain circumstances. If incriminating things or stolen articles are found in such

search, the police officer may seize them under s. 102 and produce them in court.

The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

Section 149 of Cr.PC authorizes a police officer to intervene only in cognizable offences, while s. 23 of the Police Act authorizes him to act even in general offences.

Every police officer receiving information of a design to commit any cognizable offence is required to communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Section 108 allows an EM to initiate action against a person violating ss. 124-A or 153-A or 153-B or 295-A, of the IPC. The test under this section is whether the person proceeded against, has been disseminating seditious matter or such other matter as mentioned in s. 108, and whether there is any fear of repetition of the offence. The dissemination must be intentional.

Under section 109, security for good behaviour can be taken from a person taking precautions to conceal his presence in order to committing a cognizable offence. This section enables the EM to

take action against suspicious strangers lurking within their jurisdiction.

The object of this section is to protect the public against hardened and habitual offenders, who habitually commit, or attempt to commit, or abet the commission of offences involving a breach of the peace and public tranquillity.

Whenever it appears to Magistrate upon the report of a police officer or upon other information that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate, may at any time issue a warrant for his arrest.

The various statutory provisions relating to communal violence, e.g., preventive as well as punitive legislations, constitutional provisions, rules and guidelines, etc., discussed in this chapter are relevant to the maintenance of law and order in the society. These provisions are adequate to curb the problem of communal violence if implemented effectively and timely but the law enforcement machinery lacks the will to act firmly and impartially.

The provisions of law relating to communal violence are continuously being violated by the anti-social elements and perpetrators of communal violence who incite the communal passion and disturb the peace of the nation. The executive, the law and order machinery and the judiciary have shown a marked reluctance to haul up offenders who are guilty of mass crimes.

CONCLUSION

A crime that involves the use of force or threat of force may become a civil rights violation if the perpetrator was motivated by intolerance and hate (for instance, hatred of a particular ethnic group). Hate crimes are violent actions intended to hurt and intimidate someone because of their race, ethnicity, national origin, religion, sexual orientation, or disability. Usually someone who is convicted of a hate crime faces a steeper penalty than someone who performed the same actions without discriminatory animosity, but this legal distinction also helps prosecutors establish motive in certain crimes.

These hate crimes terrorize whole communities by making members of certain classes - whether racial minorities, lesbian, gay, bisexual, transgender and queer people, religious minorities or people who are perceived to be members of these groups - afraid to live in certain places and be free to move about in their community and across the country.

Because perpetrators commit hate crimes to send a message and express anger or hatred for the victim, they often involve more violent acts than it takes to subdue or incapacitate the victim. Sometimes they involve mutilation, torture or holding the victim captive, such as in a car trunk.

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