

PETITIONER:
SHRI A.S. NARAYANA DEEKSHITULU

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT: 19/03/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 1765 JT 1996 (3) 482
1996 SCALE (2)911

ACT:

HEADNOTE:

JUDGMENT:

WITH

WRIT PETITION NOS. 1063, 1090, 1374 OF 1987 AND 173/90 AND
TRANSFER CASE NOS.168/88, 170-76/88, 2/90, 37 & 38/90,3/93
AND 4/93.

J U D G M E N T

HANSARIA, J.

It may look pedantic to say anything more in the face of the very scholarly and erudite judgment of my learned brother with whom I am in respectful government on all counts. This concurring note is only to highlight one facet of his case, which had not been traversed earlier, but which has its own importance. The same is the difference between "religion", a word used in Articles 25 and 26, and "dharma" known to our psyche. I wish to put on record the difference in my own way and to say that our constitution makers had used the word "religion" in these two articles in the sense conveyed by the word "dharma".

Very often the words "religion" and "dharma" are used to signify one and the same concept or notion; to put it differently, they are used inter-changeably. This, however, is not so, as would become apparent from what is being stated later, regarding our concept of dharma. I am of the considered view that the word religion in the two articles has really been used, not as is colloquially understood by the word religion, but in the sense of it comprehending our concept of dharma. The English language having had no parallel word to dharma, the word religion was used in these two articles. It is a different matter that the word dharma has now been accepted even in English language, as would appear from Wester's New Collegiate Dictionary which has defined it to mean : "Dharma : n. [Ekt. ff.dharayati he holds;] akin to L firmus firm: custom or law regarded as duty: the basic principles of cosmic or individual existence: nature : conformity to one's duty and nature." The Oxford Dictionary defines dharma as : "Right behaviour,

virtue; the Law [Skt = a decree, custom]".

The difference between religion and dharma is eloquently manifested when it is remembered that this Court's precept is ". It is apparent that the word dharma in this cannon or, for that matter, in our saying: does not mean religion, but the same has been used in the sense defined in the aforesaid two dictionaries. This is how the President of India, Dr. Shanker Dayal Sharma, understood the word dharma in his address at the First Convocation of the National Law School of India University delivered on 25th September, 1993 at Bangalore.

Our dharma is said to be 'Sanatana' i.e. one which has eternal values; one which is neither time-bound nor space-bound. It is because of this that Rg. Veda has referred to the existence 'Sanatan Dharmani'. The concept of 'dharma', therefore, has been with us for time immemorial. The word is derived from the root 'Dh.r' - which denotes; 'upholding', 'supporting', 'nourishing and 'sustaining'. It is because of this that in Karna Parva of the Mahabharata, Verse-58 in Chapter 69 says :

"Dharma is for the stability of the society, the maintenance of social order and the general well-being and progress of humankind. Whatever conduces to the fulfillment of these objects is Dharma; that is definite."

(This is the English translation of the Verse) as finding place in the aforesaid Convocation Address by Dr. Shanker Dayal Sharma.)

The Brhadaranyakopanisad identified Dharma with Truth, and declared its supreme status thus :

"There is nothing higher than dharma. Even a very weak man hopes to prevail over a very strong man on the strength of dharma, just as (he prevails over a wrong-doer) with the help of the King. Therefore people say about a man who declares the truth that he is declaring dharma and about one who declares dharma they say he speaks the truth. These two (dharma and truth) are this."

(English translation of the original text as given in the aforesaid convocation address).

The essential aspect of our ancient thought concerning law was the clear recognition of the supremacy of dharma and the clear articulation of the status of 'dharma', which is somewhat akin to the modern concept of the rule of law, i.e. of all being sustained and regulated by it.

In Verse-9 of Chapter-5 in the Ashrama Vasika Parva of the Mahabharata, Dhritrashtra states to Yudhishthira : "the State can only be preserved by dharma - under the rule of law."

Ashoka mentioned about victory of dharma in his rock edict at Kalsi which proclaimed his achievement in terms of the moral and ethical imperatives of dharma, and exemplified the ancient dictum : (where there is Law, there is Victory).

We may with profit refer to another learned speech given by the President of India at the valedictory session of Parliament of Religions held at Calcutta on 19th September, 1993. Dr. Sharma was there principally speaking on the contributions of Swami Vivekananda to our religion

and referred in this connection to the address of Swamiji given at the International Conference of Religions held at Chicago in September 19, 1893, when he explained many salient features of the Vedic and Vedantic body of thought and defined the characteristics of a religion "whose whole scope, whole force, will be centered in aiding humanity to realize its own true... nature." The President further quoted another thought of Swami Vivekananda where he had said : "Religion is neither word nor doctrine....It is deed. It is to be and become. It is the whole soul changed into that which is believed...."

Aforesaid was the Indian concept of religion of which the framers of the Constitution were aware and it is because of this that the word "religion", as used in Articles 25 and 26 of the Constitution cannot be confined, cabined and crabbed, according to me, to what is generally thought to be religion.

Swami Rama in his book 'A Call to Humanity', published by the Himalayan International Institute of Yoga Science and Philosophy of the U.S.A. in 1988 has taken pains to demonstrate the difference between religion and dharma. It would be profitable to note what this great saint has said in this regard. The word religion, as presently understood, is comprised of rituals, customs, and dogmas surviving on the basis of fear and blind faith; whereas dharma encapsulates those great laws and disciplines that uphold, sustain, and ultimately lead humanity to the sublime heights of wordly and spiritual glory. Dharma shines in the form of truth, non-violence, love, compassion, forbearance, forgiveness, and mutual sharing.

Swami Rama mentioned in this connection what the great master, Krishna, stated to Arjuna about the essence of the Upanishads. He introduced a healthy lifestyle through which people could attain the state of peace here and now. But with the passage of time, people formed a cult around Krishna, giving birth to new religion with various branches.

The distinction between religion and dharma has also been explained by saying that religion is enriched by visionary methodology and theology, whereas dharma blooms in the realm of direct experience. Religion contributes to the changing phases of a culture; dharma enhances the beauty of spirituality. Religion may inspire one to build a fragile, mortal home for God; dharma helps one to recognize the immortal shrine in the heart.

The author goes on to say that the perennial truths, rules, and laws that help maintain peace and harmony in one's individual and in the community life constitute dharma. It applies for all times and in all places. Social laws and even national constitutions devoid of such a dharma will lead a society toward an inevitable decline.

Thus, having love for all human beings is dharma. Helping others ahead of one's personal gain is the dharma of those who follow the path of selfless service. Defending one's nation and society is the dharma of soldiers and warriors. In other words, any action, big or small, that is free from selfishness is part of dharma.

Swami Rama has further stated that dharma has been a great force in uplifting the human race. Dharma can help us today as it did in ancient times, but only if we start living by truth, not merely believing in truth. During away from dharma and distancing oneself from the Truth is not a desirable way of living. It ultimately leads to misery. In the practice of dharma, one is advised to shed to veil of ignorance and its source ? Withholding nothing, all the great sages in the world shared their knowledge with

humanity. In the Bhagavad Gita, the Bible, Koran, and Dhammapada - knowledge, like the sun, shines for all.

It is because of the above that if one were to ask "What are the signs and symptoms of dharma?", the answer is: that which has no room for narrow-mindedness, sectarianisms, blind faith, and dogma. The purity of dharma, therefore, cannot be compromised with sectarianism. A sectarian religion is open to a limited group of people whereas dharma embraces all and excludes none. This is the core of our dharma, our psyche.

Nothing further is required to bring home the distinction between religion and dharma; and so I say that the word "religion" in Articles 25 and 26 has to be understood not in a narrow sectarian sense but encompassing our ethos of Let us strive to achieve this; let us spread the message of our dharma by availing and taking advantage of the freedom guaranteed by Articles 25 and 26 of our Constitution.