

LEGALFOXES LAW TIMES

CASE COMMENT ON *ACHARYA JAGDHISHWARANAND AVDHUT V. COMMISSIONER OF POLICE, CALCUTTA*, (AIR 1984 SC 512)

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INTRODUCTION

The term 'Religion' is not defined anywhere in the Constitution of India and indeed it is a term which cannot be fixed under a rigid set of definition. The Article 25 of the Indian Constitution guarantees to all its citizens as well as the aliens (foreign citizens) the freedom of Religion. Article 25 is a fundamental right guaranteed under PART III of the Indian Constitution is debatable as India is secular. India has varied religions and every religion follows different customs, have different beliefs, have different ways of professing their religion and so on. The Case of *Acharya Jagdishwaranand Avdhut v. Commissioner of Police, Calcutta* popularly known as the *Ananda Marga* Case is one of the landmark cases before the Supreme Court of India under Article 25 and 26 of the Indian Constitution which dealt with the matter of what constitutes an essential part of a religion and what is a religious determination.

FACTS OF THE CASE

The *Ananda Marga* sect sought permission to the Commissioner of Police, Calcutta to perform the *Tandava Dance* as a part of their religious rites in public places with knives, snakes, tridents and human skulls. The Commissioner accorded permission to carry out the *Tandava Dance* but with a condition that they would perform the *Tandava Dance* without a knife, snakes, and the above mentioned objects. This was challenged before the Supreme Court by a writ petition under Article 32 against the Commissioner of Police on the ground that they were given permission with terms and conditions which violated their fundamental right of 'Right to Freedom of Religion' under Article 25 and 26 of the Indian Constitution.

JUDGEMENT

The Apex Court observed that *Ananda Marga* was founded in 1955 and contains no dogmatic beliefs and teaches yoga and spirituality to its members based on Hindu Philosophy and thus declared as a religious denomination. The Apex Court held that the *Tandava Dance* turned into not a crucial spiritual ceremony of the *Ananda Margis*. It was established initially as religious rites around 1966 hence it cannot be considered as an essential religious rite of their religion. After taking into account all the relevant facts, the Apex Court by a majority held that the performance of the *Tandava Dance* in public places by the *Ananda Margis* is not an essential or integral part of their religion, and thus, not a matter of religion within the meaning of Article 25

and 26 of the Constitution and disallowance of them from carrying out processions with human skulls etc. were held valid as it harmed the 'public' order and 'morality'.

BACKGROUND OF THE CASE AND THE ISSUES DISCUSSED

- The Petitioners tried to assert that the *Ananda Marga* was a religious order and that they itself have their religious practices, rites, rituals, and beliefs and that itself makes *Ananda Marga* a different religion. The Supreme Court asserted that *Ananda Marga* was not an institutionalized religion. The rationale behind this is inside the writings of the founder of the *Ananda Marga* based upon the essence of Hindu Philosophy and that the *Ananda Margis* have been *Saivites* that is a sect of the Hindus.
- The Court while considering the second issue as to whether *Ananda Marga* can be termed as a religious denomination of the Hindu Religion, the court took into consideration of the point noted in the case of *Commissioner Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (AIR 1954 SC 282) which laid that the words 'religious denomination' in Article 26 of the Constitution must take their color from the word 'religion' & if this is so, the expression 'religious denomination' must also satisfy three conditions:- It must be a collection of individuals who have a system of beliefs which are regarded as conducive to their spiritual well-being. Secondly, a common organization and thirdly a designation by a distinctive name. The court took the following rationale under A.26 and found that all the three conditions are satisfied in the present case and thus treated *Ananda Marga* as a 'religious denomination' under the Hindu Religion.
- The Supreme Court has the strength to decide what constitutes an important part of religion & whether a particular rite of observance is regarded as an essential rite of a religion. The court docket pointed out that the *Tandava Dance* changed into no longer universal as a crucial non-secular rite of the *Ananda Margis* when in 1955 the *Ananda Marga* order was first founded. The court held that even though *Tandava dance* has been prescribed as a spiritual rite for the fans of the *Ananda Marga*, it is not set up as an important practice that *Tandava dance* has to be performed in the public as a matter of religion. The court didn't accept the contention of the petitioner that the performance of *Tandava dance* in public was an essential religious right of the *Ananda Marga*.

- The petitioners argued that the prohibitory order under sec.144 of the CrPc was not valid on the ground that the commissioner reissued the order on a repetitive basis. The Court held that reissuing of order again and again was an abusive use of power provision to sec.144 (4).

ANALYSIS

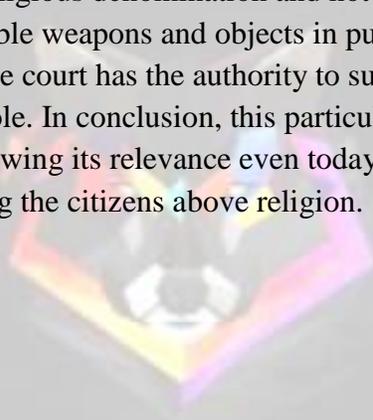
It was contended before the Apex Court by the Petitioner that one of the religious rites of the *Ananda Marga* faith was the *Tandava Dance* which becomes to be accomplished with a Skull, knife, and a Trishul. It was an essential religious practice required to be performed in public places during the procession of the *Ananda Marga* and any interference in their religious practice would amount to the violation of their right to freedom of religion under Article 25. The judges of the Court taking the stand that the allowance of such a practice to continuing without restrictions from the Commissioner of police would have created havoc in the society was totally reasonable. The point that is to be laid emphasis here is that the right to practice and propagate one's religious belief that is mentioned under Article 25(1) of the Indian Constitution is subjected to public order, morality and one has to bear in mind that one's right ends at the tip of the neighbor's nose. Allowing *Tandava dance* to be performed with such weapons and skulls caused disturbance of the public tranquility and public order. The SC's stand in this case of the order under s.144 of the Criminal Procedure Code (Cr.P.C.) stands to be correct. The orders under this section can never be intended to be issued with a permanent character. They are only mandated to be temporary in nature. Extension of the order on a repetitive basis amounted to the misuse or violation of the right.

The *Ananda Marga* case significantly raised some important questions about the legal regulation of the religion in India. One of the important questions that are raised in this case was how one could differentiate the religious from the secular. Another question that was put forth along with the previous question was what is a religion? I would here like to critically comment that the issues that are raised in the present case have highlighted the judicial inability to demarcate between the religious and the secular and its inability to decide what is a religion. The court has relied upon the principle of a precedent case and not only in this case but in many religious matters that come before the court, the court always has to rely upon the principle laid in some previous case dealing similar issues. I would say that the legislature and the judiciary should together take this matter into consideration and prepare a strict set of rules so that no new religious denomination can go against the norms of public law and order and if it tries to infringe such a law, it will lead to penalties. In such a context it becomes necessary to look into these aspects that have formed the basis of this judgement and the issues rose as they continue to reflect how the judiciary decides decisions in such matters. If we take into consideration of the temporary character of an order issued under s.144 of the Cr.P.C. the court here favored the petitioners stating that such an order issued under s.144 cannot be of a long-lasting nature. The

mentioning of the time frame for which they are to be under force if not mentioned, this provision may be used as a tool for suppressing the rights of the citizens. What I personally believe is that if the government has to deal with a situation of importance as it has occurred in this case, rather than the use of an order under s.144 Cr.P.C. the government may resort to bringing legislation for such a purpose.

CONCLUSION

Acharya Jagdishwaranand Avdhut v. Commissioner of Police, Calcutta, has put forth two most effective understandings of Article 25 and 26 of the Indian Constitution and the contention or the arguments that were put forward by this case from both the parties has some very important relevance in the understanding of how the court in sentimental matters like religion uses its unbiased opinions and deliver their judgement in the favor of the public. The way the court has determined *Ananda Margis* as a religious denomination and not a religion and that their practice of *Tandava Dance* with unacceptable weapons and objects in public spaces were harming public harmony have made it clear that the court has the authority to subject even in matters of religion when it harms the society as a whole. In conclusion, this particular case has always been argued before the court as a precedent showing its relevance even today that the court has always take into consideration of the well-being the citizens above religion.



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