

Winner Of CSC December 2018 Essay Competition

India is a diverse nation with a number of religions being followed by its population. It is a place which dwells upon the idea of "Vasudeva Kutumbakam" which means "world is one family". The preamble to the constitution states about the secular credentials of the nation. In the recent times there have been occurring some cases whereby there is growing difference of opinions among public on to matters related to Faith and Tradition. Even the people of the same community are holding opposing opinions on a matter.

Of late, there have been a number of cases across courts of the country with regard to religious matters/traditions being followed. For instance, there was a question raised in a case whereby a person following Sikhism had challenged a local cycling association's rules which required the contestants to wear a Helmet to participate in the competition. The Supreme court judges asked "whether it was mandatory for a person following Sikhism to wear a Turban as per the religion?" The counsel for the petitioner argued that even the Central Motor Vehicle Act grants exemption to Sikhs from wearing helmets while riding two wheelers. He continued with his argument that even foreign countries such as UK and US have permitted Sikhs to wear turbans while playing sports. However, the court was of the view that it is mandatory to cover the head under the religion, wearing a turban is a personal choice. Now considering this case, what the Supreme court concluded was in true spirit of religion as well as safety of a person, wearing a helmet prevents lethal injury to head in case of an accident. Many followers of Sikhism cover their heads with a cloth instead of wearing full-fledged turban. Cricketers like Harbhajan Singh, Bishen Singh Bedi, athletes Milkha Singh didn't wear turban while playing their respective sports but they covered their head at the same time. Wearing a turban or not is a personal choice of a person but priority should be given to safety and well-being of a person. However these are sensitive issues as matters relating to religion are always touchy and can cause a major controversy which may lead to law and order situation at times.

Many of the traditions that were being followed in India earlier were outdated ones, for instance the custom of "Sati" which required a woman to join her dead husband in the funeral pyre regardless of her age. Also, the tradition of child marriages is a regressive one but somehow it is still being followed in many communities across India. The Judiciary is a part and parcel of the System and it must have its say in such matters however it is a double edged sword whereby one decision can trigger law and order issues.

Triple talaq is one such case. Many women have suffered due to this tradition. The government has passed a law making it a criminal offence for men who indulge in this kind of activity. However, the Muslim personal law board disagrees on criminalizing the act. Any decision by judiciary in matters which would do well for a number of people should be welcomed. Earlier, Parsi woman who married outside religion were not allowed to enter Fire Temple. In Dec, 2017 it was decided by Supreme Court that Parsi woman who married outside religion can enter fire temple. Matter to be considered is that faith of person is same whether married within the community or outside community unless there is forceful conversion to another religion. God doesn't bifurcate between people, these customs are created by man but they shouldn't be forced upon others. To pray in a fire temple is a right of a parsi woman, even if she is married outside her community, as she continues to believe in the temple and its altar. The only possible way for people in such cases is to take a legal route and get a decision through the judiciary.

Entrance of women of a particular age group in Sabarimala in Kerala or allowing of women in Shani Singdapur is cases have attracted controversy. Although both sides can be considered right in their own way, one side remains aggrieved by Court verdict. Many a times Judiciary suo moto takes some decisions, if the decision is in benefit of larger section of the society. It is good but the only point to be taken care of is that stakeholders in any matter should be heard and decision be taken accordingly.

In the case of Sabarimala, Justice Indu Malhotra one of the Judges in the five bench hearing the case has categorically said in her dissenting judgement that "Judiciary should not interfere in the matters related to faith and tradition". In her judgment she mentioned that unless the practice being followed are oppressive in nature like "Sati" or a social evil, courts shouldn't intervene. It was interesting to note that a women judge was against the idea of allowing women of the age group of 10-50 years be allowed to enter the Lord Ayyappa temple at Sabarimala while the male judges were in favor of the same.

Some of the traditions in vogue since centuries, they would have been introduced keeping in mind the time period then but some of the traditions hold water throughout time immemorial. They shouldn't be meddled with at whims and fancies of few. India adopted its new constitution and if constitutionally any of the traditions are violating any rights of Indian national, it is duty of the government to make amends to the same. If the government is not able to do so, it is the judiciary who is looked upon for a resolution as there has to be some institution that makes the system work according to the constitution of India. In any given case, constitution should be upheld and in the even to protect the constitutional rights of a citizen if judiciary is getting involved in matters of faith and tradition, it should be accepted.

Judiciary is empowered by Indian Constitution Article 32 and Article 226 provisions which enable the Supreme Court and High Courts respectively to issue any directions or refrain from doing an act. If the faith or tradition is in violation of any provisions then Judiciary is obliged to take suitable action on the same. This may be regarded as interference by groups who are in favor of such tradition but the judiciary being protector of Constitution is obliged to intervene suitably if it deems fit.

In conclusion, judiciary should keep in mind the rights of public at large and whether there is any infringement on rights of individuals by any of the traditions or customs being followed. If there is prima facie an infringement which is against the constitution of the nation then Judiciary should intervene without any hesitation but also at the same time it should refrain entertaining fringe elements who try to impose their beliefs and ideas on others in the name of religious faith or tradition.