



RELIGIOUS FREEDOM A MATTER OF CONSCIENCE

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ABSTRACT

India is a pluralistic society and a country of religions. It is inhabited by the people of many religions. The framers of the Constitution of India thus desired to introduce the concept of secularism, meaning state neutrality in all matters of religion. Religious tolerance and equal treatment of all religious groups are essential parts of secularism. Secularism in India does not mean irreligion. It means respect for all faiths, belief and religions. The State does not identify itself with any particular religion.¹ India being a secular State, there is no state or preferred religion as such and all religious groups enjoy the same constitutional protection without in favour of discrimination.² Article 5 to 28 seeks to protect religion and religious practices from the State interferences. India has no preferred religion or State religion, as such; all religions are treated alike and enjoy equal constitutional protection without any favour or discrimination. The state has no religion of its own. It should treat all religion equally. The state should give equal respect to the church, to mosque and to the temple. Every man should be allowed to go to heaven in his own way.

¹ Dr. Radhakrishnan in *Secularism in India*(Ed. V.K Sinha) 127(1968)

² N.A.,Subramaniam, *Freedom Of Religion*, 3 JiLi 323(1961)

Worshipping God should be according to the dictates of one's own conscience. Man is not answerable to the State for the variety of his religious views".

Introduction

The concept of religious freedom has been considered as one of the most controversial topics upon which the highest court of appeal is silent. The Preamble of the Indian constitution declares India to be "Secular State"³ which explains that the state does not recognise any religion as a state religion and that it treats all religions, equally and with equal respect without in any manner interfering with their individual rights of religion, faith and worship.⁴ But this does not mean that it is an irreligious or atheistic State, neither has it meant that India is an anti- religious state. It simply means that in matters of religion the State is neutral. The State neither promotes any practices for the upliftment of particular religious sect in state nor does it interfere with any religious practices. Thus State is not concerned with relationship of men with their God but is concerned only with the relationship of men with other men in a society. Thus the concept of Secularism which is implicit in our Indian Constitution secures to all its citizens "liberty to thought, belief, faith and worship". The 42nd Amendment Act of 1976 which has inserted a word "secular"

³ The term "Secular " was inserted by the constitution 42nd amendment Act 1976

⁴ M. P.G. Nair v. State Of Kerala, AIR 2005 SC 3053; Bal Patil v. Union Of India AIR 2005 SC 3172



in the Preamble gives a new impetus to the citizens of India to have freedom of religion. The Supreme Court of India in explaining the secular character of the Indian constitution said, “There is no mysticism in the secular character of the State. Secularism is neither Anti- God nor Pro – God; it treats alike the devout, the antagonistic and the atheist. It eliminates God from the matters of the State and ensures that no one shall be discriminated against on the ground of religion”.⁵ The state has no official religion of its own. It should treat all religions equally without any distinction. The State must extend equal and similar treatment to the church, the mosque and the temple. Thus, every man should be allowed to go to heaven in his own way. Worshipping God should be according to the dictates of one’s own conscience.⁶ “Man is not answerable to the State for the variety of his religious views”.⁷ The right of worship was granted by God for man to worship as he is pleased. There can be no compulsion in law of any creed or practice of any form of worship.⁸

In *S.R. Bommai V. Union of India*,⁹ The Supreme Court has held that “Secularism is basic feature of the Indian Constitution”. The State shall treat equally all religions and religious denominations. Religion is matter of individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the state by enacting law. Justice Ramaswami observed that

secularism is not Anti- God. In the Indian context secularism is positive concept. Thus, the Indian context embodies the positive concept of secularism and has not accepted the American doctrine of secularism that is the concept of erecting “a wall of separation between Religion and State”. The concept of positive secularism separates spiritualism with individual faith. The state is neither anti – religion nor pro-religion. In matters of religion, the state is neutral and treats every religion equally.

What is religion?

The word “Religion” as such has not been defined under our Indian Constitution. And indeed it is term which is hardly susceptible to any rigid definition. The Supreme Court has given a new interpretation to the word “religion” and defined it broadly. Religion is matter of faith with individuals or communities and it is not necessarily theistic. A religion has its basis in “a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being”, “but it will not be correct to say that religion is nothing else but a doctrine of belief. A religion may have laid down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and mode of worship which are regarded as integral part of religion, and those forms and observances might

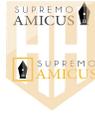
⁵ *St Xavier’s college v. State of Gujarat*, AIR 1974 SC 1389 at 1414

⁶ *Dowens v. Bidwell*, (1901) 182 US 244

⁷ *United States v. Ballard*, (1944) 322 US 78

⁸ *Cantwall v. Connecticut*, (1931) 310 US 295

⁹ AIR 1994 SC 1918



extend even matters of food and dress.¹⁰ Therefore religion is matter of personal faith and belief. Every person has a right to entertain such religious faith and ideas as may be approved by his/ her judgement or conscience but also exhibit his belief and ideas by such overt acts which are sanctioned by religions. A religion is merely an opinion, doctrine and belief. Religion has been defined as a belief which binds spiritual nature of men to supernatural being. It includes worship, belief, faith, devotion, etc. and extends to rituals.¹¹ The word “Religion” has different shades and colours. Important shade is dharma (duty), duty towards the society and soul.¹² In *Jayati Thomas v. Union of India*¹³, the Supreme Court explained that religion was a matter of faith stemming from the depth of the heart and mind and that religion, faith or devotion were not easily interchangeable. Thus the essence of Secularism in India is the essence of recognition and preservation of the different types of people, with diverse languages and different beliefs and placing them together so as to form a whole “united India”.¹⁴ Thus, it is the contribution of our founding fathers that we have a constitution which is secular in character and which caters to the tremendous diversity in our country. ¹⁵Article 30 ensures the protection of linguistic religious minorities, thereby preserving the secularism in the country. Holding

that word “secularism” used in the Preamble was reflected in provision contained in Articles 25 to Article 30 and Part IV–A to the constitution, the Apex Court said that secularism was susceptible to a positive meaning, that was, developing understanding and respect towards different religions. The court thus ruled that study of religions in school education, could not be held to be an attempt against the secular philosophy of the constitution.¹⁶

Concept of Freedom in International Scenario

Article 18 of Universal Declaration of Human Rights 1948 as well Article 18 of International Convention for Civil and Political Rights 1966 provides “Freedom of religion, belief faith and worship”. Even the international world talks about religious freedom of man in a particular society. Every man is free to choose religion of its choice and has the right to propagate the same among the masses.

Right to Freedom of religion under Indian Constitution

The right to “Freedom of religion” is embodied under articles 25 to 28 of the constitution of India. Various rights which constitute the rights to have religious freedom are-

- A. Freedom of conscience and right to freely profess, practice and propagate religion (Article 25).

¹⁰ Commissioner, H.R.E. v. L.T. Swamiar AIR 1954 SC 282 at p. 290.

¹¹ P.M.A Metropolitan v. Moran Mar Marthoma, AIR 1995 SC2001

¹² Aruna Roy v. Union of India AIR 2002 SC 3176

¹³ AIR2000 SC388

¹⁴ Virodhak Sangh v. M.M.K. Jamat, AIR 2008 SC 1892.

¹⁵ T.M.A. PAI Foundation v. State of Karnataka, AIR 2003 SC 355

¹⁶ Santosh Kumar v. Secretary, Ministry of human resources AIR 1995 SC 293.



- B. Right to religious denominations to manage religious affairs (Article 26).
- C. Freedom from payment of taxes for promotion of any particular religion (Article 27).
- D. Freedom from attendance at religious instructions in certain educational institutions (Article 28).

Thus, Articles 25 to 28 use the term “person”. Therefore, freedom of religion so secured is available to every person, citizens or non citizens or aliens.¹⁷

Freedom of Conscience and the right to profess practise and propagate religion (Article 25)

Clause (1) of Article 25 provides; “Subject to public order, morality and health and to the other provision of this Part, all the person are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion”. This article secures every person

- (a) Freedom of conscience
- (b) The right to profess religion, practice religion and propagate religion.

Freedom of conscience

The expression “freedom of conscience” means the inner freedom of the person to choose any religion of his choice. It also means the inner freedom of the person to mould his relations with his/ her god in

whatever manner he likes. It connotes a person’s right to entertain his beliefs and doctrines, concerning matters which are regarded by him to be conducive to his spiritual well being. It means to believe in one religion or another or none. Thus, every person in India, therefore, has the freedom to have faith and belief in religious tenets of any sect or community. Freedom of conscience as mentioned above means the freedom to hold or to entertain religious beliefs. Any belief which is genuinely and conscientiously held or any religious belief, as may be approved by his /her judgement or conscience, attracts the protection of Article 25(1). It simply means the freedom of religious opinions. Until this inner belief is expressed in any outward form, it is merely the “freedom of conscience”.¹⁸

Right to profess religion

Article 25(1) guarantees the right to profess religion. To “profess” means “to avow publicly; to make an open declaration of; to declare one’s belief in; as to profess Christ: to accept into religious order.”¹⁹ Thus, to profess a religion means to declare openly and freely his/her faith towards one religion. When the inner “freedom of conscience” becomes articulate and expressed in an outward form, it amounts to profession of religion. It is to declare one’s belief in such a way that it would be known to those whom it may concern.²⁰

¹⁷ Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.

¹⁸ Webster’s New world dictionary, quoted in Punjab Rao v. D.P Meshram, AIR 1965 SC1179()

¹⁹ Webster’s New world dictionary,

²⁰ Punjab rao v. D.P Meshram, AIR 1965 SC1179



Right to Practise Religion

To practise any religion means to perform religious obligations, duties, rites, ceremonies and rituals. The expression “practise of religion” means acts done in pursuance of religious beliefs. Religious practises which are included under Article 25(1) refer and include practices which are an integral part of the religion itself²¹ that is the beliefs and doctrines which are regarded by those who profess religion, to be conducive to their spiritual well- being.²²

Right to propagation of religion

Propagation simply means to spread and publicise one’s religious views. Holding public meetings by persons for propagating their religion is held to guarantee under Article (1).²³ But to “propagate religion” indicates the persuasion and exposition without any element of coercion. It does not include the right to insult the religion of others.²⁴ The right to propagate one’s religion does not give any right to others to convert other person into their religion. What article 25 (1) guarantees is right to practise, profess and propagate and does not provide any right to convert another person to one’s own religion, but to transmit or spread one’s religion by an exposition of its tenets. Article 25 guarantees “freedom of conscience” to every citizen, and not merely to the

followers of one particular religion. It, therefore, postulate that there is no fundamental right to convert another person to one’s own religion because if person purposely undertakes to conversion of another person to his religion as distinguished from his efforts to transmit or spread the tenets of his religion that would impinge on the “Freedom of Conscience”, guaranteed to all citizens of the country alike.²⁵

Religious Freedom Subject To the Rights of Others

A person can exercise his/her right to religious freedom as long as it does not enter into conflict with the exercise of fundamental rights of others. In the case of Acharya Maharajashri Narendra Prasadji Anand Prasadji Maharaj V. State of Gujarat²⁶, the Supreme Court observed that “no rights in an organised society can be absolute. Enjoyment of one’s right must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the state has to step in to set right the imbalance between the competing interests.” The court has further observed that “a particular Fundamental Right cannot exist in isolation in a water-tight compartment. One Fundamental rights of a person may have to co-exist in harmony with the exercise of another Fundamental right by others also with reasonable and

²¹ John Vallamattom v. union of India, AIR 2003 SC 2902

²² A.S. Naryanan v. State of Andhra Pradesh, AIR 1996 SC 1765,

²³ Sri lakshamana Yalendrulu v. State of Andhra Pradesh, AIR 1996 SC1414

²⁴ Ramjilal v. State of Uttar Pradesh, AIR 1957 SC 620.

²⁵ Rev. Stainislaus v.State of Madhya Pradesh, AIR 1977 SC 908.

²⁶ AIR 1974 SC 2098.



valid exercise of power by the State in the light of Directive Principles in the interests of social welfare as whole”.

Jehovah’s Witnesses

In 1986 a two judge bench of Supreme Court ruled in Bijoe Emmanuel V. State of Kerala,²⁷ that Jehovah’s witnesses constitute a religious denomination. Compelling a student belonging to the Jehovah’s Witnesses to join in singing of National Anthem despite his “genuine”, conscientious and religious objection”, would contravene the rights guaranteed by Article 19(1) and Article 25(1). The court has noted Jehovah’s Witnesses wherever they are do not sing the national anthem though they show respect to it by standing up whenever it is sung. They truly and conscientiously believe that their religion does not permit the singing of the National Anthem. The court has said; “the question is not whether a particular religious belief or practice appeals to our reason or sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion. If the belief is genuinely and conscientiously held it attracts the protection of Article 25 but the subject of course to the inhibition contained therein. The Supreme Court held that “it is true Article 51A(a) of the constitution enjoins a duty on every citizen of India “ to abide by the constitution and respect its ideal and institutions, the National Flag and National Anthem”. Proper respect is

shown to the National Anthem by standing up when the National Anthem is sung. It will not be right to say that disrespect is shown by not joining in the singing”.

Regulation of Secular Activities: Article 25(2) (a)

The State is empowered to regulate secular activities associated with religious practices. The state is not entitled to regulate religious practices as such. What the state can regulate under Article 25(2) (a) are the activities which are generally of an economic, commercial or political character though these may be associated with religious practices.

Social Reform and Throwing Open Of temple; Article 25(2) (b)

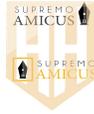
Article 25(2) (b) contains the following two ideas;

- (1) Measures of social reform are permissible and would not be void on the ground of interfering with freedom of religion. Thus, the Hindu Marriage Act which introduces the principle of monogamy for the Hindus is undoubtedly a law providing for social welfare and social reform. It is the legislation intended for the benefit of the class of persons to whom the Act applies.²⁹
- (2) The state can throw open Hindu religion institutions of public character to all the sections of the Hindus. Article 25(2) (b) enables the state to

²⁷ (1986) 3 SCC 615.

²⁸ Ratilal Panachand Gandhi v. Sate of Bombay, AIR 1954 SC 388.

²⁹ Sate of Bombay v. Narasu, AIR 1952 Bombay 84.



take steps to remove the scourge of untouchability from amongst the Hindus. The word “Public” here also includes any section of the public. Public institutions would thus mean not merely temples dedicated to the public as a whole, but even those which are founded for the benefit of sections thereof, and development and denominational temples would thus fall within the scope of this clause.³⁰

Freedom to manage religious Affairs
Article 26

Article 26 of Indian constitution provides that “subject to the public order, morality, and health every religious denomination or any section thereof shall have the right –

- (a) To establish and maintain institutions for the religious and charitable purposes
- (b) To manage its own affairs in matter of religion
- (c) To own and acquire movable and immovable property
- (d) To administer such property in accordance with the law.

Religious Denomination

The term “religious denomination” in Article 26 means a religious sect having a common faith and organisation and designated by a distinctive name. The words “religious denomination” takes their colour from the word ‘religion’. Therefore, in case of denomination there

must be common faith of the community based on the religion, and the community members must have the common intention and religious tenets peculiar to themselves.³¹ To form a religious denomination, three conditions must be fulfilled;

- (1) It is a collection of individuals who have a system of beliefs which they regard as conducive to their spiritual well- being.
- (2) They have common organisation.
- (3) Collection of these individuals has a distinctive name.

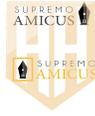
Right to establish and maintain institutions Article 26(a)

Clauses (a) of Article 26 the words “establish and maintain” go together. It means, therefore that where an institution has been established by a religious denomination, then it can claim the right to maintain the same as well. The right to maintain an institution may includes the right to administer as well. A denomination has no right to maintain an institution which has been established by it. The right to maintain an institution for religious and charitable purposes includes the right to exclude the profession or practices belonging to other religions. In Sanjib Kumar v. Principal St. Paul College³² the principal of the college has established the Christian missionary society, refused to perform Saraswati Puja in the college premises. The Calcutta High Court held that the Principal was

³⁰ Sri venkataramana Devaru v. State of Mysore, AIR 1958 SC 255.

³¹ Ramasswami Mudaliar v. State of Uttar Pradesh, (1197) 4 SCC 606.

³² AIR 1957 Cal. 524.



entitled to refuse the performance of such a religious practices in the exercise of his right to maintain the institution under Article 26(a).

Matter of religion Article 26(b)

The term used in Article 26(b) “matter of religion” is synonymous with the term “religion” in Article 25(1).³³ It thus includes not only religious belief but also such religious practices and rites as are regarded to be an essential an integral part of religion.

Right to own property and Administer Property Article 26(c) & (d)

Clause (c) of Article 26 secures to religious denomination or any section thereof “the right to own and acquire movable and immovable property”. Clause (d) further strengthens this right by guaranteeing to the denomination “the right to administer such property in accordance with law”. The right contained in Article 26(c) & (d) is distinguishable from the right guaranteed in clause (b) relating to management of religious affairs. While, Article 26(b) guarantees a fundamental right which cannot be taken away except on grounds mentioned under article 25(2), the right contained under Article 26(c) can be regulated by a law made by competent authority and legislature.

Freedom from payment of Taxes for promotion of any Particular religion Article 27

Article 27 provides “no person shall be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination”. The object behind Article 27 is to protect the secular characteristic of the constitution of India which prohibits the promotion or maintenance of any particular religion by the state or at state expenses. Therefore if such a tax is imposed, no person can be compelled to pay it. The Supreme Court in *Sri Jagannath v. State of Orissa*³⁴ upheld the levy and observed that the annual contribution so imposed was in the nature of a “fee” and not a “tax”. The payment was demanded for the purpose of meeting the expenses of the commissioner and his office which was the machinery set up for the due administration of the affairs of the religious institutions concerned.³⁵

Article 27 not only prohibits the imposition of taxes but it also prohibits the utilisation of public funds for the promotion or maintenance of a particular religion or religious denomination.

Prohibition of religious Instructions in Educational institutions (Article 28)

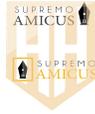
Clause (1) of Article 28 provides “no religious instructions shall be provided in any educational institutions wholly maintained out of state funds”

Clause (2) an exception to clause (1) provides that the prohibition contained in clause (1) would not apply to educational institutions which is administered by the

³³ *Govindlaji v. Sate of Rajasthan*, AIR 1963 Sc 1638.

³⁴ AIR 1954 SC 400.

³⁵ *Moti Dass v. S. P. Sahi*, AIR 1959 SC 942.



state but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institutions

Article 28 distinguishes between the following three types of educational institutions in respect of holding religious instructions and worship.

- (1) Educational institutions wholly maintained out of state funds
- (2) Educational institutions which are either recognised by the state or getting aid out of state funds.
- (3) Educational institutions which are administered by the state but have been established under any endowment or trust which requires that religious instructions shall be imparted.

Article 28 was enacted to ensure that the peaceful atmosphere of educational institutions should not be disturbed by the controversies with regard to the truthful character of any particular religion and erroneous character of the other. It was provide for a path of complete safety.³⁶

Conclusion

Therefore in secular countries like India where there is a traditional society which is still in existence it is important to grant religious freedom to each and every individual in the society and moreover the concept of religious freedom shall not be manipulated on the ground of having political influence over it. Religio-pluralism is India's past, present and future; indeed the heart and soul. "No religion is foreign to India; nor is India foreign land for any religion".

³⁶ Dr. B.R Ambedkhar, CAD VII, 883-884.