

FREEDOM OF RELIGION IN INDIA: AN ANALYSIS¹

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Independence of Practising Religion

The degree of independence to practice a religion cannot be scaled as such, but what our constitution provides is that we can practice any religion in any way² or manner we want, till the time it does not disturb the social order either morally or politically and does not hamper the smooth running of the society which means that he does not commit any act of social misconduct which may lead to any threat to the ongoing peace, any immoral act or any other activity banned by the state. Practices like sati, child marriages, dowry, various sacrificial offerings have been banned owing to the fact that it has been classed as immoral social practices³.

Articles in Constitution

- Article 25. Freedom of conscience and free profession, practice and propagation of religion.
- Article 26. Freedom to manage religious affairs.
- Article 27. Freedom as to payment of taxes for promotion of any particular religion.
- Article 28. Freedom as to attendance at religious instruction or religious worship in certain education institutions.

India, most popularly acknowledged as the land of spiritual beliefs, philosophical thinking, culture, has also been the birthplace of quite a few number of religions out of which some of

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² Laid down in Art 25-28

³ *Stanislaus v. State of Madhya Pradesh* (1977)

them exist in this era as well. 'Religion' is entirely a matter of choice, perception and belief. Paying heed to the Indian scenario we can conclude that , people in this country have a strong faith and dependence when it comes to their religion as they perceive that religion adds meaning and reason to their lives. When it comes to people who are extremely devoted to their religion , they leave no stone unturned in showing substantial amount of fidelity towards their respective religion

Right Given Under Article 25?

The said freedom to practice any religion of a person is enshrined under Part III of the Constitution in Article 25 ⁴which governs all the persons residing in the country irrespective of their status of citizenship. Hence, no one can question the religious inclination of any person irrespective of whether he is a foreign national or any person residing in the territory of India.

Constitutional Safety

Religion has been dealt with very carefully by our constitution makers in order to avoid any clash between the state and its subjects. Hence, under Part III which talks about fundamental rights of a citizen⁵, there are several provisions which provide for the safe and healthy accommodation of religious matters into the society.

Absolute Right Or Not?

Article 25 gives to all persons the right to freely profess, practice and propagate religion. This right, however, is not absolute. The opening words of Article 25(1) make this right subject to public order, morality, and health. The same restriction also applies to the other provisions of Part III of the Constitution. This would mean that the right given to a person under 25(1) can be curtailed or regulated⁵ if the exercise of that right would violate other provisions of Part III of the Constitution, or if the exercise is not in consonance with public order, morality and health and it cannot be violated by any person in exercise of his freedom of conscience or his freedom to

⁴ *Public Propagation of Religion*

⁵ *Art 14 of Indian Constitution*

profess his religion. For example, a person cannot profess his religion in such a manner as to denigrate another religion or bring about dissatisfaction amongst people.

The freedom to profess any religion is a fundamental right, but in cases where a particular community is kept under minority status, the shield of freedom of religion cannot be used for the purpose of claiming minority status so as to avail the benefits of Articles 29 And 30 of the Constitution of India. The same principle was upheld in the case of State Of Rajasthan And Ors. v. Vijay Shanti Educational Trust.⁶

Implications of Article 25 & 26 not being absolute

- Use of loudspeakers is not an integral part of the religions so the government can restrict on the use of loudspeakers for *Ajan* and *Bhajan Kirtans*.
- Followers of no religions have right to stop the processions of other religions on the ground that it is a nuisance.
- State may abolish “Cow Slaughter” as sacrifice of Cow on *Bakrid*⁷ is not an essential part of the religion.
- Possessing a *Kirpan* is an essential part of professing Sikkism and it is protected right of Sikhs. (Article 25 Explanation I)
- The Aligarh Muslim University⁸ was established under an act of parliament so Muslims can NOT claim to run this university as per provisions of Article 26 & Article 29.
- None of the rights guarantee that a *Brahmin* only can perform rituals of Hinduism.

⁶ *State Of Rajasthan And Ors. vs Vijay Shanti Educational Trust on 21 September, 2001*
Equivalent citations: RLW 2003 (4) Raj 2568

⁷ Referring to Muslim Festival

⁸ Aligarh Muslim University , Delhi Est 1875

The Freedom to Manage Religious Affairs

The freedom to manage religious affairs is provided by Article 26. This Article gives the right to every religious denomination, or any section thereof, to exercise the rights that it stipulates. However, this right has to be exercised in a manner that is in conformity with public order, morality, and health. Clause (a) of Article 26 gives a religious denomination the right to establish and maintain institutions for religious and charitable purposes. There is no dispute that the establishment of an educational institution comes within the meaning of the expression “charitable purpose”. Therefore, while Article 25(1) grants the freedom of conscience and the right to profess, practice and propagate religion. Article 26 can be said to be complementary to it.

Restrictions

Each time the state plans to introduce restrictions to curb religious dealings, it gets a wide array of reactions from the society.

A careful reading of Article 25(2)(a) indicates that it does not prevent the State from making any law in relation to the religious practice as such. The limited jurisdiction granted by Article 25(2) relates to the making of a law in relation to economic, financial, political or other secular activities associated with the religious practice. This means that the state can regulate affairs related to religion indirectly.

Meaning of Public order, morality and health

This means that Article 25 & 26 are not absolute. No person can do such religious things which affect the public order, morality and health. For example no one has right to conduct human sacrifice. No one can perform worship on busy highway or other public places which disturb the community.

Is right to performing rituals protected?

Yes, it is protected. But the state by law may regulate the economic, financial, political, or other activity which may not be a direct part of religion. For example management of Temples can be controlled by the state.

Does Constitution allow use of loudspeakers in temples / mosques etc.?

Using the loudspeakers for making noise is not guaranteed by the Constitution. The protagonists of this thought took shelter of Article 19(1) freedom of speech and right to expression. However, nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers.

In this context, cracking of fireworks on Diwali & using loudspeakers for *Ajan* in the morning had also come under Supreme Court's scrutiny. The Court restricted the time of bursting the firecrackers, and it does not in any way violate the religious rights of any person as enshrined under Article 25 of the Constitution.

The festival of Diwali is mainly associated with Pooja performed on the auspicious day and not with firecrackers. In no religious textbook it is written that Diwali has to be celebrated by bursting crackers. Diwali is considered as a festival of lights not of noises.

In this context, the Government of India framed and published **Noise Pollution Control and Regulation Rules⁹, 1999**. This legislation was amended in 2002 and empowered the State Governments to permit use of loudspeaker or public address system during night hours (between 10 pm and 12 pm mid-night) on or during the cultural or religious occasions for a limited period not exceeding 15 days.

The Supreme Court in *Church of God in India v. K.K.R. Majestic Colony Welfare Assn.*, (2000) held that the Court may issue directions in respect of controlling noise pollution even if such noise was a direct result of and was connected with religious activities. The mandate included the following lines:

“Undisputedly, no religion prescribes that prayers should be performed by disturbing the peace of others nor does it preach that they should be through voice amplifiers or beating of drums. In our view, in a civilized society in the name of religion, activities which disturb old or infirm persons, students or children having their sleep in the early hours or during daytime or other persons carrying on other activities cannot be permitted”.

The Legality of Ghar Wapsi Movements: Fate of Anti-Conversion Laws

Ghar Wapsi means homecoming or reconversion of non-Hindus into Hinduism. There are no such cases which prove that these conversions are fraudulent. Had such an activity being a result

⁹ *Noise Pollution Act, India*

of undue influence or by forceful means, it would have been an illegal activity.

One question of importance which emerged during the same time was whether the converted person will be put back to his initial caste or will he lose all his prior cast designations. It was in the case of *K.P. Manu, Malabar Cements Ltd¹⁰ v. Chairman, Scrutiny Committee for Verification of Community Certificate Civil Appeal no. 7065 OF 2008*, where the bench held that even after reconversion the person can avail the benefits of reserved categories provided the person must fulfill three mandatory conditions to avail such benefits after reconversion:

- There must be clear proof that he belongs to a caste duly recognised as a Scheduled Caste.
- He has “reconverted” to the original religion to which his parents or earlier generations belonged.
- That he has been accepted by the community.

Anti-Conversion Legislations

All of the anti-conversion laws at present seek to prevent any person from converting or attempting to convert, either directly or otherwise, any person through “forcible” or “fraudulent” means, or by “allurement” or “inducement.”

The Constitution of India guarantees the freedom to profess, practice, and propagate one’s religion under Article 25. The Supreme Court in the case of *Ratilal Panachand Gandhi v. State of Bombay 1954 S.C.R. 1035, 1063* clarified this provision by holding that “every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for edification of others.”

The Supreme Court in *Rev Stanislaus v. State of Madhya Pradesh (1977) 1 SCC 677* examined whether the right to practice and propagate one’s religion also included the right to convert. The Court upheld the validity of the earliest anti-conversion statutes: the Madhya Pradesh Dharma

¹⁰ *K.P.MANU Vs. CHAIRMAN
LAWS(SC)-2015-2-76*

Swatantraya Adhiniyam, 1968, and the Orissa Freedom of Religion Act, 1967. The Court held that propagation only indicated persuasion/exposition without coercion and that the right to propagate did not include the right to convert any person.

The Court agreed with the law wherein the learned judge has held that the conduct of a spouse who converts to Islam has to be judged on the basis of the rules of justice equity and good conscience. It was further observed that, looked from another angle, the second marriage of an apostate – husband would be in violation of the rules of natural justice. Assuming that a Hindu husband has a right to embrace Islam as his religion, he has no right under the Act, to marry again without getting his marriage under the Act dissolved. The second marriage after conversion to Islam, would, thus, be in violation of the rules of natural justice and as such would be void. The Court remarked that all the ingredients of Section 494 IPC¹¹ were satisfied in this case, and therefore the offence of bigamy had been committed.

The Court was of the opinion that many Hindus have changed their religion and have become converts to Islam¹² only for the purposes of escaping the consequences of bigamy. Since monogamy is the law of the Hindus whereas the Muslim law permits as many as four wives, errant Hindu husbands embrace Islam to circumvent the provisions of the Hindu law and to escape from penal consequences. A marriage solemnized under a particular statute and according to one personal law cannot be dissolved according to another personal law, simply because one of the parties has changed his or her religion.

Freedom of religion and Secularism in Indian Constitution

Though the Right to freedom of speech and expression (Article 19¹³) envisages the philosophy of freedom of religion in India because despite the creation of Pakistan, a lot of Muslims were scattered all over India, part from Sikhs, Parsees, Christians and others. Yet the constituent assembly made it explicit by incorporating a separate group of Articles as per an agreement with / recommendation of Advisory Committee on Fundamental Rights, Minorities, Tribal and Excluded Areas (Chairman: Vallabhbhai Patel) and Minorities Sub-Committee (Chairman: H.C.

¹¹ Abolition of Second Marriage

¹² Muslim religion largely followed in India

¹³ Right to freedom of speech

Mookherjee). Before the Constitution 42nd amendment Bill added the word “secular” in the constitution of India, the word “secular” appeared only in “Article 25”. India is a secular country and there is no state religion. India also does not patronizes any religion. The Constitution 42nd amendment Act made the above thought “explicit” in the constitution.

What Legal Actions to take when Someone Restricts you from Practising your Religion?

How to Report? Which Court to Approach?

If your fundamental right to practice your religion has been restricted you can approach the High Court under Article 226 ¹⁴of the Constitution. You also have the right to approach the Supreme Court under Article 32 but the Supreme Court has advised that you approach the High Court of your State before approaching the Supreme Court.

Apart from Constitutional safeguards, Indian Penal Code has also provided safeguards have which been stated under Chapter 15 from Sections 295-298 classified as offence any act such as:

- Damaging or defiling a place of worship or a sacred object with intent to insult the religion of a class or a person.
- For disturbing any religious worship or ceremony.
- For trespassing into any place of sepulture or place where funeral ceremonies are proceeding.
- For utterances in the presence of another person with the intention of wounding the religious feelings of that person.
- For insulting the religion of any class of citizens by spoken or written publication.

Even though it’s an important statutory provision, it comes with many conditions to prove. The term such as malicious, deliberate intentions and state of mind becomes hard to prove in the court. The last point dealing with insulting any religion through published or spoken expression also poses a problem, it varied the material expression by using the term *outraging* rather than *wounding* the feelings of any person.

¹⁴ Jurisdiction of High Court

Is Demolition of a Worship Place by Public Authorities Valid – Is it Violative of my Fundamental Rights?

Fundamental rights are there for the protection of one's right to practice religion but no right can exist in absolute independence without any condition. Same way Article 25 of the constitution which calls for one's rights to freedom of religion but it is subject to public order.

While deciding what public order is, if the court has been given two situations to prioritize from, it will choose the situation which is for the greater good of the public. So given the fact that the presence of any shrine is detrimental to the expansion of a runway for an international airport the court can order for removal of such worship places. Hence even if the right to practice any religion is a right protected under the constitution, it's still not absolute and is subject to various conditions.

Challenges

Threatened Indian Secularism

Secularism in India was not aimed to create a wall of separation between the church and state but to assure minorities that their culture, religion, and identity would be protected and a majoritarian view would not be imposed on them. Today there are clear signs of the majoritarian¹⁵ view of religion being imposed on minorities. In this post, I aim to outline some examples of this imposition:

Curtailment of Religious Freedom by the Judiciary

Recently, the Supreme Court took upon itself the responsibility to determine what is integral to the practice of a given religion and what is not. This test is called the "essentiality" test. But this exercise of determining the essential practices of a religion leads to obscure results and tends to lead the court into an area which is beyond its competence. The essentiality test was crystallized in the temple entry case. A Muslim police officer challenged a regulation which did not permit him to grow a beard. It is disgusting to note that rather than looking at the question of essentiality of beard in Islam, the court rejected the petitioner's argument by simply relying on the irrelevant

¹⁵ *Hinduism in India*

fact that certain Muslim dignitaries do not sport a beard. The mosque too was held non-essential.

The court should not privilege certain religious practices over others. These are purely religious questions which should be left to clergy. The essentiality test assumes that some practices are central to religion and others are just incidental. This is not the correct understanding of religion as all elements and practices together constitute a religion.

Non Hindus: Not Entitled to Affirmative Action

The scheduled Castes Presidential Order in 1950 included only Hindus as possible recipients of affirmative action. Sikhs were added in 1956 and Buddhists in 1990. Christians and Muslims who share vocation based caste system with Hindus have been excluded. If a Hindu converts to Islam or Christianity, he loses the benefit of affirmative action, but if he reconverts to Hinduism, he gets back his reservation.

Anti-Conversion Laws: The Proposal to have a Federal Law

The religious conversion decision of the apex court also limits freedom of religion. The most important case relating to the conversion is *Rev. Stanislaw*. It was argued that since anti-conversion laws prohibit conversions, they are contrary to constitution as they are hindrance in the “propagation” of one’s religion. But the Supreme Court upheld their validity. The right to propagate one’s idea is inherent in the concept of freedom of speech and expression. Freedom of conscience includes freedom to change the religion or belief. Freedom of conscience means a person is free to entertain any belief. This implies that the state cannot enquire into or take notice of a citizen’s religious beliefs. A number of states already have anti-conversion laws and the BJP has been advocating for a central law on conversion.

Communalism & Religious Freedom

Communalism is a disease that warps the mind and makes a man look at life through tainted glasses so that he cannot see any good in a man unless he belongs to his own community. Today communalism has infected all walks of life. Riots have been used to teach Muslims a lesson for the real and or imagined sins of 700 years of Muslim rule and for partitioning the country. The goal has been to terrorize Muslims into complete submission as subjects and to instill fear in

them so that they do not claim their rights as citizens. Riots are a substitute when total genocidal operation seems an obvious impossibility. The selection of time, place, and modalities of riots and the rising and falling curve of its graph can easily establish this macro-level plan of engineering riots. The fact that these riots have targeted minorities is clear from various independent enquiry reports and judicial probes, although all judicial probes found a program against Muslims.

Recent Events That Threaten All Freedoms :

- Silencing rationalist thinkers like Narendra Dhabholkar, Govind Pansare, and M. M. Kalburgi
- Issuing of stamps to honor Yogi Aavaidyanath, who led the Ram temple movement, which led to demolition of historic Babri Mosque
- Frequent condemnation of Nehruvian secularism
- Packing of institutions with rightist elements; secularists are removed even prior to end of terms
- Denial of jobs: "We do not hire Muslims¹⁶," a Mumbai Company responded within house
- Vishva Hindu Parishad's ¹⁷demand of construction of Ram temple by next year
- Denial of Houses to Muslims including Muslim celebrities

Conclusion

In the present scenario where India very closely observes the consequences of the communal clash, the sense of respect and accommodation for other sects and communities must be inculcated in the masses. The ambit of control exercised by the government over religious activities must be checked. A sense of inclusiveness must be provided to the people belonging to minority community. The idea of religion is very personal to individuals and it should be left personal only rather than bringing this topic on stage and deriving political gains out of it. This right has already been protected by the Constitution of India and it is the duty of the court to uphold and enforce these rights.

¹⁶ Quoted in *Mumbai Mirror*

¹⁷ *Hindu Organization*