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# **FREEDOM OF RELIGION AND ITS LIMITS: ANALYZING ARTICLE 25 OF INDIAN CONSTITUTION.**

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## **ABSTRACT**

The Indian Constitution provision in Article 25 guarantees the fundamental freedom of religion which encompasses all persons and enables them to affirm, practice and propagate their religion. This right is not inherent and however there are reasonable restrictions in the nature of public order, decency or morality, health and social justice. In this paper, the scope and boundaries of Article 25 with regard to the interpretation through the perspective of judicial trends is analyzed. It also addresses the issue of religion in India, particularly about the doctrines of the judiciary distinguishing essential from non-essential practice of Hindu Religion. Using important judgments such as, The Commissioner, Hindu Religious Endowments v Shri Lakshmindar Tirtha Swamiyar, M.H. Qureshi v. State of Bihar and Shayara Bano v. Union of India, the paper demonstrates how the conflict between individual rights and state's ambition is resolved. The study reinforces the relevance of secularism in a multicultural nation like India and that Article 25 is linked with the issues of religious rights, public order and social change in a positive way.

## **INTRODUCTION**

In January, 1950, when the Indian constitution became operative, India was a "Sovereign, Democratic, Republic". In the year 1976, with the 42<sup>nd</sup> constitutional amendment, the words "Secular, socialist and Integrity" were added in the constitution and India developed into a "sovereign, socialist, secular, democratic, republic". India has no official religion. The secular nature of India separates religious matters from social, political, cultural and economic aspects of life, religion being treated as a totally personal matter. This secular nature of India is reflected in the fundamental rights mentioned in part-III of the constitution, in Article 25-29. The idea that people of every religion in India shall have equal rights is mirrored in articles 15 and 16 of the Indian constitution. Secularism according to Alexandrowicz is, "where the states

remains adamant in the exclusion in an establishment of religion, in the observance of strict non-discrimination between various churches and religious institutions and in the abstention from any interference in their internal affairs.”<sup>1</sup> Secularism highlighted in the Indian constitution is positive in nature and hence, guarantees each of its citizens to practice, profess and propagate any religion. India as a nation does not associate itself with any religion and gives equal freedom to all religions. Article 25 guarantees freedom of religion. There have been various instances in the Indian constitutional history where, the idea of a secular state and right to freedom of religion have been upheld. There are judicial precedents, legislative provisions that talk of or atleast reflect these ideas. For instance, The representation of people’s act, 1951 prevents the seeking of votes on the basis of religion and requires every political party wanting to have an election symbol to mention in their constitutions, secularism and socialism among their objectives. One of the main reasons why secularism is included in the Indian constitution, implicitly before 1976 and explicitly after 1976 is that, India is home to people of extremely diverse religions and ideas that uphold religious tolerance are vital.<sup>2</sup> This project aims to delve into the meaning of article 25, interpret it in context of Indian law, understand what is religion and essential religious practices and describe how important secularism is for a country like India. Different articles and books related to right to religion and constitution of India have been referred to write this project. Databases such as jstor, manupatra, SCC online have been used to collect articles and gather information related to the topic.

### **ARTICLE 25: FREEDOM OF RELIGION**

Fundamental rights are constituted in part III of the Indian constitution. The fundamental right to freedom of religion is dealt with in Articles 25-28. Article 25 guarantees all persons, the freedom of conscience, and freely practice, profess and propagate their religion. Article 25(1) lays down that,

*“subject to public order, morality and health and to the other provisions of part III of the constitution, all persons are equally entitled to the freedom of conscience and the right to freely profess, practice and propagate religion.”*<sup>3</sup>

Article 25(2) basically talks of reasonable restrictions on this right. It lays down that,

*“Nothing in this article shall affect the operation of any existing law or prevent the State from*

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<sup>1</sup> C.P Bhambhri, *Indian judiciary and freedom of religion*, 25, IJPS 241,241(1964).

<sup>2</sup> V.D MAHAJAN, *CONSTITUTIONAL LAW OF INDIA* 230 (Sanjay Jain, 8<sup>th</sup> ed.,2023).

<sup>3</sup> India const. art.25, cl. 1.

*making any law—*

- a) *regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;*
- b) *b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.*"<sup>4</sup>

The government can make laws on restricting, regulating any economical, financial, political or any secular activities that might be connected to religion and laws promoting social welfare even if they violates someone's right to religion. This provisions rightfully limits the idea of non-interference by the state in religious affairs.

Explanation 1 of article 25 includes carrying of "kirpans" in profession of Sikh religion. Explanation 2 defines a "Hindu". According to explanation 2, persons professing Sikhism, Jainism and Buddhism shall also come under the definition of "Hindu" and reference of Hindu religious institutions shall be construed accordingly.<sup>5</sup>

Venkatarama Ayyar, J. in the advisory opinion of the Supreme court on Kerala education bill gave the example of Europe in middle ages and observed that, during those times the sovereigns imposed their religion on their subjects and those who rebelled were announced as traitors. This unjust treatment was the major reasons of the wars and civil wars that happened in the 16<sup>th</sup> and 17<sup>th</sup> century in Europe. As a result of unrest, it was later realised that freedom of religion, good citizenship and patriotism can go hand in hand. They are complementary to each other, rather than a threat to each other and therefore, religious ideologies of minorities need to be respected in a progressive society. This concept of freedom of religion is embodied in article 25 of the constitution of India.<sup>6</sup>

### **WHAT IS RELIGION AND ESSENTIAL RELIGIOUS PRACTICES**

Although, the constitution gives us laws related to religion, it does not explicitly define religion. There are no definite set of words that define religion. It is a very wide concept and has gradually evolved with different judicial precedents and pronouncements. It was observed by Latham C.J, in **Adelaide company v. commonwealth**<sup>7</sup>, "it would be difficult if not impossible

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<sup>4</sup> India const. art.25, cl. 2(b).

<sup>5</sup> India const. art. 25.

<sup>6</sup> N.A Subramanian, *freedom of religion*, 3, JILI 323, 323 324 (1961).

<sup>7</sup> Adelaide company v. commonwealth, (1943) 67 C.L.R, 116 at 123.

to devise a definition of religion which would satisfy the adherents of all the many and various religions which exist in the world.”<sup>8</sup> Justice field of the supreme court of America in the year 1889 defined religion, he said, “the term religion has reference to one’s views of his relations to his creator and the obligations they impose of reverence for his being and character and of obedience to his will”.<sup>9</sup> A question that various courts in this world have tried to answer is, whether religion is just a belief system or does it also include the acts done in pursuance of a religious belief? The contention in India has usually been that religion needs to be studied in a much broader sense, article 25 also specifically mentions the word “practice” therefore, religion cannot be just a belief system, this part of religion can rather just be called “faith”. Religion is much more than faith, it includes acts that are done in pursuance of that faith. In **The commissioner, hindu religious endowments, madras v. shri lakshmindar tirtha swamiyar of shri shirur mutt**<sup>10</sup> apex court said that, “article 25 which, as its language indicates, secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others.”<sup>11</sup> The supreme court also observed that, “A religion undoubtedly 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 would not be correct to say that religion is nothing else but a doctrine of belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.”<sup>12</sup> This contention has also been the view outside India. In the high court of Australia, the interpretation of section 116 of the commonwealth constitution has been that religion is not only a belief system but acts done in pursuance of that belief system as a part of religion.<sup>13</sup> Therefore, it can be said that religion is not only a belief system or faith, it also includes all the outward acts done in pursuance of that religion.

Another question that courts in India have tried to answer from time to time is, whether all

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<sup>8</sup> N.A Subramanian, *freedom of religion*, 3, JILI 323, 325 (1961).

<sup>9</sup> C.P Bhambhri, *Indian judiciary and freedom of religion*, 25, JPS 241,243 (1964).

<sup>10</sup> The commissioner, hindu religious endowments, madras v. shri lakshmindar tirtha swamiyar of shri shirur mutt, AIR 1954 SC 282.

<sup>11</sup> Ibid paragraph 14.

<sup>12</sup> Ibid paragraph 17.

<sup>13</sup> N.A Subramanian, *freedom of religion*, 3, JILI 323, 326 (1961).

religious practices can be protected by article 25 or only “essential religious practices” come under the purview of article 25? It has been laid down in various judicial precedents that a religious practice has to be essential in order to come under purview of article 25 and whether a religious practice is essential in a particular religion shall be determined by the religious doctrine itself. The Supreme Court later realized that in the *shrirur mutt case*<sup>14</sup> the scope of article 25 was given out to be very broad. There was no demarcation between a religious practice and a religious practice that is essential and sanctioned by religion. Later in the case, **Ratilal Panachand Gandhi Vs. The State of Bombay and Ors.**<sup>15</sup> it was laid by the Supreme Court that, not all religious acts, subjectively declared by people as religious acts are protected by the constitution rather, only those acts that are sanctioned and are essential to that religion are protected by the constitution. In another case later, it was laid down that the religious practice should be “enjoined” and “sanctioned” by religion. The supreme court drew a demarcation between essential and non-essential religious practices in the case **M.H Quareshi v. state of Bihar**<sup>16</sup>, the constitutionality of Bihar, U.P, C.P and Berar legislation for banning cow slaughter was in question. It was being argued that banning cow slaughter is a violation of article 25 of the Muslim community. The court assessed the Quran and Hidayah and came to a conclusion that cow slaughter is not an “essential religious practice” in Islam. It is not an essential practice for Bakr-id day. The Quran mentions, “a goat for one person and a cow or camel for seven persons”. Therefore, it was concluded by the court that cow slaughtering is not an obligation in Islam rather, it is just a choice and the legislations banning cow slaughter were held to be constitutional. The court held that, “We have, however, no material on the record before us which will enable us to say, in the face of the foregoing facts, that the sacrifice of a cow on that day is an obligatory overt act for a Mussalman to exhibit his religious belief and idea. In the premises, it is not possible for us to uphold this claim of the petitioners”.<sup>17</sup>

Another case where the Calcutta High court tried to make a distinction between “essential” and “non-essential” religious practices was **Masood alam v. commissioner of police**<sup>18</sup>, this case was concerned with the use of loudspeakers for the purpose of “Azan” in mosques. People residing near the mosque complained of the use of loudspeakers for “azan”, as a result of which

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<sup>14</sup> The commissioner, hindu religious endowments, madras v. shri lakshmindar tirtha swamiyar of shri shrirur mutt AIR 1954 SC 282.

<sup>15</sup> ramji lal modi v. state of U.P, AIR 1954 SC 388.

<sup>16</sup> M.H Quareshi v. state of Bihar, AIR 1958 SC 731.

<sup>17</sup> Ibid.

<sup>18</sup> Masood alam v. commissioner of police , AIR 1956, cal. 9 at 10.

the permit to use loudspeakers was withdrawn. The muslims contented that the use of loudspeakers is an “essential religious practice” in Islam. The Calcutta high court did not agree with this distinction and observed that, azan is an essential religious practice but the use of loudspeakers for that purpose cannot be considered an essential practice. Following were the observations of the Calcutta High court,

“What is distasteful and abhorrent in the house of man is singularly inappropriate and even irreverent when used in the house of God, Prayer is intended to be a silent communion with the creator, it does not call for a tumultuous prelude or a noisy accompaniment”.<sup>19</sup>

“This much is well known. I think these congregational prayers are a beautiful feature of the Muslim religion, and one remembers with pleasure the romantic sound of an early morning muezzin from the turrets of an upcountry mosque on a misty morning. But to transform this into a noisy fanfare is neither artistic nor necessary. I find nowhere that the religion of the petitioners enjoin it.”<sup>20</sup>

In **Shayara bano v. union of India**<sup>21</sup>, The apex court held Triple talaq or Talaq-e-Biddat as unconstitutional, arbitrary and violative of article 14 of the constitution. The argument that triple talaq is an essential religious practice in Islam was rejected. It was observed that triple talaq was a very irregular way of divorce and violates the fundamental rights of muslim women. This in no way can be an essential religious act in Islam, specifically the Hanafi school of Islam. In response of the argument that Talaq-e-Biddat is being practiced since 1400 years in Islam, supreme court observed that, age old practice of a particular religious act cannot be considered as an evidence of its essentiality. Triple Talaq was held to be unconstitutional and in violation of part III of the Indian constitution.<sup>22</sup>

In **resham v. state of Karnataka**<sup>23</sup>, after wearing of hijab was banned in a school in the Udupi district of Karnataka, a petition was moved by a bunch of female students claiming that banning hijab is violative of their right to religion. It was held by the high court that, wearing hijab is not an essential religious practice in Islam and hence, cannot claim protection under article 25.

Therefore, the courts by their judicial pronouncement have tried to make a distinction between

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<sup>19</sup> Ibid paragraph 4.

<sup>20</sup> Ibid paragraph 5.

<sup>21</sup> Shayara bano v. union of India ,AIR 2017 SC 4609.

<sup>22</sup> V.D MAHAJAN, CONSTITUTIONAL LAW OF INDIA 244 (Sanjay Jain, 8<sup>th</sup> ed., 2023).

<sup>23</sup> resham v. state of Karnataka ,AIR 2022 Kar 81.

an essential and non-essential religious practice. A “doctrine of essential religious practices” has developed over time with different judicial decisions. An essential religious practice can be considered as practices that are “sanctioned” and “enjoined” by that religion and whether it is sanctioned and enjoined shall be decided by looking at the religious doctrines of that religion itself. For instance, in order to decide if cow slaughter is obligatory in Islam or not, the Supreme court looked at the Quran itself.

### **LIMITATIONS TO ARTICLE 25**

No right is absolute in nature except the “Right to conscience” which is a part of article 25. Apart from this part, article 25 is not absolute and is subject to certain reasonable restrictions. Article 25(1) specifically mentions, “subject to public order, morality and health and other provisions of part III”. Article 25(2) also rightfully limits the principle of state’s non-interference in religious matters. It lays down that, as far as social reform and welfare is concerned, the state can make laws restricting any financial, political or economic or other secular activities that might be connected to religion and no existing law of such a nature shall be affected by article 25.

Courts in India at different points of time have taken decisions which, according to a particular community were violative of their right to religion. In a number of cases, hindus have argued that the prohibiting bigamy was a violation of their right to religion. They argued that in Hinduism, salvation lies in having a son and it is obligatory in Hinduism to have a son. For the purpose of having a son, a Hindu man may have to have to marry twice and therefore prohibition of bigamy interferes with article 25. In **State of Bombay v. narasu appa mali** <sup>24</sup> the Bombay high court said that, Hinduism makes it obligatory to have a son but it is nowhere mentioned that it is obligatory to marry twice to have a son. Hinduism also provides the option of adoption. And a hindu man may also adopt. The High Court of Bombay upheld the “Bombay prevention of Hindu bigamous marriage act, 1946”. The chief justice observed, “It is rather difficult to accept the proposition that polygamy is an integral part of Hinduism. It is perfectly true that Hindu religion recognizes the necessity of a son for religious efficacy and spiritual salvation, the same religion recognizes the institution of adoption. Therefore, Hinduism provides for the continuation of the line of a Hindu male within the framework of monogamy”.<sup>25</sup> The state is empowered under article 25(2) of the constitution to make laws

<sup>24</sup> State of Bombay v. narasu appa mali, AIR 1952 Bom. 84.

<sup>25</sup> Ibid.

promoting social reform and welfare. The compulsion of a monogamous marriage in Hinduism promotes social welfare and reform and therefore, the state is empowered to enforce this law and this does not interfere with right to religion of Hindus.

In **mohd. Hanif qureshi v. state of bihar**<sup>26</sup>, the constitutionality of legislations banning cow slaughter was upheld. It was argued that this was against freedom of religion of Muslims. The court looked into the “doctrine of essentiality” and upheld the legislations. Since, these legislations were also reasonable limitations and the state was empowered to bring such legislations under article 25(1)(a).

The Allahabad high court in the case, **ram Prasad v. state of U.P**<sup>27</sup>, clarified that, if the legislature while framing laws thinks that a particular law is step toward social reform, the courts should not say it's not. The high court basically observed that legislature is the judge and in-charge of social reform. Therefore, If a law which in a way surpasses article 25 is a measure towards social reform, the legislature is empowered to pass such a law.<sup>28</sup>

In **ramji lal modi v. state of U.P**<sup>29</sup>, the constitutionality of Section 295-A of the erstwhile IPC, 1860 which, penalized intentional, deliberate and malicious acts insulting religious belief of a community in order to outrage the religious feelings of any class was upheld by the Supreme court. This restriction imposed by section 295-A came under “public order” in article 25(1).<sup>30</sup>

Therefore, article 25 which provides every person with the right to freedom also prescribes reasonable limitations to create a balance between the religious rights of people and social reform and welfare.

## CONCLUSION

In a country like India which is so diverse, where there are so many different religions and cultures and people of every religion are extremely committed to their respective religions the idea of a secular state becomes all the more important. The state needs to be neutral while at the same time, provide each and every person the right to freely practice, profess and propagate

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<sup>26</sup> mohd. Hanif qureshi v. state of bihar ,AIR 1958 SC 731.

<sup>27</sup> ram Prasad v. state of U.P, AIR 1957 All. 411.

<sup>28</sup> N.A Subramanian, *freedom of religion*, 3, JILI 323, 335 (1961).

<sup>29</sup> ramji lal modi v. state of U.P ,AIR 1957 SC 620.

<sup>30</sup> V.D MAHAJAN, CONSTITUTIONAL LAW OF INDIA 237 (Sanjay Jain, 8<sup>th</sup> ed., 2023).

their religion. Religious tolerance and peaceful co-existence is vital for India to remain powerful and flourish ever further. Article 25 is certainly one of the most important fundamental rights that our constitution has given us. It is perfect example of combination of rigidity and flexibility. The constitution framers kept history in mind. They kept in mind that whenever, religious rights of people were taken away or some religion was forced upon them, the result was unrest. Therefore, the principle of secularism was deeply embedded in our constitution and was explicitly made a part of the constitution later. The idea of religious freedom and religious tolerance are the foundation of a prosperous and flourished society and a beautiful gift to us by the constitution and its framers. As Swami Vivekananda said, “The Christian has not to become Hindu or Buddhist, nor a Hindu or Buddhist to become Christian. But each must assimilate the spirit of the other, and yet preserve his individuality and grow according to his own law of growth. Every religion has produced men and women of most exalted character. If in the face of this evidence, anybody dreams of the exclusive survival of his own religion and destruction of the others, I pity him from the bottom of my heart.”

