

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

FREEDOM OF RELIGION UNDER CONSTITUTION OF INDIA

AUTHORED BY - KUSHAL M S & SARASWATHI

ABSTRACT:

Religion, often becomes the cause of great tension and predicament, creating a rift between people and societies, pluralism and nurturing diversity is the only way to ease such passions and promote peace and harmony among the masses.

While the western world has recently initiated discussions on multiculturalism, India has a vast history of managing different cultures and faiths, and this history needs to be cherished and made relevant even today, the courts have repeatedly highlighted this rich tradition and has held this principle of cohesiveness between the people stating that the Constitution mandates through its various provisions to allow requisite freedom to people to discover and express their beliefs in their divine.

This article tries to understand the idea of religion and the concept of secularism in Indian context, these two form the foundation of the edifice of the freedom of religion in the country. We see, how the freedom of religion with its restrictions has its implications on the ground through Article 25, 26, 27 and 28 and their judicial interpretations and the ambiguity in the application of the Essential Practice Test, which is paramount in solving most of the problems emerging from various religions.

KEYWORDS: Constitution; Freedom; Fundamental; India; Religion; Secularism.

BACKGROUND OF RIGHT TO FREEDOM OF RELIGION

In crafting Articles 25-28 of the Constitution, India responded to the violence and displacement during the partition in 1947, prioritizing secularism to protect minority rights. Despite a Hindu-majority population, India aimed to provide equal security to all communities, contrasting with Pakistan's creation as an Islamic state. This decision stemmed from the ethos of India's freedom fighters, who envisioned an inclusive nation. Leaders like Mahatma Gandhi and Jawaharlal

Nehru championed unity amidst diversity, rejecting religious discrimination. Hence, India's secular constitution symbolizes a commitment to pluralism and equality, ensuring that all citizens, regardless of their faith, enjoy the freedom to practice and profess their religion without fear of persecution.

INTRODUCTION

important amendment and played a pivotal role in reinforcing secularism as a fundamental principle of the Indian Constitution. It not only added the term "Secular" to the Preamble but also strengthened the concept of democracy and justice in the country. The inclusion of "secular" emphasized that India, despite its vast diversity in religion, culture, and ethnicity, would remain neutral toward all religions and that the government would neither promote nor discriminate against any religion. The constitutional framework envisaged by the framers of India's Constitution aims to ensure that religion does not interfere with public policy or governance. This principle of secularism is enshrined through various provisions in Articles 25 to 28, which safeguard the right of individuals to practice, profess, and propagate their religion freely. These provisions ensure that every citizen, irrespective of their faith, is given equal protection under the law, without any discrimination based on religion.

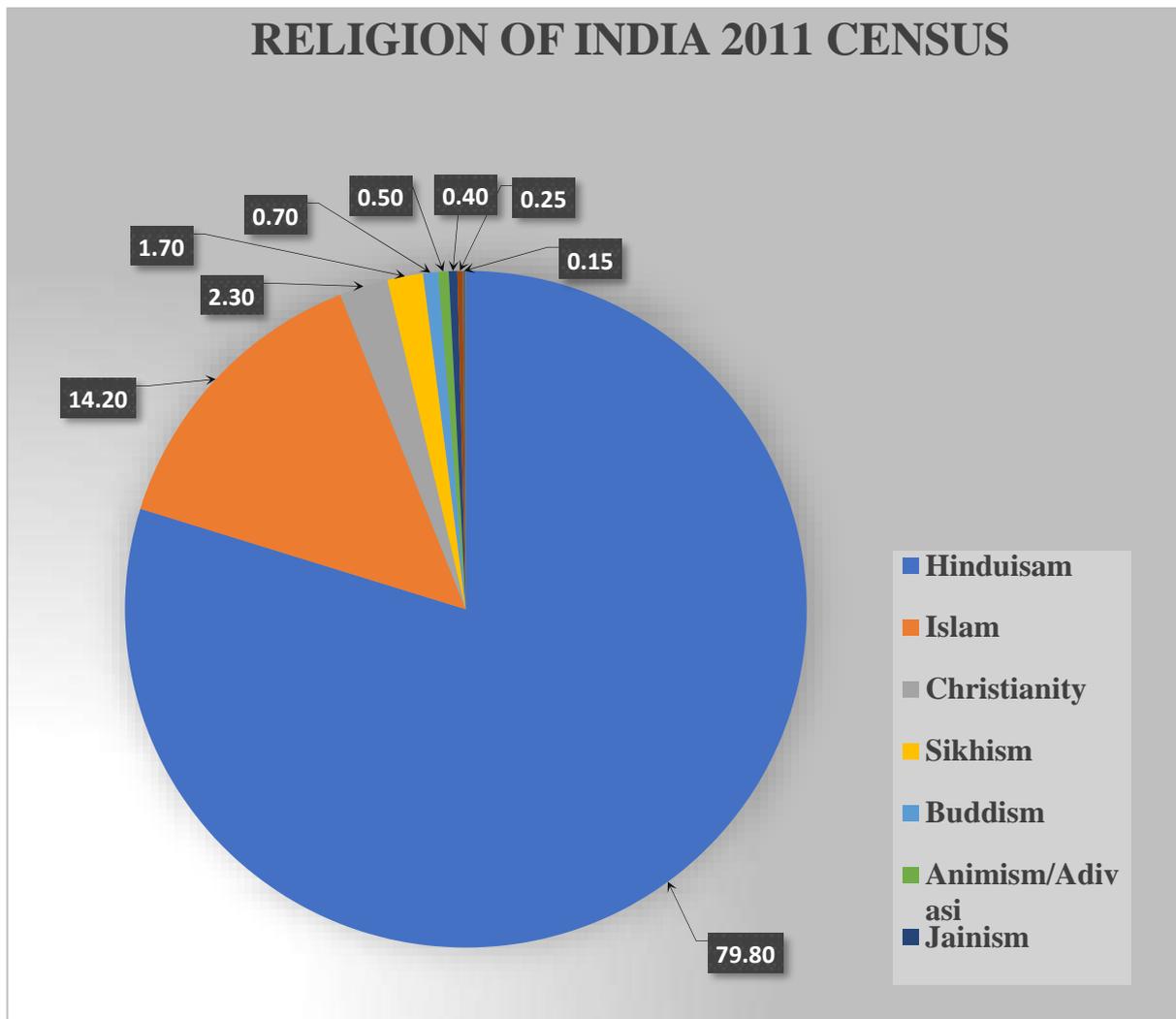
In addition to individual freedoms, the Indian judiciary has played a significant role in upholding secularism. In landmark cases such as **S.R. Bommai v. Union of India (1994)**, the Supreme Court reiterated that secularism is a basic feature of the Constitution and cannot be altered by any government or legislative action. The case reaffirmed that the State must maintain a stance of neutrality when it comes to religion. Similarly, in **Kesavananda Bharati v. Union of India (1973)**, the Court declared that secularism is part of the basic structure of the Constitution, and thus, any attempt to dilute or undermine this principle would be unconstitutional. India's commitment to secularism is further demonstrated in its political and social landscape. The country's electoral processes, governance, and judicial systems are designed to ensure that no religious group is favored over another. This neutrality fosters harmony among its diverse religious communities, helping maintain peace and stability in a nation with over 1.4 billion people, belonging to various faiths, languages, and cultural backgrounds.

Despite these constitutional guarantees, the practice of secularism in India has not been without challenges. Tensions between religious groups have occasionally led to social unrest, and there have been debates regarding the influence of religion in politics. However, the resilience of

India's democratic framework, backed by the judiciary's unwavering commitment to secularism, has allowed the country to navigate these challenges and maintain its status as a secular state.

In conclusion, secularism is not just a legal provision but a living, evolving principle that serves as the bedrock of India's pluralistic society. The Constitution guarantees that every citizen has the freedom to practice their faith, and the government remains neutral in religious matters. India's example underscores how a nation can celebrate its religious diversity while ensuring the equal treatment and freedom of its citizens, regardless of their religious affiliations.





CONSTITUTIONAL PROVISIONS

1 FUNDAMENTAL RIGHTS

The Constitution of India guarantees the right to freedom of religion as a part of its Fundamental Rights, outlined in Part III. The specific articles that protect religious freedom are:

- ***Article 25: Freedom of Conscience and Free Profession, Practice and Propagation of Religion***

Article 25 of the Constitution guarantees the freedom of conscience and the free profession, practice, and propagation of religion. This article ensures that every individual has the right to practice and propagate their faith, subject to public order, morality, and health.

The Supreme Court of India has interpreted Article 25 in various cases to mean that the freedom of religion is not absolute and is subject to reasonable restrictions. In the case of **Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954)**, the Supreme Court held that the freedom of religion is not a fundamental right that is absolute in its scope, but is subject to the limitations imposed by the Constitution.

□ ***Article 26: Freedom to Manage Religious Affairs***

Article 26 of the Constitution guarantees the freedom to manage religious affairs. This article ensures that every individual has the right to manage their religious affairs, subject to public order, morality, and health.

In the case of **Sri Venkataramana Devaru v. State of Mysore (1958)**, the Supreme Court held that the freedom to manage religious affairs includes the right to administer the properties of a religious institution.

□ ***Article 27: Freedom from Taxation for Promotion of Any Particular Religion***

Article 27 of the Constitution guarantees the freedom from taxation for the promotion of any particular religion. This article ensures that no individual can be forced to pay taxes for the promotion of any particular religion.

In the case of **Society for Unaided Private Schools of Rajasthan v. Union of India (2012)**, the Supreme Court held that the freedom from taxation for the promotion of any particular religion does not mean that the state cannot impose taxes on educational institutions that are run by religious organizations.

□ ***Article 28: Freedom from Attendance at Religious Instruction***

Article 28 of the Constitution guarantees the freedom from attendance at religious instruction. This article ensures that no individual can be forced to attend religious instruction or participate in any religious ceremony.

In the case of the Supreme Court held that the freedom from attendance at religious instruction includes the right to opt out of religious education in schools.

2 DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy, found in Part IV of the Constitution, although not justiciable, provide guidelines for the state to promote social and economic justice. Relevant articles include:

- **Article 44:** This article advocates for the enactment of a Uniform Civil Code (UCC), which seeks to replace personal laws based on the scriptures and customs of each major religious community with a common set governing all citizens. Advocates argue that a UCC would promote gender equality and eliminate discrimination against women in personal laws, while opponents fear it undermines religious freedom.
- **Article 46:** This article directs the state to promote the educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections of society. This is particularly relevant in discussions about protecting the rights of religious minorities and ensuring they receive equal opportunities.

3 ARTICLE 14: RIGHT TO EQUALITY

Article 14 ensures that all individuals are equal before the law and guarantees equal protection of the laws. This right is fundamental in preventing discrimination based on religion, thus reinforcing the secular and democratic fabric of the nation. The courts have consistently upheld this right in cases where religious practices have led to discrimination or violence against specific groups.

RELIGION

Religion in India is characterised by a diversity of religious beliefs and practices. Throughout India's history, religion has been an important part of the country's culture and the Indian subcontinent is the birthplace of four of the world's major religions, namely, Buddhism, Hinduism, Jainism, and Sikhism, which are collectively known as native Indian religions or Dharmic religions and represent approx. 83% of the total population of India.

The Preamble to the Constitution of India states that India is a secular state, and the Constitution of India has declared the right to freedom of religion to be a fundamental right.

IMPORTANCE OF FREEDOM OF RELIGION

The freedom of religion is essential for the development of a democratic society. It allows individuals to practice and propagate their faith without fear of persecution or discrimination.

The freedom of religion promotes tolerance, understanding, and mutual respect among individuals of different faiths.

In the case of **Rajendra Prasad v. State of Uttar Pradesh (1954)**, the Supreme Court held that the freedom of religion is an essential part of the Constitution and is fundamental to the development of a democratic society.

HISTORICAL CONTEXT

1. Pre-Independence Era

The struggle for freedom in India included significant discourse on the right to religious freedom. British colonial rule imposed several laws that restricted religious practices and suppressed dissenting voices. Movements like the Brahma Samaj and Arya Samaj emerged, advocating for reform and the right to practice one's faith freely.

2. Post-Independence Developments

The framers of the Constitution recognized the importance of religious freedom in a nation characterized by pluralism. The debates in the Constituent Assembly reflected diverse perspectives, with leaders like **B.R. Ambedkar** emphasizing the need for constitutional safeguards against discrimination based on religion.

The inclusion of comprehensive provisions for religious freedom in the Constitution was a significant step towards ensuring that all citizens could coexist peacefully, respecting each other's beliefs and practices.

LAWS AND CONSTITUTION OF INDIA

The Preamble of the Constitution of India has the word "secular", and articles 25 to 28 implying that the State will not discriminate, patronise or meddle in the profession of any religion. However, it shields individual religions or groups by adding religious rights as fundamental rights. Article 25 says "all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality and health". Further, Article 26 says that all denominations can manage their own affairs in matters of religion. All these rights are subject to be regulated by the State.

Article 25 (2b) uses the term "Hindus" for all classes and sections of Hindus, Jains, Buddhists and Sikhs. Sikhs and Buddhists objected to this wording that makes many Hindu personal laws applicable to them. However, the same article also guarantees the right of members of the Sikh faith to bear a Kirpan. Religions require no registration. The government can ban a religious organisation if it disrupts communal harmony, has been involved in terrorism or sedition, or has violated the Foreign Contributions Act. The government limits the entry of any foreign religious institution or missionary and since the 1960s, no new foreign missionaries have been accepted though long term established ones may renew their visas. Many sections of the law prohibit hate speech and provide penalties for writings, illustrations, or speech that insult a particular community or religion.

Some major religious holidays like Diwali (Hindu), Christmas (Christian), Eid (Muslim) and Guru Nanak's birth anniversary (Sikh) are considered national holidays. Private schools offering religious instruction are permitted while government schools are non-religious.

The government has set up the Ministry of Minority Affairs, the National Human Rights Commission (NHRC) and the National Commission for Minorities (NCM) to investigate religious discrimination and to make recommendations for redressal to the local authorities. Though they do not have any power, local and central authorities generally follow them. These organisations have investigated numerous instances of religious tension including the implementation of "anti-conversion" bills in numerous states, the 2002 Gujarat violence against Muslims and the 2008 attacks against Christians in Orissa.

For Shia Muslims, the Grand Ashura Procession In Kashmir where they mourn the martyrdom of Husayn ibn Ali has been banned by the Government of Jammu and Kashmir from the 1990s. People taking part in it are detained, and injured by Jammu and Kashmir Police every year. According to the government, this restriction was placed due to security reasons. Local religious authorities and separatist groups condemned this action and said it is a violation of their fundamental religious rights

POST-INDEPENDENCE STATE LAWS

The Article 25 of the Constitution of India is a basic human right guarantee (see Articles 18 and 19 of the Universal Declaration of Human Rights) that cannot be subverted or misinterpreted in any manner. Anti-conversion laws are promulgated on the premise that forced or induced

conversions happen and need to be prevented.

A consolidation of various anti-conversion or so-called "Freedom of Religion" Laws has been done by the All Indian Christian Council. Several Indian states passed Freedom of Religion Bills primarily to prevent people from converting to Christianity. Orissa was the first state to bring such law named as 'Orissa Freedom of Religion Act, 1967' It was followed by Madhya Pradesh in 1968 and Arunachal Pradesh in 1978. Christians protested against this saying that propagation of their faith was an important part of Christianity. Both laws enacted by the Orissa and Madhya Pradesh high courts were challenged stating Article 25 of the Constitution. The Supreme Court supported the laws saying, "What is freedom for one is freedom for the other in equal measure and there can, therefore, be no such thing as a fundamental right to convert any person to one's own religion".

Chhattisgarh in 2000 and Gujarat State in 2003 passed anti-conversion laws that prohibit forced or money induced conversions. In July 2006, the Madhya Pradesh government passed legislation requiring people who desire to convert to a different religion to provide the government with one month's notice, or face fines and penalties. In August 2006, the Chhattisgarh State Assembly passed similar legislation requiring anyone who desires to convert to another religion to give 30 days' notice to, and seek permission from, the district magistrate. In February 2007, Himachal Pradesh became the first Congress Party-ruled state to adopt legislation banning illegal religious conversions. It was followed by Rajasthan in 2008, but it has still not become an act. So total there are 10 states where freedom of religion bill has become an act- Odisha, Madhya Pradesh, Arunachal Pradesh, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Uttarakhand, Uttar Pradesh and Jharkhand.

In 2013, the Bharatiya Janata Party general secretary Venkaiah Naidu has declared that his party would bring anti-conversion laws nationwide if his party is elected to power in 2014. However, as of January 2018, the party does not yet have a majority in the Upper House of the Parliament. The president of party Amit Shah has challenged the opposition parties to support it in enacting such a law. The US State Department has said that the recent wave of anti-conversion laws in various Indian states passed by some states is seen as gradual increase in ideological Hindu nationalism (Hindutva).

Madhya Pradesh Freedom of Religion Act of 1968

The Niyogi Committee (1954) set up by the Congress government in Madhya Pradesh alleged that Christian missionaries were creating 'a state within a state' and observed that the 'philanthropic activities of Christian missionaries are a mask for proselytization.' Missionary work was also opposed by the Sangh Parivar. The Madhya Pradesh Assembly rejected the Freedom of Religion Bills of 1958 and 1963. However, this bill was passed in 1968 as 'The Freedom of Religion Act.' The Madhya Pradesh 'Freedom of Religion Act' requires that a convert produce a legal affidavit that he/she was not under any pressure, force, or allurements to convert but was converting by own will and desire after evaluating the religion properly. Also according to this law, anyone who writes or speaks or sings of 'divine displeasure' (with an intention to induce forced conversion by means of threat) can be imprisoned for a period of up to two years and fined up to five thousand rupees.

Orissa Freedom of Religions Act of 1967

The Orissa Freedom of Religions Act of 1967 states that "no person shall convert or attempt to convert either directly or otherwise any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion". Contravention of this law was punishable with imprisonment of up to one year and/or a fine of up to Rs 5,000. In the case of a minor, a woman, or a person belonging to a Scheduled Caste or Tribe, the punishment was up to two years of imprisonment and the limit of the fine raised to Rs. 10,000. The Orissa High Court, however, struck down the Act as ultra vires of the Constitution on the ground that the state legislature did not have the right to legislate matters of religion. The same year, the state of Madhya Pradesh also enacted the Madhya Pradesh Freedom of Religion Act as seen above. However, the Madhya Pradesh High Court, in contrary to the Orissa High Court, negated the challenge of some Christians that the Act violated their fundamental right as provided under Article 25 of the Constitution. The decisions of both the Courts were challenged before the Supreme Court. The Supreme Court upheld the decision of the Madhya Pradesh High Court and reversed the decision of the Orissa High Court.

Arunachal Pradesh Freedom of Religion Act of 1978

The Arunachal Pradesh government enacted this Act to protect the tribals of Arunachal Pradesh from forced conversions of any kind.

Tamil Nadu Prohibition of Forcible Conversion of Religion Bill 2002

The Tamil Nadu Prohibition of Forcible Conversion of Religion Bill 2002 stated that 'No person shall convert or attempt to convert directly or otherwise any person from one religion to another either by use of force or by allurement or by any fraudulent means.' However, soon after the defeat of the Bharatiya Janata Party-led coalition in the 2004 elections, the Tamil Nadu Government led by Jayalalitha repealed the law in June.

Gujarat Freedom of Religion Act 2003

The Gujarat Assembly passed the Freedom of Religion Act in March 2003. It was called the Dharam Swatantrata Vidheya (Freedom of Religion Act). Narendra Modi, the Chief Minister of the State, called the Act as one of the main achievements of his government's one year in office. The law prohibited conversion by force or inducement.

Himachal Pradesh Freedom of Religion Act 2006

Himachal Pradesh Freedom of Religion Act 2006 is a bill unanimously passed by the Legislature of Himachal Pradesh state in India on 19 December 2006. According to Chief minister Virbhadra Singh, "The Bill was intended to prevent forcible conversions. Conversions created resentment among several sections of the society and also inflame religious passions leading to communal clashes," he said. He claimed the Bill was meant to prevent exploitation of the depressed classes. On 20 February 2007, Governor Vishnu Sadashiv Kokje gave his assent to the Himachal Pradesh Freedom of Religion Bill 2006.

JUDICIAL INTERPRETATIONS

□ Landmark Judgments

The Indian judiciary has played a pivotal role in interpreting and protecting the right to freedom of religion through various landmark judgments:

- **Kesavananda Bharati v. State of Kerala (1973)** established the basic structure doctrine, asserting that the Constitution's fundamental rights, including the right to religious freedom, cannot be altered or abridged by amendments.
- **S.R. Bommai v. Union of India (1994)** dealt with the issue of federalism and the misuse of Article 356, emphasizing the need to respect the autonomy of state governments, including their management of religious institutions.
- **Shayara Bano v. Union of India (2017)** challenged the practice of instant Triple

Talaq, highlighting the intersection of gender rights and religious practices. The Supreme Court ruled the practice unconstitutional, thereby reinforcing the rights of women within the framework of religious freedom.

- **Sarla Mudgal v. Union of India (1995):** This case focused on the conflict between personal laws and the constitutional guarantee of equality. It addressed the issue of conversion to Islam for the purpose of polygamy, with the court emphasizing that while individuals have the right to change their religion, it cannot be used as a tool to bypass legal restrictions.
- **Indian Young Lawyers Association v. State of Kerala (2018):** This landmark judgment allowed women of menstruating age to enter the Sabarimala temple, challenging traditional religious practices that restricted entry. The judgment emphasized that religious practices must comply with constitutional morality and fundamental rights, and they cannot infringe on the rights of women.
- **Ismail Faruqui v. Union of India (1994):** The Supreme Court ruled that the demolition of the Babri Masjid, although a religious structure, had to be viewed within the larger context of law and order. The court highlighted the delicate balance between religious freedom and maintaining public peace.

□ **Balancing Rights**

The judiciary often faces the challenge of balancing individual rights against collective religious practices. The courts have, in various cases, emphasized that while the freedom to practice religion is protected, it cannot infringe upon the rights of others or public order.

SOCIETAL IMPLICATIONS

➤ **Religious Minorities**

India's pluralistic society necessitates special protections for religious minorities. The National Commission for Minorities, established under the National Commission for Minorities Act, 1992, plays a vital role in safeguarding the rights of minorities. It addresses grievances, ensures representation in decision-making processes, and promotes educational and economic development.

□ **Challenges to Religious Freedom**

Despite constitutional guarantees, religious freedom is frequently challenged by societal norms, political agendas, and communal tensions. Instances of mob violence, targeted attacks on religious minorities, and the rise of religious intolerance have underscored the vulnerabilities that exist within the framework of religious freedom in India.

SECULARISM IN INDIA

The western idea of "Secularism" was obtruded on Indians by the colonial masters and upon independence the Indians rejected it, and a customised version of it was introduced, suitable to the peculiar socio-cultural and political situations of India, but this "desi" version is also open to multiple interpretations. India, has always been the land which welcomed all faiths and religions from all corners of the world, and the people having diverse faiths also found India to be a conducive place to live freely and remain undisturbed. Gradually, these faiths started influencing each other and also the polity of the country, and rightly so, because when one is surrounded by superior philosophies continuously it is somewhat strenuous to not be theist, and slowly the philosophical characteristic of India developed into a theist State and not otherwise. The Constituent Assembly was divided over the amendment, whether to begin the Constitution with "In the name of God", many arguments were made for and against pertaining to the relation of the State with religion, but finally the amendment was declined but the assembly did not agree over the term secular either. The assembly was unanimous on the point that independent India should be secular as secularism is essential for democracy to prosper in India, but what kind of secularism India should adopt was a conundrum. The word "Secular" was added to the Constitution vide the 42nd Constitution Amendment after the historic virtues of tolerance and harmony were rejuvenated by the efforts of various laws and judicial interpretations. This concept of Secularism is not similar to the Doctrine of Secularism in America, which tries to establish a rigid distinction between the State and the religion. India adopts an affirmative side of secularism, wherein it is neutral in terms of religion, and is in consonance with its ancient legacy of accommodating all faiths and abandoning none.

According to Donald E. Smith, the Indian way of secularism refers to the non-religious functioning of the State, it has a non-communal and non-sectarian connotation and not a strict schism between state and religion. India may not be a completely theist state but it is definitely

not an atheist state. India has its own way of dealing with multiculturalism and relies more on customisation and adjustment with all beliefs than stubbornly rejecting them.

CONCLUSION

India has long embraced secularism as a core value, rooted in its ancient tradition of cultural and religious freedom. While the Western concept of secularism may not fully apply to the Indian context, the inclusion of the term "secular" in India's constitutional framework remains significant, symbolizing a commitment to diversity. Though criticisms of the Essential Practices Test are notable, this judicial tool is essential in a country as religiously diverse as India, where unchecked disputes could escalate if not carefully adjudicated.

However, the test should be reserved for cases with serious concerns about violations of constitutional restrictions, rather than intervening in minor religious practices.

The judiciary has consistently upheld the autonomy of religious institutions, particularly in their management and foundational practices, while the state largely refrains from overregulating religious affairs focusing instead on the commercial aspects when necessary. This balance, maintained by the state, judiciary, and society at large, exemplifies India's "unity in diversity" and strengthens its democratic resilience, even under challenging circumstances.

REFERENCES

1. "The Constitution of India" M P Singh
2. "Freedom of Religion" by Dr. Subhash C. Kashyap
3. "The Indian Constitution: A Critical Commentary" by S.P. Sathe
4. "Religion Of India 2011 Census"
5. "Rajendra Prasad v. State of Uttar Pradesh (1954)"
6. "S.R. Bommai v. Union of India (1994)"
7. "Kesavananda Bharati v. Union of India (1973)"
8. "Sri Venkataramana Devaru v. State of Mysore (1958)"
9. "Society for Unaided Private Schools of Rajasthan v. Union of India (2012)"
10. "Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954)"