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FREEDOM OF RELIGION VIS-À-VIS SPONSORED RELIGION IN INDIA: NEW CHALLENGES

Authored By - Ananya Kumari Mehta

INTRODUCTION

India is a pluralistic society and a country of religion. It is inhabited by people of many religion. The framers of the constitution thus desired to introduce the concept of secularism meaning state neutrality in matter of religion.

The concept of secularism is implicit in the preamble of the constitution.¹ The constitution (42nd Amendment) Act 1976.² Inserted the word 'secular' in the preamble. In the case of S.R. Bommai vs Union of India³, the Supreme Court held that the secularism is a basis structure of the constitution so that it cannot be changed secularism means respect for all faiths and religion. The state does not identify itself with any particular religion but today A big challenge to the state that can sponsored any religion or not.

We consider according to Art. 25(1)⁴ Freedom of conscience and freedom to profess practise and propagate religion. So any person maintain own spiritual well-being but subject to public order, mortality and health and to the other provisions of part III of the constitution. So restrictions are there also.

Religious tolerance and equal treatment of all religious groups are essential parts of secularism. The state does not identify itself with any particular religion.⁵

¹ Constitutional Law of India, Dr. J.N. Pandey, 59th Ed. 2022, CLA

² The constitution (42nd Amendment) Act, 1976

³ AIR 1994 SC 1918

⁴ Bare Act, Art. 25, Freedom of conscience and free profession, practice and propagation of religion constitution of India, 1950

⁵ Dr. Radhakrishnan, Secularism in India. (Edn V.K. Sinha) 127 (1968)

The constitutional provisions have raised several problems of interpretation thus, India is a multi-religious country. People of various religion peacefully co-exist here, perhaps for this reasons framers of constitution thought it fit to make India secular country i.e. state neutrality in matters of religion. The concept of secularism was not expressly provided in the original constitution but its spirit was very well visible in form of fundamental rights and directive principles later, by 42nd constitution amendment the concept of secularism was made explicit by stating it in preamble. Therefore, preamble along with article 25-28 emphasize that India is a secular nation.

The idea of a secular state and the giving of religious freedom in western political history emerged from a variety of historical circumstances and intellectual inclinations. They have been influenced, in particular, by the secularisation of the State and the dissolution of the mediaeval union between the Church and the State. As was previously in chapter one, this division hasn't always been comprehensive in practise. However, given that political choices now have an impact on every element of human existence, particularly moral and religious issues, which people value highly, the question of whether the total division between faith and the State can ever be kept may be asked.

These fundamental provisions reflect the State's approach to religion, which maintains a "principled distance." This does not, however, prevent the State from taking action when religious practises breaches objectives of the welfare state intended for the holistic development of individuals and groups, such as public order, morality, health, and equitable social order. Which of the two strategies best promotes the fundamental values of religious freedom, egalitarian social order, social justice, and religious harmony—which are essential components of a life deserving of human respect for all—determines whether the state interferes with religious freedom or leaves it alone.

RULE OF LAW AND RIGHT TO RELIGION

Rule of Law, it means it is not the main ruled by policy is ruled means law is supreme social order and principles of law that is social wishes greater social interest.

Article 25 to 28⁶ of the Indian constitution center certain rights relating to freedom of

⁶ Bare Act, Art. 25, Freedom of conscience and free profession, practice and propagation of religion, Constitution of India, 1950.

religion not only on citizens but also on all persons in India. These constitutional provisions guarantee religious freedom not only to individuals but also to religious groups.

Articles 25 to 28 seeks to protect religion and religious practices from state interference. India has no preferred or state religion as such; all religions are treated alike and enjoy equal constitutional protection without any favour or discrimination. A religious organisation as such has not received any special security. The non-interference with religious freedom policy has not, however, gone as far as to permit a faith to negatively affect citizens' secular rights or the state's ability to control socio-economic issues.

The supreme court has interpreted the constitutional provisions with an eye towards promoting inter-religious amity, concord, and agreement. The provisions of the constitution have generally generated a number of interpretational issues. Overall, the court has changed its attitude towards minority groups and has granted them some privileges above and beyond those of the majority.

In USA

In the USA, religious freedom is guaranteed by the first amendment. The government is forbidden to pass a Law "respecting an establishment of religion" as well as a law "prohibiting the free exercise of religion."⁷

In the American constitution commence with the concept of neutrality towards every religion but eventually it is diluted and even the court decisions protected the religious aspects of the community. The question of sponsorship of a religion by the state, we can say the state is remained neutral and indirectly supporting the observation of religion in the public.

⁷ Bare Act, Arts 25 to 28, Constitution of India, 1950

Art 25, Freedom of conscience and free profession, practice and propagation of religion.

Art 26, Freedom to manage religious affairs.

Art 27, Freedom as to payment of taxes for promotion of any particular religion.

Art 28, Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

In India

So far India is concern our the member of constituent assembly learned lesson from American constitution in this regard the history of India and India religion based on tolerance has played very important role in the role of state in regulating the religion here the concept of Indian constitution adopted secularism based on sarb-dharm sambhab the state is responsible for freedom of religion everyone that is to protect religion everyone as well as where it is needed to provide fund for the protection and promotion of religion. The Indian concept of secularism based on sarb dharm sambhab is completely based on tolerance which be India have inheritate our history.

Thus, secularism is an important ingredients of rule of law in India where, it is required unity in diversity.

SECULARISM OF INDIAL LEAGAL SYSTEM

After 42nd Amendment 'secularism' is incorporated in preamble or the constitution of India. In S.R. Bommai vs Union of India⁸, A nine-judge Bench of the Supreme Court held that the secularism is a basic structure or the constitution.

According to justice Sawant – "religious tolerance and equal treatment or all religious groups and protection of their life and property and of the places of their worship are an essential part of secularism enshrined in our constitution."⁹

According to justice B.P. Jeevan Reddy – "while the citizens of this country are free to profess, practise and propagate such religion, faith or belief as they choose, so far as the state is concerned, i.e., from the point of view of the state, the religion, faith or belief of a person is immaterial. To it all are equal and all are entitled to be treated equally."¹⁰

⁸ A.I.R. 1994 SC 1918

⁹ Supra, chapter 2

Bare Act, Art 29 and 30, constitution of India, 1950

Art 29, Protection of interests of minorities

Art 30, Right or minorities to establish and administer educational institutions

¹⁰ Bare Act, Arts 14 to 16, constitution of India, 1950

Art. 14, Equality before Law

Art. 15, Prohibition of discrimination on grounds of religion, race, caste, sex, place of birth.

The concept of secularism is not merely a passive attitude of religious tolerance it is also a positive concept of equal treatment of all Religions.

- (i) No religious influence in state action / or religious country.
- (ii) State will protect all religion can not sponsored any religion. Freedom of religion, rights with duties.
- (iii) State control includes protection of all religion called 'Sarv-dharm sambhab'. Subject to public order, health morality and to the other provisions of this part.
- (iv) Court decides the state action or law this regard where the matter of secular activity or religious activity.

Now becomes supreme court of India is religious institution. It was held that to follows the instructions of particular religion that is secularism. It can be decide, which is the integral part of any religion.

Reference may be made in this connection to Articles 25 to 28¹¹, 29 and 30¹² and 30¹³, to Articles 14, 15 and 16 as well as to Articles 44 and 51A. These various constitutional provisions promote the idea of secularism and by implication prohibit the establishment or a theocratic state. The state is under an obligation to accord equal treatment to all religious and religious seats and denominations

Therefore, a secular state is based on the notion that the relationship between man and man is what the state is concerned with, not the relationship between man and God, which is an issue for personal morality. Without in any way interfering with each religion's or group's individual freedom to practise their religion, faith, or worship, the state is required to handle all faiths and religious groups equitably and with respect.

THE EXERCISE OF RELIGIOUS FREEDOM

IN INDIA CASE ANALYSIS

Researcher study some of cases of historical importance where need arose to give judicial definition to 'religion' and 'matter of religion'.

¹¹ Bare Act, Arts 44 and 51A, constitution of

¹² Art. 44 – Uniform civil code for the citizen

¹³ Art 51A – Fundamental duties.

Meaning or Religion

The term 'religion' is not defined in the constitution, and it is a term which is not susceptible of any precise definition. The supreme court has defined it broadly. It has observed in the case of Lakshmindra¹⁴ : "Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. These are well known religions in India like Buddhism and Jainism which do not believe in God or in any intelligent first cause."

In the case of PMA Metropolitan Vs Moran Mar Marthoma.¹⁵ The Supreme Court held that 'religion is a belief which binds the spiritual nature of men to super-natural being'. It includes worship, belief, faith, devotion, etc and extends to rituals. Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it.

Religious denomination :- In the case of Shirur Mutt¹⁶ the supreme court defined the expression 'denomination' from the oxford dictionary as "a collection of individuals classed together under the same name; a religious sect or body having a common faith and organisation and designated by a distinctive name." Further in the case of S.P. Mittal Vs Union of India.¹⁷ The decisions a religious denomination must satisfy three conditions:

Article 26 is confined to religious denomination or any section thereof. It guarantees collective freedom of religion.

- (i) Common faith
- (ii) Common organisation and
- (iii) Designation by distinctive name

Freedom of religion of an individual start with freedom of conscience but Article-26 talks about denomination which is talks about an organisation denomination means main religion includes sub-groups for example –

- (i) **Sabrimala temple case¹⁸** - In this case first of all proved the religion then, after that proved their denomination.

¹⁴ AIR 1954 SC 1035

¹⁵ Commr, HRE, Madras Vs Sri Lakshmindra, AIR 1954 SC 282, 290

¹⁶ AIR 1995 SC 2001

¹⁷ AIR (1983) 1 SCC S1

¹⁸ Indian young Lawyers' Association Vs State of Kerala WP (C) No. 373 of 2006

- (ii) **Ananda Margi case¹⁹** - He was practice of their religion which is Tandava dance in public street, Kolkata.

The court held that Tandava dance in public is not an essential rite of Ananda Margi faith. So it is not essential part of religion, it could be a religious denomination but do not a religion.

- (iii) **Azan of Muslim Religion by Lord Speaker** - In this case, the Supreme Court ruled that it is illegal for anyone to make noise or disturb others' serenity while practising their right to religion. Loudspeaker-based religious rituals are not a necessary component of any faith.

Thus, each religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenants of the religion they hold then, ceremony is the essential elements of the religion.

- **Sri Jagannath Temple Puri Management Committee Vs Chintamani.²⁰**
- The Supreme Court ruled that the state can exert control over the administration of the sanctuary or the upkeep of discipline or order inside the temple. Any legislation that takes control of a temple's administration cannot be deemed to violate Articles 25 or 26.
- **Ismail Faruqui Vs Union of India²¹**

This case is popularly known as Babri Masjid case.

The Babri Masjid lawsuit is the common name for this situation.

A majority of the Supreme Court ruled that the state can obtain places of worship like mosques, churches, temples, and other places of worship in the exercise of its sovereign authority, irrespective of Article 300A of the constitution. if doing so is required to keep law and order.

STATE SPONSORED RELIGION : A BIG CHALLENGE

Secularism's core principles include religion tolerance and respect for all faith organisations. In India, secularism does not equate to atheism. Respect for all sects and faiths is what it implies. The nation does not associate itself with any one faith. Literally, it states that the state

¹⁹ Acharya Jagdishwaranda Avadhuta & Others Vs The Commissioner of Police, Calcutta & Anothers, AIR (1983) 4 SCC 522

²⁰ AIR 1977 SC 3839

²¹ (1994) 6 SCC 360

cannot sponsor any specific faith, and if it did, it would be very difficult.

There is no such thing as an official faith. All faiths should be treated equitably. In a secular state, the state must regard all places of worship equally because it only cares about how people interact with one another. It doesn't address how man and God relate to one another. It is up to each person's morality.

It should be possible for each individual to enter Heaven in his own manner. Man's various faith views are not subject to governmental regulation.²²

Grounds for State to intervene in Freedom of Religion :-

Article 25(2) allows for state intervention in matters relating to social welfare and reform, as well as any economic, financial, political, or other secular activity that may be connected to religious practice, as well as the opening of Hindu religious institutions with a public character to all clauses.

That state shall treat all religions and religious groups equally and with equal respect. Without in any manner interfering with their individual right or religion, faith and worship. There is no justification for interfering in some one's religious belief by any means.²³

- (i) The state will not compel any citizen to pay any taxes for the promotion or maintenance of any particular religion or religious institution (Art 27).²⁴
- (ii) No religious instruction shall be provided in any educational institution wholly provided by state funds.
- (iii) Every person is guaranteed the freedom of conscience and the freedom to profess, practice and propagate his own religion subject to the only to restrictions imposed by the state in the interest of public order, mortality and health.
- (iv) Every religious group or denomination is guaranteed the right to
 - (a) establish and maintain institutions for religious and charitable purposes;
 - (b) manage its own affairs in matters of religion;
 - (c) own and acquire movable and immovable property; and

²² Dr. Radhakrishnan, Secularism in India (Edn V.K. Sinha) 127 1968

²³ United States Vs Bauard, (1994) 322 US 78

²⁴ Dara Singh Vs Republic of India (2011) 2 SCC 490 (531)

(d) administer such property in accordance with Law. These rights are in addition to the individual's freedom to profess, practice, and propagate his or her religion.

CRITICISM, SUGGESTIONS AND CONCLUSIONS

Criticism

In India, the state sponsored religion where the govt used to protect as well as to fund the observation of the religion has reached a very critical situation at present. It has become very difficult to established equality in the actions of the state which has resultant in to social conflicts. There is no proper guideline to form equality in state sponsorship of the religion.

The right to freedom of religion or belief is one of the most controversial fundamental human rights, and an increasing number of cases on religious freedom highlight the need for normative clarity about its limits. Right to freedom show be exercise are –

- (i) subject to regulation of economic, financial, political, and secular activities associated with religion
- (ii) subject to law
- (iii) subject to regulation of economic, financial, political, and secular activities associated with religion
- (iv) subject to public order and morality
- (v) subject to public health
- (vi) subject to others provisions of part III of the constitution

Suggestions – The important question is how to form equality in freedom of religion ?

- to established equality in the policy of state sponsorship to all the religion in India.
- to form the equality there must be follows some proper guideline for the state in sponsored religions
- for specific area there must be some coordinating committee to observation of different religions of that area
- the constitution of coordinating committee must be a part of regulations of state sponsorship
- The religious committee must make programmes to educate the members of the community so that they may understand the essential observation of religion as well as the adverse impacts of observation of religion on general public.

- to make efforts educationally or by sponsorin some programme to check or to remove habitual obedience of the member towards a wrong practice.
- Get involved in education
- Extend the reach of your faith
- Make it a family matter and matter of prayer
- India being a secular state provides equal protection to all the religions so everyone has the right to freedom of thought, conscience and religion.

Conclusion:-

In the USA, religious freedom is guaranteed by the first amendment. The government is forbidden to pass a Law "respecting an establishment of religion" as well as a law "prohibiting the free exercise of religion." In the American constitution commence with the concept of neutrality towards every religion but eventually it is diluted and even the court decisions protected the religious aspects of the community. The question of sponsorship of a religion by the state, we can say the state is remained neutral and indirectly supporting the observation of religion in the public.

So far India is concern our the member of constituent assembly learned lesson from American constitution in this regard the history of India and India religion based on tolerance has played very important role in the role of state in regulating the religion here the concept of Indian constitution adopted secularism based on sarb-dharm sambhab the state is responsible for freedom of religion everyone as well as where is it needed to provide fund for the protection and promotion of religion. The Indian concept of secularism based on sarb dharm sambhab is completely based on tolerance which be India have inheritate our history.

Thus, secularism is an important ingredients of rule of law in India where, it is required unity in diversity.

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