

SECULARISM IN INDIA: AN ANALYTICAL STUDY OF RIGHT TO FREEDOM OF RELIGION UNDER CONSTITUTION OF INDIA

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ARTICLE INFO

Original Article

Received: 17, 06.2023.

Revised: 19, 06.2023.

Accepted: 1, 07.2023.

Keywords:

*Secularism, Religion,
Constitution, Article 28.*

ABSTRACT

Every Indian citizen is entitled to religious freedom under the Indian Constitution. The freedom to profess, practice and spread any religion is guaranteed by it. Because India is a secular nation, the state and religion are separate. In contrast to secularism in other nations, India's is unique. In spite of the fact that it does not explicitly distinguish between religion and places of worship like churches, monasteries, mosques, and Sikh temples, it does not support any one religion. In India, a state's residents are not subject to discrimination based on their faith. According to the Indian Constitution, there is a limit to the freedom of religion. In accordance with the provisions of Part III of the Constitution, the State may impose reasonable restrictions on fundamental right. Judiciary system in India plays important role in determining the ambit of this freedom. This paper tries to investigate the different aspect of the Right to freedom of religion in India. Researcher has tried to discuss the different aspect of freedom of religion and how under this freedom religious practices are prevail in state funded institutions. In present study data were collected from secondary sources. Data were collected from books, articles, official report of the Govt. and through internet sources.

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INTRODUCTION

India differs from other nations in the globe because it is a secular nation. The other nations either made their state religion known or actively promoted a certain religion. The official religions of Bhutan, Sri Lanka, Laos, Thailand, and Cambodia are Buddhism. Afghanistan, Bahrain, Bangladesh, Egypt, Iran, Iraq, Algeria, Pakistan, Maldives, etc. all have Islam as their official religion. Nepal's official religion is Hinduism. The official religion of Costa Rica, Malta, Monaco, Vatican City, and other places is Christianity. India is a secular nation, hence there is no official religion there.

People in India have separated themselves into several castes, races, and religions since the beginning of time. They formed their own groups, which led to social unrest and violence. As a result, the founder of the constitution established a secular nation without a governmental religion in order to promote harmony. The founder of the Indian constitution aimed to create harmony on Indian land when it was incorporated.

Initially, the term secularism was not used. The 42nd Amendment Act of 1976, which includes a secular phrase in the preamble, added it to the Constitution. India became a "Sovereign, Socialist, Secular, Democratic and Republic" nation as a result of this constitutional amendment act. Secularism is neither in favour of nor against God. Simply put, it ensures that no one will face discrimination based on their religion and removes God from state affairs.

Objectives of the Study

- Study the basic concept of Article 28 of the Constitution of India, 1950.
- To find out the basic feature of the Article 28 of the Constitution of India, 1950.
- To find out the judicial decisions on Article 28.

METHOD

In the present research paper researcher collected the data from secondary sources. Researcher has collected the data regarding this research paper from Books, Articles, Supreme Court Journal and through Internet sources.

RESULTS AND DISCUSSION

The constitution makes no mention of religion. The Supreme Court of India explained religion as a matter of faith with people and groups in *Commissioner, H.R.E. v. L.T. Swamiar* (AIR 1954 SC 282). The Supreme Court of India ruled that Jainism and Buddhism in India do not believe in God. A religion has beliefs and teachings that persons who practise that faith perceive as beneficial to their spiritual well-being. Religion is so more than just an opinion or set of beliefs. Religious practise and the execution of deeds in support of religious beliefs are as much a part of religion as faith or doctrine-specific views. Religion is a set of ideas that connects man's spiritual essence to supernatural beings. Worship, beliefs, faith, devotion, and so on are all part of it. Religion has many diverse tints and colours.

FREEDOM OF RELIGION



(A) Freedom of conscience and right to freely profess, practice and propagate religion (Article 25)
(B) Right of a religious denomination to manage religious affairs (Article 26)
(C) Freedom of payment of taxes for promotion of any particular religion (Article 27)
(D) Freedom from attendance at religious instructions in certain educational institutions (Article 28)

A. Freedom Of Conscience And Right To Freely Profess, Practice And Propagate Religion (Article 25)

Clause (1) of Article 25 provides : “Subject to the public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.”

This clause of Article 25 guarantees everyone the right to freedom of conscience as well as the right to profess, practise, and spread religion. Freedom of conscience indicates that a person is free to develop his or her own relationships with God. It means that people have the right to hold religious beliefs. This privilege is not required to be associated with any particular religion or faith in God.

The freedom to profess religion means the right to make an open declaration of one's religious beliefs. The right to practise religion entails performing religious responsibilities, ceremonies, and rituals, among other things. The right to religious propagation refers to the ability to promote one's religious views.

B. Right Of A Religious Denomination To Manage Religious Affairs (Article 26)

Article 26 provides : “ Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

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

The constitution makes no mention of religious denominations. A religious denomination is a group of people who share the same name, a religious sect or body that shares a common faith and organisation and is identified by a unique name. According to Article 26 of the Indian Constitution of 1950, a person has the right to create religious and philanthropic organisations with movable and immovable property, and such property must be administered in conformity with the law.

C. Freedom From Payment Of Taxes For Promotion Of Any Particular Religion (Article 27)

Article 27 provides: “No person shall be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.”

The purpose of Article 27 of the Indian Constitution is to ban the promotion or maintenance of a particular religion by the state or at the expense of the state. As a result, if such a tax is implemented, no one will be forced to pay it.

D. Prohibition Of Religious Instructions In Educational Institutions (Article 28)

Clause (1) of Article 28 provides: “No religious instruction shall be provided in any educational institution wholly maintained out of state fund”.

Clause (2) of Article 28 is an exception of clause (1) provides that the prohibition contained in clause (1) would not be apply to an educational institution which is administered by the state but has been established under any endowment or trust which requires that religious instructions shall be imparted in such institution.

Clause (3) further provides: “ no person attending any educational institution recognised by the state or receiving aid out of state funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto”.

Thus, Article 28 of the Indian Constitution clearly distinguishes three sorts of educational institutions in terms of religious instruction and worship:

1. Educational institutions that are entirely supported by public revenues.
There is an absolute prohibition on religious instruction in these types of educational institutions.
2. Educational institutions that are either state-recognized or receive state financing.
There is no bar on delivering religious teaching or holding religious worship in such institutions.
3. Educational institutions controlled by the state but created under any endowment or trust requiring religious teaching to be delivered.
There is no ban against delivering religious teaching in such organisations.

Important Supreme Court Judgements

- In the case of **Guru-Nanak: D.A.V. College v. State of Punjab (1971)**, the Supreme Court decided that the legislation establishing the University, which specified that the state shall make provisions for the study of Guru Nanak Devji's life and teachings, was challenged as violating Article 28 of the Constitution. The court denied argument, ruling that academic study of Guru Nanak's life and teachings cannot be called religious instruction.
- In **Ahmedabad St. Xavier's College v. State of Gujarat (1974)**, the Supreme Court ruled that the notion of secularism does not encourage neither no-god nor anti-god. It completely removes God from governmental activities or matters.
- In the case of **Santosh Kumar v. Secretary, Ministry of Human Resource Development (1994)**, the Supreme Court ruled that the inclusion of Sanskrit in the curriculum of the Central Board of Secondary Education does not violate the principle of secularism because it is the mother of all Aryan languages. The Court also ordered the CBSE to make required changes to the curriculum, allowing Sanskrit to be taught as an elective subject.
- The Supreme Court of India, in the case of **S.R. Bommai v. Union of India (1994)**, ruled that secularism is a fundamental tenet of the Indian Constitution. The Court went on to say that politics and religion should never be intertwined. In cases when the state implements non-secular policies or takes other acts that contradict the secular state notion, such actions or policies will be deemed to be in violation of the constitutional mandate. Prior to this case, the Supreme Court held in **Kesavananda Bharati v. State of Kerala and Anr. (1973)** that secularism is a component of the fundamental structure of the Indian Constitution. The Court went on to clarify that the basic structure of the Constitution is not subject to amendment.
- In **Aruna Roy v. Union of India (2002)**, a PIL was filed under Article 32 stating that NCERT texts breached constitutional norms. It was also suggested that it was anti-secular and was passed without the Advisory Authority's permission, and thus should be rejected. The court determined that there was no violation of Article 28 because studying religious philosophy to live a value-based life in society is not prohibited.

Prohibition Of Religious Instruction in A State – Aided Institution

Article 28 is expressly related to the provision of restricting religious education in State-aided institutions. The three types of state-aided institutions include those that are wholly maintained by the state, those that receive State aid, and those that are formed under any trust or endowment and are controlled by the State. This Article only applies to state-aided institutions; it does not apply to other institutions with no link to the state.

The Article distinguishes three types of educational institutions: completely public, i.e., where religious education is completely prohibited; institutions where the State acts as a trustee, in which case religious education is permitted; and institutions aided by the state, where consensual religious education is permitted.

Article 28 Clause (1) states that no religious instruction shall be delivered by any institution completely supported by out-of-state funding.

However, Clause (2) of this Article states that this provision does not apply to educational institutions supported by state funds but established under any trust or endowment that expressly or implicitly requires religious instruction in such institutions.

Article 28(3) provides that no person attending a State-recognized institution or getting state aid shall be required to participate in any religious instruction delivered in any such institution. He shall also not be pushed or induced to attend any religious workshop held in any such facility or at a location attached to or near such an institution. A cursory reading of Clause (3) of Article 28 reveals that it enhances Article 30(1).

While clarifying the intent of Article 28, the Supreme Court stated in *Ms. Aruna Roy and others v. Union of India and others* (2002) that it does not prohibit the study of faiths. The primary goal of the Article is to prevent the dissemination of religious education. It is never stated in the Article that the study of religion, philosophy, and culture is forbidden, especially when they propose values and understanding of social life. The Indian Courts have often decided that the study of religion in educational institutions does not violate the Constitution's secular framework.

CONCLUSION

India is a secular country provides Right to freedom to each and every citizen of India. State have no religion but State is neutral on the basic of religion. This fundamental right is not absolute. State should impose restriction for the public welfare.

In present day religious activities will be perform in various govt. educational institution. This is the violation of Article 28(1) of the Constitution of India. Govt. should check such type of activities to save the harmony of the country.

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