



**INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW**

*An International Open Access Double Blind Peer Reviewed, Referred Journal*

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Volume 4 | Issue 3 | 2025

Art. 21

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**Recommended Citation**

Akshara B., *A Study on Right to Religion under Constitution of India*, 4 IJHRLR 299-319 (2025).

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# A Study on Right to Religion under Constitution of India

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**Manuscript Received**  
06 May 2025

**Manuscript Accepted**  
14 May 2025

**Manuscript Published**  
18 May. 2025

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## ABSTRACT

*India is a multi- religious nation. Pluralism of religions is one of the basic features of Indian democracy. Religion plays a pivotal role in the Indian society. The Constitution makers therefore included the freedom of religion as a fundamental right. The right to religion under Indian Constitution is very wide and goes together with the unique model of Indian secularism and provide a strong foundation for the mutual co- existence of religious diversity in India. The Constitution of India guarantees the Right to Freedom of Religion as a fundamental right, enshrined under Articles 25 to 28. This study explores the scope, evolution, and judicial interpretation of these provisions, which aim to uphold the secular fabric of the Indian state. Article 25 ensures the freedom of conscience and the right to freely profess, practice, and propagate religion, subject to public order, morality, and health. Articles 26 to 28 further reinforce religious autonomy by granting rights to manage religious affairs, freedom from compulsory religious instruction, and protection of religious institutions. This paper examines how the Indian judiciary has interpreted these rights in balancing individual freedoms with societal interests and state intervention. The study also analyzes the distinction between essential religious practices and secular activities associated with religion, a doctrine frequently employed by courts to adjudicate religious disputes. The study concludes by suggesting reforms to strengthen the secular ethos and promote inter-religious tolerance through legal and educational means. It underscores the need for a balanced approach that respects religious diversity while upholding constitutional values.*

## KEYWORDS

*Religion, Constitution of India, Secularism, Values,  
Judiciary, Freedom, Fundamental Rights*

## INDIAN CONCEPT OF SECULARISM

### • **Meaning**

The concept of secularism is a part of the Constitution of India. However, the Indian concept of secularism is unique and distinct from the western model of secularism. There is neither an official religion nor a state-recognised church or religion in India. India is not a theocratic State. India has neither adopted the American concept of separation of State and religion nor the French concept where religion is a matter of internal belief. India has always sustained religious and cultural pluralism. Therefore, in India, secularism is a concept where all religions co-exist and the State actively promotes such co-existence. In other words, secularism in India refers to the equal treatment of all religions by the State.

The Constitution of India through its preamble declares India to be a secular republic. At the same time, the right to freedom of religion and conscience is embedded in Part III of the Constitution of India. The meaning of Indian secularism, as distinct from western notions, is well understood through the words of various statesmen and academicians. Pandit Jawaharlal Nehru has said that “*secularism refers to the granting of equal status to all religions.*”

According to Dr. B.R. Ambedkar, “*secularism does not mean that we can abolish religion. It does take into consideration the religious sentiments of the people. All that a secular state means is that this parliament shall not be competent to impose any particular religious sanction upon the people.*”<sup>1</sup>

Donald E. Smith, Professor of Political Science in Pennsylvania University in his book ‘India as a Secular State’ gives the definition of a secular State, “*The Secular State is a State which guarantees individual and corporate freedom of religion, deals with the individual as a citizen irrespective of his religion, is not constitutionally connected to a particular religion, nor does it seek to promote or interfere with religion.*”<sup>2</sup>

H.V. Kamath, a member of the Constituent Assembly had said in the Constituent Assembly debates that “*a secular state is neither a godless state nor an irreligious state.*”<sup>3</sup>

The concept of secularism was not a part of the Constitution when it was adopted. This was because the country required time to

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<sup>1</sup> *Constituent Assembly Debates* (Nov. 15, 1948) (statement of Dr. B.R. Ambedkar)

<sup>2</sup> Donald E. Smith, *India as a Secular State* (Princeton Univ. Press 1963).

<sup>3</sup> *Constituent Assembly Debates* (Nov. 15, 1948) (statement of H.V. Kamath).

establish its own idea of secularism. Even after the word 'secular' was added much later, the meaning of the word was not defined anywhere. The meaning of Indian secularism is well expressed in various judicial decisions.

In *Narayanan Namboodrippad v State of Madras*<sup>4</sup>, Madras High Court had examined the US principle of the "wall of separation" between religion and state and concluded that there are provisions in the Constitution which are 'inconsistent with the theory that there should be a wall of separation between church and State'. In *Kesavananda Bharati v. State of Kerala*<sup>5</sup>, the Honourable Supreme Court of India defined the basic structure of the Constitution and secularism was declared to be a part of the basic structure of the Constitution. This was reiterated in *Indira Gandhi v Raj Narain*.<sup>6</sup>

The meaning of Indian secularism inserted into the preamble was very well explained in the case of *S.R Bommai v Union of India*<sup>7</sup>.

It said:

*The Constitution has chosen secularism as its vehicle to establish an egalitarian social order*

*"Notwithstanding the fact that the words 'Socialist' and 'Secular' were added in the Preamble of the Constitution in 1976 by the 42nd Amendment, the concept of Secularism was very much embedded in our constitutional philosophy. By this amendment what was implicit was made explicit. These provisions by implication prohibit the establishment of a theocratic State and prevent the State from either identifying itself with or favouring any particular religion or religious sect or denomination. The State is enjoined to accord equal treatment to all religions and religious sects and denominations."*

*Secularism is a positive concept of equal treatment of all religions.*

*When the State allows citizens to practise and profess their religions, it does not either explicitly or implicitly allow them to introduce religion into non-religious and secular activities of the State. The freedom and tolerance of religion is only to the extent of permitting pursuit of spiritual life which is different from the secular*

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<sup>4</sup> AIR 1955 MAD 385

<sup>5</sup> AIR 1973 SC 1461

<sup>6</sup> 1975 AIR 1590

<sup>7</sup> (1994) 3 SCC 1

*life. The latter falls in the exclusive domain of the affairs of the State.*

In the case concerning the Ayodhya dispute the Supreme Court has summarised the true concept of secularism under the Constitution as follows:

*"It is clear from the constitutional scheme that it guarantees equality in the matter of all individuals and groups irrespective of their faith emphasizing that there is no religion of State itself. The Preamble of the Constitution read in particular with Article 25 to 28 emphasizes this aspect and indicates that it is in this manner the concept of secularism is embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional validity of any legislation. The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our constitution".*

In *Ziyauddin Burhamuddin Bukhari v Brijmohan Ramdass Mehra*,<sup>8</sup> Justice Desai puts it, a secular State deals with the individual as a citizen, irrespective of his religion, is not connected to a particular religion nor does it seek to promote or interfere with religion. Secular State must have nothing to do with religious affairs except when their management involves crime, fraud or becomes a threat to unity and integrity of the State.

Thus, it could be said that the Constitution of India is a blend of secular and religious elements.<sup>9</sup>

## **HISTORY OF SECULARISM IN INDIA**

### **• Pre Colonial view**

It has been considered by many that India has borrowed the concept of secularism from the west. However, India has a strong foundation of secularism right from the Vedic period. This has been observed by many scholars like D.E Smith. Religions in India are known to have co-existed and evolved together for many centuries predating the Republic of India. The Indian civilisation is among the oldest living civilisations of the modern world. India is a country where religion is very central to the life of many people. India's age-old philosophy as expounded in Hindu scriptures called Upanishads is *sarva dharma samabhava*, which means respect for all belief systems.

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<sup>8</sup> 1975 AIR 1778

<sup>9</sup> Laws of India on religion and religious affairs, Dr. Tahir Mehmood, P.No 22

The concept of secularism was present in the ancient period through the concept of *dharma*. The ancient *dharma* derived from the word *dhr*, which means to support, was the basis on which Hindu Kings ruled the country. The ancient Hindu kings were obliged to follow Dharma. The noted indologist A. Kumarasamy has said that the Brahmins wrote taught and interpreted dharma and Kshatriyas guarded and enforced it. Thus, it could be said that during ancient times the Brahmins symbolised religion and Kshatriyas symbolised polity and they coexisted harmoniously. India has an illustrious political history of religious harmony and secularism. Emperor Ashoka propounded Buddhism in spite of which he promoted religious tolerance and peaceful co-existence with Hinduism. The Guptas who promoted Vedic Hinduism continued to patronize Buddhism by donating and supporting various Buddhist monasteries and universities. Ala-ud-din Bahaman Shah also known as Zafar Khan or Hasan Gangu who founded the Bahamani sultanate took the name 'Bahaman' in honour of his Brahmin patron. India welcomed Parsees and Jews when they were persecuted in their own respective homelands. India is also the homeland of Jainism and Sikhism. Therefore, Indian rulers welcomed all major world religions and created conditions where all religions could live peacefully. Such was the religious pluralism in India.

Some researchers believe that the history of Indian secularism began with the protest movements in the 5th century BC. The three main protest movements were by the Charvakas (a secularist and materialistic philosophical movement), Buddhism, and Jainism. All three of them rejected the authority of the Vedas and any importance of belief in a deity.

- ***Colonial & Contemporary view***

The Colonial Indian State was not identified with any particular religion. The Governor Generals like Lord Bentick often intervened and acted against religious and social practices. During that period, various reforms in religion and society were introduced by the British and attempts were made to regulate religion. The reformation of Hindu religious practices was the first intervention in India by the State against social and religious order. These reforms, on the other hand, brought an end to many age old social evils.

Traditionally, the State in India was subordinate to society. This was reversed by the colonial role. The abolition of Sati, influx of missionaries, introduction of legislation and policy against social practices, other laws like Dalhousie's doctrine of lapse marked the

intervention of State intervention on religious matters.<sup>10</sup> The codification of personal laws by British laid the foundation of a non - uniform civil code in India. Therefore, the religion which was separated from the State became a part of the Indian legal system.

After independence, India adopted the Constitution which contained secular provisions and few religious elements. Though not formally declared, the Constitution of India was strongly tilted towards secularism. It was much later that the word 'secular' was inserted into the preamble of the Constitution of India.<sup>11</sup>

The contemporary period in India has witnessed a strong movement which goes against the principles of secularism. This is called the 'Hindutva' movement which is, in other words, cultural nationalism. This movement started by right wing Hindu parties argue that India has historically been the land of Hindus which in later time has welcomed other religions. It is the contention of Hindutva protagonists that, in recent times, due to the minority religious groups and the demand for their rights and reservations, the majority Hindu religion has been suffering from inequalities and therefore, the Hindutva movement is formed to transform India into a Hindu State.

## **SECULARISM UNDER THE CONSTITUTION OF INDIA**

### **• *Constituent Assembly Debates***

The Constituent Assembly while discussing the subject of secularism had decided on two things: Secularism should necessarily be a part of Constitution of India so that Indian democracy would not have to witness another communal disaster like that of partition. And secondly, the secularism which the Indian democratic legal system will adopt would be unique in its concept and not a blind adaptation of the Western concept of 'Wall of separation'. Therefore, Constitution of India would not hastily include the word secular in the Constitution. There were lot of discussions in the Constituent Assembly on the topic of secularism. There were disagreements and debates in the Constituent Assembly on the topic of secularism.

H.V Kamath, a member of Constituent Assembly moved an amendment to begin the preamble by the phrase, "In the name of god." However this move was opposed by Dr. Rajendra Prasad who argued that this would be against the spirit of religious freedom provided in the Constitution and Kamath's motion was

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<sup>10</sup> Swarna Rajagopalan ; Secularism in India

<sup>11</sup> 42<sup>nd</sup> Amendment Act, 1976

rejected by a narrow margin. There were attempts to include the 'secular' in the Constitution but it was not even debated properly.

The meaning of the word 'secular India' led to the debates in the Constituent Assembly. There were two notions. The first was that religion is a matter of individual belief and individual has the liberty to decide whether to believe in a religion or not. Therefore the preamble could not contain any references to God nor could the Constitution provide that the State should promote religious equality. The second notion spoke about the religious liberty and the importance of religion in the Indian society. According to the supporters of the second notion, the State should promote and respect all religions equally and should establish a secular State based on such principles.

There were debates also for choice between the words 'Religious Practice' and 'Religious Worship'. The initial definition of the right to freedom of religion as defined by the Sub-Committee on Fundamental Rights used the words "Right to freedom of religious worship" which was similar to western notion of secularism. However this was rephrased by the Minorities Sub-Committee to read "...Right to freely profess, practice and propagate religion" which was a broader definition of religion. The Constituent Assembly voted in favour of the broader definition.

One of the famous debates was on the Uniform Civil Code. Dr. Ambedkar and Munshi in their draft articles had put Uniform Civil Code in the category of justiciable rights. However the Fundamental Rights Sub-Committee had decided to make the Uniform Civil Code a Directive Principle. Many members like Rajkumari Amrit Kaur opposed this move as they considered personal laws to be the main cause of India's backwardness. Some members were against the whole idea of Uniform Civil Code. Another group of members thought personal law is a matter of freedom. Due to all these debates, the Constituent Assembly decided to place it in the Constitution as a Directive Principle. The words used were an 'endeavour to establish a Uniform Civil Code'.<sup>12</sup>

- ***Constitution (42<sup>nd</sup> Amendment) Act, 1976***

After many years of Independence and adoption of the Constitution, when the Indian concept of secularism was familiar to the world, the 42<sup>nd</sup> Amendment Act was enacted. Section 2 (a)

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<sup>12</sup> Secularism in the Constituent Assembly Debates, 1946-1950 , Shefali Jha, Vol - XXXVII No. 30, July 27, 2002



of the Act provides for the inclusion of the word 'Secular' into the preamble of the Constitution.

- **3.3 Secularism in the Indian Constitutional Framework**

Secularism in the Constitution of India is based on the principle of *Sarva Dharma Sama Bhava* or the principle of equal treatment of all religions. The Constitutional provisions on secularism are neither based on religious neutrality nor on religious partiality. The Constitution is rather based on non-discrimination and equality of religious groups. Therefore, the State interferes in religious matters to uphold these principles and prevent their violation. As observed by Supreme Court, secularism under the Constitution of India is more than a passive attitude of religious tolerance.<sup>13</sup> Therefore, the Constitution of India contains the elements of both secularism and religion.

- **Preamble**

The Indian notion of secularism means the equality of all religions. The Preamble to the Constitution speaks of the solemn resolution of the people of India, inter alia, to secure themselves "liberty of thought, expression, belief, faith and worship". In a way, it could be said that even before the inclusion of the word 'secular' in the Constitution it had provided every citizen liberty in the matter of religion. Then in 1976, after the 42<sup>nd</sup> Amendment Act, the word 'secular' found a place in its preamble after which India is called a 'sovereign socialist secular democratic republic'.

- **Fundamental Duties**

Art 51A provides for the fundamental duty to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women and to develop the scientific temper, humanism and the spirit of inquiry and reform.

- **Uniform Civil Code**

The concept of a Uniform Civil code is provided in Article 44 of the Constitution of India. Article 44 says that "*the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.*" The debates on Uniform Civil code has been there since the Constituent Assembly debates. There are arguments in favour and against such a code. A uniform civil code administers the same set of secular civil laws to govern all people

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<sup>13</sup> (1994) 3 SCC 1

irrespective of their religion, caste and tribe. Those in favour of the Code argue that main reason for inequality in India is that there are various set of personal laws governing different groups. According to them, these personal laws which are different have created lack of uniformity in civil laws and have provided undue favour to certain groups. Therefore a uniform civil law will eliminate all these inequalities. The other group who are against the Code argues that such a code will be an attack on the personal laws which are mainly based on the religious laws. They also fear that a Uniform Civil Code in India would create dominance of majority group personal laws.

The question which arises after all these discussions is whether such a code is even possible. The Constitution makers realising that such a Code is not possible at a stretch has used the word 'endeavour'. Tahir Mahmood in his study, Muslim Personal Law, concludes that "Article 44 does not require the state to enforce a uniform civil code abruptly; it rather gives a latitude for the introduction of such a code in stages...since the Muslims and other minorities were not 'prepared to accept and work social reform,' enactment of an all-embracing civil code could be lawfully deferred."

- ***Fundamental Rights***

The principle of secularism is embedded in Part III of the Constitution of India through various fundamental rights which essentially are based on equality and non- discrimination of all religions.

1. Article 14 of the Constitution of India grants equality before law and equal protection of law for the people of all religions..
2. Article 15(1) of the Constitution of India provides that the State shall not discriminate against any citizen on grounds only of religion. Article 15(2) prohibits discrimination on access to public places on the ground of religion.
3. Article 16 prohibits discrimination on the ground of religion in public employment. It means that the State shall treat all religions equally in the matters of public employment.
4. Article 15 and Article 16, however permit protective discrimination for certain marginalized and weaker sections.

5. Article 23(2) provides that if the State imposes compulsory services on citizens for public purposes, there shall be no discrimination on the basis of religion.

### **INDIVIDUALS' RIGHT TO RELIGIOUS FREEDOM**

In India, the State promotes all religions equally. Religion is not merely an internal matter or private matter. Article 25 of the Constitution provides the fundamental right to freedom of religion. It applies not only to citizens but to all persons. Further, Article 27 and Article 28 deal with other fundamental rights relating to the religious freedom of individuals.

The term religion has not been defined anywhere in the Constitution. However, the Supreme Court has interpreted it well in the following words.

*“Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. No doubt religion 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 is not correct to say that it is nothing else but a doctrine or belief. The religion, thus, may lay down a code of ethical rules for its followers to accept and also prescribe rituals, ceremonies and modes of worship which are regarded as integral parts of the religion.”<sup>14</sup>*

#### **• Right to Religious Freedom**

According to Article 25 of the Constitution of India, right to freedom of religion is one of the fundamental rights recognized by the Constitution of India.

Article 25 (1) of the Constitution says, *“Subject to 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, practise and propagate religion.”*

This shows that religious freedom under the Indian Constitution is quite wide in its ambit. It does not merely cover internal belief or faith. The right to profess religion means and includes the right to declare and openly manifest one's faith. The right to practice the religion means the right to practice the religion openly in any manner and perform rituals, rites and other activities associated with the religion. The right to propagate refers to the right to spread and publicize the religion by exposing its tenets.

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<sup>14</sup> Commr. HRE Madras v Sri Lakshmindra Swamiar, AIR 1954 SC 282

The Honourable Supreme Court has observed in *Sri Lakshmana Yatendrulu v State of Andhra Pradesh*<sup>15</sup>, “Article 25, as its language amplifies, assures to every person subject to public order, health and morality, freedom not only to entertain his religious beliefs, as may be approved of by his judgement and conscience, but also to exhibit his belief in such outwardly act as he thinks proper and to propagate or disseminate his ideas for the edification of others.”

Further, Article 25 also confers on the individual, freedom of conscience. Thus, he may also choose not to follow any particular religion. Freedom of conscience gives a person freedom to choose or not to choose any one of the many religions which are being propagated. On his deciding to choose a particular religion which is being propagated with a view to its acceptance and on his being prepared to comply with the requirements necessary to be a member of that religion, he has the freedom to be converted to that religion<sup>16</sup>. “Freedom of Conscience” includes right to entertain beliefs and doctrines concerning matters which he considers to be conducive to his spiritual well-being.<sup>17</sup>

#### • **Restrictions on Right to Religious Freedom**

The right to freedom of religion and conscience is however not absolute. The right is subject to certain restrictions that may be imposed by the State, on the ground of (i) public order, morality and health; (ii) regulation of non-religious activity associated with religious practice; (iii) social welfare and reform; (iv) throwing open of Hindu religious institutions of public character to all classes of Hindus. These are the areas where the State may interfere with the people’s right to religious freedom. They are inserted for the effective implementation of principles of religious equality and equal treatment of all religious groups. The Constitution through this article also tries to ensure that the State may take effective measures against those religious practices which are detrimental to the health, morality and peaceful life of the people.

*Public Order, morality & health* - Article 25 (1) of the Constitution says that the right to freedom of religion is subject to public order, morality and health. The State cannot authorise the outrage of the religious feelings of another class, with a deliberate intent in the name of religion, as this would be detrimental to public order. Similarly, the word ‘health’ gives the power to the competent legislature to prohibit practices harmful to health in the name of

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<sup>15</sup> AIR 1996 SC 1414

<sup>16</sup> Hm seervai vol 2 1288

<sup>17</sup> Ratilal v State of Bombay, AIR 1954 SC 388

religion. The State can also interfere in religious activities if they are against the morality of the public.

In the case of *Church Of God (Full Gospel) In India v K.K.R. Majestic Colony*<sup>18</sup> *Welfare*, the Supreme Court has put restrictions on the use of voice amplifiers in religious places.

*Other Provisions of this part* - Article 25(1) also says that the enjoyment of one's right to freedom of religion is subject to the fundamental rights of others. In other words, a person can exercise his religion freedom as long as it does not come in conflict with the fundamental rights of others.<sup>19</sup>

In *Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj v State of Gujarat*<sup>20</sup>, the Supreme Court has said: "No rights in an organised society can be absolute. Enjoyment of one's rights must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring out a voluntary harmony, the State has to step in to set right the imbalance between competing interests."

- ***Regulation of non-religious activity associated with religious practice***

The Constitution also gives the State the power to regulate non-religious activity - political, economic and secular activities which may traditionally be or which may seem to be associated with religion. Certain practices even though regarded as religious, may be sprung from merely superstitious belief and may, in that sense, be only extraneous and inessential accretions to religion itself. Such practices are also not protected and can be abrogated. Therefore, the norm that only such practices as are essential and integral part of a religion need to be protected. It therefore falls upon the Courts to decide, on the basis of evidence adduced before them concerning the conscience of the community and the tenets of the religion concerned, whether a practice for which protection is claimed is 'religious' in character, and, if so, whether it is an essential and integral part of the said religion, or is merely 'secular' or 'superstitious' in nature.<sup>21</sup>

In this regard, the Supreme Court had said in *Sri Jagannath Temple Puri Management Committee v Chintamani*<sup>22</sup>, "Although the State cannot interfere with the freedom of persons to profess,

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<sup>18</sup> AIR 2000 SC 2773.

<sup>19</sup> MP Jain 1321

<sup>20</sup> AIR 1974 SC 2098

<sup>21</sup> Commissioner, HRE v Lakshmindra Swamiar, AIR 1972 SC 282

<sup>22</sup> AIR 1997 SC 3839

*practice and propagate religion, the State, however can control the secular matters connected with religion."*

In *Sarla Mugdal v Union of India*<sup>23</sup>, the Supreme Court held that marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 & 27.

- **Social welfare and Social Reforms clause**

Under clause (2) (b) of Art. 25 the State is empowered to make laws for social welfare and social reform. Therefore, under this clause the state has the power to eradicate age old social and religious practices which stand as an obstacle for social reform.

Article 25 (2) (b) contains the idea that "*Measures of social reform are permissible and would not be void on the ground of interfering with religious freedom.*"

An Act which prohibited bigamy was held valid in *State of Bombay v. Varasu Bopamali*,<sup>24</sup> as polygamy is not an essential part of the Hindu religion.

- **Throwing open of Hindu religious institutions of public character to all classes of Hindus**

Article 25(2) (b) also says that the throwing open of Hindu religious institutions of public character to all classes of Hindus, is not a violation of religious freedom. In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.<sup>25</sup> The word 'public' here includes any section of the public. Public institutions would thus mean not merely temples dedicated to the public as a whole, but even those which are founded for the benefit of sections thereof, and denominational temples would thus fall within the scope of this clause.<sup>26</sup>

This clause which is particularly applicable to Hindu religion is added in light of the various social reform movements against the practice of untouchability and for the equality of status of the lower class Hindus.

- **No Compulsory Taxation for the Promotion of Religion**

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<sup>23</sup> (1995) 3 SCC 635

<sup>24</sup> AIR 1953 Bom.84

<sup>25</sup> Article 25, Explanation II, Constitution of India

<sup>26</sup> Sri Venkatarama Devaru v State of Mysore; AIR 1958 SC 255

Article 27 provides that, “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 Constitution ensures that no one shall be compelled to pay such taxes, for the promotion of any particular religion. In *T.M.A Pai Foundation v State of Karnataka* <sup>27</sup>, the Supreme Court remarked, “The manner in which article has been framed does not prohibit the State from enacting a law to incur expenses for the promotion or maintenance of any particular religion or religious denomination, but specifies that by that law, no person can be compelled to pay any such tax.”

Article 28 guarantees that State sponsored education will be secular. It provides that no religious instruction shall be imparted in institutions wholly maintained by State funds. However, this provision is not applicable in cases where an educational institution is administered by the State but is established under any endowment or trust which requires that religious education shall be imparted in such institution. The article further says that if an institution is either recognized by the State or is receiving aid out of State funds, then in that institution, no one shall be compelled to take part in any religious instruction or attend any religious worship.

- **Special Provision for Sikhs**

Explanation I to article 25 of the Constitution gives a special fundamental right to Sikhs to wear and carry a kirpan. However, this does not allow them to carry any number of kirpans. The right is only to carry one kirpan as it is one of the tenets of the Sikh religion.

## **COMMUNITIES' RIGHT TO RELIGIOUS FREEDOM**

The right to freedom of religion in the Indian Constitution is not merely an individual right. In some cases it is also extended to religious communities. This is enunciated in Article 26, 29 and 30 of the Constitution.

This is because religion in India is more than a personal matter. The right to freedom of religion has also to be enjoyed in community with others. H. M Seervai, in his book Constitutional law of India wrote, “It is obvious that religion has both a personal and an institutional side. No doubt men can pray in their homes and hit heaven with their prayers; but throughout the ages men have worshipped in temples, churches, mosques and the like. In practice, personal rights is inseparable from the institutional; and

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<sup>27</sup> (2002) 8 SCC 481 at page 554

*the person would just complain that he had been denied, the freedom of religion if the right of private worship was conceded, but the right of public worship was denied to him. This aspect is further emphasised by Article 26, which confers freedom of religion on every religious denomination".* Therefore in short, the right to individual freedom of religion will be meaningless without providing religious communities certain freedom.

- ***Freedom to manage religious affairs***

Article 26 provides for the freedom to manage religious affairs. Every religious denomination shall have the right to establish and maintain institutions for religious and charitable purposes, to manage its own affairs, to own, acquire and administer immovable property in accordance with the law. This article is also subject to public order, morality and health.

The Drafting Committee of the Constituent Assembly realised that freedom of religion will be meaningless without giving certain rights to religious denominations. The term 'religious denomination' means a religious sect having a common faith and organisation and designed by a distinctive name. The words 'religious denomination' takes their colour from the word 'religion'. Therefore, in the case of a denomination, there must be a common faith of the community based on religion, and the community members must have common religious tenets peculiar to themselves.<sup>28</sup> The followers of Zoroastrian religion<sup>29</sup>, Ram Krishna Mission/ Ram Krishna Math<sup>30</sup> and Ananda Margis<sup>31</sup> are examples of religious denominations. The right of a denomination to establish and maintain institutions go together. The words 'establish' and 'maintain' should be read conjunctively and consequently the right to maintain the institution can be claimed only by the religious denomination which has established and brought into existence the institution.<sup>32</sup> The right of a religious denomination to manage its own affairs would include matters of religious beliefs and also practices which are regarded as essential tenets of religion. Article 26 also gives the right to own, acquire and administer property in accordance with law. The right to manage affairs is outside the realm of law while the right to administer property is only enjoyed in accordance with law.<sup>33</sup> The right to own, administer and acquire property however does not

<sup>28</sup> Ramaswami Mudaliar v Commr. HRE, AIR 1999 Mad 393

<sup>29</sup> Ratilal Panachand Gandhi v State of Bombay, AIR 1954 SC 388

<sup>30</sup> Brahmachari Sidheshwar v State of W.B, AIR 1995 SC 2089

<sup>31</sup> Jagdishwaranand v Commr of Police, AIR 1984 SC 51

<sup>32</sup> Azeez v Union of India, AIR 1968 SC 662

<sup>33</sup> Ratilal Panachand Gandhi v State of Bombay, AIR 1954 SC 388



take away the right of State to take away the property belonging to religious denominations.<sup>34</sup>

- ***Cultural and Educational Rights of Religious Minorities***

Article 29 and 30 guarantee cultural and educational rights to religious minorities to conserve their culture, language and script, non-denial of admission to educational institution on religious grounds and to establish and maintain educational institutions without discrimination. These articles are for particularly for minorities including religious minorities. The expression 'religious minorities' refers to only people belonging to a minority religion and not a sect of any religion. This was held in *Arya Samaj Educational Trust Delhi v The Director, Delhi administration*.<sup>35</sup>

Justice Hidayatullah observed regarding Articles 29 and 30 of the Constitution, that Article 29(1) was a general protection given to the minorities to preserve their language, script and culture. Article 30(1) was a special protection given to the minorities to establish educational institutions.

### **JUDICIAL APPROACHES AND INTERPRETATION**

The Supreme Court of India has discussed broadly on the topics of secularism and religious freedom in India. Some of those decisions has expanded the scope of religious freedom and has been given status of law of the land. On the contrary, the apex court has also given few decisions which are criticised for narrowing the idea of secularism and religious freedom given under part III of the Constitution. The view of the Supreme Court in its various decisions is being discussed below.

In *Z.B. Bukhari v. B.R. Mehra*<sup>36</sup>, the court laid down, that a secular State must be neutral or impartial - "The term secular is used to distinguish all that is done in this world without seeking the intervention of a Divine Power. Secularism is quite independent of religion. The Secular State is neutral or impartial"

The scope and extent of Article 25 and 26 were discussed by the Supreme Court in *Commissioner, HRE v Lakshmindra Swamiar*<sup>37</sup> popularly known as Shirur matt case. The Court in this case held that institutions or corporations could not practice or propagate religion; that could be done only by individual persons and it was

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<sup>34</sup> *Khajamian Wakf v Madras*; (1971) 2 S.C.R 790

<sup>35</sup> AIR 1976 Delhi 207

<sup>36</sup> 1976 2 SCC 17

<sup>37</sup> AIR 1972 SC 282

immaterial whether they propagated their personal views or the tenets for which the institution stood. It was the propagation of the belief that was protected whether it took place in a church or a monastery, in a temple or a parlour.

Again in another case, the Supreme Court held that “the right to religion guaranteed under Article 25 or 26 is not absolute or unfettered right, they are subject to reform on social welfare by appropriate legislation by the State. The Court therefore while interpreting Article 25 and Article 26 strikes a careful balance between matters which are essential and integral part and those which are not and the need for the State to regulate or control in the interests of the community.”<sup>38</sup>

In the case of *Bijoe Emmanuel v. State of Kerala*<sup>39</sup>, when three school children of the Jehovah's witnesses community were expelled from a school in Kerala because they refused to sing the national anthem, the Supreme Court held that the “the expulsion of children from school for the reason that because of their conscientiously held religious faith, they did not join in the singing of the national anthem, though they stood up respectfully when it was sung, is a violation of their fundamental right under Article 25 'to freedom of conscience and freely to profess, practice and propagate religion.' They cannot be denied that right on the ground that the appellants belonged to a religious denomination and not a separate religion.

In *Stainslaus v State of M.P.*<sup>40</sup>, the Supreme Court held that right to propagate religion one's religion does not grant the right to convert another person to one's own religion, but to transmit or spread one's religion by exposing its tenets.

In *S.R. Bommai v. Union of India*<sup>41</sup>, the Supreme Court held that “the State stands aloof from religion. Matters which are purely religious are left personal to the individual and the secular part is taken charge by the State. State is neither pro-particular religion nor anti-particular religion.” This case explained the true nature of religious freedom and secularism in the Indian Constitution.

However, in some of the subsequent decisions, the Court has tended to interfere with religious matters. This is apparent in *Ismail Faruqui v. Union of India*<sup>42</sup>, where the majority of the judges let pass the acquisition of the mosque at Ayodhya holding that “a mosque is not an essential part of the practice of the religion of

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<sup>38</sup> AS Narayan Deekshitalu v State of A.P, AIR 1996 SC 1765

<sup>39</sup> 1986 3 SCC 615

<sup>40</sup> AIR 1977 SC 908

<sup>41</sup> 1994 3 SCC

<sup>42</sup> 1994 6 SCC 360

Islam." To make it worse, in the case of *Mohd. Islam v. Union of India*<sup>43</sup>, the Court took a light stand on the issue of communal riots. For having disobeyed the orders of the Supreme Court and allowing the demolition of the Babri Masjid, Kalyan Singh, the then chief minister of U.P., was convicted and sentenced to a "token imprisonment of one day" and a fine of Rs.2000 to be paid within a period of two months. Again in *Manohar Joshi v. N.B. Patil*<sup>44</sup>, the court made the shocking statement "however despicable be such a statement (that the first Hindu State will be established in Maharashtra) it cannot be said to amount to an appeal for votes on the ground of religion. "A contrary progressive trend was noticed in *Bal Thackray v. P.K. Kunte* <sup>45</sup>, in which the Supreme Court held the appellant guilty under Representation of Peoples Act, 1951 for invoking communal hatred during election campaigning.

In another case, the Supreme Court has upheld the ban on sale of eggs in the city of Rishikesh and made the following observation.

*"Haridwar and Rishikesh were "pilgrim centres" and "a major section of the society in the three towns considers it desirable that vegetarian atmosphere is maintained in the three towns for the inhabitants and the pilgrims. it is a matter of common knowledge that members of several communities in India are strictly vegetarian and shun meat, fish and eggs. In the three towns people mostly assemble for spiritual attainment and religious practices. Maintenance of clean and congenial atmosphere in all the religious places is in common interest. Peculiar culture of the three towns justifies complete restriction on trade and dealing in non-vegetarian items including eggs within the municipal limits."*<sup>46</sup>

This is yet another case of Court prejudice on religious matters.

Another notable case is the question raised against the ban of cow slaughter. This was in the case of *Mohd. Hanif Querashi v State of Bihar*<sup>47</sup>. The Supreme Court upheld the ban on cow slaughter. H.M Seervai, the famous jurist observes in this regard " On the evidence, the conclusion arrived at by the Court is probably correct; however, it is necessary to add that a religious practice need not be universal, and a religious practice is negative because it is shown to be limited to certain denominations."

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<sup>43</sup> 1994 (6) SCC 442

<sup>44</sup> (1996 (1) SCC 169)

<sup>45</sup> 1996. 1. SCC 130

<sup>46</sup> 2004 3 SCC 402

<sup>47</sup> 1959 SCR 629

In *Zoroastrian Cooperative Housing Society v. District Registrar*<sup>48</sup>, the Supreme Court went in support of the Zoroastrian Cooperative housing society which held the bye-law that the owners of the plots or bungalows who were from the Parsi community could not sell them to any non-Parsi. The Supreme Court held that for the promotion of a housing society there should be "a bond of common habits and common usage among the members which should strengthen their neighbourly feelings, their loyal adherence to the will of the society. In India, this bond was most frequently found in a community or caste." It further said that "the paramount consideration was the interest of the society, not the public interest".

The ambit of religious freedom in the Constitution of India is in consideration of the religious pluralism and significant role played by religion in the lives of its people. The trend of the Supreme Court to narrow down the scope of religious freedom is unwelcoming.

## CONCLUSION

The Right to Religion, enshrined in Articles 25 to 28 of the Constitution of India, is a cornerstone of the country's commitment to secularism, pluralism, and democratic values. It reflects the vision of the framers of the Constitution who, in the wake of India's partition and diversity of beliefs, sought to build a society where all individuals could live with dignity, irrespective of their faith. This study has demonstrated that while the Constitution guarantees broad religious freedoms, it also places reasonable restrictions in the interest of public order, morality, and health, ensuring that individual liberty does not disrupt societal harmony.

One of the most significant contributions of the Indian judiciary has been its interpretation of these provisions, particularly through the development of the "essential religious practices" doctrine. While this doctrine has helped courts distinguish between core religious tenets and secular customs, it has also raised questions about judicial overreach and the state's role in determining religious authenticity. This dynamic interplay between individual rights and state interest continues to shape India's legal landscape on religious freedom. The study further highlights that India's model of secularism is distinct—it does not enforce a strict separation between religion and state, as seen in Western democracies. Instead, Indian secularism is more about equal respect and treatment of all religions by the state. This inclusive model attempts to balance the protection of religious

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<sup>48</sup> 2005 5 SCC 632

rights with the need to regulate practices that may contradict other constitutional principles, such as gender equality and human rights.

However, the evolving socio-political environment poses challenges to the ideal of religious freedom. Issues such as religious intolerance, communal violence, forced conversions, and hate speech continue to test the constitutional guarantee of religious liberty. Political influences and majoritarian tendencies have at times threatened the rights of religious minorities, emphasizing the need for vigilant constitutional governance and independent judiciary. To preserve and promote the right to religion, it is imperative to foster a legal and educational framework that encourages tolerance, interfaith dialogue, and mutual respect. Legal reforms must aim to clarify the scope of religious rights while safeguarding them from being misused for political or divisive agendas. At the same time, civil society and educational institutions must work to instill constitutional values in citizens from an early age.

The right to religion under the Indian Constitution is not just a legal entitlement—it is a moral commitment to uphold the dignity, diversity, and unity of the Indian people. It embodies the spirit of “unity in diversity” and remains essential for the sustenance of India’s democratic ethos. The state, judiciary, and citizens must collectively ensure that this right is protected not only in law but also in practice, thereby strengthening the foundation of a truly secular and inclusive India.