
RELIGIOUS FREEDOM IN INDIAN SOCIETY: CHALLENGES AND SOLUTIONS

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1. INTRODUCTION

Religion is certainly a matter of faith with individuals or communities Religion has its basis in a system of beliefs or doctrines which are regarded by those, who profess that religion, are conducive to their spiritual wellbeing, but it would no be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded a integral part of religion and forms and observances might extend even to food and dress. Justice Sunil Ambwani observed:¹Religion is a matter of faith, belief and doctrine, which concerns the conscience i.e. the spirit of man; it must be capable of expression in words or deed such as worship or rituals. The term 'religion' has reference to one's view of his relations to his creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. With obligation he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the law of society designed to secure its peace and prosperity, and the moral of is people, are not interfered with.²

2. RIGHT TO FREEDOM OF RELIGION UNDER INTERNATIONAL LAW

The history of freedom of religion in international law may be traced back to the thirty years' war in some early antecedents even beyond.³ In modern international law freedom of religion was originally included into the genera framework of minority protection. While attempts at including a provision concerning freedom of religion into the League of Nations covenant

¹ Religion and Jurisprudencel; Organized by SAMVADA - A Forum for understanding Religion Sri Udasin Karshni Ashram, Ramanreti (Gokul), Mathura, (September 6-8, 2013) available at http://www./hcraj.nic.in/Paper-Speech/01-speech_samvada_06_09_2013.pdf;accessed on 20/3/2021

² J.Duncan M.Derrett, *Religion, Law and the State in India* 35-55 (Faber and Faber, London, 1968)

³ Malkolm D. Evans, *Religious Liberty and International Law in Europe* 1- 41 (Cambridge Studies in International and Comparative Law, 1997).

failed,⁴ the system of minority protection established after World War I offered the possibility to include freedom of religion. The Universal Declaration of Human Right (UDHR) of December 1948 is the first international document in which freedom of religion as an international individual right is spelled out. The declaration (U D H R) mentions:⁵

The UDHR provides:⁶Everyone is entitled to all the right and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non- self- government or under any other limitation of sovereignty. Apart from the Universal Declaration of Human Rights (UDHR) one may mention Article 18⁷ and Article 2 Para 1 of the International Covenant on Civil and Political Rights ICCPR), 1966⁸. Similar rights have also been recognized by Article 2, Para 1⁹ and Article 13 ¹⁰Para 3 of the International Covenant on Economic, Social and Cultural Rights, 1966. Article 9 of The European Convention of Human Rights ¹¹ Article 12 of the American Convention of Human

⁴*Id.* at 83-103 —Their common ground was that religious persecution and intolerance are fertile source of warl.

⁵ Article 18, the Universal Declaration of Human Right 1948

⁶ Article 2, the Universal Declaration of Human Right 1948

⁷ Article 18 of ICCPR reads as

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

⁸Article 2 of ICCPR reads as: 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

⁹ Article 2 para2 of ICESCR reads as: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

¹⁰ It reads as The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

¹¹ Article 9, the European Convention on Human Right, 1950 reads as: 1.Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belie and freedom, either alone or in community with others and in public or private to manifest his religion or belief, in worship, teaching, practice and observance

Rights, 1978¹² and Article 8 of the African Charter of Human and People's Rights (ACHR) 1981¹³ provides similar provisions.

Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief 1981 was adopted by the United Nations General Assembly. It has been considered a major international standard setting instrument pertaining to the freedom of religion or belief.

3. RIGHT TO RELIGION UNDER INDIAN CONSTITUTION

The debates in the Constituent Assembly on the question of State neutrality assumed great importance. Proposals to enact such a clause were made in the Constituent Assembly but were defeated. Some of them sought to incorporate literally the phrase used in the first amendment of the American Constitution. One proposal was in the terms: —the Indian Republic shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. Dr. B. R. Ambedkar, in his Memorandum and Draft Article on the Rights of States and Minorities of March 1947 proposed that the future Constitution of India should contain a clause declaring that —the State shall not recognize any religion as a State religion⁸ The other was in the following words: —the State shall not establish, endow or patronize any particular religion. Nothing shall however, prevent the State from imparting spiritual training or instruction to the citizens of India. This amendment seems to be inspired by section 116 of the Constitution of Australia.¹⁴

The framers of Indian Constitution thought that the State should not completely take its hands off religion by enacting a high wall of separation between State and Church. There were number of good reasons for this attitude. One perhaps was the philosophical reasons, or the Universalist approach of Indian religions particularly *Hinduism*. Another could have the historical

¹² Article 12 of the American Convention of Human Rights (ACHR), 1978 provides:

Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs either individually or together with others, in public or in private.

No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

Parents or guardian, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

¹³ Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may subject to law and order, be submitted to measures restricting the exercise of these freedoms.

¹⁴Section 116, the Constitution of Australia reads: The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth

background of peaceful harmony of various religions and enough space for their survival that led to the *modus vivendi* of law and religion.¹⁵

Right to freedom of religion is a fundamental right under the Indian Constitution. Articles 25-28 of the Indian Constitution confer certain rights relating to freedom of 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. These Articles seek to protect religion and religious practice from State interference. India has no preferred or State religion, as such; all religions are treated alike and enjoy equal Constitutional protection without any favor or discrimination. No specific protection has been accorded to any religious group as such. In *S.R. Bommai v. Union of India*¹⁶, a nine Judge Bench of the Supreme Court examined the concept of Secularism in the Indian Context. According to Sawant, J —religious tolerance and equal treatment of all religious group and protection group and protection of their life and property and of the places of their worship are as essential as part of Secularism enshrined in our Constitution. B.P. Jeevan Reddy, J observed: —while the citizens of this country are free to profess, practice 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.¹⁷

4. SECULARISM

The concept of Secularism is not merely a passive attitude to religious tolerance. It is also a positive concept of equal treatment of all religions. The concept of Secularism was not expressly incorporated in the Constitution at the stage of its making. However, its operation was visible in the Fundamental Rights and Directive Principles. The concept of Secularism, though not expressly stated in the Constitution was nevertheless, deeply embedded in the Constitutional philosophy. In 1976, through the 42nd amendment of the Constitution the concept of Secularism was made explicit by amending the Preamble. By this amendment the word 'Secular' was introduced in the Preamble to the Constitution and, thus, what was hitherto implicit was made explicit. The Constitution does not define the secular as it is a very elastic term and not capable of any precise definition and it best left undefined.¹⁸⁹

¹⁵ Y.B. Damle, —Process of Secularization in G.S. Sharma (ed.), *Secularism: its implications for law and life* 86-87 (N.M. Tripathi Private Ltd., Bombay, 1966)

¹⁶ AIR 1994 SC 1918

¹⁷ Mohammad Ghouse, *Secularism, Society and Law in India* 1-7 (Vikas Publishing House Pvt. Ltd., Delhi, 1973)

¹⁸ Deepak Rawat, —Secularism and the Law – A process in nation building in *Secularism and the Law* 9-72 (National Foundation for Communal Harmony, New Delhi, 2010) ¹⁰ AIR 1995 SC 605

Verma, J., delivering the majority opinion in *Mohd. Ismail Faruqui v. Union of India*,¹⁰ observed in relation to Secularism:

It is clear from the constitutional scheme that it guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasizing that there is no religion of the State itself. The Preamble of the Constitution read in particular with Articles 25 to 28 emphasizes this aspect and indicates that it is in this manner the concept of secularism 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 on the touchstone of the constitution. The concept of secularism is the one facet of the right to equality woven as the central golden thread in the scheme in our Constitution.

It is a creed of the Constitution to promote a scientific and cultivate a humanist spirit (vide Article 51-A). Various rationalists associations, scientific societies and compassionate organizations strengthen a secular– scientific humanist outlook. Laws like those which protect wildlife, prohibit animal sacrifice, ban child marriage and polygamy, subject religious practices to requirements of public peace, public health and public morals and prescribe use of religious appeal to pollute the electoral process, these and like other measures accelerate the pace of secular transformation. The political process, with adult suffrage and joined electorates the diffusion of the *Muslim* population all over the country and permeation of the society ideology among the people, break down religious bigotry. The all-powerful role of the judiciary and its secular credibility, even for decoding and applying religious laws and adjudicating communal disputes, is a force for good. The omens are good for law and religion to evolve a *mo dus vivendi* of a secular republic.

5. ISSUES AND CHALLENGES

The following issues related to religion affect our society today.

a. Communal Riots

In more than seven decades of independence, the country has witness communal riots resulting in rapes, murders, arson and loot in the name of religion. According to the Union Minister of State for Home Sh Nityanand Rai over 2900 cases of communal riots have been registered from 2017 to 2022.¹⁹The victims and perpetrators are from all religion. People have been killed from all religions. The partition of the country saw largest migration in

¹⁹ <https://indianexpress.com/article/india/2900-communal-violence-cases-india-5-years-govt-8311709/> visited on 5.1.2023

human history. It had its shares of communal sentiments flaring up resulting in rapes and murders. According to an estimate around 3000 Hindus were killed and 17000 injured.²⁰ Gujarat has witnessed two large scale violence based on religion- in 1969 and in 2002 killing around 660 people and injuring 1074²¹ and 1044 deaths, 2500 injured and 230 missing people in 2002.²² Anti Sikh riots of 1984 saw 10,000-1700 people being killed or burnt alive.²³

b. Religious involvement in militancy

Religion has begun to play an important role in militancy. The terrorists in Jammu and Kashmir are basically the religious fanatics. The Khalistan movement was again carried out under the guise to protect the honor of Sikhism. In North East also National Liberation Front of Tripura imposed a ban on Hindu worship. It banned all Hindu celebrations like Durga puja.²⁴

c. Politics of Appeasement

Indians are deeply concerned about their religion. The sentiment is so deep rooted that some of them can go any extent to protect “their religion.” The politicians have understood this sentiment well and they very cleverly use the religious card to influence the people and get their votes. They support one religion and pit it against others by glorifying one religion to an extent that it demeans the contribution of all other religions to the great Indian Civilization. Some of the common examples are diluting the Supreme Court’s judgment making provision maintenance for Muslim women on divorce in Shan Bano case²⁵ by passing The 1986 Muslim Women (Protection on Rights of Divorce) Act, protests on CAA and NRC, support to the students who raised anti India slogan in JNU. A Vice Chancellor of the Darul Uloom Deoband, only because he supported Narendra Modi, the Chief Minister of Gujarat.²⁶ The Uttar Pradesh government’s decision to conduct a survey of Madarsas was given apolitical colour. The hijab controversy was totally uncalled for.

²⁰https://en.wikipedia.org/wiki/Religious_violence_in_India#:~:text=Since%20independence%2C%20India%20has%20always,riots%20and%202020%20Delhi%20riots. visited on 5.1.2023

²¹ Ibid

²²https://en.wikipedia.org/wiki/2002_Gujarat_riots#:~:text=According%20to%20official%20figures%2C%20the%20tolls%20in%20excess%20of%202%2C000. visited on 5.1.2023

²³Supra note 20

²⁴ Ibid

²⁵ Mohd. Ahmed Khan v. Shah Bano Begum 985 (1) SCALE 767

²⁶ <https://www.fairobserver.com/politics/indian-politics-dangerous-game-appeasement/> visited on 5.01.2023

One of the aspects of political appeasement is pseudo secularism. The issues and concerns of minorities are voiced even if they are not genuine. On turning down of such concerns the party in power is called as Pseudo secular.²⁷

d. Love Jihad

Marriage is very personal choice. In cases of inter religion marriages love vanishes and conspiracy takes its place. It is no more a marriage but becomes love jihad. The phrase 'love jihad' was coined in 2009 at the Catholic Bishops Council in Kerala, when a Bishop claimed without evidence that a large number of Catholic girls were being lured into marriage by Muslim boys.²⁸ Presently 11 Indian states have laws on love jihad. At times clear criminal cases have also been termed as cases of love jihad where muslim youths guised as Hindus trap the Hindu girls, compel them to accept islam and in case of protest by the girl, kill her. The case of Shraddha Walkar in which her boyfriend Aftab cut her body into 35 pieces heated up the topic of love jihad once again.²⁹

e. Forced Conversions

The constitution of the country grants a right to everyone to propagate his religion. But no force should be used. The Indian law permits conversion provided it is made freely by an individual without any temptation or use of any force. Though there is no central law on religious conversions, some Indian states have like Madhya Pradesh, Odisha, Gujarat, Chhattisgarh, and Himachal Pradesh have anti conversion laws. The aim of such laws is to check the right to Proselytize and also to put an end to fraudulent marriages where one spouse conceals his religion before marriage. However these laws have been criticized on the ground of being antithetical to minorities and secularism and also using vague terminology.

6. CONCLUSION

Religion in Indian society is a personal choice. An individual can practice and propagate his religion. The government has no religion of its own. It stays away from the religious activities. However the government has at times tried to regulate certain religious practices in the interest of the society at large. With the changing times, the government has tried to

²⁷ <https://knowlaw.in/index.php/2020/12/20/appeasement-politics/> visited on 5.01.2023

²⁸ <https://thewire.in/communalism/lies-insistence-and-disregard-for-evidence-the-journey-of-love-jihad-laws> visited on 5.01.2023

²⁹ <https://www.businesstoday.in/latest/trends/story/shraddha-walker-murder-case-5-key-updates-on-progress-of-the-case-so-far-359011-2023-01-05> visited on 5.01.2023

change social practices as well. The codification of personal laws of Hindus and Christians is one such example. There is need to drop the lens of religion every time in the interest of the advancement of society.