

## **A study on right to freedom of religion and its related articles in Indian constitution**

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### **Abstract**

Freedom of religion in India is a fundamental right guaranteed by Article 15 and Article 25 of the Constitution of India. Modern India came into existence in 1947 and the Indian constitution's preamble was amended in 1976 to state that India is a secular state. Every citizen of India has a right to practice and promote their religion peacefully. However, there have been a number of incidents of religious intolerance that resulted in riots and violence, notably, the 1984 Anti-Sikh riots in Delhi, 2002 Anti-Muslim riots and the 2008 Anti-Christian riots. The perpetrators of the violence are rarely brought to justice despite widespread condemnation.

Article 25 (2b) uses the term "Hindus" for all classes and sections of Hindus, Jains, Buddhists and Sikhs. Sikhs and Buddhists objected to this wording that makes many Hindu personal laws applicable to them.

**Keywords:** Freedom of Religion, Rights, Constitution

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### **Introduction**

India is one of the most diverse nations in terms of religion, it being the birthplace of four major world religions: Hinduism, Jainism, Buddhism and Sikhism. Even though Hindus form close to 80 percent of the population, India also enjoys multiple regions with majority populations of other religions: notably, Jammu and Kashmir with Muslim majority, Punjab with Sikh majority, and Nagaland with Christian majority. The country has large Muslim, Sikh, Christian, Jain and Zoroastrian Population. Islam is the largest minority religion in India, and the Indian Muslims form the third largest Muslim population in the world, accounting for over 14 percent of the nation's population.

Rajni Kothari, founder of the Centre for the Study of Developing Societies has written, "India is a country built on the foundations of a civilisation that is fundamentally non-religious.

For Shia Muslims, the Grand Ashura Procession In Kashmir where they mourn the death of Husayn ibn Ali has been banned by the Government of Jammu and Kashmir from the 1990s. People taking part in it are detained, and injured by Jammu and Kashmir Police every year <sup>[1]</sup>.

According to the government, this restriction was placed due to security reasons. Local religious authorities and separatist groups condemned this action and said it is a violation of their fundamental religious rights. However, the same article also guarantees the right of members of the Sikh faith to bear a Kirpan. Religions require no registration.

### **Laws and Indian Constitution**

The Preamble of the Indian Constitution has the word "secular", thereby implying that the State will not discriminate, patronise or meddle in the profession of any religion. However, it shields individual religions or groups by adding religious rights as fundamental rights. Article 25 says "all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality and health." Further, Article

26 says that all denominations can manage their own affairs in matters of religion. All these rights are subject to be regulated by the State.

The government can ban a religious organisation if it disrupts communal harmony, has been involved in terrorism or sedition, or has violated the Foreign Contributions Act. The government limits the entry of any foreign religious institution or missionary and since the 1960s, no new foreign missionaries have been accepted though long term established ones may renew their visas. Many sections of the law prohibit hate speech and provide penalties for writings, illustrations, or speech that insult a particular community or religion.

Some major religious holidays like Christmas (Christian), Eid (Muslim), Guru Nanak's birth anniversary (Sikh) and Holi (Hindu) are considered national holidays. Private schools offering religious instruction are permitted while government schools are non-religious <sup>[2]</sup>.

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

### **Research Study**

The Article 25 of the Indian Constitution is a basic human right guarantee that cannot be subverted or misinterpreted in any manner. It is in this context that the anti-conversion laws in India must be viewed. Anti-conversion laws are promulgated on the premise that forced or induced conversions happen and need to be prevented. Such laws are controversial because they run the risk of being abused by communal forces who may have the tacit approval of the dominant political party in the state or country.

A consolidation of various anti-conversion or so-called "Freedom of Religion" Laws has been done by the All Indian Christian Council. Several Indian states passed Freedom of Religion Bills primarily to prevent people from converting to Christianity. Orissa was the first state to bring such law named as 'Orissa Freedom of Religion Act, 1967'. It was followed by Madhya Pradesh in 1968 and Arunachal Pradesh in 1978<sup>[3]</sup>.

Catholics protested against this saying that propagation of their faith was an important part of Christianity. Both laws enacted by the Orissa and Madhya Pradesh high courts were challenged stating Article 25 of the Constitution. The Supreme Court supported the laws saying, "What is freedom for one is freedom for the other in equal measure and there can, therefore, be no such thing as a fundamental right to convert any person to one's own religion". This move was criticized because it ignored Article 25 and it did not differentiate between forced conversion and conversion by persuasion.

Chhattisgarh in 2000 and Gujarat State in 2003 passed anti-conversion laws that prohibit forced or money induced conversions. In July 2006, the Madhya Pradesh government passed legislation requiring people who desire to convert to a different religion to provide the government with one month's notice, or face fines and penalties.

In August 2006, the Chhattisgarh State Assembly passed similar legislation requiring anyone who desires to convert to another religion to give 30 days' notice to, and seek permission from, the district magistrate. In February 2007, Himachal Pradesh became the first Congress Party-ruled state to adopt legislation banning illegal religious conversions. It was followed by Rajasthan in 2008.

In 2013, the Bharatiya Janata Party general secretary Venkaiah Naidu has declared that his party would bring anti-conversion laws nationwide if his party is elected to power in 2014. However, as of April 2015, the party does not yet have a majority in the Upper House of the Parliament. The president of party Amit Shah has challenged the opposition parties to support it in enacting such a law. The US State Department has said that the recent wave of anti-conversion laws in various Indian states passed by some states is seen as gradual increase in ideological Hindu nationalism (Hindutva). Freedom of religion and Secularism in Indian Constitution Though the Right to freedom of speech and expression (Article 19) envisages the philosophy of freedom of religion in India because despite of the creation of Pakistan, a lot of Muslims were scattered all over India, part from Sikhs, Parsees, Christians and others. Yet the constituent assembly made it explicit by incorporating a separate group of Articles as per a agreement with / recommendation of Advisory Committee on Fundamental Rights, Minorities, Tribal and Excluded Areas (Chairman: Vallabhbhai Patel) and Minorities Sub-Committee (Chairman: H.C. Mookherjee).

### Significance of the Study

Before the Constitution 42nd amendment Bill added the word "secular" in the constitution of India, the word "secular" appeared only in "Article 25". India is a secular country and there is no state religion. India also does not patronizes any religion. The Constitution 42nd amendment Act made the above thought "explicit" in the constitution. Is being a Hindu means No secular? Hindus are in majority in India but

secularism means that in India, state shall observe neutrality & impartiality to all religions<sup>[4]</sup>.

Here, all religions are respected and all beliefs & methods of worship are accepted. All minority religions enjoy full freedom and in certain cases protected. This is opposite in some neighboring countries such as Pakistan and Bangladesh which were part of India but later became Islamic countries. Secularism does not mean that state is hostile to a particular religion. If a person is a Hindu, he / she do not cease to be a secular.

### Conclusion

The Supreme Court in Pannalal Pitti v/s State of Andhra Pradesh mandated that while Article 25 and 26 grants religious freedom to minority religions such as Islam and Christianity, yet they do NOT intend to DENY the same guarantee to Hindus. Article 25 mandates that subject to public order, morality and health, all persons enjoy the freedom of conscience and have the right to entertain any religious belief and propagate it. Meaning of Public order, morality and health means that Article 25 & 26 are not absolute.

No person can do such religious things which affect the public order, morality and health. For example no one has right to conduct human sacrifice. No one can perform worship on busy highway or other public places which disturb the community. Is right to performing rituals protected? Yes, it is protected. But the state by law may regulate the economic, financial, political, or other activity which may not be a direct part of religion.

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