

INDIAN JURISPRUDENCE ON RELIGION & SECULARISM

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Law has come to be recognised as a compelling mechanism to accomplish progressive change and facilitate authoritative resolutions to conflicts. The Constitution of India postulates a separation between a secular domain regulated by the State and a religious domain in which it must not interfere. India is a country of many religions; hence there are a lot of different faiths and beliefs which can conflict with each other, that is why the framers of the Constitution incorporated the concept of secularism in the Constitution of India. This present article will have an analysis on the legislations enacted by the Government of India while dealing with Secularism in India. It also covers contentious issues within the wide ambit of Secularism and assesses the political, judicial and social responses in this regard. A humble attempt has been made to find out the reasons why despite the present legislations and judgements of the Judiciary, the concept of secularism has not been successful in India. At last the suggestions have been provided for the attainment of Secularism in the Country.

INTRODUCTION

Secularism in India means religious tolerance among people and respect for religion of other people. It means that the state will not give preference to any particular religion and will work for the welfare of every religion.³ Secular is a word that discovers its original meaning in a Christian context 'Saeculum'. The traditional Latin word for century or age, took on a special meaning as applied to profane time, the time of ordinary historical succession. This time was intermixed with higher times, the time of ideas, or of the origin, or of God. The government was more in the speculum by contrast with the church. The secularism of today is made on this original distinction. The origin point of recent western secularism was the wars of religion.⁴ By the concept of Secularism religions and harmony can only be maintained when equal importance is given to all the religions without any discrimination. The Indian concept of secularism provides for the concept of equality which is required to be

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³ M.P. Jain, Indian Constitutional Law, LexisNexis, 2013, 6th Edition, Pg 1315

⁴ Graeme Smith, A short history of Secularism, I.B.Tauris(2007)

followed by the state while dealing with different religions.⁵ The Constitution of India provides that India is a secular country and the state has no religion but the concept of secularism in India is different from that of America.⁶ In India secularism doesn't mean irreligion but means religious tolerance among people. The term 'secularism' was made popular by G.L. Holyoake, who was an associate of Charles Bradlaugh. Charles Bradlaugh was an atheist and believed that religion is just a superstition, but in India a different concept of secularism was considered.⁷ The word 'secularism' was not used in the Constitution of India until the Forty-Second Amendment in 1976, which incorporated the word explicitly in the Preamble.

RELIGION UNDER INTERNATIONAL LAW

The Universal Declaration of Human Rights adopted in December 1948 provides for "right to freedom of thought, conscience and religion". It also provides "the right to change religion or belief and the freedom to display religion in the form of teaching, practise, worship and observance."⁸ It is very important today that a person must respect the religious freedom of other persons. International Convention on the Elimination of All Forms of Racial Discrimination which was adopted in 1965 made it obligatory for all states to provide every individual without distinction as to race, colour or national or ethnic group, the right to freedom of thought, conscious and religion.⁹ Then in 1966 International Covenant on Civil and Political Rights was adopted which provided that anyone can adopt a religion of one's own choice, it then ends any type of coercion which will affect the freedom of an individual to adopt a religion of his own choice. It then provides that freedom of religion will be subject to public morality, order, health morals, fundamental rights and freedoms of others.¹⁰ So, the covenant provides for religious freedom but that freedom should not be at the cost of rights of other individuals. It also provides that advocacy of religious hatred that results into intolerance and discrimination should be prohibited.¹¹ A major step was taken by the UN General assembly to eliminate all kinds of intolerance by proclaiming a declaration on the elimination of Intolerance in all its forms and to end any discrimination based on Religion or

⁵ Prof, K.L. Bhatia, Cases and materials on Constitutional Law of India, Universal Law Publishing, pp.781

⁶ Udai Raj Rai, Fundamental Rights and their Enforcement, Asoke K. Ghosh, New Delhi ,pp. 410

⁷ Ibid

⁸ Article 18, Universal Declaration of Human Rights, 1948

⁹ Article 5, International Convention on the Elimination of All Forms of Racial Discrimination, 1965.

¹⁰ Article 18, International covenant on Civil and Political Rights, 1966

¹¹ Ibid

Belief in November 1981. It issued a warning that any kind of discrimination between individuals on the ground of religion is disrespect to human dignity and is a violation of human rights.¹² On 18 December 1992 a major step was taken by adopting the UN Declaration on the Rights of the Minorities. It provides that favourable conditions should be made to enable minorities to exercise their religion with peace.¹³

FREEDOM OF RELIGION UNDER CONSTITUTION OF INDIA

Indian Constitution provides for freedom of religion to every person of India and not only to the citizens of India. Freedom of religion has been provided as a fundamental right under the Constitution of India. Article 25 to 28 of Indian Constitution deals with the freedom of religion and this freedom is available both to the individuals and the religious groups.¹⁴

1. Article 25(1) of the Constitution of India says that all the persons and not only the citizens of India can enjoy the 'freedom of conscience' and every person can practice any religion, can profess any religion and has freedom to propagate his religion. However the freedom is not absolute and is subject to certain restrictions. The three restrictions provided under the Constitution of India to this freedom are public order, morality and health.¹⁵ In *State of Karnataka v. P.B. Thogadia*¹⁶ a religious leader was not allowed to enter Dakshina Kannada. The restriction was upheld by the Supreme Court of India on the ground of public order and it was laid down by the court that if a person by using his speech is likely to cause harm to the communal harmony, then preventing that person from doing so becomes important for the maintenance of public order. Morality can also be a basis for the restriction on religious freedom.
2. Indian Constitution provides freedom to every religious denomination to manage its religious affairs.¹⁷ These religious denomination have been provided with the right to have an institution of their own which can be used by them for religious purposes,¹⁸ the right has also been provided to these denomination to manage their affairs related

¹² Article 3, Declaration on the elimination of all forms of Intolerance and Discrimination based on Religion or Belief.

¹³ Articles 4-5, Declaration on the Rights of the Minorities

¹⁴ Supra.

¹⁵ Article 25(1), Constitution of India, 1950

¹⁶ AIR 2004 SC 2081

¹⁷ Article 26, Constitution of India, 1950

¹⁸ Article 26(a), Constitution of India, 1950

to religion,¹⁹ they also have the right to purchase property which can be both movable and immovable in nature²⁰ and they also have a right to administer and manage the properties acquired according to the law of the land.²¹ 'Religious denomination' used under Article 26 of Indian Constitution means collection or combination of different people or a religious sect in which the people have similar faith related to the religion, the people have a similar belief system and they are known by a distinctive name.²²

3. The Indian Constitution not only provides that every person and groups should have freedom of religion but it provides that no money is to be taken from the funds which are to be used for the administration, maintenance and promotion of a particular religion.²³
4. Freedom has been provided to the educational institutions which are established under a trust or endowment to impart religious instructions even though it is administered by the state.²⁴ However restriction is provided to this freedom that the religious instructions should not be imparted in the educational institutions which are fully maintained by the funds of state.²⁵ Under Article 28 of the Constitution of India reference has been made to three types of educational institutions-
 - (a) Institutions which are completely maintained by the state
 - (b) Institutions which are just administered by the state but which is established under a trust. Here the state just acts as a trustee.
 - (c) Institutions which are aided by the state.

The formation of University was challenged as violative of Article 28 in the case of *D.A.V.College, Jullundur v. State of Punjab*,²⁶ because the university is wholly maintained by the Government of Punjab. It was held that the university is not imparting any religious instructions and is used for the purpose of studying the life and teaching of Guru Nanak and therefore not violates Article 24 of the Constitution of India.

5. The provisions related to religion in the Constitution of India are not limited to the freedom of religion under Article 25 to 28 but its reference has been made under

¹⁹ Article 26(b), Constitution of India, 1950

²⁰ Article 26(c), Constitution of India, 1950

²¹ Article 26(d), Constitution of India, 1950

²² Prof. Dr K.L. Bhatia, Cases and Materials on Constitutional Law of India, Universal Law Publishing, pp.790

²³ Ibid

²⁴ Article 28(2), Constitution of India, 1950

²⁵ Article 28(1), Constitution of India, 1950

²⁶ AIR 1971 SC 1737

various other provisions of the Constitution also. Under the Part III of Indian Constitution containing fundamental rights there are many provisions in which efforts has been made to provide equality to every citizen without any discrimination on the basis of religion.²⁷

INDIAN PENAL CODE & RELIGION IN INDIA (INDIAN PENAL CODE)

In India, the offences related to religion have been specifically dealt with under the Chapter XV of Indian Penal Code. The basic principle on which the chapter has been made is that every individual has the right to practice the religion he wants to and no one has a right to insult the religion of others.²⁸ The intentional acts of one religious group to insult the other religious group have been made punishable under Indian Penal Code.²⁹ A separate chapter related to offences on religion is provided under the Indian Penal Code but the reference of religion is not just present there and we can also find it in other chapters under IPC e.g. chapter VIII related to offences against public tranquillity and chapter XII related to criminal intimidation.

1. If a person causes any damage to the place of worship or to an object which is considered as sacred it is punishable with imprisonment upto 2 years or fine or both.³⁰ In the draft of this Penal Code the punishment prescribed was more severe in nature.³¹ The main purpose of this section is to make people respect the religious susceptibilities of individuals related to different religions.³²

2. Outraging of religious feeling is made punishable under the Section 295A of Indian Penal Code. The section provides that when a person outrages the religious feeling of any citizen of India with the bad intention of doing so he shall be punished a imprisonment for upto 3 years or fine or both.³³

3. If an assembly is performing religious worship and ceremonies legally and someone causes disturbance, he will be held liable for the same and shall be punishable for imprisonment. The

²⁷ Prof. Tahir Mahmood, Laws of India on Religion and Religious Affairs, Universal Law Publication Co.,pp.24.

²⁸ K.D. Gaur , Indian Penal Code, Universal Law Publishing Co., 5th edition, pp.411

²⁹ Ibid

³⁰ Sec. 295 of Indian Penal Code, 1860

³¹ K.D. Gaur , Indian Penal Code, Universal Law Publishing Co., 5th edition, pp.412

³² S. Veerabadrhan Chettiar v. E.V. Ramaswami Naicker, AIR 1958 SC 1032

³³ Sec.295A of Indian Penal Code, 1860

punishment prescribed under Section 296 for causing disturbance to the religious assembly is 1 year or fine or both.³⁴ The term voluntarily has been used in Section 296 which is defined under the Section 39 of the Indian Penal Code.

4. If a person commits trespass in place of worship and with the intent to cause insult to any religion the person shall be liable for imprisonment upto 1 year or fine or both. The object laid down under Section 297 is just an extension of Section 295 which deals with causing damage to any place of worship.³⁵ The section is very wide in the sense it includes both the civil and criminal trespass within its ambit and not just the criminal trespass as provided under section 441 of Indian Penal Code.³⁶

5. Using the oral words against a religion with the intention of injuring the religious feeling shall be punishable for imprisonment upto 1 year or fine or both.³⁷ While framing this section it was taken into consideration that fair religious discussions are allowed but any discussion with the intent of injuring the feelings of others is not allowed. If during the heat of an argument any war expression is made not to insult anybody's feelings it will not be considered as an offence under the Indian Penal Code.³⁸

6. If a person tries to promote hatred and enmity between religious groups by writings or words or visual representations or signs, as a result of which the harmony between the religious groups is disturbed is punishable for imprisonment upto 5 years or fine or both.³⁹ It is necessary for the prosecution to prove that the words are spoken or written by the accused and it is done with the intention to cause hatred between the religious groups.⁴⁰

7. If an imputation is made by a person that someone does not have faith in the Constitution of India or he does not uphold the sovereignty and integrity of India because of him belonging to a particular religion then it will be considered as an offence under the Indian Penal Code.⁴¹ The punishment prescribed for this offence is 3 years imprisonment or fine or

³⁴ Sec.296 of Indian Penal Code, 1860

³⁵ K.D.Gaur, Indian Penal Code, Universal Law agency, pp. 422

³⁶ Ibid,pp.423

³⁷ Sec.298 of Indian Penal Code, 1860

³⁸ Draft Penal Code, 2nd Report ,p .252 quoted in K.D. Gaur, Indian Penal Code, Universal law publishing co, pp. 426

³⁹ Section 153A, Indian Penal Code, 1860

⁴⁰ Ibid

⁴¹ Section 153B, Indian Penal Code, 1860

both.⁴² However if the similar offence is done in the place of worship then the punishment prescribed is 5 years imprisonment or fine or both.⁴³

8. If a rumour is spread by a person just to spread hatred among the people on religious grounds then it is an offence under the Indian Penal Code and shall be liable for punishment for imprisonment for 3 years along with fine.⁴⁴ However if the similar offence is done within a place of worship then he will be punished with 5 year imprisonment or fine or both.⁴⁵

9. The Law Commission of India in its Report No. 267 of, 2017 two new sections should be added under the Indian Penal Code concerning the hate speech as a result of which The Criminal Law (Amendment) Bill of 2017 provides for the insertion of Section 153C which provides that whoever uses threatening words on the grounds of religion or spread hatred by words will be punished by two years imprisonment and fine of rupees five thousand.⁴⁶ It also provides for the incorporation of Section 505A which provides an imprisonment of one year if someone with the intention of causing violence uses hate speech in the public.⁴⁷

SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

The list of people who will come under the category of Scheduled Caste was first issued in the Schedule Caste order of 1950. Only people from Hindu religion were considered eligible to come under the Schedule Castes. Later on with amendments in the year 1956 and 1990 religion of Sikhs and Buddhists were also included.⁴⁸

The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to protect the people of Schedule Castes and the Schedule Tribes and to make special courts to deal with the offences against them and to provide relief to these people. A list of offences has been provided under the Act which includes causing injury, putting inedible substance in mouth, removing their clothes forcefully, hurting their sentiments, promoting use of Schedule Caste or Schedule Tribe women as devadasi etc and punishment of 5 months which can extend to 5 years imprisonment and fine is prescribed.⁴⁹

⁴² Ibid

⁴³ Section 153B(2), Indian Penal Code, 1860

⁴⁴ Section 505(2), Indian Penal Code, 1860

⁴⁵ Section 505(3), Indian Penal Code, 1860

⁴⁶ Section 2, The Criminal Law (Amendment) Bill, 2017

⁴⁷ Id. Section 3

⁴⁸ The Constitution (Schedule Castes) Order, 1950, Para 3

⁴⁹ Section 3, The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

In the cases of Schedule Tribes there is no religion specific list,⁵⁰ this is so because in India different tribes can consist of different religions.

THE REPRESENTATION OF PEOPLE ACT, 1951

A person will be disqualified to contest election if he convicted of an offence provided under Section 153A or section 505 of the Indian Penal Code which deal with promoting hatred on the basis of religion or publishing a wrong information to create hatred among religious groups or if he commits an offences of misusing religious shrines or commits an offence related to conversion of place of worship.⁵¹

LAWS RELIGIOUS MINORITIES & OTHER LEGISLATIONS IN INDIA

The first commission was formed in 1978 but it covers both the linguistic and the religious minorities, however by a resolution in 1988 the linguistic minorities were removed.⁵²

1. The National Commission for Minorities Act, 1992

The main function of the commission is to see how the minorities under different states and union are developing, it seeks to monitor that whether the safeguard provided to the minorities in the Constitution and under different legislatures are properly applied or not, it also takes into consideration the complaints made by minorities in case their rights are violated, it also suggests measures that can be taken for the development of the minorities.⁵³

The term minority is not clearly defined under this Act and it is provided that minority will consist of that community as notified by the Central government.⁵⁴

2. National Minority Educational Institutions Commission Act, 2004

The act provides for the Constitution of the national commission for minority educational Institution.⁵⁵ The main functions of this commission will be to advise the government on matters concerning minority education, it provides safeguard to the educational rights of minorities.⁵⁶ Religious minority under this also consists of Muslims, Christians, Buddhists, Jains, Parsis.

⁵⁰ The Constitution (ScheduleTribe) Order, 1951

⁵¹ Section 8, The Representation of People Act, 1951

⁵² Supra.

⁵³ Id.,S. 9

⁵⁴ Id.,S. 2(c)

⁵⁵ Section 3, The National Commission for Minority Educational Institutions Act, 2004

⁵⁶ Section 11, The National Commission for Minority Educational Institutions Act, 2004

3. The Orissa Freedom of Religion Act, 1967

The first law to regulate conversion in the post-independence era was enacted in the state of Orissa in the year 1967 and then in the state of Madhya Pradesh in the year 1968. The purpose of the act is to prohibit the religious conversions which are done by fraudulent means or by the use of force and inducement.⁵⁷ Under the Section 6 of Orissa Freedom of Religion Act it has been provided that the person can be prosecuted only after giving intimation to the District Magistrate. In case of *Stainislaus v. State of Madhya Pradesh*⁵⁸ it was challenged whether these acts of Orissa and Madhya Pradesh for the regulation of conversions are Constitutional valid or not. The acts were held to be valid by the Supreme Court and it was laid down by the court that the fundamental right of freely propagation of religion provided under Article 25 of the Constitution of India does not mean that people have the right to convert others.

4. The Madhya Pradesh Freedom of Religion Act, 1968

This Act was the second one enacted after the anti-conversion law of Orissa. The Act also prohibits the religious conversions done by fraudulent means or by use of force.⁵⁹ However under the Section 5 of The Madhya Pradesh Freedom of religion Act it has been provided that the person should give the intimation of conversion to the District magistrate. The term conversion defined under this act is same as provided under The Orissa Freedom of Religion Act, 1967 i.e. leaving one religion and accepting another and the punishment provided under the act is 1 year imprisonment and fine of rupees five thousand.⁶⁰

5. The Arunachal Pradesh Freedom of Religion Act, 1978

The Act was similar to the earlier anti-conversion acts of Orissa and Madhya Pradesh. The definition of conversion adopted by this act was broader than the earlier definitions. In this act the conversion not only includes the adoption of a new religion but it also includes the adoption of a new faith which was not in the acts of Orissa and Madhya Pradesh.⁶¹ The word indigenous was used in the act which includes within itself the rituals, festivals, practices and beliefs of the people of Arunachal Pradesh as provided under the Section 2(c) of the act. The punishment prescribed in the act was more severe than the anti-conversion acts of Orissa and Madhya Pradesh. It provides for the punishment of 2 years imprisonment and a fine of rupees 10 thousand if a person uses force to convert someone or

⁵⁷ Section 3, The Orissa Freedom of Religion Act, 1967

⁵⁸ (1977) 2 SCR 611

⁵⁹ Section 3, The Madhya Pradesh Freedom of Religion Act, 1968

⁶⁰ Section 4, The Madhya Pradesh Freedom of Religion Act, 1968

⁶¹ Section 2(b), Arunachal Pradesh Freedom of Religion Act, 1978

even if attempts to convert someone from one religion to another. It is also essential that intimation is to be sent to the deputy commissioner if a person is converted from one faith to another.⁶²

6. The Anti-Conversion laws in Gujarat, Rajasthan, Chhattisgarh and Himachal Pradesh (2003-06)

The Gujarat Freedom of Religion Act of 2003 not just provided severe punishment of 3 years imprisonment and fine of fifty thousand rupees but it also keep into consideration the increase in conversion rates of weaker section of society i.e. Schedule Tribes and Scheduled Castes, women and minor and provide severe punishment for forceful conversions of these people which extend to 4 year imprisonment and fine of rupees 1 lakh.⁶³ The aim and purpose of all these acts is to prevent fraudulent conversions in their respective states. The punishment provided in the Rajasthan act is 2 years imprisonment and fine of rupees fifty thousand,⁶⁴ in the Himachal Pradesh act the punishment prescribed in two years imprisonment or fifty thousand fine or both.⁶⁵

CONCLUSION & SUGGESTIONS

The main reason for growing trends of religious violence in the world lies in the erosion of the essential features and values of religion. Implementing laws to deter people is essential but the main remedy lies in focusing our attention back to the humanitarian teaching of religion and in searching the true meaning of religion. There is a need for a Uniform Civil Code with immediate effect and harmonising all religions equal treatment in the civil society. Religious provocation speech must be banned and penal provisions should be made accordingly. Political parties shall not be allowed to contest election on religious agendas, strict implementation of legislations relating to elections is the foremost need of the day.

⁶² Section 4, Arunachal Pradesh Freedom of Religion Act, 1978

⁶³ Section 4, Gujarat Freedom of Religion Act, 2003

⁶⁴ Section 4, Rajasthan Freedom of Religion Act, 2006

⁶⁵ Section 5, Himachal Pradesh Freedom of Religion Act, 2006