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Freedom of Religion & Minority status in Reference to India

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ABSTRACT

India is a secular country. The nature of secularism is to treat every religion equally even they are following minority religion. Spirituality is a destiny and religion are just a way to attain spiritual. People choose different ways (Religion) to reach their destiny. India believes every way (Religion) should be treated respectfully. As the result Secularism was added as a part of our Indian Constitution and articles regarding secularism was also added as a part of Fundamental Rights. Some people around the world having a presumption that India is a country following Hinduism as an only religion but the truth is India is having lot of religions most of them are legally recognised and having certain privileges. Now it's our moral duty to know about our Fundamental rights relating to religion and secularism. This article includes definition of various authors about the word religion and constitutional provision regarding freedom of religion. Measures taken by India to protect religious minorities. Analysing the position of minorities in India comparative to other countries. Evaluate whether Hinduism is a minority religion in India or not. Study of landmark judgement related to freedom of religion and the rights of religious minorities and its overview.

Keywords: Religion, Minority, Constitution.

I. INTRODUCTION

India, which is most known for its spiritual beliefs, intellectual thinking, and culture, has also given birth to a large number of faiths, some of which still exist today. Religion is solely a question of personal preference, perception, and belief. Considering the Indian situation, we can conclude that the people of this country have a deep confidence and reliance in their religion since they believe it gives purpose and reason to their life. When it comes to people who are deeply committed to their religion, they leave no stone unturned in demonstrating a high level of devotion to their faith. People in India mainly practice Islam, Hinduism, Jainism, Buddhism, Sikhism and, Christianity.

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If we study the Indian constitution, we will find that it provides for various fundamental rights to its citizens. One of the fundamental rights which is guaranteed by the constitution also includes right to freedom of religion. India is a secular nation and therefore every citizen residing within the territory of India has the right to follow the religion of his choice.

(A) Objectives

- To understand and analyse Freedom of Religion in reference to Constitution of India
- To understand the position of minorities in India.

(B) Research Methodology

The study undertaken by the author is based on both, qualitative and doctrinal research. Thus, under the qualitative research, several books, articles, research papers and journals were read and analysed which found foot in the current research. As a part of the doctrinal research methodology, constitutional law, case laws, were taken into account and further analysed so as to find relevance in the present study.

The term Religion:

If we will study, we will find that the constitution does not define the term 'religion' and 'matters of religion'. Hence, it is left to the Supreme Court to determine the judicial meaning of these terms. However, some scholars have defined the term "religion"

"Religion is the acknowledgement of all our duties as divine commands," says German philosopher Immanuel Kant.

Religion is defined by Milton Yinger, an American sociologist, as "a system of ideas and practises through which a community of people battles with the ultimate challenges of human life."

"Religion is that which grows out of, and gives expression to, experience of the holy in its various aspects", says Rudolph Otto.

*In the case of A.S Narayan v. State of Andhra Pradesh*³, Justice Hansaria observed that "our constitution makers had used the word "religion" in these two articles (Articles 25 and 26) in the sense conveyed by the word 'dharma'." He further explained the difference between religion and dharma as "religion is enriched by visionary methodology and theology, whereas dharma blooms in the realm of direct experience. Religion contributes to the changing phases of a culture; dharma enhances the beauty of spirituality. Religion may inspire one to build a

³ JT 1996 (3) 482

fragile, mortal home for God; dharma helps one to recognize the immortal shrine in the heart.”

II. CONSTITUTIONAL PROVISIONS REGARDING FREEDOM OF RELIGION

Article 25-28⁴ of constitution of India provides for freedom of religion.

Article 25-Freedom of conscience and free profession, practice and propagation of religion.

It provides that all persons in India, subject to public order, morality, health, and other provisions:

- Are equally entitled to freedom of conscience, and
- Have the right to freely profess, practice and propagate religion.

It further provides that this article shall not affect any existing law and shall not prevent the state from making any law relating to:

- Regulation or restriction of any economic, financial, political, or any secular activity associated with religious practice.
- Providing social welfare and reform.
- Opening of Hindu religious institutions of public character for all the classes and sections of the Hindus.

Article 26-Freedom to manage religious affairs

Article 26 (subject to public order, morality, and health) confers a right on every religious denomination or any section of such religious denomination of:

- Establishing and maintaining institutions for religious and charitable purposes;
- Managing its affair with regard to religion;
- Owning and acquiring property (movable and immovable);
- Administering the property in accordance with the law.

Article 27- Freedom as to payment of taxes for promotion of any particular religion.

This prohibits anybody from being forced to pay any taxes that are intended to cover the costs of promoting or maintaining a religion or religious sect.

Article 28- Freedom as to attendance at religious instruction or religious worship in certain educational institutions. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

⁴ The Constitution of India

It prohibits:

- Providing religious instructions in any educational institutions that are maintained wholly or partly out of the state funds.
- The above shall not apply to those educational institutions administered by the states but established under endowment or trust requiring religious instruction to be imparted in such institution.
- Any person attending state recognized or state-funded educational institution is not required to take part in religious instruction or attend any workshop conducted in such an institution or premises of such educational institution.

In, Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan & Ors⁵ supreme court has held that the test to determine the question in deciding what is an integral part of a religion is whether it is regarded as integral by the community following that religion or not.

In Hasan Ali v. Mansoor Ali⁶ the Bombay High Court held that Articles 25 and Article 26 not only prevents doctrines or beliefs of religion but also the acts done in pursuance of religion. It thus guarantees ceremonies, modes of worship, rituals, observances, etc which are an integral part of religion. What is the essential or integral part of a religion has to be determined in the light of the doctrines and practices that are regarded by the community as a part of their religion and also must be included in them.

III. PROTECTION OF RELIGIOUS MINORITIES IN INDIA

Sikhs, Muslims, Christians, Zoroastrians (Parsis), Buddhists and Jains have been notified as minority communities under Section 2 (c) of the National Commission for Minorities Act, 1992. This act does not define the term minorities but under section 2(c) it says that central government will notify who are minorities. As per the Census 2011, the percentage of minorities in the country is about 19.3% of the total population of the country. The ministry of minority affairs was created by the government of India on 29th January, 2006 to ensure the improvement of socio-economic conditions of the minority communities through affirmative action and inclusive development so that every citizen has equal opportunity to participate actively in building a vibrant nation and to empowering the minority communities and creating an enabling environment for strengthening the multi-racial, multi-ethnic, multi-cultural, multi-lingual and multi-religious character of our nation. The ministry of minority affairs will

⁵ 1964 SCR (1) 561

⁶ (1948) 50 BomLR 389

formulate the overall policy and planning, coordination, evaluation and review of the regulatory framework and development programmes for the benefit of the minority communities. Central Waqf Council (CWC), National Commission of Minorities (NCM) formed under National Commission of Minorities act 1992, Durgah Khwaja Saheb Ajmer, National Waqf Development Corporation Ltd. (NAWADCO), Haj Committee of India (HCoI) etc. are a statutory body, presently working under the administrative control of the Ministry of Minority Affairs (MoMA), Government of India. The ministry of minority affairs will issue minority certificate. Minority certificate is an important document for people who belong to minority community. It is used to apply for pension service and school admission with fees concession. Beyond the jurisprudence of India United Nation Human Rights also made a declaration on the rights of minorities to protect the existence and identities of minorities. It also calls upon states to encourage the promotion of national or ethnic, cultural, religious and linguistic identities. Under Article 2(1) of this declaration, minorities shall have the right to practice their religion, enjoy their culture and use their own language in both public and private settings without any kind of discrimination. Article 3 of this declaration guarantees persons belonging to minorities the right to exercise their rights individually and in community with others without discrimination. It was adopted by the General Assembly resolution 47/135 of 18 December 1992.

In India everyone belongs to their own religion and have own belief and faith. According to the Indian Constitution, citizens have the freedom to “profess, practice and propagate” religion. The word propagate must include the citizen's right to convert. However, the right to propagate and convert has come into contradiction with laws that restrict a citizen to do so. Everyone’s personal law is respected and allowed to follow by them without any restriction until it contradicts with our constitution and natural justice. Personal law is defined as a law that applies to a certain class or group of people or a particular person, based on the religions, faith, and culture. All the Muslims in India are governed by the Muslim Personal Law (Shariat) Application Act, 1937. All the Christian in India are governed by the Indian Christian Marriage Act, 1872. It is illegal to carry knife in India under Indian Arms Act 1920 but under Explanation 1 of Article 25 only Sikhs have permission to carry kirpans/knives as a part of their religious practice and profession of their faith. According to Sikhs, kirpans was a part of the religious creed of every member of the Sikh community. Jain students as well as institution run by Jains with minority status will get a central scholarship which were not available to others. These are some basic privileges given to the minorities in India. At the same time judiciary will ensure that these privileges are not misused and affect the feelings of other religions, exemption under

Article 25 that does not mean that he can keep any number of Kirpans. He is entitled to keep one sword; He cannot possess more than one Kirpan without a licence. *In Mohd. Hanif Quareshi v. State of Bihar*⁷, the petitioner claimed that the sacrifice of cow on occasion of Bakrid was an essential part of his religion a therefore the state law forbidding the slaughter of cow was violative of his rights to practice religion. The court rejected this argument and held that the sacrifice of cow on the Bakrid day was not an essential part of Islam religion. The same judgement was upheld in the case *State of West Bengal v. Ashutosh Lahiri*.⁸

It was very easy to suppress the minority in the land of majority but Government of India played a very crucial role to protect the rights of the minority against suppressing. Government takes various measures and schemes to promote the minority community by educational empowerment like Scholarship Schemes, Maulana Azad National Fellowship (MANF), Padho Pardesh - Scheme of Interest Subsidy on Educational Loans for Overseas Studies for the Students Belonging to the Minority Communities, Naya Savera - Free Coaching and Allied Scheme, Nai Udaan - Support for Students for preparation of Main Examination who clear Prelims conducted by UPSC/SSC, State Public Service Commission (PSC) etc., economic empowerment like Skill Development, Seekho aur Kamao (Learn & Earn), USTTAD (Upgrading the Skills and Training in Traditional Arts/ Crafts for Development), Nai Manzil, Concessional credit through National Minorities Development and Finance Corporation (NMDFC) and infrastructure development like Pradhan Mantri Jan Vikas Karyakram (PMJVK).

The judiciary cannot ignore the representation of minority to deliver justice in the issues relating to the minority. For example, the three-member mediation panel was appointed by the Supreme Court to resolve the decades old Ram Janmabhoomi-Babri Masjid land dispute. The panel includes Justice FMI Kalifulla, Sri Sri Ravi Shankar and senior Advocate Sriram panchu. There should be balanced composition of judges with different custom, religion & culture and the representative of minority community. In triple talaq case the Supreme court heard the petition for ban of triple talaq through a constitution bench comprising of 5 judges from different religions – justice Kurian Joseph, a catholic, Justice UU Lalit, a Hindu, Justice RF Nariman, a Parsi, Chief Justice Khehar, a Sikh and Justice Abdul Nazeer, a Muslim. The representation of minorities in judicial bench will assist the bench to know more about the issue, claim and minorities point of view. Justice must also be seen to be done by all the

⁷ 1959 SCR 629

⁸ 1995 SCC (1) 189

communities involved.

(A) Positions of minority –

Religious communal violence rises from the past decades consistently in India. According to the MHA, 'communal violence' involves 'planned and organized acts of violence by members of one community against members of another community with the intent of creating or expressing ill-will or hatred and leading to the loss of life or injuries to people'. Our constitution and our government want to protect the minority communities as their moral responsibility but at some point of time minority religion people will face some social and political problems which made them feel insecure about their life and well-being. The US Commission on International Religious Freedom (USCIRF) has named India under "Countries of Particular Concern", tagging it as one of the worst violators of religious freedoms in 2020. This report has been prepared by an independent, bipartisan commission, and has named India on this list second time in a row. The report stated various religious issues, demolishing the Babri Masjid Mosque, passage of the religiously discriminatory Citizenship (Amendment) Act (CAA), February 2021 Delhi riot violence between Hindu and Muslim, the Uttar Pradesh Prohibition of Unlawful Religious Conversion Ordinance, 2020, Jammu and Kashmir issue etc. However, if we look on ground reality we will come to conclusion that USCIRF report is not correct fully. Position of minorities in India in comparison to other countries are much better whether we see our neighbouring countries Pakistan, Bangladesh where Hindu & Sikh community are under threat and there overall population is decreasing year by year. Situation is worst in Afghanistan where minority(Hindu,Sikh) are extinct. In China everyone knows how the China has detained more than one million Uyghurs muslims against their will over the past few years in a large network of what the state calls "re-education camps", and sentenced hundreds of thousands to prison terms. There is also evidence that Uyghurs are being used as forced labour and of women being forcibly sterilised. Some former camp detainees have also alleged they were tortured and sexually abused. In USA we use to see in news how minority of racial and ethnic group were being targeted. In India we can see the Muslim population in the country has increased from 9.8% in 1951 to 14.2% in 2011. There are many policies which government has implemented for them. India has witnesses many President, Governors, Judges and many from minority community holding higher authorities in different-different organisation. So this shows the position of minorties.

(B) Whether Hinduism is minority in India?

Minority is decided based on the criteria of population in a particular community is below 50%

under certain jurisdiction. According to the Census 2011, Hindus are minority in eight states: Lakshadweep (2.5%), Mizoram (2.75 %), Nagaland (8.75%), Meghalaya (11.53%), Jammu and Kashmir (28.44 %) (now Union Territories), Arunachal Pradesh (29%), Manipur (31.39%) and Punjab (38.40%) but not treated as a minority. Likewise, Sikhs are a majority in Punjab and there is significant population in Delhi, Chandigarh and Haryana. But there also they are treated as minority. BJP leader and lawyer Ashwini Upadhyay filed Public Interest Litigation Petition on Supreme Court seeking minority status for Hindus in several states where Hindu are minority with the citation of TMA Pai Foundation v. State of Karnataka under section 2(c) of the National Commission for Minorities Act, 1992 central has the only power to determine the minority of the entire nation. Supreme Court held that state law has the power to determine the minority of a particular state. A bench led by Chief Justice of India rejected the public interest litigation seeking minority status for Hindus on the grounds of state having power only to determine minorities on linguistic basis not on religious basis. States were formed on linguistic basis. That is not the case with religion. Religion must be considered pan India.

IV. GENERAL POINT OF VIEW

*In S.R Bommai v. UOI*⁹ nine judge bench ruled that the fundamental characteristic of India's Constitution is secularism. It further stated that religion and politics should not be combined. If the state adopts non-secular policies or actions, it is violating the constitution's mandate. All citizens of a state are equal and should be treated as such. In concerns of state, religion has no role. In India, everyone has the right to practise their religion, but religion, faith, and belief are irrelevant from the viewpoint of the state.

When it comes to exercising one's religious beliefs, India is completely neutral, unbiased, and impartial. The Indian Constitution guarantees that no citizen is denied the freedom to peacefully practise his or her chosen religion on Indian soil. The concept of secularism is held in high respect by the Constitution, which places great emphasis on it. Secularism is extremely important, and it has earned respect in the eyes of the law. The word "secular" was added to the preamble of the constitution by the 42nd amendment.¹⁰

When it comes to language, religion, creed, community, caste, and other factors, India can be described as a land of diversity. It is a land where millions of people of various castes, sub-castes, races, ethnicities, and faiths have lived since time immemorial. Differences in community, religion, or caste are not seen as a barrier to growth, but rather as an important

⁹ 1994 SCC (3) 1

¹⁰ The Constitution (Forty-Second Amendment) Act, 1976

feature that contributes to enriching culture not just in the society, but also in the nation as a whole.

Every individual has the right to believe in the religious beliefs of any sect or religion. The availability of this right, according to the constitution, is primarily to provide every person with an opportunity to express his true feelings about his respective religion, his conceptions and ideologies relating to the religious practise he has engaged in, in an open, free, and without hesitation way. The right to practise a specific religion involves a person's ability to convey his thought process, mindset, and opinions to others with the goal of spreading his religion and making them well-versed and clear in their minds in society.

It is true that each person has his or her unique way of practising his or her religion, but this should not be done in a haphazard manner. An individual is not responsible to the state for his diverse religious beliefs. God gave the privilege of worship on man, allowing him to worship as he wanted. A person cannot be forced to practise a certain type of worship by the law. But, without a doubt, the law has the authority to prohibit the practise of any malicious or corrupt religious practises in order to maintain order and discipline in the country.

When a person adopts an illegal method of practising or promoting his religion, he or she sets a bad example for the general public, as it conveys to them that everyone has the right to exercise their religious freedom in any way, they see fit, even if it is illegal and unethical in the eyes of the law. Every religion has its own set of rules, rituals, ceremonies, and styles of worship, but when following and observing them, one should ensure that decency and morals are maintained. He must be aware that the religious activities to which he engages do not generate any kind of dispute or destruction of people's property or lives in society. If any acts compromising the country's safety and unity are projected in its eyes, the law will take the necessary steps and measures.

*In National Anthem case*¹¹ where three children belonging to a sect (Jehovah's witness) worshipped only Jehovah (the creator) and refused to sing the national anthem. According to these, children singing national anthem was against the tenets of their religious faith which did not allow them to sing the national anthem. These children stood up respectfully in silence daily for the national anthem but refused to sing because of their honest belief. A Commission was appointed to enquire about the matter. In the report, the Commission stated that these children were 'law-abiding' and did not show any disrespect. However, the headmistress under the instruction of the Dy. Inspector of Schools expelled the students.

¹¹ AIR 1987 SC 748

The Supreme Court held that the action of the headmistress of expelling the children from school for not singing the national anthem was violative of their freedom of religion. The fundamental rights guaranteed under Article 19(1)(a) and Article 25(1) of Constitution of India has been infringed. It further held that there is no provision of law which compels or obligates anyone to sing the national anthem, it is also not disrespectful if a person respectfully stands but does not sing the national anthem.

*In Triple Talaq case*¹² the main issue was whether the practice of Talaq-e-biddat (triple talaq) is a matter of faith to the Muslims and whether it is constituent to their personal law. By a 3:2 majority, the court ruled that the practice of Talaq-e-biddat is illegal and unconstitutional.

*In Maulana Mufti v. State of West Bengal*¹³ restrictions were placed on the use of microphones before 7 am. It was held by the Calcutta High Court that Azan is an integral and necessary part of the religion but certainly not the use of microphones. It violates the basic human and fundamental right of the citizens to sleep and leisure.

*In case of Saifuddin Saheb v. State of Bombay*¹⁴ the State passed the Bombay Prevention of Excommunication Act, 1949. Section 3 of this Act prevented the excommunication of the members of any community. The petitioner (religious head of the Dawoodi-Bohra Community) challenged the Act on the ground of violation of their fundamental rights guaranteed under Article 25 and 26.

The Court observed that the power of Excommunication by the head formed the essential affairs of the community and the Act clearly violated the fundamental right under Article 25(1) of the Constitution. The Supreme Court held that the Act was violative of Articles 25 and 26 and was therefore void.

V. CONCLUSION

This article has discussed about definition of religion, how Indian constitution protect secularism through their provisions, privileges to the minorities and threat to the minority religion. It was clear India is a secular state. India has no religion on its own. India, unite as a nation, however, has been firmly constituted by the sacred geography it has held in common and revered: its mountains, forests, rivers, hilltop shrines." For Hindus, as also for many Indian Buddhists, Muslims, Christians and Sikhs, India is a holy land. India is neither anti-god nor pro-god, it treats alike the devout, the antagonistic and the atheist. According to Indian

¹² WP (C) 118/2016

¹³ AIR 1999 Cal 15

¹⁴ 1962 SCR Supl. (2) 496

constitution, secularism is a basic structure of the constitution which means India will follow all religion with pride and respect. Respecting others religion is not only our legal duty its our moral duty too. Government of India always strive to protect the minority from the majority its ca be attained only the with the help of each and everyone other society.

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