

Religion and the Law

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A] Introduction

From history of India number of communities lived in India having different religions and culture. Hindu religions divided into four classes in antient India such as Brahman, Kshtriya, Vaishya and kshudra. Also Islam, Boudha, Jain, Cristian, Parashi, Jue, religions lived from old era. From 16th century the social reforms was offering with the social reformers like RajaRam Mohan roy, IshwarchandraVidyasagar, DayanandSaraswati, JyotibhaPhule, as well as British executors. And It helps to another step towards secularism The Preamble of Indian constitution aims to constitute India a Sovereign, socialist, Democratic, Republic.

The term socialist and secular were added to it by 42th amendment which is also called Mini constitution. Indian society is a multi regional society having different caste and religion. Preamble it aims to promote fraternity while assuring unity and the integrity of nation along with individual dignity.

B] Defination of Secularism

According to Donald Eugene Smith

" The secular state is a state which guarantees individual and corporate freedom of religion deals with the individual has a citizen irrespective of his religion is not constitutionally connected to a particular.

Secularism

Art. 25 to 28 confer right 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'.

India being a secular state, there is no state or state preferred religion as such and all religious groups enjoy the same Constitutional protection without any favour or discrimination.

'Secularism in India does not mean irreligion like China. It means respect for all faiths and religions. The state does not identify itself with any religion.

In case V. Rajnarayan ,1975

S.C held that,Secularism means that state shall have no religion of its own and all persons of the country shall be equally entitled to freedom of their conscience and have the right freely to profess, practice and propagate any religion"

In SantEshar Singh V. Union of India.

Court held that,- the Constitution postulates in the preamble that India shall be a secular republic. The rights as embodied under Art.'s 19, 25, 26, and 29 have to be harmonized to ensure that we achieve the goal of cohesive community (i.e. secularism). The duty to transcend religious diversities is fundamental.

Secularism is a basic feature of Indian Constitution This topic embodies the principle of secularism enshrined in the preamble.

Terrorism

The common understanding of, "any organiser program of individual, social groups or political groups of using force to create fear for panicness

UN General assembly meeting

" In its wider sense Terrorism is a fact of using an act or to violate against individual or groups to change the outcome of some process of politics."

C] Constitutional article about secularism (Art 25 to 30)

Following freedoms are guaranteed under Art. 25 to 28 of the Constitution

I] FREEDOM TO PROFESS OR PRACTICE RELIGION [ART. 25].

Art 25:- It provides the freedom of conscience and the right to Profess, practice and propagate the religion of once choice.

Art. 25 (1) secures to every person

- a). Freedom of conscience, and
- b). Right to freely: -
 - i. Profess' religion;
 - ii. Practice religion, and
 - iii. Propagate religion.

The expression 'Freedom of conscience' means the inner freedom of a person to mould his relations with his God in whatever manner he likes."To profess a religion' means to declare freely and openly one's faith and belief. To practice means to perform prescribed religious duties, rites and rituals. To propagate' means to spread and publicize his religious views. The term 'religion' though not defined in Constitution, means a matter of faith and belief. Means it protect freedom of conscience to process, practice and propagate or promote religion. Here process means Right to occupation , faith and declaration religion. These rights conferred on persons are not absolute but are subject to public order, morality, health and other provisions of fundamental rights.

In- Bijoe Emmanuel V. state of Kerala

(National Anthem case)Fact- Children belonging to the "Jehova's witnesses" of the Christian community were expelled from the school for refusing to sing National Anthem' though they stood up respectfully when it was being sung. They challenged the validity of their expulsion on the ground that it was violative of their fundamental right under article

Supreme Court that no person can be compelled to sing National Anthem If he has genuine, conscious religious obligation. But the sacrifice (i.e. slaughter) of cows on Bakid day was not essential part of Muslim religion and hence prohibition of cow slaughtering could not violate Art 25.

II] FREEDOM TO MANAGE RELIGIOUS AFFAIRS (Art. .26):-

Art 26:- it provides freedom to manage religious affairs.

Art. 26, lays down that every religious denomination or a section thereof has right –

- a. to establish and maintain institutions for religious and charitable purpose (fore.g.educational institutions etc),
- b. to manage its own affairs in matters of religion.
- c. to own and acquire movable and immovable property", and
- d. To administer such property in accordance with law".

This right is subject to public order, morality and health.

A religious denomination:

While Art. 25 confers particular right on all persons, Art.26 is confined to religious denominations or any section there of. Religions denomination means, "religious sect having a common faith and Organisation and designated by a distinctive name-.

Therefore, the followers of Madhavacharya, Swetambar sect of Jains, followers of Zoroastrian religion, DawoodBohras are religious denominations

In. Ram-Krishna Mission case

Supreme Court held that the followers of Ramkrishna, who are collection of individuals, andwho adhere to a system of beliefs as conducive to their spiritual well being, who have organised themselves collectively and who have an Organisation of definite name as "Ramkrishna Mission can be regarded religious denomination within

Hindu religion. It satisfies all the tests of denomination and therefore, is entitled for fundamental right conferred under Art.26.

Therefore, under Art. 26 such religious denominations can decide what rites and ceremonies are essential for their spiritual well being

III] NO TAXATION TO PROMOTE ANY RELIGION [Art. 27]

Art. 27, provides that no person shall be compelled by state to pay any tax for the promotion or maintenance of any particular religion or religious denomination. This article emphasizes secular character of the state and prohibits state from promotion of any particular religion out of public money collected by way of taxation. It may be noted that Art. 27, prohibits levy of tax and not the imposition of a Fee'. It prohibits compulsion to pay taxes to benefit in a religious denomination.

IV] PROHIBITION OF RELIGIOUS INSTRUCTIONS OR WORSHIP IN EDUCATIONAL INSTITUTIONS [Art. 28]:-

Art 28 :- It states that no religious instruction shall be provided in any educational institution wholly maintained out of state fund.

Art. 28 Distinguishes between following three types of educational institutions in respect of prohibiting religious instructions or worship. Viz:

- a. Educational institutions wholly maintained by the state- No religious instructions or worship can be imparted.
- b. Educational institutions which are either recognised by the state or receiving aid out of state funds - Religious instruction or worship can be imparted only with the consent of the students or consent of their guardian.
- c. Educational institutions, which are administered by the state but are established under any trust or endowment which requires that religious instructions or worship, shall be imparted-No restrictions on religious instructions.

Restrictions on religious instruments in educational institution.

Restriction would not applied to educational institution which administered by state and has been established under and enrollment and trust that religious instruction should be imparted in such institutions.

Art 28(3) No person attending any educational institution recognized by the state funds shall be required to take part in any religious instruction imparted in the institution their to unless he consents to do voluntarily or if a minor his guardian gives consent for the same.

D] RIGHTS GUARANTEED UNDER (Art. 29 And Art. 30.)

Art 29 &30 :- guarantee certain cultural and educational rights to cultural, religious and linguistic minorities.

Cultural and educational rights

People following different cultures, religions, faiths, languages live in India. There is vast diversity in India. People of different religions and languages particularly minorities have been given certain rights to preserve their culture, language and script. Minorities contemplated in the Constitution are religious and linguistic minorities. Among the religious groups Christians and Muslims are considered as religious minorities'. 'Linguistic minorities, those who speak language, which fifty percent population in that state do not speak. Thus, Kannada, Telgu, Malyalam speaking people in Maharashtra come under linguistic minorities.

Rights guaranteed under Art. 29 and 30 for protection of interest of minorities are as follows:

1. The right to preserve a distinct language, script or culture

According to Art. 29 (1) any section of the citizen residing in any part of India having a distinct language, script or culture of its own has the right to preserve the same.

2. The Right of admission in educational institutions" [Art.29 (2)]

According to Art.29 (2), admission is not to be denied to any citizen into any educational institutions maintained by the state, or receiving aid out of state funds, on the grounds only of religion, race, caste, language, or any of them.

In Bombay V. Bombay Education Society.

Fact :- Bombay Government issued an order thereby banning admission in English Medium School to those whose mother tongue was not English. 12 Supreme Court Held: - The order is invalid under Art. 29 (2) because it denied admission solely on the ground of language.

[Art. 30 (1)] provides that all minorities whether based on religion or language, shall have the right to establish and administer (manage) educational institutions of their choice. The right to maintain institutions of their choice is necessary concomitant of the right to preserve its distinct language, script and culture.

In Azeez Basha V. Union of India

Supreme Court Held that - Aligarh Muslim University was not established by Muslim Minority but by the Central Government by passing Aligarh Muslim University Act.1920. Therefore under Art 30 (1) Muslim Minority cannot claim the right to manage the University, which is not established by it.

Art. 30 (1A) provides that, in making any law providing for compulsory acquisition of any property of an educational institution established and administered by the minority (referred above), the State shall ensure that the amount fixed by (or under such law for the acquisition of such property), would not restrict or abrogate the right guaranteed under Art. 30 (1). In other words, amount should not be so meager that the minority institution would not function again.

[Art. 30(2)] No discrimination in granting aid provides that, State shall not in granting aid to educational institutions, discriminate against any educational institutions on the ground that it is managed by a linguistic or religious minority.

Art 30

1. Minority sector- minority development , establishment of educational institutions
2. Maintain property
3. State can not discriminate this institutions about aid.

Ratilal Gandhi V. State of Bombay

S.C declares that,

He may freely practice his religion, and "religious practices or performance of acts in pursuance of religious belief are as much a part of religion as faith or believes in particular doctrines.

Religious minority : Right to religion the universal declaration of human right 1948, Recognize the right to religion in Art 14 which says that,

" Everyone has right to freedom of thought conscience and religious, this right includes freedom to change his religion or believes and freedom either alone or in community with other in public or private to manifest his religion or belief in teaching, practice, workshop and observance

E] Conclusion

India is the secular state but having some exemptions and special conditions for minorities. Each religion have right to conserve its own culture.

References

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