



Right to freedom of conscience, free profession, practice and propagation of religion under article 25 of the constitution of India

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Abstract

The story of civilization has two dynamic components, among many, namely, law and religion. From ancient times, 'law and religion' have interacted, jointly operated and, at times, mutually fought to over-power each other. 'Religion' binds us together; 'law' regulates our mutual relations. India is a multi-religious and multi-cultural country. 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. This paper examines the issue of freedom of religion in the light of existing constitutional provision through the lens of restrictions.

Keywords: constitution, religion, freedom, conscience, profess, practice, propagate and restrictions

Introduction

The Indian Constitution provides for the religious liberty of both the individual and associations of individuals united by common beliefs, practices and discipline. In this scheme of liberty this is guaranteed to the individual not only freedom of religion, where religion tended to become a menace to his liberty and dignity, but this is also guaranteed to him freedom from religion; because without the latter the former guarantee alone will be incomplete, and even meaningless^[1].

This principle of giving primacy to the individual, placing him before and above religion, and recognizing freedom of religion and of religious denomination as these are incidental only to his well-being and to a general scheme of his liberty, is a distinguishing feature of Indian secularism. Conjointly with the principles of tolerance and equality, also incorporated side by side, it embodies our Constitutional philosophy regarding religion^[2]. The individual and collective aspects of religious liberty shall be discussed in the following order.

Religious freedom as individual's right is guaranteed by the Constitution to all persons within the following parameters

1. All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion-Article 25(1).
2. There shall be freedom as to payment of taxes for promotion of any particular religion by virtue of which no person shall be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religious denomination-Article 27.
3. No religious instruction is to be provided in the schools wholly maintained by State funding, and those attending any State-recognized or State-aided school cannot be required to take part in any religious instruction or services without their (or if they are minor their guardian's) consent-Article 28.

Freedom to Profess, Practice or Propagate Religion

Like many western Constitutions^[3] the Indian Constitution guarantees a large amount of religious freedom subject to necessary limitations. Article 25 of the Constitution provides:

1. Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
2. Nothing to this article shall affect the operation of any existing law or prevent the State from making any law-
 - a. Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice.
 - b. Providing for social welfare and reform or the throwing open of *Hindu* religious institutions of a public character to all classes and sections of *Hindus*.

Explanation I: The wearing and caring.....shall be deemed to be included in the profession of the *Sikh* religion.

Explanation II: In sub-clause (b) of clause (2) the reference to *Hindus* shall be construed as including a reference to persons professing the *Sikh*, *Jaina* or *Buddhist* religion, and the reference to *Hindu* religious institutions shall be construed accordingly.

Right to freedom of faith is not a conferred right but a natural entitlement of every human being. In fact law does not assign it but it asserts, protects and insures its entitlement. Indian society has nourished and nurtured almost all the established religion of the world like *Hinduism*, *Islam*, *Christianity*, *Buddhism*, etc. from its time immemorial. Article 25 incorporates right to practice, profess and propagation of faith not only this, the Article guarantees the freedom of conscience. Right to possess adopt abandoned faith is ascribed by a person since his birth. India is a heterogeneous and pluralist society with multiplicity of faith and cultures. India's most fundamental code of governance i.e. the Constitution of India also asserts, protects and ensures this right to all individuals irrespective of their religions, under its various provisions especially Article 25. It is important to note that the freedom of conscience and religion guaranteed by this Article is not confined to citizens but extends to all persons including aliens.

In discussions of the origin of this Article, attention is frequently drawn to its similarity to the following provision of the 1937 Constitution of Eire: "Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen ^[4]." There were, however, other sources nearer at hand. The language of the Indian Constitution is very similar to that of the resolution on fundamental rights adopted at the Karachi Congress in 1931: "Every citizen shall enjoy freedom of conscience and the right freely to profess and practice his religion, subject to public order and morality ^[5]."

It may be noticed that clause 1 of Article 25 does not read, simply, "All persons are entitled to freedom of conscience and the right freely to profess, practice and propagate religion." Instead, the guarantee is that "all persons are equally entitled" to this freedom and to these rights. There can be no doubt that the prominence thus given to the principle of equality in the key provision of the Article brings out the attitude of State neutrality in matters of religion without importing the "wall of separation" doctrine of the United States. Aid, facilities, protection and even encouragement given by State to religion will not offend this provision as long as the State adhered to the principle of equality –and to that extent, neutrality-among the various religious groups and communities. Perhaps "equally" also has another aspect, less cheering for religionists. As with aid and encouragement so in regard to restriction and regulation, there will appear to be no offence to the guarantee under Article 25 as long as the State adhered to equality. It would be perhaps somewhat uncharitable and extremist to assert that the clause guarantees no more than equality in matters of conscience and religion stated there in. However, it would be no less unreasonable to ignore altogether the significance of the central position the expression "equally" occupies in the guarantee. This significance as will be presently seen is only enhanced by the sweeping provisions of the non-obstante clause that follows ^[5].

Under Article 25 (1) of the Constitution a person has two-fold rights: (a) freedom of conscience, (b) freedom to profess, practice and propagate religion. Freedom of 'conscience' is absolute inter freedom of the citizen to mold his own relation with God in whatever manner he likes. The courts have defined freedom of conscience as the freedom of person to entertain any belief or doctrine concerning matters, which are regarded by him or her to be conducive to his or her spiritual well-being ^[6]. Freedom of conscience, in its very nature is illimitable and not susceptible to governmental restriction.

Freedom of conscience connotes a person's right to entertain beliefs and doctrines concerning matters, which are regarded, by him to be conducive to his spiritual well-being ^[1]. A person has freedom to believe in religious tenets of any set or community.

Under the terms of Article 25, it may be asked whether the State may claim any power over an individual's freedom of conscience. Dr. Donald Smith argued that "the State could have no power over an individual's freedom of conscience, and, therefore, the wording of Article 25 which apparently implied State's restriction was due to inaccurate drafting." It seems, nevertheless, the restrictions to which freedom of conscience may be submitted as implied in Article 25 of the Constitution of India, are not resulting from such inaccuracy in drafting; rather the said Article did not intend to protect freedom of conscience on religious scruples when it stands opposed to protect public welfare, because the protection guaranteed to religious freedom is at the same time subject not only to public order, morality and health but also to the other provisions of part III of the Constitution.

Article 25 not only entitles the individuals to hold a particular religious belief but also to profess, practice and propagates their religion. To profess a religion means the right to declare freely and openly one's faith. The Constitutional right to profess religion means a right to exhibit one's religion in such overt acts as teaching, practicing and observing religious precepts and ideals in which there is no explicit intention of propagation involved. Taking out religious processions, worship in public places, putting on specific garments is included within the ambit of profession of religion ^[8].

The Constitution of India, for example, provides the wearing and carrying of *Kripans* ^[9] as part of the profession of *Sikh* religion. The phrase 'profess a religion' as given in Article 25 means according to the Supreme Court "to enter publicly into a religious State."

Next to right to profess follows the right to "practice" religion, which obviously has a wide significance to public order, morality, health and the civil rights of others. The practice of religion being the external and applied part

of religious belief and philosophy is bound to get associated or commingled with property and overt acts otherwise the concern of the State. In the words of Justice Frankfurter ^[10]:

As the State's interest in the individual becomes more comprehensive, its concerns and the concerns of religion perforce overlap. State codes and the dictates of faith touch the same activities. Both aims at human good and in their respective views of what is good for man they may concur or they may conflict. No Constitutional command which leaves religion free can avoid this quality of interplay.

Certain practices even though regarded as religious, may have sprung from merely superstitious beliefs and may, in the sense, be only extraneous and unessential accretions to religion itself. Such practices also are not protected and can be abrogated. Therefore, the norm that only such practices as are essential and integral part of religion needs to be protected. It, therefore, falls upon the courts to decide, on the basis of evidence adduced before them concerning the conscience of the community and the tenets of the religion concerned, whether a practice for which protection is claimed is 'religious' in character, and, if so, whether it is an essential and integral part of the said religion or is merely 'secular' or 'superstitious' in nature ^[11].

After going through the Islamic custom of animal sacrifice on *Bakr-Id* day and the tradition maintained by *Muslim* rulers in India, the Supreme Court observed that cow sacrifice was sanctioned by Islam but it was not an obligatory overt act to express Islamic faith and therefore, it would not be protected under practice of religion as given in clause (1) of Article 25. The criterion adduced to the practice of religion, which might claim State protection ^[12].

Over and above these, individuals have the right to propagate their religions with the intention of popularizing them. There was a bitter controversy in the Constituent Assembly on the desirability of inserting the word 'propagation' in the Constitution. While some members strongly opposed granting such a religious right to the individuals, others supported its insertion to the Constitution. R.K. Diwakar, S.W. Krishnamoorthy and K.T. Shah opposed the insertion of the word 'propagate' in the Constitution on the ground that it might create social disorder, communal disharmony and religious tensions. But members like K. Santana, Krishanaswami Bharti, Pandit L.K. Mitra and many other stood for the inclusion of the word propagate in the Constitution. They argued that denial of right to propagate religion would be tantamount to the negation of the freedom of speech and expression guaranteed by Article 13 (now Article 19) ^[13].

Clause (13) of the Interim Report on Fundamental Rights submitted to the Constituent Assembly in April 1947 included the right to propagate ^[14]. Nevertheless, clause (17) of the report stated, "conversion from one religion to another brought about by coercion or undue influence shall not be recognized by law ^[15]." When clause (17) was debated in the Constituent Assembly, Mr. K.M. Munshi who composed the text, proposed a new amendment to the clause during the debate which read: "Any conversion from one religion to another of any person brought by fraud, coercion or undue influence or of a minor under the age of eighteen shall not be recognized by law ^[16]." The Christian members of the Assembly opposed Mr. K.M. Munshi's amendment proposal, because they voiced that it would nullify in large measure the freedom of religion guaranteed under clause (13). Dr. B.R. Ambedkar also strongly opposed Mr. K.M. Munshi's amendment proposal. The reluctance shown by some members of the Constituent Assembly for the inclusion of the clause on the right to propagate religion was conditioned by their fear that this right would help Christian missionaries to convert *Hindus* and others to Christianity ^[17].

Some other *Hindu* members of the Constituent Assembly, however, emphasized India's spiritual heritage, which is inclusive and open to all faiths. Therefore, they had no misgiving to include the right to propagation under religious freedom, Pundit Lakshmikanda Maitra referred to the saying of Swami Vivekananda and said: "the great Swami Vivekananda used to say that India is respected and revered all over the world because of her rich spiritual heritage.....If we are to educate the world, if we are to remove the doubts and misconceptions and the colossal ignorance that prevails in the world about India's culture and heritage, this right must be conceded ^[18]."

The Constitution when finally adopted, accepted only the positive statements related to religious freedom as we have it in Article 25 of the Constitution. Article 25 provides to all persons the right to propagate religion and Article 26, which guarantees collective freedom of religion to denominations, or any section thereof, does not explicitly refer to the right for propagation. The right to propagate religion applied to a person in one's individual capacity as well as on behalf of an institution ^[19].

The right to propagate religion means the right to communicate one's religious tenets to others by way of preaching, teaching and writing with the explicit intention of convincing others about the goodness of one's religion. As propagation implies convincing others to one's point of view, it may involve underestimating others religion. This may produce religious ill feeling and may lead to violence, which may place the maintenance of public order and safety at stake. Hence, the task of the State is to maintain a balance between the rights to propagate religion and the right of the public for order and security of life.

Highlighting the significance of the word 'propagate', M.V. Pylee Writes ^[20]:

The word 'propagate' does not find a place in any Constitution where it deals with religious freedom. But the practical wisdom of our Constitution makers made it a conditional right. So, when propagation affects other people's religious sentiments or conversion involves some sort of force or fraud, it goes against the letter and spirit of the Constitution.

A secular State which provides protection to all religions equally is by no means bound to protect every kind of human actions within the ambit of religion. There are religions which take out their own penumbra in every human actions and it would be fantastic to suggest that a secular State should protect them all.

Regulation of Economic, Financial, Political or other Secular Activities associated with Religion

Article 25 (2) (a) empowered the State to regulate financial, political and secular activities associated with religion. The religious activities as such are not covered under the regulatory power of the State. It is not always easy to find out whether an activity will be covered under religious practice or under financial, political or secular activity associated with religion. Certain activities even if involve expenditure or employment of servants and priests or uses of marketable commodities cannot be said to be secular activities under Article 25(2) (9) ^[21]. On the other hand the management of property attached to a religious institution or endowment has been held to be a secular activity subject to regulatory power of the State ^[22].

The State is empowered to regulate secular activities associated with religious practices. The State is not entitled to regulate religious practices as such. What the State can regulate under Article 25 (2) (a) are the activities which are really of an economic, commercial or political character though these may be associated with religious practices ^[23].

A question would, however, arise whether the activity sought to be regulated is 'religious' or 'secular'. This distinction is important for what is religious cannot be regulated. This again raises the question whether activity sought to be regulated is regarded as an essential and integral part of the religion in question. If so, it is religious in nature ^[24].

Sub-clause (a) of clause (2) of Article 25 at once recognizes the inevitability of such interplay and asserts the overriding power of the State to regulate and restrict over the entire area where the secular and the religious activities are found to commingle. This power to regulate and restrict, referred to in the sub-clause, is a general, plenary power and should not be confused with the power in regard to "public-order, health, morality, and other provisions of this part" to which the right enshrined in clause (1) is already subject. Since "practice of religion happens to be practically the only part of religion susceptible of State control, this sub-clause makes the State practically supreme over religion." Management of property attached to a religious institution or endowment is a secular activity which can be regulated by State ^[25]. The administration of the property by a religious denomination is placed on a different footing from the right to manage its own affairs in the matter of religion. The latter is a Fundamental Right which no legislature can take away, whereas the former can be regulated by law ^[26].

Social reform and throwing open of Temples

Clause (2) (b) of Article 25 deals with two exceptions: (1) laws providing for social welfare and social reforms, and (2) the throwing open of all "*Hindu* religious institutions of a public character" to "all classes and sections of *Hindus*."

The freedom of religion under Article 25(1) is, therefore, subject to the power of the State to make laws for social welfare and social reforms. Thus, the banning of bigamous marriage was upheld as a measure of social reforms ^[27]. Likewise, the provisions of the Hindu Marriage Act, 1955 are protected under Article 25 (2) (b) ^[28]. On the same basis the prohibition of evil of Sati or system of '*devdasi*' was upheld ^[30].

The right protected by Article 25 (2) (b) is a right to enter into a temple for purposes of worship and it should be construed literally in favor of public. But it does not follow from this that the right is absolute and unlimited in character. No member of the *Hindu* Public could, for example, claim as the rights protected by Article 25 (2) that a temple must be kept open for worship at all hours of the day and night or that he should personally perform those services which the *acharyas* alone could perform ^[31]. It is again a well-known practice of religious institutions of all denominations to limit some of its services to persons who have been specially initiated though at other time the public in general are free to participate in the worship. Thus the right recognized by Article 25 (2) (b) necessarily becomes subject to some limitations or regulations and such limitations or regulations arise in the process of harmonizing the rights conferred by Article 25 (2) (b) with that protected by Article 26 (b) ^[32]. The legislature could not invade the traditional and conventional manner in which the actual worship of the deity is allowed to be performed only by the authorized *pujaris* of the temple and by no other devotee entering the temple for *darshan* ^[33].

Temple entry of *Dalits*, who had been barred on grounds of "untouchability", was one of the leading social reforms movements that ran parallel to the larger Independence movement in the early part of the last century in India. The first legal measure guaranteeing the rights of *Dalits* to enter temples at par with all other caste of *Hindus* was the temple entry proclamation issued by the then Maharaja of Travancore ^[34]. It opened the doors of all temples in the princely State of Travancore to all classes of *Hindus*. This was subsequently followed by the Temple Entry Authorization and Indemnity Act, 1939 ^[35] passed in the then Madras Presidency guaranteeing *Dalits* the rights of temple entry there. Article 25 (2) (b) of the Constitution of India clarifies that temple entry laws are not tantamount to restriction of individual's right to religion under Article 25 (1).

The demand for temple entry to all classes has long been a part of the larger struggle for social reforms in India. Literally begun as a movement towards seeking equality for *Dalits* with other caste *Hindus*, it has now also embraced within its scope *Hindu* women who seek parity with men in access to temples.

One is witnessing strange incidents where the women from *Muslim* and *Hindu* community are facing similar obstacles. This relates to the issue of entry into places of worship. While the women from Bhumata Brigade are struggling to get entry into Shani Shingapur temple (Ahmadnagar, Maharashtra), the *Muslim* women are fighting a legal battle to restore their access to mazar of Haji Ali dargah in Mumbai. In yet another incident the women are trying to get the right of worship in Sabarimala temple. The *Hindu* women in an act of brave initiative landed up in many buses to the Shani Shinganapur temple, where they were denied the entry while police had to resort to some force to prevent their entry.

After four months of efforts put in by, women led by activist Trupti Desai, the trust of the Shani Shingapur temple in Maharashtra has finally permitted women to enter the temple and pray is the *sanctum sanctorum* putting an end to a 400 year old custom. This comes after the Bombay High Court made it clear that it was incumbent upon the State Government to ensure that Maharashtra *Hindu* Places of worship (Entry Authorization) Act, 1956 was properly enforced. Temple trustees decided to facilitate unrestricted entry following High Court directive; activist Trupti Desai wants Nashik, Kolhapur temples to follow suit. On April 1, 2016 the High Court held that it is the women's fundamental right to go into places of worship and the government is duty-bound to protect it ^[36].

Shani Shingapur is not the only instance where women are seeking entry to temples at par with men. The Sabarimala temple in Kerala and the Haji Ali dargah have also become the focus of efforts by women to seek entry to religious places of worship. The entry of women to both is presently under litigation before the Supreme Court of India and the Bombay High Court respectively. The Bombay High Court has stated that it will wait for an authoritative ruling by the Supreme Court in the Sabarimala case before deciding the Haji Ali Case.

One distinction must be pointed out between the two cases in court-whereas the Constitution explicitly states that laws make the throwing open of *Hindu* religious places of worship to all classes is an exception to any claimed right to religion by a person or a denomination, no similar clause exists for other religious places of worship. Even Article 15 which specifically prohibits discrimination on the basis of caste, religion, gender etc. all in public places does not include "temples or places of worship" as public places. This does not necessarily mean that there is no Constitutional protection for *Muslim* women wishes to access the Haji Ali dargah. The argument for the same may have to be made on the constitutional guarantee of equality rather than rely on specific statutory provisions regarding temple entry ^[37].

Here, it is pertinent to mention the wording of the Supreme Court of India. The court held ^[38]:

Article 25 (2) (b) enables the State to take steps to remove the scourge of untouchability from amongst the *Hindus*. The word "public" here includes any section of the public. Public institutions would thus mean not merely temples dedicated to the public as a whole, but even those which are founded for the benefit of sections thereof and denominational temples would thus fall within the scope of this clause.

Shorn of all the legal and religious construction, the justification offered for denying women entry into places of worship rest on a supposed inferiority of women in matter of religion. Whether such an argument is linked to menstruation, the weakness of physical frame or some other physical attributes of women, the fact remains that the arguments offered for restricting women's entry to religious places is a brute exercise of patriarchal power and nothing more. When such barriers and obstacles in the path of equality of women is being slowly but steadily being eroded in most aspects of society, one hopes that the constitutional courts will find themselves on the right side of history in clearing the path for equal rights for women in matters of religion.

Explanations to Article 25

Explanation 1 to Article 25 of the Constitution recognizes the rights of the followers of the *Sikh* religion to wear *Kripans* as an emblem of their religion. *Kripan* means a Sword, but its size and shape has not been prescribed by the *Sikh* religion. It may, therefore, be a sword of any size or shape. But a *Sikh* cannot carry any number of *Kripans* or swords. He is not allowed to possess an extra sword without license ^[39].

Explanation II to Article 25 declares that the expression "*Hindu*" shall be constructed as including persons professing the *Sikh*, *Jaina* or *Buddhist* religion. The explanation is only for the purposes of Article 25 (2) (b) and for no other ^[40]. Various statutes accord legislative recognition to the fact that even though *Jains* may not be *Hindus* by religion they are to be governed by the same laws as *Hindus* and cannot claim to be a separate religious minority ^[41].

Restrictions upon the Freedom of Religion

Freedom of religion, like any other freedom, cannot be absolute. Perhaps, the complete protection of all religious beliefs might result in the disappearance of organized and orderly society. It might also interfere with social reforms aimed at eradicating objectionable practices perpetuated in the name of religion. The Constitution of India itself imposes drastic-limitations on the freedom of religion guaranteed by Article 25. This Article contains six grounds for restricting religious freedom. We shall briefly discuss each of them:

Restriction on Grounds of Public order, Morality and Health

a. **Public order:** No freedom can retain in a state of disorder, therefore, it is the duty of the State of maintain peace and order so that people can enjoy the rights given by the Constitution. "Public order" is an expression of wide connotation. It signifies a state of tranquility which prevails among the members of a political society ^[42].

Restriction on this ground implies that the State could pass a law to regulate religious meetings or processions in public places like roads, streets and parks. Under Article 19 (1) (c) all citizens have freedom to assemble for any purposes. This freedom also includes assembling for religious purposes. However, this right is subject to a number of conditions *viz.* the Assembly must be peaceful, it must be unarmed and it must be held subject to the requirement of public order. Sections 295 to 298 of the Indian Penal Code, 1860 decree certain acts to be an offence if they tend to wound the religious feelings of any class of persons. Section 153 A of the code also makes it an offence to promote, on grounds of religion, race, language, caste or community, disunity between different religious, racial or language groups. This section also declared an act to be a criminal offence if it is prejudicial to the maintenance of harmony between different religious groups or is likely to disturb public tranquility. These sections are protected under the restrictive head of “public order”. Donald E. Smith very prudently mentions ^[43]:

In order to maintain public order, there are two basic reasons for the extensive governmental regulation of religious festivals and pilgrimages in India. First, both *Hinduism* and *Islam* lack the centralized organization and authority necessary to provide for the orderly conduct of such religious activities. Second in both *Hinduism* and *Islam* great importance is attached to religious functions which take place in the out-of-doors, especially in the form of *melas* and processions. Indian law has long provided for regulatory measures to prevent breaches of the peace resulting from religious processions. Sections 30 and 30 A of the Police Act provide for the licensing and regulation of processions; the exact course the procession is to take must be approved in advance, and it is accompanied by policemen to prevent any disturbances. Under section 144 of the Code of Criminal Procedure a magistrate can prohibit processions and meetings altogether, and such an order is always promulgated during times of communal tension.

The cow-protection legislation and laws prohibiting propagation of religion for the purposes of conversion, by force, fraud, inducement or allurement, have been made with the objectives to maintain public order in the State.

- b. **Morality:** On the ground of Morality State legislation can validly prohibit immoral practices, although they may be approved by religion. The *Hindu* religion has sanctioned certain practices which would appear to be immoral. In South India many orthodox *Hindus* held belief that religious merit could be attained by dedicating girls to temples. Such girls were called *devadasis* (i.e. servants of the God). However, in the course of time, this led to temple prostitution. The practice of *Sati* (whereby a widow burnt herself to death on the funeral pyre of her husband) was also considered to have a basis in religion. Again gambling during *Deepavali* festival (i.e. light festival) is considered to have the approval of *Hindu* religion. ^[44] For this the Constitution of India has empowered the State to declare illegal such immoral practices or to regulate them on the ground of morality.
- c. **Public Health:** It is the paramount duty of a civilized State to furnish legal armor to protect individual's life and to maintain good health of the human being. However, this life saving objective of the State may run counter to certain religious beliefs and practices. Death by starvation or by self-inflicted torture to attain spiritual ends is also an offence under the Indian Penal Code ^[45]. The law, therefore, forbids suicide even if the act is motivated by religious intention.

Although cleanliness is supposed to be next to godliness, certain religious practice, having their origin in primitive social customs, are far from being hygienic. But apart from individual health, certain manifestation of religious faith may be detrimental to public health. Religion is a great social force, and religious festivals, ‘meals’ and pilgrimages, which are attended by a large concourse of the faithful, may give rise to epidemics of cholera, plague, typhoid; etc., of which India has had too long and bitter experience. It stands to reason that the State, which has to protect public health, must have the power of taking the necessary measures for this purpose even if they involve the imposition of restrictions on the freedom to profess and practice religion. However, though limitations imposed in the interests of public health are generally justifiable, even this innocent-looking ground for restricting religious freedom may be abused by the powers that be ^[46]. For example, married couples may be forced to use contraceptives to protect the health of mothers and children. But the Roman Catholics would regard this not only as a violation of morality but also as an attack on their religious liberty, since the Catholic Church denounces the use of contraceptives as an immoral practice and those who indulge in it are guilty of mortal sin ^[47].

Cases have arisen in western countries where persons endanger life by refusing blood transfusion on religious grounds. In *Darroll Labrong v. Illinois ex rel. Wallace* ^[48], the parents of a child who were Jehovah's Witness objected to transfusion of blood to their child on the ground that it was equivalent to eating or drinking of human blood which was forbidden by the Bible. In India likewise the practice of *Nirwan* (i.e. attaining salvation through torturing oneself to death) like *Sati* also had religious approval ^[49].

However, the right to religious freedom does not mean that a person could validly indulge in such activities. Nor does it mean that State legislation which prohibits such practices can be constitutionally attacked. Indeed in all these cases where a person attempts to give up his life by refusing blood transfusion, practicing *Sati* or by starving, he could be prosecuted for attempting to commit suicide. Again, a law can be validly passed to provide that all pilgrims visiting certain places of pilgrimage shall have to get inoculation against small pox, cholera and typhoid. In *Rama Chandra v. State*, the validity of the *Ganga Sagar Mela* or Dinace of 1975 which was promulgated to enable the State of West Bengal to take measures for safeguarding the health, safety and welfare

of pilgrims attending the *Ganga SagarMela* (fair) was attacked. However, the court observed that the ordinance come within the scope of restrictions permitted by Article 25.

Restrictions Imposed by Part III

Clause (1) of Article 25 of the Indian Constitution declares that the exercise of religious freedom is subject to other Fundamental Rights guaranteed in part III ^[50] of the Constitution. This requires a balancing of rights in the area of religion with other rights. Since the freedom under Article 25 has been made specifically subject to the provision of Part III if there is any conflict between the two, provisions of part III will prevail over Article 25 ^[51]. The limitation subject to the other provisions of this part occurs only in clause (1) of Article 25 and not in clause (2). Clause (1) declares the rights of all persons to freedom of conscience and the right freely to profess, practice and propagate religion. It is this right that is subject to the other provisions in the Fundamental Rights chapter one of the provisions to which the right declared in Article 25 (1) is subject to Article 25 (2). A law, therefore, which falls within Article 25 (2) will control the right conferred by Article 25 (1) and the limitation in Article 25 (1) does not apply to that law ^[52].

According to the judgment of the court, clause (2) of Article 25 supersedes clause (1) of the same Article. Therefore, right to free exercise of religion is subject to the right conferred to every *Hindu* to enter any *Hindu* temple of public character. The provision given in Article 26 (b), the Supreme Court observed, were to be read in the light of the limitations contained in sub-clause (b) of clause (2) of Article 25 ^[53].

Concluding Observance

The jurisprudence of freedom of religion under Indian Constitution presents us with a moddled picture. With a complicated history of denominational religion and reform, these provisions have been seen to be the very root of the social revolution which the Constitution intended to mark. At the same time, the restrictive interpretation of Article 25 and 26 of the Constitution, in the form of what M.M. Alam called the doctrine of “essentiality” ^[54], has failed to gather enough attention. It is argued that this interpretation of freedom of religion was revolutionary from the point of view of the natural textual construction. Moreover, it is argued that this construction of the text – re – aligned the Constitutional conception of secularism something that is not often noted. While this construction strengthened the power of State to regulate denominational religion, it reduced “Constitutional secularism” to a concept anti - thetical to the individual’s right to freedom of religion.

The word “secular” was added in the Preamble by the Constitution (42nd Amendment) Act, 1976. The freedom of conscience and the right to profess, propagate and practice religion, flow out of the idea expressed in the preamble. In this context, Article 25 of the Indian Constitution enumerates the fundamental right of every person to freedom of conscience and the right to freely profess, practice and propagate religion. But equally important, it provides that the State may regulate any economic, financial, political or other secular activity associated with religious practice. Article 26 grants the freedom to manage the affairs to every religious denomination. Article 27 prohibits any taxation on the basis of religions and Article 28 provides for freedom as to attendance at religious instruction in certain educational institutions.

The nature of permeability of ‘religion’ by the State is more complex. One facet is, of course, that the Constitution envisages social welfare and reform. Thus the State is empowered to intervene in cases of such considerations. The belief and the construction, of the Constitution as a social document, furthering the goals of the socio-economic revolution, give legitimacy to this intervention. But this does not make India non-secular, although it does give the secular Indian State a unique overall arbitral role.

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