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ABSTRACT:

Religion is a social phenomenon, distinctive and each has its own centre of population. The character and right of religious observance depends upon the membership of particular social group. Religious issues often become spots of social anxiety because of competing religious sentiments. Transformations within the religion occur in the course of social development due to reformative movements, emergence of alternative faiths, rise of new leadership, impact of other cultures and efforts of modernization. Basically religion is for spiritual guidance of the people and hence can be a major resource for peace and social justice. It can become, as liberation theology indicates, a powerful option for the weaker sections of society. Instead religion has more often been used by powerful vested interests of which religious functionaries become apart. Worse, religious functionaries and priests themselves create powerful establishments and join hands with politicians to protect their establishments. A woman has a right to equality before law, a right to religious liberties and also lawful rights against discrimination based on her sex, gender, status, etc. Any infringement to their fundamental rights are indeed an infringement of law and order. Women are the half of world's population. Are human women have right to live a dignified and secured life. They are strong enough but gets shattered when their self esteem is hurt. The dignity for women is much precious then life and this is universal phenomenon. Right to life includes right to human dignity. Various Laws reinforce safeguards against discrimination and provide for positive discrimination for women. Women ought to be protected and responsible persons or institutions must observe certain guidelines to ensure the prevention of sexual harassment of women so that lives with dignity as guaranteed by our Constitution.

Introduction

Religion is a social phenomenon, distinctive and each has its own centre of population. The character and right of religious observance depends upon the membership of particular social group. Religious issues often become spots of social anxiety because of competing religious sentiments. Transformations within the religion occur in the course of social development due to reformative movements, emergence of alternative faiths, rise of new leadership, impact of other cultures and efforts of modernization. A principled distancing from religions and an approach of impartiality in treatment provide a safe walk, soberness and legitimacy for state action. Being a component of the policy of multiculturalism, this approach sets ways and limits to law's regulative task, and inculcates an attitude and mindset for co-existence amidst different religious communities.

A woman has a right to equality before law, a right to religious liberties and also lawful rights against discrimination based on her sex, gender, status, etc. Any infringement to their fundamental rights are indeed an infringement of law and order. There are temples that bars women during her menstrual cycle and restrict them to stay away from religious rituals and place. Just because of the orthodox mindset and societal norms, these temples not only questions a woman's purity on the basis of her menstruation process but also prohibits her to retain religious activities and worship the deity by the suppression of her will. No religious scriptures defines a woman as Impure.

India is famous worldwide as democratic, republic, secular and sovereign country. It is popularly known for its rich and royal culture, sacred traditional customs and rituals. In Hinduism, women are worshipped as goddesses. Our religious scriptures believe that a woman represents strength of emotions, balance in life, high intellect and defines aesthetics. She is the creator, a very important element of the whole life cycle.

Religious freedom through the Constitution

Religious freedom in India is explicitly protected under the Constitution of India where 4/5th of the population holds Hinduism, Abuses of religious freedom in India had attracted International attentions due to new assault's in the Country's religious freedom has been stated under Article 25 of the Indian Constitution that all persons are equally entitled to enjoy freedom and have the right to practice any religion. Indian's minority religious group's rights that all together constitute one-fifth of India's population have also been protected in the Indian Constitution. The constitution provides for the protection of these minorities right and prohibits any kind of discrimination based on religious. Article 26 of Indian Constitution also provides corporate freedom of religion that governs that relationship between the states. According to Articles 26 Every religion will have the right to open religious institutions or to manage affairs related to religion or to own any property as per the laws passed by the state. The articles passed in favour of the protection of the religion clearly states that freedom of practicing any religion is a fundamental right provided by the Constitution.

Freedom of religion and non-discrimination on the basis of religion

➤ Freedom of religion under Article 25

Article 25 of the Constitution of India guarantees to every citizen the right to profess, practice and propagate religion. Article 25 reads as follows:

Freedom of conscience and free profession, practice and propagation of religion—

- (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 in 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 carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II: In sub-clause (b) of the 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."

Accordingly Article 25 protects two freedoms:

- a. freedom of conscience,
- b. freedom to profess, practice and propagate religion.

The freedom of conscience is absolute inner freedom of the citizen to mould his own relation with God in whatever manner he likes. When this freedom becomes articulate and expressed in outward form it is to profess and practice religion. To profess religion means to declare freely and openly one's faith and belief. To practice religion is to perform the prescribed religious duties, rites and rules. To propagate means to spread and practice his view for enlightening others. The right to propagate one's religion is not a right to convert other to one's own religion.

Article therefore postulates that there is no fundamental right to convert another person to one's own religion, 'because if a person purposefully undertakes the conversion of another person to his religion as distinguished from his effort to transmit or spread the tenets of his religion that would impugn on the freedom of conscience guaranteed to all citizens of the country alike; as decided in *Rev. Stainialaus v. St. of Madhya Pradesh* (AIR 1977 SC 908)

The Supreme Court in *Punjab Rao v. D. P. Meshram*, (AIR 1966 SC 1179) expresses that, the right is not only to entertain such religious belief as may be approved by his judgment or conscience but also to exhibit his sentiments in overt acts as are enjoyed by religion. In the words of the Article, he may "profess a religion means the right to declare freely and openly one's faith." And in *Ratilal Panachand Gandhi v. State of Bombay*, (AIR 1954 SC 388) declares that he may freely practice his religion; "Religious practices or performance of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines".

Rituals and observances, ceremonies and modes of worship considered by a religion to be its integrals and essentials part are also secured. What is integral and essential part of a religion or religious practice has to be decided by the Courts with references to the doctrine of a particular religion include practice regarded by the community as part of its religion as put forth by the honourable Supreme Court in *Seshammal v. state of Tamil Nadu*, (1972) 2 SCC 11. Again in *Ratilal*, the SC states that, he may propagate freely his religious views for the edification of others. It is immaterial also whether a person makes the propagation in his individual capacity or on behalf of some church institution.

If one makes an attempt to look at the secular aura in our Constitution, the only point to reach is Article 25, which refers "Right to freedom of religion". It reads thus- "Freedom of conscience and free profession, practice and propagation of religion – (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 to freely profess, practice and propagate religion".

In *Bijoe Emmanuel v. State of Kerala* (AIR 1987 SC 748) also known as National Anthem case, the Supreme Court has upheld the religious belief of the Jehovahs witness, a Christian community not to praise anybody but for his or her own embodiment of God. In this case the children of Jehovahs witness were expelled from the school for refusing to sing the National Anthem. The Supreme Court held their religious practice was protected under Article 25. Chinnappa Reddy, J., observed “that the question is not whether a particular religious belief or practice appeals to our reason of sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion. Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held it attracts the protection of Article 25 but subject, of course, to the limitations contained therein”.

The Indian constitution provides for the individual as well as collective freedom of religion. The basic guarantee of this right of individual freedom is in Art. 25 (1). This freedom extends to all persons including aliens underlined by Supreme Court in *Ratilal Panchand vs. State of Bombay*. The Indian Constitution makes freedom of conscience as well as right to freely profess, practice and propagate religion subject to state control in the interest of public order, morality and health.

But Supreme Court has made it clear that state can have no power over the conscience of individual – this right is absolute. The Indian Penal Code (sections 295-8) makes it a crime to injure or defile a place of worship or to disturb a religious assembly etc. even though these actions might be sanctioned by offender’s own religion. Practices like devadasi, sati may have religious sanctions but the state still has constitutional power to ban them. Art. 25(2) grants to the state broad, sweeping powers to interfere in religious matters. This reflects peculiar needs of the Indian society. The extensive modification of Hindu personal law has been by legislation based on this provision. Art. 25(2) thus authorizes the state to regulate any secular activity associated with religion, to legislate social reforms.

Article 25 gives freedom for all to practice any religion they want. This is a basic right guaranteed in the Constitution. Article 26 (Freedom to manage religious affairs), Article 27 (Freedom as to payment of taxes for promotion of any particular religion) and Article 28 (Freedom as to attendance at religious instruction or religious worship in certain educational institutions) can be considered as the interpretations of the principle of secularism in the constitution. Art. 26 deals with the freedom to manage religious affairs. Accordingly any religious denomination is given right to establish religious institutions, acquire properties (movable and immovable) and manage affairs regarding the religion. Art. 27 is also very important which reads – “Freedom as to payment of taxes for promotion of any particular religion. – 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 religion or religious denomination.”

➤ **Restrictions on the freedom of religion**

a. Restrictions to the enjoyment of Right to Religion:

The right to religion guaranteed under Article 25 is not an absolute right, like other rights this right too can be restricted for the purpose of maintaining public order, morality and health.

In addition Article 25 further exceptions are engrafted by clause (2) of the Article. Sub-clause (a) of clause (2) saves the power of State to make laws regulating or restricting any economic, financial, political or secular activity which may be associated with religious practice and sub-clause (b) reserves the State's power to make laws for providing for social welfare and social reform even though they might interfere with religious practices.

In *S.P. Mittal v Union of India*, the Government enacted the Auroville (Emergency Provision) Act, to take away the management of Aurobindo Society property on the ground of mismanagement of affairs. The petitioners challenged the validity of the said Act on the ground that it violates Articles 25 and 26 of the Constitution. The Court held that teachings of Aurobindo did not constitute 'religion' and therefore taking of Aurobindo Ashram did not infringe the Society's right under Articles 25 and 26. It further held, even if it was assumed that the Society were a religious denomination, the Act did not infringe its rights under Articles 25 and 26. The Act has taken only the right of management of property of Auroville, in respect of secular matters, which can be regulated by law.

Also, in *Mohd. Hanif Quareshi v State of Bihar*, the petitioner claimed that the sacrifices of cows on the occasion of Bakr-Id was essential part of his religion and therefore the State law forbidding the slaughter of cows was violative of his right to practice religion. Court rejecting the argument held that sacrifice of cow on Bakr-Id day was not essential part of the Mohamedan religion and hence could be prohibited by State under Clause 2(a) of Article 25.

In a another case *State of West Bengal v Ashutosh Lahiri*, the Supreme Court held that slaughter of cows on Bakrid day is optional and not obligatory. It is not essential or required for religious purpose of Muslim. Article 25 deals with essential religious practices.

b. State Acting towards Social Welfare and Social Reforms:

Under clause (2)(b) of Article 25, the State is empowered to make laws for social welfare and social reforms. Under this the State can eradicate those evil practices, which are under the guise and name of the religion. Example, the devadasi system, the Sati system etc.

The State can throw open Hindu religious institutions of public character to all Hindus. Article 25(2)(b) enables the State to take steps to remove the untouchability from amongst Hindus. But this does not mean the right is absolute and be unlimited. The Supreme Court in *Shastri Yagnapurushdasji v Muldas Bhundardas Vaishya* makes it clear that the State cannot regulate the manner in which the worship of the deity is performed.

Whereas it justifies banning of polygamy amongst hindu in *State of Bombay v Narasu*. What the Courts have tried to do is to separate 'religious' activities and 'social and secular' activities, the former are protected under Article 25 the latter are not.

In *Ismail Farooqi v Union of India*, ((1994) 6 SCC 360) the Supreme Court has tried to differentiate between "essential parts" of religious practice. It has held that offer of prayer or worship is a religious practice; its offering at every location where such prayers can be offered would not be essential religious practice. What is protected under Articles 25 and 26 is a religious practice, which forms an

essential part of religious practice. Thus, a place of worship may be acquired by the State in exercise of its supreme power. Thus places of worship be it temples, mosques or churches can be acquired.

➤ **Right to manage religious affairs**

Article 26 says that: Subject to public order, morality and health, every religious denomination of any section have the following rights:

- a. to establish and maintain institutions for religious and charitable purposes;
- b. to manage its own affairs in the matters of religion;
- c. to own and acquire moveable and immoveable property;
- d. to administer such property in accordance with law.

The right guaranteed by Article 26 is the right of an ‘organized body or entity’ like the religious denomination or any section thereof. The word ‘denomination’ can be understood as a collection of individuals, classed together under the same name; generally religious sect or body having a common faith and organization and designated by a distinctive value.

In S.P. Mittal the SC states that, the words ‘religious denomination’ in Article 26 must take colour from the word ‘religion’ and therefore as described in the case of **Acharya Jagdishwaranand Avadhuta v Commissioner of Police, Calcutta** it must also satisfy three conditions:

- (1) It must be collection of individual who have a system of beliefs, which they regard as conducive to their spiritual well being, that is common faith;
- (2) It must have a common organization; and
- (3) It must have distinctive name.

Thus in the large sense 'Hinduism' is a denomination and to some extent various philosophies governing the Hindu Society, such as Advaitas, Dwaitas, Visishtadwaitas and Shaivites can also be termed as denomination. On this base the SC held that "Anand Marg" is a religious denomination within the Hindu religion in **Shastri Yagnapurushdasji v Muldas Bhandardas Vaishya**.

Meaning of Minority

Article 30(1) uses the terms ‘linguistic’ or ‘religious’ minorities. Article 30 of the Indian Constitution states the Right of minorities to establish and administer educational institutions. It says “All minorities, whether based on religion or language shall have right to establish and administer educational institutions of their choice”. This Article 30 was adopted on December 8, 1948.

Minorities right protected in India

The continuous violence and crimes against the minorities that are Muslim, Sikhs, Christians have been unexpectedly moving on daily in India. This issue came up from UN forum at Geneva. It was held that the rights of minorities are in virtual collapse.

The supreme court also stated that the majority of the arrest and detention is illegal in the case of Ram Narayan Agarwal v. State of UP. Minorities communities in the name of religion are tortured in police custody every year. Torture have increased to such a huge extent that it questions the credibility of the rule of law and criminal justice.

The Indian Constitution does not define the term minority but it defines minorities based on religion and language. There rights have been defined in part 3 of the constitution which are legally enforceable and rights which have been laid down in part 4 of the Constitution are not legally enforceable by law. Jains joined the minority list in 2014. The issues of minorities are dealt with by the Ministry of minority affairs and ministry of Home affairs in the government of India. There is no specific protection for Minorities in the Indian Constitution. The Judiciary, Police and Prosecution are not at all strict to this issue. One of the committee identified the disabilities that the muslims in India face. The Christians are much smaller victims but they are still victims.

Religious Minorities and law

Right to religion

➤ **The Universal Declaration of Human Rights:**

The Universal Declaration of Human Rights, 1948 recognizes the right to religion in Art. 18 which say that “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief; and freedom, either alone or in community with others in public or private, to manifest his religion or belief in teaching, practice, worship and observance”. That makes it clear that an individual who is ‘born free’ also has freedom to manifest his religious beliefs as he is free to practice any religion, he is also free to change his religion. Either he automatically adopts the religion practiced by his parents after his birth or has freedom to choose his own. It is his absolute choice to profess his religion in private and if he wishes he may join any religious group.

➤ **Civil and Political Convention 1966:**

In the Civil and Political Covenant, 1966, the right to religion is discussed as follows: Article 18 ;

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion, which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardian to ensure the religious and moral education of their children in conformity with their own convictions.

➤ **Declaration on religious Discrimination, 1981:**

The Declaration on the Elimination of All forms of Intolerance and of Discrimination Based on Religion or Belief adopted by General Assembly of UN in 1982 states in Article 1,

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, freedom either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practices and teaching.
2. No one shall be subject to coercion, which would impair his freedom to have a religion or belief of his choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to public safety, order, health, or morals or the fundamental rights of freedoms of others.

➤ **Right not to be taxed to promote a religion:**

Individual freedom of religion is further strengthened by Article 27 prohibiting religious taxation. **Article 27:** 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 religion or religious denomination.

To maintain the “secular” character, the Constitution guarantees freedom of religion to individuals and groups, but it is ‘against the general policy of the Constitution that any money being paid out of public funds for promoting or maintaining any particular religion’ as stated in Commissioner HRE v. L.T. Swamiar. Therefore Article 27 lays down that 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 religion or religious denomination."

The Supreme Court in various decisions has tried to differentiate between tax and fee. Tax is in nature of compulsory exaction of money by public authority for public purposes the payments of which are imposed by law. Tax is imposed for public purposes to meet general expenses of State. Tax is collected and merged with the general revenue of the State. Tax is a common burden. Fees on the other hand is payments primarily in public interest lent for some special work done for the benefit of those from whom payments are demanded. Article 27 prohibits imposition of the tax and not fee.

Thus fee can be levied as decided in Jagannath Ramanuj Das v State of Orissa, the Government's imposition of fee on temples whose annual income exceeds Rs. 250 for meeting the expenses of Commissioner and Officers and Servants was held valid. As decided by SC in Bira Kishore v

State of Orissa, the Grant of money by State for renovating water tanks belonging to Lord Jagannath was held to be valid under Article 27, for these tanks were used by the general public for bathing and drinking purposes. As a result in *K. Raghunath v State of Kerala*, after the communal riots some places of worship were destroyed, the Government agreed to meet the cost of restoring these places. It was also held valid.

➤ **Restriction on religious instruments in educational institution:**

Article 28 –

- (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
- (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Art. 28(3) which forbid compulsory religious instruction or worship in state aided institutions strengthen Art. 25 (1). According to Article 28(1) no religious instruction is to be provided in any educational institution, which is wholly maintained out of State funds. Under Article 28(2) this restriction would not apply to educational institutions, which though administered by the State, has been established under an 'endowment' or 'trust' requiring that religious instruction should be imparted in such institutions.

According to Article 28(3) no person attending any educational institution recognized by the State or receiving aids out of State funds shall be required to take part in any religious instruction imparted in the institution, or to attend any religious worship conducted in the institution thereto, unless he consents to do voluntarily or, if a minor, his guardian gives consent for the same.

➤ **Cultural and Educational Rights**

The constitution keeps the spirit of secularism by making a space to all the religious protecting the interest of minorities respecting their right to development. Art 29 and 30 guarantee certain cultural and educational rights to cultural, religious and linguistic minorities.

Article 29. –

- (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

- (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30.-

- (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- (2) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
- (3) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Conclusion

India is a free democratic Country and there minorities should never feel weak and victim. They are free to praise their religion. It can be said that the obligations of the constitution to protect the rights of minorities from operation wardens discrimination matters a lot “Mahatma Gandhi once rightly said that the civilized nature of a country should not be judged by the way it treats minorities. Though the record of India in this change since Independence does not appear to be satisfactory we still wish that democratic ideas in the preamble of the Indian Constitution will someday be a reality for minorities as well.