

AN ANALYTICAL STUDY OF FREEDOM OF RELIGION UNDER THE CONSTITUTION OF INDIA WITH REFERENCE TO CONTEMPORARY JUDICIAL RESPONSES

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India is a secular country with religion occupying a central role. The constitution of India provide that India as a secular state. In this paper freedom of religion has been analyzed. The paper also throws light upon the concept of secularism with comparative analysis of other countries on the issue. In Indian context, secularism means the separation of religion from the state. It means there is no official religion or sponsored religion of Union of India. The paper tries to prove that secularism is a attitude of the state not to provide any ascendancy of religion in the state matters. In this paper constructive work on the essence of the freedom of religion has been made. The paper conclude that to believe in religion is compulsory or not, is not easy to know. For this purpose, the paper has taken help from the judicial construction on freedom of religion and secularism.

Keywords: *Secularism, right to religion, freedom of religion, uncontrolled freedom Hinduism, Public order, Morality, health ,The constitution of India, official religion, etc.*

“Religion must be a matter of principles only .It cannot be a matter of rules. The moment it degenerates into rules, it ceases to be a religion, as it kills responsibility which it and essence of the true religious act”

-Dr. Bhim Rao Ambedkar

INTRODUCTION

The constitution of India provide that India as a secular state. Secularism means the separation of religion from the state. It means there is no official religion or sponsored religion of India, for example,

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where Shri Lanka Buddhism and in Pakistan Islam are official religion. The Indian Constitution allows individuals the freedom to live by their religious beliefs and practices as they interpret these. In keeping with the idea of religious freedom for all, India also adopted a strategy of separating the power of religion and the power of the State. Secularism refers to this separation of the State from religious institutions. Indian constitution is the supreme law of land. It determines the Rights, Duties, Liabilities, powers of persons and institutions. Fundamental Rights are also called as Human Rights rather they are called as Natural Rights. These rights are basic in nature, without these rights it is impossible to live a Human life. India is a secular country it means there is no authenticates religion of Government of India. The Supreme Court had played important role in the maintenance of India as a secular nation.

During the British regime, India was not completely a secular state, some of the religions enjoyed weight age. In India, the 42nd Amendment Act, 1976, has inserted the word 'Secular' in the Preamble. The religious freedom granted under Indian constitution is most revered part under which very person's belief, faith and worship is protected. Still this right is not absolute, uncontrolled freedom is not available to Indian citizens. This freedom is subject to Public order, Morality, health, and other provisions of Part III of the Indian constitution. It means this freedom of religion can be curtailed under certain circumstances. Without any doubt India is a secular country with religion occupying a central role. The country's failure in erecting a US-like wall of separation between religion and state was the first error of our republic. It is generally argued by scholars that the concept of secularism in India as embodied in the Constitution of India is very different from the way it is viewed in the West. The paper has already established how "secularism" implies the separation between State and religion. Such implication is clear in the reading of the Universal Declaration of Human Rights which offers, "The right to freedom of thought, conscience and religion which includes the freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, manifest his religion or belief in teaching, practice, worship and observance. Religion has a close relation not only with the

'Supernatural'; but also with man's social system. Consequently, Dr. Ambedkar took "Religion to mean the propounding of an ideal scheme of divine governance the aim and object of which is to make the social order in which men live a moral order."¹

India is the birthplace of several major religions. According to the 2011 census of India, 966.3 million people identify as Hindu, Who make up 79.8 per cent of its population , and 172.2 million Muslims, who make up 14 .23 percent .Among the other minorities , Christians make up 2.3 per cent of the population and Sikhs 2.16 per cent.² According to 2021 census of India Hinduism is the accounting for about 80% of the population. Islam is the second-largest religion at 13% of the population. Other major religious groups in India are Christians (2.3%), Sikhs (1.9%), Buddhists (0.8%) and Jains (0.4%). People who claimed no religion are officially recorded under 'other' by the census. In 2011, 0.9% of Indians selected the 'No Religion' category.³

The Constitution of India guarantees various fundamental rights to the citizens. One of the fundamental rights under Part III, 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 their own religion which he believes in. This right basically entitles every Indian citizen and gives him the liberty to moralize practice and propagate the religion of his own choice. This right gives relaxation to preach about his/her religion, gives him/her the occasion to spread it among everyone without any fear of governmental retribution and also gives him/her the declaration to practice it in an agreeable manner within the jurisdiction of the country. In the Constitutions of major democracies in the world which accord an equal position to all religion, the impartiality, the State may be the subject of express constitutional provision to that effect or the constitutional provision may be silent on this matter. The Indian Constitution follows latter course except for some provisions in some areas. There are exact provisions relating to particular aspects of State neutrality but there is an absence of any general clause asserting this principle. The framers of Indian Constitution thought that the State should not completely take its hands off religion by enacting a high wall of separation

between State and Church. There were number of good reasons for this approach. One perchance was the philosophical reasons, or the Universalist approach of Indian religions, mostly Hinduism. Another could have the historical background of peaceful harmony of various religions and enough space for their survival that led to the modus Vivendi of law and religion.⁴

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. These constitutional provisions guarantee religious freedom not only to individuals but also to religious groups. These Articles seek to protect religion and religious practices from State interference. India has no preferred or State religion, as such; all religions are treated alike and enjoy equal Constitutional protection without any favor or discrimination. No specific protection has been accorded to any religious group as such. In *S.R. Bommai v. Union of India*⁵, a nine Judge Bench of the Supreme Court examined the concept of Secularism in the Indian Context. According to Sawant, J: "religious tolerance and equal treatment of all religious group and protection group and protection of their life and property and of the places of their worship are as essential as part of Secularism enshrined in our Constitution." *B.P. Jeevan Reddy, J.* observed: "while the citizens of this country are free to profess, practice and propagate such religion, faith or belief as they choose, so far as the State is concerned, i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all are entitled to be treated equally."⁶

According to our Constitution, everyone enjoys the right to pursue the religion of his or her preference. This freedom is measured as a trademark of democracy. Historically, there were rulers and emperors in diverse parts of the world who did not allow residents of their countries to enjoy the right to freedom of religion. Persons following a religion different from that of the ruler were either mistreated or forced to convert to the authorized religion of the rulers. Then, democracy has always included the freedom to follow the religion of one's choice as one of its basic principles. Freedom of religion too includes the freedom of conscience. This means that a

person may prefer any religion or may decide not to follow any religion. Freedom of religion includes the freedom to profess, follow and propagate any religion. Freedom of religion is subject to certain limitations. The government can impose restrictions on the practice of freedom of religion in order to protect public order, morality and health. This means that the freedom of religion is not an unrestricted right. The government can impede in religious matters for rooting out certain social problems. The restrictions on the right to freedom of religion always produce tensions between followers of various religions and the government. When the government seeks to confine some activities of any religious people of that religion feel that this is intervention in their religious Freedom of religion becomes a matter of political argument for yet another reason. The Constitution has guaranteed the right to propagate one's religion. This includes persuading people to exchange from one religion to another. However, some people resent conversions on the ground that these are based on pressure or encouragement. The Constitution does not allow aggressive conversions. It only gives us the right to spread in sequence about our religion and thus draw others to it.

2. CONCEPT OF SECULARISM

In recent times, though, the idea of secularism itself has become contested. While the Christian roots of the term "secular" are recognized by most scholars, there is at the same time acknowledgment that secularism has relevance for non-Christian societies. It is now recognized that separation of church and state is not the only feasible model for secularism. As Charles Taylor writes, "Some kind of distancing is obviously required by the very principle of equidistance and inclusion which is the essence of secularism. But there is more than one formula that can satisfy this. Complete disentanglement of government from any religious institutions is one such, but far from the only one"⁷ The Constituent Assembly, which drafted between 1946 and 1949, the Constitution of India, is an excellent source to locate the thinking behind the Indian secular state. The Assembly debates expose that there was no real agreement on the track that Indian secularism should take. There were some voices in the Assembly, including that of B. R. Ambedkar, who

wanted to severely limit the role of religion in the public sphere. Hence, scientist K. T. Shah raised the demand that there be an article expressly stating that the Indian state has “no concern with any religion, creed or profession of faith.”⁸ However, there were others, like Hindu traditionalist K. M. Munshi, who said the state must take into account that India was a nation of people with “deeply religious moorings”⁹ and who articulated religious tolerance in Hindu terms.

Eventually, it was the “equal respect” theory—where the state tolerates and respects all religions—that won the day. This was also Prime Minister Jawaharlal Nehru’s formulation of secularism. This is a position that oscillates between *sarvadharmā sambhava* (goodwill toward all religions) and *dharma nirpekshata* (religious neutrality). It is no secret that Nehru saw religion as a force that checked the “tendency to change and progress.”¹⁰ This study analyzes the working of constitutional secularism or freedom of religion in India with reference to contemporary judicial responses in matter of religion in India. The Supreme Court is, of course, one among several sites where the contestation over secularism is played out. The study examines how the Supreme Court reacts and demarcates in religious matters, religious practice, religious organizations, and religious freedom. The ways in which rulings exceed the limitations of the court and authority the practice of and the public conversation on secularism are also scrutinized. Article 25 to 28 of Indian constitution devoted to Religious freedom. It means that the citizens of India will have choice of religion, they can profess, and practice and propagate any religion as per their choice. If there is a violation of fundamental Rights of citizens then they can knock the doors of Supreme Court and High courts under Article 32 and 226 respectively. Apex court then determines the contours of Religious freedom of citizens of India. Furthermore in the Universal Declaration of Human Rights, 1948 provided equal freedom of all human rights which is necessary in human being to survive peacefully. Article 1 mentions that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. And Article 18 says 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 and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.¹¹

Secularism is a attitude of state not to provide any ascendancy of religion in state matters. This is philosophy bifurcates the sequential and religious powers. It is method to know the concept of secularism in India. Ideas like secularism can't be held as a dividing tool but it is a compilation of abstracts, philosophical and superior principles of statehood because of the principle for which it has been introduced in the constitution. Secularism in its literal sense means complete neutrality of state in the matters of religion. The Encyclopedia Britannica says the word 'secular' means: non-spiritual, having no concern with religion or spiritual matters. Secularism is an idealism followed by any democratic state. The notion of secularism as west model is not followed in India because Indian secularism is unique one. The state is empowered to interfere in the matters of religion where religion tries to overreach secularism notion. Secularism is most controversial concept under Indian condition because there is dispute which model of secularism India is following. The destiny of Indian secularism and what are the secular principles followed in India it needed judicial interpretation and scrutiny. It is very much necessary to separate the spiritual and temporal powers for better future.

a) Secularism in United State of America

The original American constitution is unaware about the freedom of religion and secularism. American constitution was amended by first constitution amendment Act and in this way America become first official secular state. The role of judiciary is not satisfactory to adhere the concept of secularism because many decisions make it clear that some sort of religious interfere is allowed in state affairs and vice versa. The judiciary is empowered to interpret the first amendment to such an extent to keep church and state away from each other.

b) Secularism in United Kingdom

In Europe till the 16th century the State was under the direct or indirect control of the Pope and during that period the idea of

secularism in the state system arose. The history of the struggle between Church and king in England is very expressive, for various reasons the church tried to exercise its powers in such a way as to hamper the administration of the King. The position of secularism in England is very much different from United States of America and India. In ancient England the decision of church were final and binding on state. The church was in strong capacity to give directions to the state. It asserts by the state temporal and spiritual powers are derived from God or almighty itself and hence church can make binding decisions on state. The present scenario is reversed and King/Queen is head of church and direction can be given by the state to church. The secularism in England which follow model of religious interfere in the administration of the country. The priests can hold many positions in state departments.

c) Indian Secularism

Indian constitution declares that state cannot declare any religion as state sponsored religion nor shall discriminate among the religion and religious denomination. The state was barred from discriminating among Indians on the ground of religion. Religious freedom is available to all subject to secularism concept followed in India. But in India we have to see that state or judiciary can interfere in religious matters. It's because society need that interference due to several unsolved religious matters. The social reforms are yet another ground on which state can interfere in the religious matters of individual.

3. FREEDOM OF RELIGION

Freedom of religion and secularism are antonymous to each other but still makers of Indian constitution nicely clubbed two concepts to in such a way to achieve harmonious and peaceful coexistence in the nation. Freedom of religion and secularism are not defined under Indian constitution hence it triggered the significance of judicial interpretation to solve many disputing situations. The role of judiciary in country like India is very vital as there is always tussle between the freedom of religion and secularism. Secularism can be defined as neutrality of state regarding religious matters. It

is expected in secularism country like India that religion will not interfere in temporal powers of the state and state will provide at most liberty to religion to practice it without any hurdle. Part III forms Article 25 to 30 are totally devoted to freedom of conscience it's merely protects the freedom of religion to practice rituals and ceremonies etc. which are integral parts of the religion. A disposition towards making gift for charitable or religious purpose may be a pious act of a person but the same cannot be said to be an integral part of any religion. In order to keep society cohesive, religious liberty is necessary. Preamble is prefacing to Indian constitution it plays vital role in interpretation of provisions of constitution. The Constitution of India had given power to judiciary to interpret it as situation demands in the society. Article 25 of Indian Constitution is a revered legal document created by the mutual understanding of the people. It is will of people in which way they wants to live their life. There are several provisions under Indian constitution which empowers to practice religion as fundamental right. Freedom of conscience and free profession, practice and propagation of religion.

I: subject to public order morality and health and to the other provision of this part, all persons are equally entitled to freedom of conscience and the freely to profess practice and propagate religion.

II: Nothing in this Article shall affect the operation of any existing law or prevent the state from making any law - regulating or restricting any economic, financial political or other secular activity which may be associated with religious practice; providing for social welfare and reform or throwing open of Hindu religious institutions of public character to all classes and sections of Hindus.

The freedom to manage religious affairs is provided by Article 26 (a) of the Constitution. This Article 26 (a) gives the right to every religious denomination, or any section thereof, to implement the rights that it stipulates. However, this right has to be exercised in a manner that is in compliance with public order, morality, and health. There is the establishment of an educational institution comes within the meaning of the expression "charitable purpose" is not questionable. This religious right is group right and is available to every religious denomination. The Article 27 prohibits is the

levying the tax and not of fee. In *Rati lal v. State of Bombay*,¹² the Supreme Courts has held that a tax is in the nature of a compulsory exaction of money by a public authority for public purposes. Tax is a general burden and the only return which the tax – prayer gets is a participation in the common benefits of the State. Fee are, on the other hand, payment primarily in the public interest but for some special service rendered or some special work done for the benefit of those from whom the payment are demanded. According to Article 28 (1) no religious institution shall be imparted in any educational institution wholly maintained out of State funds. But this clause shall not apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious institution shall be imparted in such institutions.

The Constitution of India provided these provisions for the citizen to enjoy all fundamental rights and protect the interest of citizen as a secular country, along with absence of state religion; India qualifies to be a secular state.

4. ESSENCE OF FREEDOM OF RELIGION:

To know the importance of religion in person life is not possible. To believe in religion is compulsory or not, is not easy to know. It is highly impossible to tress the grounds of religious belief. It is the individual choice to have or haven't belief in religion. It is the inner conscience of person which drags him to have belief on particular religion. This important freedom is guaranteed under Indian constitution. The fundamental object of any religion is to organize the individuals under one umbrella and inculcate the concept of common brotherhood under the philosophy of any religion. Freedom from religion means liberty not to believe in any particular religion. A person is allowed not have belief and faith in particular religion. If a person can enjoy the fruits of religion as per the choice of person, and if he/she wants change belief, faith and can convert another religion. If a person wants to follow the doctrines of any religion then it is free. When he professes any religion then he must follow essential or integral part of religion. When an individual rejects

basic tenants of any religion then he may not called follower of any specified religion. In *Gurlen Kaur v. State of Punjab*¹³, Supreme Court held that it is the duty of follower of religion to follow all the basic modes prescribed by the religion. Whenever an individual is exercising religion it shall not violate rights guaranteed to other religion. Indian secularism is the best example secularism in the world because secular Indian constitution provides freedom of religion to all. That is matters of religion, the State is neutral. In *Aruna Roy case*,¹⁴ The Supreme Court has held that, The word 'Secularism' means developing understanding and respect for different religions. Secularism is thus disposed to this positive meaning and a basic feature of the Constitution.

In *S.R. Bommai V. Union of India*,¹⁵ the Supreme Court has held that 'Secularism is the basic feature of the Constitution.' Article 25 to 28 of the Constitution guarantee to every person the freedom of conscience and the right to profess, practice and propagate religion. The concept of secularism is not defined anywhere under Indian Constitution but In *St. Xavier Collage V. State of Gujarat*,¹⁶ the Supreme Court has said, "although the words 'Secular State' not expressly mentioned in the Constitution but there can be no doubt that Constitution makers wanted to establish such a State" and accordingly Article 25 to 28 have been include in the Constitution. Indian constitution mandates that the Indian State be Secular. According to the Constitution, only a Secular State can realize its objectives to ensure the one religious community does not dominate another. Secondly, some members do not dominate other members of the same religious community, and that the State does not enforce any particular religion nor take away the religious freedom of individuals. The Indian Constitution allow the State to promote the secular aspect of religious laws , practices and institutions as it does not display favorites among different religions. This has, popularly come to be known as "equal respect for all religions".¹⁷

The preamble to the Constitution declares India to be a Sovereign,

Secular , Democratic Republic and its objectives is to secure justice ,Liberty , Equality and fraternity for the people of India without any discrimination on the ground of religion , cast , creed , gender and place equal citizenship has been conferred upon all the Indians . As equal citizens they all enjoy equal Fundamental rights as contained in the part iii of the Constitution and equal political rights. Article 14 to 18 of the Constitution guarantee the right to equality to every citizen of India. Article 14 ensures equality of all citizens before the law and confers equal protection of law within the territory of India. Article 15 (1) declares that the state shall not discriminate against any citizen on the ground of religion ,caste , creed ,gender and place of birth or any of them be subject to any disability , liability , restriction or condition with regard to access to all public places .Article 16 guarantees equality of opportunity for all citizens in matter relating to employment or appointment to an public office under the state . Article 17 of the Constitution abolishes the practice of untouchability and declares it to be an offence punishable in accordance with the law. Article 18 abolishes title. The Constitution seeks to protect the interest of all sections of society. Under Article 25 to 28 the Constitution grants the Right to freedom of religion. And also as per need of the society the Constitution try to protect the interest of the society provide Article 29 holds “ Any section of the citizen residing in territory of India or any part of there of having a distinct language , script of its own shall the right to conserve the same ,” further , no citizen can be denied admission into any Educational Institution on ground only of religion , race , caste , language or any of them. Article 30 grants to the minorities the right to establish and administer their educational institutions. The state gives special protection to the people belonging to Scheduled Caste, Scheduled Tribes, tribal woman, children and other backward classes, it provides for reservations in jobs to the people belonging to SC, ST, and OBCs. Therefore, it accepts the principle of protective discrimination as an integral part of Indian Secularism. Without socio-economic equality and justice there can be no real secularism and for the interest of the weaker section has been specially protected.

5. JUDICIAL RESPONSE IN MATTER OF RELIGION IN INDIA

The Supreme Court's decisions on religious freedom, thus, represent the interventionist tendencies of the Indian state. The Court is an ideal atmosphere to examine the state's approach to religion and its consequences for religious freedom. The debates that occur in the courtroom attach the highly theoretical arguments on secularism to immediate, tangible issues, felt deeply by the nation's citizens. Because the Supreme Court is tasked with balancing religious liberty with the state regulation of religion—two competing impulses in the Constitution—its decisions are extremely consequential for religious communities in India. Conflict is predictable. In moving out its duty to resolve disputes and interpret laws, the judiciary gives substance to the guarantee of religious freedom, and determines the degree of restriction that can be placed upon it. Speaking to the role of the courts, Tahir Mahmood writes, "In the secular India of our times, it is the law of the land that determines the scope of religion in the society, and it is the judiciary that determines what the laws relating to the scope of religion say, mean, and require."¹⁸ A secular state is required to permit the free practice of any religion, within reasonable limits. One another reason why it is prudent to consider the Indian Supreme Court's adjudication on religion. Several recent cases have made it clear that judges read, cite, and contemplate scholarship on the Court's approach. Their engagement with this material will unavoidably influence their decision-making. Indeed, the Court is comprised of individuals, some of whom bring a self-reflective attitude to their judgments. That being the case, the body of erudition dealing with secularism, religious freedom, and the Supreme Court is not only descriptive of the judiciary's approach, but may even influence its course. Ideally, contributions to this discipline could improve the ability for the judges to consider the broader context of their judgments, perhaps leading to more enlightened decision-making. From the inception of Article 25 and 26 in the Constitution of India, the power of deciding whether a practice is essential to a religion or not was only with the court. In the *Sabarimala judgment*¹⁹, the court exercised its power and decided against the old and elementary practice which holds no value in today's society. India is developing and such practices which are

gender biased, considering menstruating females to be impure have no place in the society. Though the Sabarimala verdict has opened Pandora's Box giving rise to a number of applications challenging practices which are biased mostly against women. The court has not been at fault in deciding in favor of women as the old custom was violative of right to equality and was arbitrary in nature. The court held the practice unconstitutional.

In early 2019, two women broke the longstanding prohibition and entered the Sabarimala temple for worship.²⁰ Their actions were prompted by the 2018 Court decision, which found the restriction on women's entry unconstitutional and compelled the local police to provide security for any women attempting the pilgrimage. Many women before them attempted to enter the Sabarimala temple, but were blocked or intimidated by protestors. The successful entry of women into the temple, some would argue, has irrevocably altered the local religious landscape. Following the two women's visit to the shrine, temple officials temporarily closed Sabarimala to perform rituals of purification.

The name of the in famous case is *Indian Young Lawyers Association v. The State Of Kerala*.²¹ In 1991, the Kerala High Court considered the constitutionality of the restriction on women, and upheld the restriction as "in accordance with the usage prevalent from time immemorial."²² In 2018, the issue was raised again in the Supreme Court, which set aside the earlier decision. The Court declared the restriction upon women's entry unconstitutional. The majority judgments were grounded in the language of human dignity, equality, and progress. However to arrive at their conclusions, the judges had to consider several apparently ordinary questions on the nature of Lord Ayyappa devotees and their practices. Interestingly, these questions were significant for this revolutionary decision:

1. Whether the practice of excluding such women constitutes an "essential religious practice" under Article 25 and whether a religious institution can assert a claim in that regard under

the umbrella of right to manage its own affairs in the matters of religion?

2. Whether Ayyappa Temple has a denominational character and, if so, is it permissible on the part of a 'religious denomination' managed by a statutory board and financed under Article 290-A of the Constitution of India out of the Consolidated Fund of Kerala and Tamil Nadu to indulge in such practices violating constitutional principles/ morality embedded in Articles 14, 15(3), 39(a) and 51-A (e)?²³

Though other factors prejudiced their conclusions, the judges placed significant weight on these two questions. The devotees were compelled to prove their denominational status and the essentiality of the impugned practice in order to satisfy the Court's jurisprudential tests. The Sabarimala case attests to the evolution of these controversial juristic techniques, the religious denomination test and the essential practices test. Furthermore, the public reaction to the case establishes the relevance of religious freedom adjudication in India, and demonstrates the interrelationship between several distinct realms: the religious, the public, and the judicial. Also In *Sarala Mudgal's* case²⁴ Supreme Court was solving very important question that whether a person can ramify during the life time of first wife, because section 494 of Indian Penal Code 1860 rues as under "Marrying again during lifetime of husband or wife. Apex court of India had delivered a landmark judgment and held that ""It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall Endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing *A Common Civil Code* for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. *A Common Civil Code* will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, undeniably; it has the legislative capability to do so.

The major challenge in the accomplishment of the Uniform

Civil Code is Article 25 of the Indian Constitution. The minorities of the country oppose the implementation of the Uniform Civil Code by taking the protection of Article 25. Under this Article, a person is free to practice and propagate his choice of religion. The religious practices prevalent in the personal laws of communities are continued to be practiced. These communities contend that the right to freedom of religion in Article 25 enables them to manage personal laws according to their community's laws. The introduction of Uniform Civil Code is challenged as a violation of the fundamental rights under Article 25. Article 44 is only a Directive Principle of State Policy which is not enforceable in courts but Article 25 is a Fundamental Right which is enforceable in courts. Though, Article 25 excludes secular activities from its purview. Secular activities are to be dealt with by the State and not the religion. This exception is considered to include personal laws by the supporters of the Uniform Civil Code. It is a key point to notice that matters like divorce, adoption, inheritance are matters of law and not of religion. These matters can be separated by religion for better applicability of constitutional provisions. Law and religion are better to be separated. This is a long going argue. But the need for a Uniform Civil Code cannot be denied.

Like most Supreme Courts, the Supreme Court of India is the final arbitrator of constitutional disputes in the nation. Including the Chief Justice of India, the Court today consists of a maximum of thirty-one judges. The number of positions increased considerably over the years due to an increase in cases and workload. The appointment process for judges also has seen substantial change. Previously, judges were appointed by the president on the advice of the union cabinet, an executive body led by the prime minister. In an effort to promote judicial independence, the Court later adopted the collegiums system in the 1990s. Under this system, Supreme Court judges are appointed by the president upon the recommendation of the collegiums, which consists of the Chief Justice of India and five senior judges.²⁵ There is no fixed term for judges' tenure, and they retire at age sixty-five. Typically, judges sit on benches of two or three members. Particularly important cases are heard by a larger bench of five or more, known as a constitution bench. In *Ayodhya*

Land Dispute case (*M Siddiq (D) Thr Lrs vs Mahant Suresh Das & Ors*) the Supreme Court delivered a landmark judgment in the Ayodhya land dispute case. The five-judge Supreme Court bench led by Chief Justice Ranjan Gogoi read out a unanimous judgment and ruled in favour of the Ram Janmabhoomi and said there will be a Ram Mandir at the disputed site and Muslims will be given an alternate 5 acre land for their mosque. The fact of the Ayodhya case is that, some Hindus believe that the Mughals destroyed a temple in the 16th century that marked the birthplace of Ram,²⁶ one of the Hindu gods.²⁷ The Babri Masjid mosque was built on that site in Ayodhya, Uttar Pradesh. Violence over this dispute has been documented in 1856-57, 1934, and 1949.²⁸ In December 1949, some Hindus placed an idol of Ram in the mosque and began to worship the idol.²⁹ Muslim worship at the site was discontinued from that day.³⁰ In 1992, the mosque was illegally destroyed.³¹ The Supreme Court of India resolved this dispute in this case. Chief Justice Ranjan Gogoi aptly summed up the breadth of the Court's challenge in one sentence: "This court is called on to determine the legal consequences arising out of a thousand years of prayer, contest, construction, and destruction at the disputed site Muslims will be given an alternate 5 acre land for their mosque."

6. THE SUPREME COURT –THE FINAL INTERPRETER OF THE CONSTITUTION

India is a religiously diverse society and self-proclaimed secular state. The religious freedom clauses of Indian Constitution allow for the state to regulate and restrict certain activities associated with religious practice. By interpreting the Constitutional provision for religious freedom, the Judiciary plays an important role in determining the extent to which the state can lawfully regulate religious affairs. The Supreme Court is the guardian of the Constitution of India. Truly, the Supreme Court has been called upon to safeguard civil and minority rights and play the role of "guardian of the social revolution".³² Under the constitution of India, the Supreme Court is provided with the scope of judicial review. The judicial review allows the Supreme Court to safeguard fundamental rights and struck down legislations which are violative of Constitutional provisions. Under Article 13, 32, 131-136, 143, 226 and 246 of the Supreme Court can review any

law. Article 13 declares that all laws that are inconsistent with or in derogation of the Fundamental Rights shall be null and void. Article 32 guarantees the right to move the Supreme Court for the enforcement of the Fundamental Rights and empowers the Supreme Court to issue directions or orders or writs for that purpose. Indian Constitution is federal in nature and it is the constitutional duty of the Supreme Court to interpret the constitution. Under its original jurisdiction, the Supreme Court keeps the government within their limits by judicial interpretations. The Supreme Court protects citizens against legislative excesses and executive arbitrariness. It protects our country from tyranny of executive and legislature through judicial review. In absence of judicial review and judicial activism, various legislation or executive actions might undermine the very spirit of democracy. Articles 137 of the Constitution of India empower the Supreme Court to review its own order or judgment. This power of correction makes the judiciary correct its own mistakes. As per the change in circumstances and conditions and coming into existence of new facts and laws the Supreme Court and High Court overrule and set aside their own judgments and orders. The Supreme Court has done this many times, for example in *Kesavananda Bharati case*³³. This case upheld the changes in 24th amendment in Article 368 and Article 13 of Indian Constitution by overruling *Golaknath Judgment*³⁴ of 1967. Thus, the constitution has provided judiciary with independence and enough powers to keep executive in check making Supreme Court as the final judge of the constitution.

7. CONCLUDING OBSERVATION AND SUGGESTIONS

Religion plays a significant role in the improvement of individual personality. In India, people of different religious faith and sects reside together. The Constitution of India play very important role to protect the interest of the people. Judiciary has guardian, provider and examiner in modern world. It is the duty of state to declare law and order place in the society and to direct the behavior of individuals. The Supreme Court has duty to safeguard the fundamental rights of individuals and create a secular atmosphere in the country. Secularism is another concept enshrined under Indian Constitution it is also the duty of Apex court of India to follow

constitutional mandate and protect the basic structure of Indian constitution. The Supreme Court of India had in many cases tries to protect individual religious freedom against secularism or beside any state action. In N. Adhitayan's³⁵ case Apex court of India held that any person who is well versed with rituals of temple is adequate for the appointment of archakas or priests under any Hindu temple. It clearly shows that intention of Supreme Court of India to protect individual religious freedom and not the communal freedom. It was also observe by the court that though it is matter of purely communal purpose still court will interfere in the religious matters on the ground of secular activity of state. The court also dismiss the writ petition which claims priest ship as hereditary right of Brahman community a small community among Hindus. In *Ratilal Panchand Gandhi v. State of Bombay*³⁶ Supreme Court of India was dealing with very important aspect of freedom of religion regarding religious denomination. The petitioners in both the cases assailed the constitutional validity of the Act, known as the Bombay Public Trusts Act, 1950 (Act XXIX of 1950), which was passed by the Bombay Legislature with a view to regulate and make better provisions for the administration of the public and religious trusts in the State of Bombay. The Act was brought into force on and from the 1st of March, 1951, and its provisions were made applicable to temples, maths and all other trusts, express or constructive, for either a public, religious or charitable purpose or both. This was an appeal before Supreme Court of India which challenges Bombay Public Trusts Act, 1950 as violation of Article 25 and 26 of Indian constitution. These two Articles enshrined under part III provide freedom of religion to individual as well as freedom to administer religious affairs. In this Act constitutional validity of the Act was challenged. There was Parsi group of people donator's form where donation was accepted for the well fare of Parsi community. The Act passed by the Bombay was violating freedom of religion. The object of the Act, as declared in the preamble, is to control and make better provisions for the administration of public, religious and charitable trusts within the State of Bombay. It includes, within its scope, all public trusts created not just for religious but for purely charitable purposes as well and extends to people of all classes and denominations in

the State. The Indian Judiciary has an unavoidable part in solving controversies in law relating to religion. It is very obvious that the State can administer only the secular acts whereas with consider to the religious acts. The Indian Constitution provides safeguard from the intervention of State in religious matters. Eventually, it is the Judiciary which only has the power or right to interfere in the religious practices and matters of religion. The Essential Religious Practice test is one of the contributions of the Indian Judiciary in matter of religion. The essential practices test determines what practices are entitled to protection under Articles 25. By virtue of the obscurity in *the Shirur Mutt case*³⁷ the Essential Religious Practice test emerged in India. The Supreme Court obliterated the assertion test, where the only basis to prove a particular act was not secular was the 'assertion' of a high capacious priest stating the same. The Essential Religious Practice test was brought in as a replacement to this test. The safeguard guaranteed under Articles 25 and 26 of the Constitution is granted to the acts done in pursuance of the religious rituals and ceremonies, beliefs, modes of worship, practices which are integral or essential part. With reference to its various doctrines, practices, tenets, historical background etc, has to be determining as to whether such beliefs and practices are integral or essential part of the religion or not. The essential part of a religion means the core values upon which the religion is founded. The essential practices mean those practices that are fundamental to follow a religious belief. One of the tests which has been applied is to see if the taking away of that part or practice could result in a fundamental change in the character of religion or its belief and if it does change, then such a part be treated as an essential and integral part. Belief must be of an essence of that religion.³⁸ It is very much evident that the Supreme Court of India has managed to provide the definition of religion and sketching boundaries to the fundamentals of religion with respect to the Indian Constitution. The Judges are given the sole authority to determine whether a religious practice is integral to the religion or not. One cannot divide the practices of a religion into essential and non-essential practices without understanding that religion in deeper sense. Having assumed the power greater than any religious leader, they acted as a theological authority so as to determine the

practices which were essential for a religion.³⁹

Finally, in concluding observation, after analyzing the various case laws, judicial decisions in above study here find those judiciaries play very important role in religious inconsistency arise in the country. The Supreme Court is the final interpreters of the Constitution .It protect all Constitutional rights to citizens. The Supreme Court held in various cases that freedom of religion is subject to the right of others rights. Secularism is an integral aspect of the Preamble, which is also included as the basic structure of the Indian Constitution. Secularism does not only separate religion and the state. It also means accepting every religion and religious tolerance. In India, the Constitution has empowered the judiciary to ensure religious prejudice and reform offensive religious practices. As the Indian judiciary is an organization of the state. Secularism refers as an ideology which provides people with the right to follow any religion or not. The Supreme Court's approach elucidates the features of Indian secularism not just in theory, but also in practice.

SUGGESTIONS

1. Present day the world is moving from religiosity to secular way of life. However, evidences show that religious beliefs have not fully declined in our Indian society .It is necessary to society to maintain law and order and avoid religious controversies.
2. Indian Constitution does not provide any specific definition of secularism but expressed it in Preamble of the Indian Constitution and also in Article 25 to 28 to guarantee the freedom of religion to every persons of the society. Therefore, it is duty of persons to accept those rights and not create any controversies in matter of religion.
3. A problem of Uniform Civil Code is essential in the direction of bringing about national identity and the addition of members of all religious communities into one bond of common citizenship. But till now no progress has been made

in the evolution of a Uniform Civil Code.

4. The secularism is basic structure of Indian constitution and hence it must succeed over individual religious freedom guaranteed under Article 25 of Indian constitution.
5. The Supreme Court of India must not be impeded in religious matters if any religious custom, traditions contrary to philosophy of Article 25 of Indian constitution.
6. The Supreme Court of India must shape religious freedom in accordance with provisions of Indian constitution. But the political parties in India have tended to use religion and caste factors for the promotion of their political interest and thus greatly undermined the secular values.

“The reality is that our independent judiciary is the most respected branch of our government and the envy of the world”

-Ted Olson

Notes

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