
The Clash between Right to Freedom of Religion in India and other Individual Rights

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Abstract

The plural and secular nature of India is different from that of any other country since religion is taken more seriously here. India is a diverse country where followers of different religions live peacefully. Although the Constitution of India provides in its Preamble that the Indian State is Secular in nature and the Constitution of India guarantees its citizens the Right to Freedom of Religion, we also see the misuse of religious rights which violates other rights of citizens. The existence of multiple religions in the country does not always create peace. The paper addresses the paradox of the necessity of ensuring the Right to Freedom of Religion for citizens on one hand, and the equally essential individual rights it ends up violating on the other. It elaborates on the position of Right to Religion in India and illustrates how unrestricted freedom of religion can end up disrespecting other important rights of the individuals.

Key Words: Religion, Constitution, Article 25, Fundamental Rights, Preamble

Introduction

Religion in India

Religion and India have never been apart. It has always influenced society politically, culturally, socially, morally, and economically. The population here is diverse as well as extraordinarily devout to their own faiths and beliefs. With Hinduism being a major religion and Islamism, the second major religion succeeded by Christianity, Buddhism, Sikhism, and Jainism, the diversity is enough to impact contemporary society continually. Religion is often seen as the center of many debates, conflicts, and tensions in the country. Research has shown that Indians value religious tolerance, though they also live segregated lives¹. It means that for Indians, it is important to respect other religions and be united but it is also important for them to be part of their own community and value religion since it is a part of their identity.

The Plural nature of Indian society has always accepted all religions and sects with honour and is home to many popular religions in the world. That is why the religious history of India is rich which gives a sense of pride to the countrymen. Even the Britishers divided India's history on a religious basis as Ancient, Medieval, and Modern history with respect to Hindu, Mughal, and British rule. For centuries, it is continuing to be a defining feature of the country. Because it is taken far more seriously in India than it is often taken in the West.

Secularism

India's Constitution declares it a "Secular State". It means having no religion of its own. Secularism is a fundamental tenet of our Constitution.² It protects all religions but interferes with none. It embodies the positive concept of secularism as opposed to the American doctrine of secularism. The Indian state is not anti-religion nor pro-religion and is certainly not anti-God. 'State tolerance of religion does not make it either a religious or theocratic state.'³ The State treats and protects all religions and denominations equally. Besides having no official religion, still it plays a significant role in India. This might be the reason why it is given that is why the right to freedom of religion is a fundamental and in separable part of our Constitution. No one can be allowed and justified to interfere in anyone's religious beliefs. The secular nature was added by the 42nd Amendment Act.

Right to Freedom of Religion under the Indian Constitution

Indian Constitution puts forth the Right to Freedom of Religion in Art. 25 to 28.

➤ Article-25

"Freedom of conscience and free profession, practice and propagation of religion." Under Clause (1): "every person is given the guarantee of freedom of conscience. Also, providing right to profess, practice and propagate religion. These rights have some restrictions. They cannot be exercised by overlooking public order, morality & health, and provisions like this." Also, under sub-clause (a) and (b) of clause (2), the State is empowered under Sec. 25(2)(a)(b):

- (a) That it can both regulate and restrict activities like any economic, financial, political, or other secular. But they shall have association with religious practice;
- (b) It provides (i) social welfare and reform and (ii) opens Hindu religious institutions of a public character to all classes and sections of Hindus.

Therefore, there are 2 kinds of freedom guaranteed by this article- (i) the freedom of conscience which is the absolute inner freedom of a citizen, and, (ii) the freedom to profess, practice and propagate which is subject to the given restrictions.

➤ Article-26

Every religious denomination of any section shall have the following rights, it states, subject to public order, morality, and health: (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire real estate; and (d) to administer such property in accordance with the law. Since the

right provided by Article 25 is an individual right and the right guaranteed by Article 26 is the right of a "organized body" like the religious denomination or any component thereof, the two articles were prepared concurrently.⁵

➤ **Article-27**

Under this, no one can be forced to taxes which can be used for promoting any religion and maintaining denominations of any religion. This Article emphasizes the secular character of the state. Similarly, money collected in form of tax by people cannot be spent for promoting any religion.

The concept behind this is that because India is a secular State, it cannot use public money for purposes which promote any religion. Art. 27 prohibits the levying of tax and not offer.⁶

➤ **As given in Indian Constitution Article-28 states that-**

“Freedom as to attendance at religious instruction or religious worship in certain educational institutions

- (1) No religion 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 Cultural and Educational Rights.”

However, it allows studying of religion, philosophy, and culture as it helps in having value-based and good social life.⁷ This statement also emphasizes that religion is the foundation for the value-based survival of human beings in a civilized society.

Restrictions on Freedom of Religion

1. *Religious liberty is subject to public order, morality, and health-* Article 25 and Article 26 specifically mention these restrictions. Acts like indecent exposure of a person, untouchability, traffic in humans, or the system of Devadasis. These bad practices are not acceptable and justiciable by taking garb of religion. This freedom is also subject to “other provisions of this Part” i.e., to other fundamental rights. It does not allow forcible religious conversion of any person.⁸

2. *Social welfare and Social Reforms-* Under Art. 25(2)(b) for social welfare and social reforms, laws can be made by the State. These laws can be used in removing social evils, practices and dogmas as they stand as barrier towards country’ progress.

Therefore, to sum-up, the Right to Freedom of Religion under the Indian Constitution gives the liberty and freedom to associate with religion however one wants to but still being restricted in the ambit of not violating the rights of others and public welfare. This right is

guaranteed under the Fundamental Rights since faith or belief is elementary to human nature and is something that helps one to survive.

Right to Freedom of Religion violating other rights

Sometimes, the rituals, beliefs, supernatural powers, and forces conflict with science and logic which further drives the hate. What one's religion allows; the other's religion might oppose resulting in disturbances in the public which can be seen as violating other rights of the people. Since India is such a vast and diverse country where a number of religions are flourishing, religion-based conflicts are more common than one might think. Every now and then we see hate crimes such as mob lynching taking place in the country. India has seen freedom of religion being used as a same answer to acquire monetary gains, obtain political fame, commit crimes and retain the position of power and gain everyone's support. Brutal murderers have not been punished yet for religious murders.⁹

Here are some of the most common rights violated in the name of 'Freedom of Religion -

Freedom of Speech and Expression

Art. 19 (1)(a) provides Freedom of speech and expression to its citizens. These two rights of freedom of religion and speech & expression are in constant tug of war these days. As people connect through the Internet and express themselves, it has also become a platform of arising conflict and hate. One might argue that in the shade of Freedom of Religion, people are targeting others' freedom of speech. In light of recent cases like the Comedian, Munawar Faruqui and ex-BJP spokes person, Nupur Sharma the debate between the two rights has sparked up even more. Of course, there is a line between freedom of speech and hate speech but we need to learn to differentiate between them. The right to speech does not include the right to offend and the offended can peacefully protest or take the help of the law but cannot do vigilante justice. Section 295A¹⁰ of IPC provides the hurting of one's religious sentiments as hate speech. This section has also not escaped from misuse. These kinds of laws remain an outlet by which offended citizens can vent out their anger at perceived insults to their communities or religious beliefs. It has been used to curtail the freedom of people and wrongfully detain them but later they are acquitted by the court as their offense is not proven. But they still go through the process of wrongful detention which clearly violated their rights. In 2010, in Kerala there was a teacher following Christianity was assaulted and his hands cut off the wrist. This act was done by Popular Front of India currently banned in India which is an Islamic organization. Reason for this act was because he showed cartoons which were published by magazine known as Charlie Hebdo. These caricatures were of Prophet Mohammad. Freedoms are given with certain and reasonable curbs and should peacefully exist with other fundamental rights.

Right to Equality

Right to equality talks about equality between each and everyone. But in the ancient texts and scriptures there have been examples and instances which promote inequality, gender

inequality with regard to women. This thing is common most of the religions. Although with society becoming modern such things have become less but still much must be done.

Due to people becoming educated, things have changed but there are places where widows are made bald, menstruating age girls are stopped from entering temples and participating in holy ceremonies, women are mutilated in Bohra community, Muslim women are restrained from entering mosques for payers. All these things have shown the fundamental right of freedom of religion in violation of the right to equality before the law without any discrimination or prejudices against anyone. In 2018, the Supreme Court opened the Sabarimala Temple in Kerala to women of all age groups. Almost 50 review petitions were filed in the Supreme Court as a result of the decision seeking protection under Articles 25 and 26. And even after this, the entrance of women and children involves a difficult process.

While we are speaking of gender equality being violated, we cannot possibly ignore the coexistence of the caste system in India which is the core of the very existence of Hinduism. Many instances are reported where lower caste people are stopped from entering temples and other ill practices in the name of religion. Recently, a Dalit man was beaten up over 'ghurchari' by several upper-class men alleging that the practice was only for upper-class people. Thus, a violation of the right to equality over the right to freedom of religion is still prevalent in India.

Right to Life and Personal Liberty

Art. 21 of the Indian Constitution guarantees the right to life and personal liberty. But religious freedom through the years has created religious violence & communal riots dividing the country and amongst all this, the right to life and personal liberty is violated. The seeds of communal differences and hate have been laid down by the Britishers and then worsened by the partition. Hindu-Muslim riots alone have claimed thousands of lives and destroyed the properties of people.

The Gujarat riots of 2002, the Muzaffarnagar riots in 2013, the demolition of Babri Masjid in Ayodhya in 1992 and the most recent the Delhi riots of 2020¹¹ have all shown that this right to life and liberty is so fragile in front of the right to freedom of religion. Only because one religious sect or community has felt that it is their claim on a certain area or their right to go against another religion this itself has led to immense violence taking away the lives of thousands and depriving them of the right to life and personal liberty.

Religious violence not only claims the lives of people but also takes a toll on public health. Health is also an essential part of the right to life. Recently, amidst the corona pandemic in 2020, we witnessed a religious gathering in New Delhi known as the Tablighi Jamat whose members included people from India as well as abroad when Covid-19 was in a very fatal stage. More than 640 cases¹² had come up as a result of this gathering in the name of religious freedom.

LGBT Rights

Demand for Lesbian, Gay, Bisexual, and Transgender rights are growing rapidly in recent years in India. It is getting support from various political and social movements. As the awareness spreads, it is getting acceptance among people. Like around 3 out of 4 Indians supporting same-sex relationship.¹³ However, LGBT citizens face rejection and social as well as legal difficulties in the country mainly because of religious bodies claiming homosexuality to be against their religion.

In *Navtej* case,¹⁴ a landmark case, the S.C decriminalized all consensual sex among adults, including homosexual sex. The Supreme Court later reopened the homosexuality debate and all the religious bodies united to oppose LGBT Rights. The Hindu, Christian, and Muslim organizations unanimously disapprove of homosexuality and argue that Indian Society would never approve of it. Homosexuality is an abomination and an act of sodomy as per the Bible, the AIMPLB¹⁵ opposed it saying it is against all religious faiths and the Secretary General of VHP Champat Rai said that it is against Indian culture.

Conclusion

Although religion empowers India, gives hope to millions of people and it is the soul of Indian Culture but it also provides a scope of violence, violation of rights, misogyny, discrimination, and hypocrisy. It is often used as a medium to manipulate the masses and suppress and humiliate people. Several times inhumane activities are accepted by people because their religion allows them to do so. These activities in the name of religion need to be stopped in this country. The Right to Freedom of Religion is available to all citizens for equality amongst all religions but people twist it in such forms which result in violation of others' rights. There are restrictions on this freedom but they need to be more severe so that it is not misused to violate other rights. Religious freedom can never go against humanity and the harmony and strength of this country. It is and will always be responsibility of the State to be highly responsible, active and vigilant in order to control and condemn religious violence and strict action should be taken against such elements.

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