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Right to freedom of religion

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ABSTRACT

The flexibility of religion does not imply that each individual can do what he feels under the shroud of the religion. It doesn't imply that the religion is wild, free. The composer of the Constitution given some limitation on the flexibility of religion, with the goal that the profitable right of the opportunity of religion may not be abused. This flexibility is to be guaranteed in an adjusted way so as not to jeopardize the security and prosperity of the general public, the support of which is the right of the State for the best possible development and the advance of the general population. Thus, Constitutions give additionally the ability to direct and even to limit this flexibility. As the establishing fathers were composing the Constitution, they trusted that administration should have been mainstream so as to keep the peace between religious groups, and they put forth an admirable attempt to make a statement with no religious desires. "Right to freedom of religion is not only a right guaranteed by the constitution but also at the same time is a duty expected to be followed, for the betterment and overall growth of the society."

Keywords— Flexibility, Shroud, Constitution, Jeopardize, Religion, Administration, Prosperity, General Public

1. INTRODUCTION

Since its existence, Identity dilemma is of the major concern for man. For same we all came upon with an idea of associating with something or someone greater than us. Namely, God something superior, divine and not a human being. The people with the same idea of God came together & started following the same customs and beliefs. They also shared common views on their culture. They gave themselves an identity and give birth to Religion.

Many scholars have given considerably acceptable definitions of religion. While it is characterized by religion, one standard model of religion utilized as a part of religious courses was proposed by CLIFFORD GRETZ, who essentially called it a "cultural system". Law is a set of rules & regulation which control human conduct in the society. In today's world, the law is entering into every reach of human life. Law and religion both conduct the human behavior. Law is sanctioned by the state whereas religion is supposed to be sanctioned by God. State play important role in encouraging human values in the society. It also guarantees the protection of the same. Now religious freedom is guaranteed as a legal right in the democratic era.

India, most popularly known as the land of philosophy, spirituality & the origin of civilization, was a birthplace of different religion. Religion is a particular system of faith, beliefs, and worship. Religion is a set of faith and belief which is held by a group of people. There is a much different religion and each follow different beliefs and customs. Taking into the account of Indian scenario we can conclude that people in India have strong faith and belief when it comes to their religion as they adjudge that religion which they followed add meaning and reasons to their lives.

In India, Art. 25-28 of the constitution of India deals with the right to freedom of religion. The right to freedom of religion entitles every citizen of India and gives them liberty to profess, practice and propagate any religion of their choice. The right also provides them the freedom to sermonize about their religion. It also gives the opportunity to spread it among everyone without any fear of government involvement.

Every person has the freedom to have faith in the religious beliefs of any particular domination. This right is mainly to provide every person with an occasion to declare in open and without hesitation what he truly feels about his religion.

2. CONCEPT OF SECULARISM

Secularism is the most obvious opportunity we need to make a general public in which individuals everything being equal or none can live respectively reasonably and gently.

Secularism is the idea of something is not religious. It is also called secularity. The separation of religion and the state is the foundation of secularism. In some countries like Pakistan, Iran or Saudi Arabian, there is a state religion. Another example that can consider is of United States there, the founding fathers such as Thomas Jefferson made a law that religion and government should stay separate. This means that anyone can practice the religion they want or cannot practice if they don't want and the government cannot force them to practice any religion. They cannot make them part of any religion if they do not want to.

2.1 Separation of religion from state

Secularism is the segment of government foundations. In this, a man offered a way to address the state from religious dignitaries. One introduction of secularism is the view that open exercises and choices, ought to be uninfluenced by religious sentiments or practice. Another manifestation of secularism is asserting the right to be free from religious rule and teachings.

As the founder of the constitution was writing it, they believed that in order to maintain peace between religious sector govt. needed to be secular. Hence they went to great extent to create a state without any religious aspirations. The 42nd Amendment Act, 1976, introduced the word 'Secular' in the preamble. The constitution of India guarantees various fundamental rights to the citizens. One of the fundamental rights guaranteed by the constitution includes the right to freedom of religion. India is a secular nation and therefore every citizen who is inhabitants of India has the right to adopt any religion they believe in. However, neither the constitution of India nor its laws define the relationship between state and religion. The laws require the state and its institutions to recognize and accept all religions. The laws enforce religious laws, instead of parliamentary laws & respect pluralism.

The material code of law in present-day India is unequal, and India's own laws on the issue, for example, divorce, marriage fluctuates with a people of various religion. Indian Muslims have sharia-based Muslim individual law while others non-Muslims like Hindus, Christians, and Sikhs live under the customary law. The attempt to regard unequal, religious law has made various issues in India, for example, polygamy, worthiness of child marriage, unequal legacy rights and some more.

When it comes about India, we can say that it is a land of the diversity of culture, creed, religion, community, and caste. It is a country where people of different caste, sub-caste, race and also those practicing different customs are present since time immemorial. When it comes to exercising one's religious belief and customs, then India is absolutely neutral, unbiased and impartial. The constitution of India ensures that no citizen within the Indian Territory is deprived of this right to profess, practice and propagate the religion of his choice peacefully. The constitution gives utmost importance to the concept of secularism. Secularism has great significance in the eye of law.

2.2 Religious freedom

“The Constitution provides for Freedom of Religion, Not Freedom from Religion.”

India does not accept any religion as state religion. It maintains absolute impartiality towards all religions. Secularism in India means equal treatment of all religion by the state. The idea of secularism in India imagines acknowledgment of religious laws as official on the state, and equivalent interest of the state in various religions though the western idea of secularism envisions separation of religion and state. India is a secular state. A secular state is one where there is no official religion of the state. In India, the secular state was never considered as an irreligious state. It means that in all matter of religion it is neutral. The state should not have its own religion. It should treat all the religion equally.

Unlike other nations, India interprets the ideology of secularism by treating every religion equally. This concept doesn't evade the essence of secularism i.e. separation of the state from religion and its affairs. It allows state not to encourage a particular religion and at the same time treat every religion equally too. But this is not the case with the USA. The constitution of the USA by the first amendment of 1791 makes itself a neutral state.

In a secular state, the state is not concerned with the relation between man and god. It is only concerned with the relation of man and man. In *S.R. Bommai v. UOI*, the Supreme Court has held that “secularism is a basic feature of the constitution”. The state treats equally all religions and religious denominations. Religion is a matter of individual faith and cannot be mixed with secular activities.

2.3 Secularism protects both believers and non-believers

Secularism seeks to protect the freedom of religious beliefs and practice of all citizen. Secularists need flexibilities of thought and soul to apply similarly to all – believers and non-believers alike. They don't wish to curtail religious opportunities.

2.4 Secularism is not atheism

Lack of belief in god is atheism. Secularism simply provides a groundwork for a democratic society. Agnostics have a direct enthusiasm for supporting secularism, yet secularism itself does not look to challenge the ideology of a specific religion or conviction, neither does it try to impose atheism on anyone.

2.5 Equal access to public service

Hospitals, school and the police and the services of local authorities is shared by every citizen of India. Everyone has equal access to public services, no one is disadvantaged or denied access on grounds of religious or non-religious belief. All the schools which are state-funded should be non-religious in character, with children who are being educated together without the parent's religion.

3. RIGHT TO FREEDOM OF RELIGION (ART. 25 TO ART.28)

Right to the flexibility of religion is one of the rights ensured by Indian constitution. As we know that India is a secular nation, every citizen of India has the right to follow any religion of their choice. As one can find that India is a country of diversified culture, so many religions being practiced in India and the constitution guarantees every citizen liberty to follow the religion of their own choice. Ideal to the opportunity of religion is very much portrayed in the Articles 25, 26, 27 and 28 of Indian constitution.

3.1 Article 25- freedom of conscience and free profession, practice and propagation of religion [1]

According to this right, to enjoy the freedom of conscience every person is equally permitted. Every citizen has the right to acknowledge, practice and spread religion. In spite of that, this right is subject to some restrictions law and order, morality and peace

in the country. This article will not prevent the state from making any law. It will also not restrict the working of any political, social, economic and financial activity which may be related to religious practice.

This right guarantees every citizen of India the freedom to profess, practice and propagate religion. Right to propagate does not include the right to convert religion. This means that no person has the right to convert another person to his/her religion by fraud, force or by other methods. The carrying and wearing of kirpans shall be deemed to be included in the profession of the Sikh religion.

3.2 Restrictions that can be imposed on the right to freedom of religion

Freedom of religion does not mean that every person can do what he feels under the veil of the religion. It does not mean that the religion is unrestricted and uncontrollable. The producers of the constitution granted some restrictions on the freedom of religion so that the important right to freedom of religion may not be misappropriated. Nothing can be done in the name of religion that will adversely affect public law and order.

In *Shyamal Ranjan Mukherjee v Nirmal Ranjan Mukherjee* [AIR 2008 (NOC) 568 (All.)], it has been held that were temples and other religious institutions of Hindus are affected by frequent communal violence the state is duty bound to maintain public order. Nothing can be done in the name of religion which will adversely affect public order, morality, and health.

The freedom to practice prolong only those activities which are the basis of religion. It is not always easy to say which activities fall under religious practice or which are of secular, political or commercial nature. Each case must be judged by its own circumstances. In *Mohd. Hanif Quareshi v State of Bihar*, [AIR 1958 SC 731], it was held that butcher of a dairy animals upon the arrival of bakreed, was not a basic component of Muslim religion and henceforth could be restricted by law.

3.3 Article 26: Freedom to run religious affairs

Subject to public order, morality and health, every religious domination or any section thereof shall have the rights [2]

- (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 movable and immovable property; and
- (d) To administer such property in accordance with law.

3.4 Article 27: No person shall be compelled to pay any tax for the promotion or maintenance of any religion. [3]

3.5 Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions

- (A) No religious instruction shall be provided in any educational institution wholly maintained out of state funds.
- (B) 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. [4]
- (C) No person attending any educational institution recognized 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.

4. RELATION BETWEEN RIGHT TO EQUALITY AND RELIGIOUS FREEDOM

“The argument for equality has become inflated to such a degree that we’re now willing to use it against religious freedom”.

-Barry Bussey

Right to equality ensures equal rights to each and every citizen of India. Inequality on the basis of caste, religion, place of birth, race or gender is prohibited by the right to equality. It also ensures equal opportunity in public employment matters and prevents the state from discriminating against anyone on the grounds of sex, race, caste, religion, descent, place of birth, and place of residence or any of them in matters of employment.

Right to freedom of religion ensures a secular state in India and guarantees religious freedom. The constitution says that state should treat every religion impartially and equally and no state has an official religion. It also guarantees all people the right to preach, profess, and practice the religion of their choice.

Fundamental rights are considered as the basic human rights of all citizen irrespective of their caste, creed, religion or gender. Right to equality and the right to freedom of religion are interrelated with one another. Articles 14, 15 and 16 of the constitution of India manage the privilege to fairness. Article 17 is the unique arrangement that nullifies “untouchability” and blocks its preparation in any edge. Right to equality to correspondence under the fixed gaze of the law and equal assurance of the law to all residents regardless of religion, race, sex, and place of birth are one of the fundamental estimations of a secular popularity based state. Article 14 of the constitution gives the two sections of consistency to all individuals, including untouchables who dwell inside the area of India.

5. RELIGIOUS CONVERSION

The court concurred with the law set around *J.Chagla*, in *Robasa Khanum v Irani’s* case, wherein the scholarly judge has held that the conduct of a spouse who converts to Islam has to be judged on the basis of the rule of justice equity and good conscience.

It was additionally watched that, looking from other angled, the second marriage of apostate- husband would be infringing upon the rules of natural justice. Expecting that a Hindu husband has a privilege to hold onto Islam as his religion, he has no right under the

Act, to marry again without getting his marriage under the act dissolved. The second marriage after the change to Islam, would, in this manner, be disregarding the principles of common equity and in that capacity would be void. The court remarked that all the elements of section 494 IPC were satisfied in this case & therefore the offense of bigamy had been committed.

The court was of the opinion that many Hindus has changed their religion and converted to Islam only for the purposes of escaping the consequences of bigamy. Since monogamy is the law of Hindus, however, the Muslim law permits upwards of four mates, errant Hindu spouses grasp Islam to go around the arrangements of the Hindu law and to escape from corrective results. A marriage comes under the particular statute and according to one particular law cannot be dissolved, simply because one of the party has changed his/her religion.

6. CONCLUSION

Religion involves an imperative place in the human lives. Allowing religious opportunity permits distinctive convictions, feelings, conclusions that individuals have in understanding to their own particular religion, to blossom and in addition create in the society. It has a fundamental impact in affecting the brains of the general population. It likewise assumes a basic part particularly in the Indian culture in representing the direction and also the conduct of the general population. Indians are amazingly possessive with regards to their religion and they end up alarm when any individual endeavors to upset it or make a hindrance to their trip of religious love.

Yet in addition in the meantime, while releasing this central right given to us, it is basic to keep in mind that it ought not to interfere with the peace and congruity of the general public. It is important to think about the repercussions that will occur if this privilege is underestimated. To keep away from any sort of future peril or guess among our fellow mates it is essential to keep up some respectability while practicing this right, to comprehend the hidden significance and the purpose behind the distribution of this right, which is chiefly to keep up the solidarity and harmony in the nation and avoid any sort of issue on the ground of religion between our own particular siblings and sisters. At times citizens demonstrating an extraordinary level of worry towards their religion in the proper way of declaring it ,wind up in making the general population around feel annoyed, which thus may irritate or incite them to make strides which may likewise bring about rupture of open peace and prompt outcomes making hatred among everybody in the general public. It is without a doubt a principal right which the constitution ensures for the smooth working and advance of the nation, so every one of the Nationals have the freedom to practice the theories and principles they have confidence in, and is additionally a correct which they at any cost can't be denied of, yet it is in the meantime important to guarantee that we demonstrate in a feasible and to be exact others conscious way. Law gives all the Indian subjects the endorse to rehearse this privilege so as to fortify the agreement and unity in the nation, yet in the meantime, the State has the privilege to interfere when the mishandle or any sort of wrong use of this correct happens in the general public.

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