



## RELIGIOUS LIBERTY

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## ABSTRACT

Almost all the countries in the world guarantee freedom of religion in some form or the other. Such a guarantee assumes special importance in a multi-religion country like India which owes its religious diversity to history rather than any recent or contemporary phenomena. Religion is a volatile issue in India and religious conversions add more to the volatility of the issue therefore various state governments have enacted anti-conversion laws with the purported aim of preventing conversions brought about by coercion or inducements. Such laws have been a subject of intense criticism and have been alleged as infringing on one's right to freedom of religion. The paper examines the issue of religious conversion in the light of existing constitutional provisions, judicial pronouncements, and secularism and through the lens of contemporary political philosophy.

## KEYWORDS :

## INTRODUCTION

Human Birth is an ascription of sorts, ascription to a certain race, status, caste (in the Indian context) and religion. Whether such ascriptions are capable of revision and if so then to what extent has been a subject of human inquiry, a social project (for instance backward caste movements to get rid of caste based inequalities in India) as well as contemporary political philosophy.

Any discussion on religion in public sphere in India (as opposed to religion being a subliminal human experience) automatically brings the spotlight on secularism or more specifically Indian model of secularism. There can be no universal model of secularism as there is no universal religion. Donald E. Smith explains that "To most Indians, secular means non-communal, or non-sectarian, but it does not mean non-religious. The basis of secular state is not a 'wall of separation' between state and religion but rather 'no preference doctrine' which requires that no special privilege be granted to any one religion. The secular state includes the principle that the function of the state must be non-religious." India is a nation of many religions and freedom of religion has been accorded constitutional protection. Articles 25 to 28 constitute significant constitutional provisions on freedom of religion. It is also pertinent to mention here that the term religion is nowhere defined in the Indian Constitution but the term has been given expansive content by way of judicial pronouncements.

Religion has been a volatile issue in the country capable of inciting sentiments which have often seen being translated into violent outpourings in the public sphere. A case in point being Anti conversion laws in India which have been a subject of innumerable inconclusive debates and also a subject matter of this article.

## Right To Freedom Of Religion In India

Indian constitution in its Part III provides endorsement to freedom of religion in India. This freedom is reserved not just for Indian citizens but is also conferred on anyone who resides in India. It becomes amply clear from the words of article 25 which states that "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." The limitations placed on this freedom have been discussed by the apex court in the following words:

Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. Both in the American as well as in the Australian Constitutions the right to freedom of religion has been declared in unrestricted terms

without any limitation whatsoever. Limitations, therefore, have been introduced by courts of law in these countries on grounds of morality, order and social protection. Our Constitution-makers, however, have embodied the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of articles 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not.

Further the Indian state is also empowered to regulate matters incidental to religion or in other words secular activities associated with religious practices but the state is not permitted to interfere with the religious matters as such. What the state can regulate under article 25(2) (a) are the activities which are really of an economic, commercial or political character though these may be associated with religious practices. Further religious denominations have also been given freedom to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion; to own and acquire movable and immoveable property and to administer such property in accordance with law.

To sum up, the Indian position on the freedom of religion entails noninterference of the state in religious matters and the only permissible interference is confined to matters incidental to religion. This is a skeletal model of Indian secularism. How this skeletal model works out when life and blood are infused into it is a matter of ongoing observation. It is important to note that secularism was a late entrant to the Indian constitution.<sup>7</sup> Attempts have been made to strengthen secularism in India:

Failed attempts have been made to amend the Indian Constitution and make its statement of secularism clearer and stronger The Constitution (Eightieth Amendment) Bill, 1993 sought to empower Parliament to ban parties and associations that promote religious disharmony, and to disqualify members who indulge in such misconduct. The bill, however, was not passed.

The importance which has been given to religion by the Indian state can also be seen from the fact that there is a chapter titled "Of Offences Relating to Religion" in the Indian Penal Code which makes acts intending to outrage religious feelings of any class by insulting its religion or religious beliefs punishable by imprisonment.<sup>9</sup> Therefore it is only natural for a multi-religion country to take the issue of conversion seriously.

## CONCLUSION

Human beings are embedded in their immediate social, economic, political, cultural contexts. Are they absolutely free to do as they choose or the freedom is to be exercised within the societal bounds that are the question? Contemporary political philosophy has attempted to address this seemingly irreconcilable dilemma and this has resulted in the emergence of libertarian versus communitarian debate. It is essentially a debate between those who favor individual rights and autonomy on the one hand and those who emphasize the bonds of community in political life.

## REFERENCES

1. The American idea of secularism is based on the complete segregation of the church and the state and the French model of *laïcité*—which guarantees the neutrality of the state toward religious beliefs, and the complete isolation of the religious and public spheres. See, United States Commission on International Religious Freedom, Special report on Constitutional and Legal Challenges Faced by Religious Minorities in India1 (Feb. 2017). Available at: [www.uscifr.gov](http://www.uscifr.gov).
2. Secularism has been viewed as a political doctrine, based on the assumption of the autonomy and equality of all citizens within the imaginative project of national unification which tends to create a system of citizenship not unaccustomed to traditional social inequalities. See, Talal Asad, *Formations of the Secular* (Stanford University Press, Stanford, 2003), Rajeev Bhargava, ed. *Secularism and its critics* (Oxford University Press, New Delhi, 1998).
3. Donald E. Smith, *India as a Secular State* 381 (Princeton University Press, New Jersey, 1963).
4. The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar, AIR 1954 SC 282.
5. Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.
6. Article 26 of The Constitution of India.