



MEDIA LAW AND ETHICS; MAJOR ASSIGNMENT

TOPIC: RIGHT TO RELIGIOUS FREEDOM

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INTRODUCTION

In a diverse country like India which is home to people of different cultures, religions and communities, their rights need to be protected in the purview of the larger context of the nation. This is not a simple thing once put into perspective, because a large number of things are interwoven in society- the individual to their respective communities, the community to society and the society to the nation as a whole. One such right this applies to is the Right to Freedom of Religion.

The Right to Freedom of Religion is one of the fundamental rights mentioned in the constitution, which in itself is telling of its significance not only in the Indian society but also in the constitution itself. The fundamental rights form a part of the basic structure of the constitution and are therefore something that is beyond amendments.

Why is it given this much significance? To understand the essence of the right itself, let us look at the Articles concerned with it: Articles 25-28 cover the Right to Freedom of Religion and its scope.

Article 25 - Freedom of conscience and free profession, practice, and propagation of religion.

At the core of religion, lies the freedom of conscience. Freedom of conscience is for an individual, the freedom to follow his own thoughts, beliefs and what makes up his own ethical and moral principles. Every religion believes in a conscience and lists down its own moral and ethical precepts. 'Therefore whatever binds a man to his own conscience and whatever moral and ethical principles regulate the lives of men that alone can constitute religion as understood by the Constitution.' Said MC Chagla, the former Education Minister of India.

The right to religious liberty can be traced back to 17th-century John Locke's criticism of the religious and political order of Restoration England. Locke who believed that humans are rational beings, formed the basis for the freedom of conscience we so freely practice today. Locke advocated for the separation of the Church from the state strongly, as he maintained that the freedom of conscience was an inalienable right. The conscience to choose what and who to believe in, and to which religious institution to show allegiance to, is at the basis of practicing religion. Although Locke is also the propounder of the social contract theory, he maintains that rational individuals would still not give up their conscience and religious freedom, to attain happiness and salvation in their own right. (Steven J. Heyman, 2018)

John Stuart Mill's essay 'On Liberty', written almost a century ago and focused primarily on the freedom of individuals; maintains that no discussion on the freedom of conscience can be complete without the social dimension of it. This means it must be examined not only as a matter of the State and individual but also the State's interaction with religious groups and organisations. This dual perspective was highlighted by The Joint Committee on Religious Liberty in Great Britain, in their statement on 'Human Rights and Religious Freedom'. According to the statement, religious freedom encompasses two essential aspects: firstly, it entails an individual's right to directly approach and respond to God according to their conscience, and to choose the religious community that they believe will best serve their religious and moral well-being. Secondly, it involves the right of a religious community to autonomously establish its own worship practices and social framework, in line with the

religious and moral welfare of its members, and to openly demonstrate the faith that guides its communal life. (de Souza, J. P., 1952)

"Full religious liberty," observes H. G. Wood, "is much more than freedom of worship. Freedom of speech and freedom of worship are not just conterminous. Freedom of the press, freedom to propagate the faith, freedom to educate in the faith, freedom to express the faith in deeds, in social activities and organization, freedom to organize and control the life of the religious association and to define its faith, economic independence through the ownership of property, and the right to keep in effective touch with fellow-believers in every land—all these elements belong to religious liberty in the full sense of the term. Freedom of worship would have to be very liberally interpreted if it is to include them all." (de Souza, J. P., 1952)

REASONABLE RESTRICTIONS AND OTHER PARTICULARS OF THE RIGHT TO RELIGIOUS FREEDOM

Thus, it is understood that the Freedom of Religion is not a single and straightforward right but has complexities of rights within it. Given its comprehensive and complex nature, it would be perilous to assert that the Indian constitution establishes absolute religious liberty, because it does not. There are 'limitations' and 'interventions' that are permissible by law. Let us try and understand these intricacies in the following manner; first by going through the reasonable restrictions on this fundamental right, and then the role of the State in managing cases of such nature.

Article 25 guarantees the freedom of conscience, the freedom to profess, practice, and propagate religion to all citizens.

1. *The above-mentioned freedoms are subject to public order, health, and morality.*
2. *This article also gives a provision that the State can make laws:*
 - *That regulates and restricts any financial, economic, political, or other secular activity associated with any religious practice.*

Restrictions on freedom of religion in the interest of public order, morality and health are generally accepted grounds for State intervention. Bringing back the statement from 'Human Rights and Religious Freedom' from The Joint Committee on Religious Liberty in Great Britain, "If the adherents to any form of religion, exercise their right of religious freedom as to disturb public order, or endanger public security, or outrage the basic moral conceptions which are essential to both, they do so at their own risk, and the State to which they belong, or in which they are resident, is entitled to invoke the sanctions of law against them." (de Souza, J. P., 1952)

The Amendment made to Article 19 in the Constitution Amendment Act of 1951, states that any limitations imposed by the State on the freedom of speech and expression to maintain public order must be reasonable. Inferring to the same, the principle applies to restrictions on freedom of religion as well. Consequently, the courts have the authority to assess whether the restrictions imposed are reasonable, even if claimed to be in the interest of public order.

When it comes to examining the health aspect of the restrictions, not only does the state have to protect what could be detrimental to individual health but also the larger public sphere of health. For example, certain manifestations of religious faith could put public health at risk. Religious festivals like melas, and pilgrimages, which are attended by thousands of people may give rise to epidemics. A most recent case scenario was that of the Kumbh Mela and the Tablighi Jamaat gatherings, both of which received criticism from the public in light of the covid-19 pandemic. Although the right to worship and practice religion is a fundamental right, during the pandemic the government had closed all religious places and banned everyone from visiting or praying in religious places of worship.

On the other side of the coin, there are some cases that could generally be justifiable but may disturb the order of the religion. For instance, married couples are encouraged to use contraceptives to protect the health of the mother and children. But the Roman Catholic Church would not only regard this as an attack on morality but also on their religious liberty since the Church denounces the use of contraceptives as an immoral practice. (de Souza, J. P., 1952)

SECULARISM AND THE ROLE OF THE STATE

The freedom of religion broadly covers two aspects; freedom from the state- the state will not compel the individual what to practise and not to, and freedom from the people- the people will not compel for the same either.

The Modern Indian State is secular in nature and a secular State, therefore, is to treat all its citizens equally regardless of religion. It's important to clarify that a Secular State does not inherently imply being against religion or promoting atheism. Rather, it maintains a neutral stance in religious matters. It recognizes that diverse religious beliefs, whether held by the majority or minority communities, should receive fair and equal treatment. However, the ideas of Indian secularism and Western secularism are different. Indian secularism is not any less secular, it simply has its own colour.

Unlike the saying that goes “Then render to Caesar the things that are Caesar's; and to God the things that are God's” (Matthew 22:21 NASB), the State and Religion are not water-tight compartments in India. The Indian State's influence does have its reach in religious affairs but in a limited fashion.

Marc Galanter, Author of “Hinduism, Secularism, and the India Judiciary”, clearly pointed out two possible ways in which the law may exercise its control over religion, which he called “the mode of limitation” and “the mode of intervention”:

“By limitation I refer to the shaping of religion by promulgating public standards and by defining the field in which these secular public standards shall prevail, overruling conflicting assertions of religious authority. By intervention I refer to something beyond this—to an attempt to grasp the levers of religious authority and to reformulate the religious tradition from within, as it were” (Galanter 1971:480).

In principle, this means that limitations that spring out of the fundamentals of law, on their own become interventions of religious traditions.

For example, a case in Tamil Nadu (Seshammal 1972:832) concerning the hereditary succession in the priestly office of some temples was brought to the Supreme Court:

“the appointment of an Archaka [temple priest] is a secular act and the fact that in some temples the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular. ... That after his appointment the Archaka performs worship is no ground for holding that the appointment is either a religious Practice or a matter of religion.”

This view was reiterated in the following judgements after. In fact, in the next judgements not only was the priest deemed to be secular, but also his act of service was deemed to be so.

“There is a distinction between religious service and the person who performs the service; performance of the religious service ... is an integral part of the religious faith and belief But the service of the priest (archaka) is a secular part. ... Though performance of the ritual ceremonies is an integral part of the religion, the person who performs it or associates himself with performance of ritual ceremonies, is not” (A.S. Narayana Deekshitulu 1996:118)

These legal views of priesthood largely differed from the Hindu conception of priesthood and their qualifications. Furthermore, a consequent Supreme Court ruling in 2002, opened priesthood in public temples including that of the Brahmins to all castes. (Tarabout, 2018)

This entanglement of limitation to intervention, through the disentanglement of what is religious and secular forms a very powerful legal tool called ‘essential practices’, that enables courts to determine what is essential in religious practices and practically opens the doors to court interventions in the religious realm.

RELIGIOUS LAWS AND AFFAIRS

This springs the question, does Article 26 not give freedom to manage one’s own religious affairs? Here is how the Article goes:

Article 26- Freedom to manage religious affairs

This Article provides that every religious denomination has the following rights, subject to morality, health, and public order.

- 1. The right to form and maintain institutions for religious and charitable intents.*
- 2. The right to manage its own affairs in the matter of religion.*
- 3. The right to acquire the immovable and movable property.*
- 4. The right to administer such property according to the law.*

The second point addresses what we call religious personal law. If we take a look back at history from the times of the British, they had always maintained a healthy distance from religious affairs and did not interfere in personal law. This is characteristic of the English Reformation that separated the Church and England. (Srivatsava, D.K, 1976)

However, when India drafted her constitution, the forefathers of the nation took a secular stance on this matter; the introduction of Article 44, or what is popularly known as the

Uniform Civil Code. The Uniform Civil Code remains a proposal and a topic of parliamentary debate and is not exercised in law to date.

One could argue that religious personal law is protected under the guise of freedom of religion, but it is just as liable to the restrictions laid under it. In fact, as previously mentioned, The Constitution itself enables Parliament and the state legislatures to make laws concerning:

Marriage and Divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which the parties in judicial proceedings were immediately before the commencement of the Constitution subject to their personal law.

In summary, The Constitution grants individuals a limited right to practice their personal laws, and it delegates the authority to Parliament and state legislatures to handle matters related to personal laws. However, this legislative power cannot be utilized to enact discriminatory laws. Any classification made by legislation based solely on religion, race, caste, sex, place of birth, or any combination of these factors would be deemed unconstitutional. (Srivatsava, D.K, 1976)

Now as a citizen equipped with this knowledge, it could leave one wondering whether this is a healthy balance or not. That is a question of one's own faith and perhaps, the faith in fair judgements in civil courts.

RELIGIOUS COMMUNITIES, AND POLITICS

Indian Secularism differs from Western Secularism and is unique in its own right. This is because the ideology stems from the basic unit of society itself. In India, it has been found that religious tolerance and attitudes towards other religious communities, is not the typical Western image of a melting pot of different groups. Rather it is more like a patchwork fabric that has clear lines between them.

Indians prefer keeping their respective religious communities in segregated spheres; they live together, separately. This paradoxical element makes sense for Indians because they like to maintain their distinctiveness, while at the same time being tolerant towards their outgroups. (Pew Research Center, June 29, 2021)

Religious communities are recognized as such in **Article 26** of the Constitution under the label 'religious denomination'. While the law acknowledges the complete religious freedom individuals possess in their private lives, it also acknowledges that the manifestation of this religious freedom can occur in public contexts, whether through religious practices or participation in religious groups and organizations.

A most recent controversy over the Hijab row in Karnataka very well brings out the intricacies of an individual's choice and its corresponding manifestation in the public context. So much so that the Supreme Court issued two divided verdicts that argued for both sides of the issue. The matter kept getting escalated to a larger bench and so far, the case still stands.

The perspective of law is this- the focus is on individuals. Society and religion are a collection of individuals whose rights and actions are subject to limitations in the interest of the public welfare.

However, one could argue that this perspective diverges significantly from the findings of social science, which indicate the intricate and complex interconnections between religious matters and various aspects of social, economic, legal, and political relationships, highlighting the nuanced and multifaceted nature of religious issues. (Tarabout, 2018) Whether this argument is fair or not, is up to one's own discretion.

But when it comes to a purely democratic exercise such as the elections, it is best to keep religion at bay. Only recently in January 2017, the apex court made it illegal to seek votes in the name of religion, caste, race, community or language. Religious organisations across the ideological divide welcomed the Supreme Court's ruling.

“Mixing religion with State power is not permissible while freedom to practice profess and propagate religion of one's choice is guaranteed. The State being secular in character will not identify itself with any one of the religions or religious denominations.” The Supreme Court said.

Although this exists in principle, it is not followed as it should be.

PROPAGATION OF RELIGION

The last part of Article 25 is the Freedom of propagation of religion. The word propagate means to transmit from person to person or place to place. The propagation of religion in its literal sense means to spread religion through an 'exposition of its tenets' and not to directly convert a person to one's religion. (Rev. Stainislaus vs. State of Madhya Pradesh and Others, 1977) The apex court also overruled the stance of the Odisha High Court which stated that proselytism fell under the purview of Article 25 since it is fundamental to the Christian religion.

The practice and spreading of religion can involve the right to maintain effective communication with fellow believers in other countries, as seen among Roman Catholics. Roman Catholics worldwide are under the authority of the Church, with both a visible head (the Pope) and an invisible head (Christ). However, several modern states find it unacceptable for their citizens to owe allegiance to any foreign authority, whether it be temporal or spiritual, as it challenges their claim to the exclusive loyalty of their subjects. Nevertheless, the State envisioned in the Indian Constitution is far from being totalitarian, and Indian nationalism is not so exclusive that it disregards interactions with foreigners. In certain religions, foreign missionaries may be necessary for the dissemination of their faith. Consequently, the right of a religious organization to invite foreign missionaries and the right of these missionaries to enter India can be seen as implicit in the right to propagate religion. During the era of British colonial rule, Christian missionaries were often viewed by many Indian nationalists as agents of British Imperialism. However, in a free India, there is no need for such suspicions to persist. (de Souza, J. P., 1952)

A recent example that entails this part of Article 25, is the Anti-Conversion law (Karnataka Protection of Right to Freedom of Religion Act) which was passed in 2022. The Christian community was hurt by this move; “Forced conversion is only a myth. In the disguise for preventing forced conversion, this law is actually infringing the fundamental rights of the people. It violates the right to privacy and the right to personal liberty. A person who wants to

convert has to submit a lot of personal details to the Government which is a violation of his privacy. It also curtails the freedom of a woman to marry a person of their choice irrespective of religion” said the Archbishop of Bangalore Dr Peter Machado. Machado also wrote a writ petition to the Supreme Court challenging the Anti-conversion law in Karnataka. ('Caste, Religion And Hate At Worst': Christians In Dismay Ahead Of Karnataka Elections, OutlookIndia, 2023)

Another concern after conversion brought out by the Christian leaders is that Harijan converts are given a ‘step-motherly’ treatment when it comes to the distribution of benefits to the backward classes. This is the basis of reservation, because reservation is not given according to religion but based on backwardness. Reservation based on religion is unconstitutional.

PEOPLE WITH NO RELIGION

The Constitution not only protects the rights of people of religion but also of those who choose to not identify with any religion- atheists and antagonists alike.

In the legal case of Lily Thomas v. UOI, the court emphasized that individuals have the fundamental right to hold and practice their chosen religious beliefs, but this right should not infringe upon the religious and personal freedoms of others. Addressing the question of whether the act of promoting atheism violates Article 25 of the Constitution, the court responded in the negative and affirmed that the constitutional secular nature safeguards the rights of atheist individuals as well.

In the Sundaesan v The Principal Secretary to Government case, a petition was brought before the Madras court challenging the government's decision to grant permission for the construction of a statue of Periyar (a prominent advocate of atheism) on a school campus. The petitioner argued that allowing the statue aimed to promote atheism among students. However, the court dismissed the petitioner's plea and highlighted the importance of school children being aware of and exploring the life of Periyar. The court further stated that such knowledge would contribute to the development of their scientific temperament. If we were to claim that atheism has no place in India, we would not only undermine the legacy of leaders like Periyar but also disregard the fundamental duty (Article 51A(h)) enshrined in the Indian Constitution.

CONCLUSION

The right to Freedom of Religion and its many nuances could not possibly be all covered in this essay, because there are so many possible scenarios that can happen in a court of law. Nevertheless, it is a fundamental right that is enjoyed by all citizens and is subject to limitations like any other right. No right is absolute. Notably, the fathers of our constitution have not invoked the name of God in the preamble, which means they wanted the power of the people to be sovereign; the power of the people to be absolute. As citizens, we must respect that and exercise that right.

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