Page 900 - 930 **DOI:** *https://doij.org/10.10000/IJLMH.115816*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 5

2023

Judicial Stewardship of Secularism and Religious Sentiments in India: A Comprehensive Examination

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ABSTRACT

India, a diverse and culturally rich nation, has long grappled with the delicate task of maintaining secularism while respecting the deeply held religious sentiments of its people. At the core of this endeavor lies the pivotal role of the judiciary in interpreting and applying the principles of secularism within the framework of the Indian Constitution. This research paper delves into the intricate relationship between secularism and religious sentiments in India and examines the multifaceted role of the judiciary in navigating this complex terrain. This research paper explores the nuanced interplay between secularism and religious sentiments in India and investigates the pivotal role of the judiciary in shaping and maintaining this delicate balance. The paper hilightened the inherent diversity and pluralism within Indian society and the framers' intent to create a secular state. It examines the concept of secularism within the Indian Constitution, tracing its evolution and the key provisions related to religious freedom and equality. This research paper delves into the critical role played by the judiciary in interpreting and applying these constitutional provisions. It analyzes landmark cases and judicial decisions that have defined the contours of secularism in India, particularly those that involve sensitive religious issues and sentiments. The paper also explores instances where judicial interpretations have been both lauded and criticized for their impact on minority and majority religious communities. Furthermore, this paper addresses the complexities of balancing secularism with religious sentiments in a diverse nation like India. It discusses how the judiciary has often acted as a guardian of individual rights and a protector of secular values, but also how its decisions can sometimes be perceived as favoring certain religious groups. It offers insights into the broader implications of judicial decisions on the secular fabric of the nation and underscores the importance of a well-balanced and impartial judiciary in upholding the ideals of India's constitutional framework.

Keywords: *Secularism, Religion, Religious Sentiments, Constitution, Judiciary on Religion.*

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 [ISSN 2581-5369]

I. INTRODUCTION

The term "secular" was purposefully left vague, maybe because of its intrinsic flexibility, which made precise definition difficult and best left undefined. By making it explicit, the 42nd Amendment sought to make what was implicit more clear. However, the Constitution is fundamentally secular in nature and guarantees everyone the freedom to embrace, practice, and disseminate any religion of their choosing. Before 1976, the Constitution's use of the word "secular" was limited to the definition of "secular activity" found in Clause (2) (a) of Article 25. The rights to freedom of religion outlined in Article 25's Clause (1) were exempt under this clause. The Constitution does not, however, state that it was its purpose to create a "secular State." The vagueness of the phrase and its connection to specific political ideologies were probably to blame for this omission. Articles 25–28, 29(2), and 30 of the Constitution, along with Articles 15(1) and 16(2), all state the Constitution's position on religion clearly. The Supreme Court has interpreted the implications of these articles in a number of cases, making it the most qualified body to evaluate the nature and scope of secularism. The Indian Supreme Court has often defended secularism as a basic concept of the Constitution through its power of adjudication, judicial review, and judicial legislation. However, it appears that there is disagreement within the Court as to the precise definition and characteristics of secularism, swinging between a totally Western and a more conventional Indian notion. The situation is complicated; diversity in religion and culture is necessary for democracy and a sense of national identity, thus secularism is required. State intervention in religious concerns is necessary in order to modernize a traditional community and make social reforms at the same time. The courts have dealt with important secularism-related problems, at times vehemently reiterating the secularism's unchangeable place inside the Indian Constitution. Other times, the Court's practical interpretations of secularism appear to serve the interests of the majority while potentially violating the rights of minority communities or, in certain circumstances, even favoring minorities.

II. INTERPRETATION OF 'SECULARISM'

The Supreme Court while interpreting the term 'Secularism' in *Ahmedabad St. Xavier's College Society* v. *State of Gujarat*[2], it was observed:"Although the words "secular State" are not expressly mentioned in the Constitution, there can be no doubt that our Constitution-makers wanted establishment of such a State. Secularism is neither anti-God nor pro-God; it treats alike the devout, the agnostic and atheist. It eliminates God from the matter of the State and ensures

[2] AIR 1974 SC 1389

 [ISSN 2581-5369]

that the no one shall be discriminated against on the ground of religion. To allay all apprehensions of interferenceby the legislature and executive in matters of religion, the rights mentioned in Articles 25 to 30 were made part of Fundamental Rights and religious freedom mentioned in those Articles is guaranteed by the Constitution. (Per Khanna J.). In the same case, two other learned Judges held: "Our Constitution has not erected a rigid wall of separation between church and State. There are provisions in the Constitution which make one hesitate to characterize our Constitution as secular. Secularism in the context of Constitution means only "an attitude of live and let live developing into the attitude of live and help live."(Per Mathew and Chandrachud JJ).

In *Ziyyauddin Burhanuddin Bukhari* v. *Brijmohan Ramdas Mehra*[3], it was held that the term "secular" is used to distinguish all that is done in this world without seeking the intervention or favour or propitiating a superman or Divine power or being from that which is done professedly to please or to carry out the will of the Divinity. Secularism is the realm of philosophy, is a system of utilitarian ethics, seeking to maximize human happiness or welfare quite independently of what may be either or occult. The court further held; "the Secular State, rising above all differences of religion, attempts to secure the good of all its citizens of their religious beliefs and practices. It is neutral or impartial in extending its benefits to citizens of all castes and creeds. Such a State has to ensure, through its laws, that the existence or exercise of political or civil right or the right of capacity to occupy any office or position under it or to performany public duty connected with it does not depend upon the profession or practice of any particular religion."

In his dissenting judgment in *Indira Sawheney* v. *Union of India*[4] *(popularly known as Mandal Commission case),* Justice Kuldip Singh stated: "Secularism is the basic feature of the Indian Constitution. It envisages a cohesive, unified and casteless society. The Constitution has completely obliterated the caste system and has assured equality before law; reference to caste under Articles 15(2) and 16(2) is only to obliterate it. Theprohibition on the ground of caste is total; the mandate is that never again in this country caste shall raise its head. According to the learned Judge: "Caste poses a serious threat to secularism and a consequence to the integrity of the country." In the landmark judgment *S.R. Bommai* v. *Union of India*[5], Supreme Court while adjudicating that a State Government cannot follow particular religion discussed at lengththe concept of Secularism. It should be kept in mind that since it was a special bench of 9 Judges,

[3] AIR 1975 SC 1788
[4] AIR 1993 SC 477
[5] AIR 1994 SC 1918

 [ISSN 2581-5369]

the propositions laid down in *Bommai's* case will prevail over the observations made by smaller Benches both prior to and subsequent to *Bommai*. The Court held that Secularism is one of the basic features of the Constitution. Secularism is a positive concept of equal treatment of all religions. This attitude is described by some as one of neutrality towards religion or as one of benevolent neutrality. While freedom of religion is guaranteed to all persons in India, from the point of view of the State, the religion, faith or belief of a person is immaterial. To the State, all are equal and are entitled to be treated equally. In matters of State, religion has no place. And if the Constitution requires the State to be secular in thought and action, the same requirement attaches to political parties as well. The Constitution does not recognize, it does not permit, mixing religion and State power. Both must be kept apart. That is the Constitutional injunction. None can say otherwise so long as this Constitution governsthis country. Politics and religion cannot be mixed. Any State Government which pursuesnon secular policies or non secular course of action acts contrary to the Constitutional mandate and renders itself amenable to action under Article 356. Given the above position, it is clear that if any party or organization seeks to fight the elections on thebasis of a plank which has the proximate effect of eroding the secular philosophy of the Constitution would certainly be guilty of following an unconstitutional course of action. In this case, the Supreme Court gave a practical shape to the principles enunciated in the earlier thirteen judge bench judgment in the *Keshavanand Bharati*[6] case, which only said that secularism was a fundamental law. In the *Bommai* case[7] the apex court gave wide powers to the President to take any action, including the dismissal of a popularly elected State Government, to protect the secular character of the Constitution. The court declared that any State Government which pursues an unsecular course, contrary to the Constitutional mandate renders itself amenable to action under Article 356 of the Constitution that subjects them to dismissal. Moving more closely to the western notionof secularism, the court gave the following ruling.

"The religion is a matter of one's personal belief and mode of worship; secularism operates at the temporal plane. Freedom and tolerance of religion is only to the extent of permitting the pursuit of spiritual life that is different from the secular life, the latter falls in the domain of the affairs of the State". Justifying the interference of State in religious matters on certain circumstances, the court said, "The State has the power to legislate on religion including personal laws and secular affairs of temples and mosques, and other places of worship. State has the power to decide what does and what does not constitute a religion for all practical

[6] Supra.
[7] Supra.

 [ISSN 2581-5369]

purposes."

In case of *Dr. Ismail Faruqui* v. *Union of India*[8] (popularly known as *Rajanambhoomi* case), secularism was explained as a concept of tolerance and understanding of equalityof all religions. It was observed that so far as India is concerned, a secular State which treats all religions alike and displays benevolent neutrality towards them is more united than that of a "truly secular State". It was explained that State has no religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion of their own choice. While explaining the meaning of secularism, court referred and traced its history in religious scriptures like *Yajur Veda*, *Atharva Veda* and *Rigveda* and Akbar"s *Din Ilahi.*

In *Ramesh Prabhoo* v. *Prabhakar Khunte*[9], the Supreme Court took more or less a standthe same as *Ramjanambhoomi* case[135]. The case came before the Supreme Court as an appeal petition against the Bombay High Court"s verdict nullifying the election victory of Prabhoo on the ground that he (Prabhoo) and his agent (Bal Thackeray) violated Representation of Peoples Act, 1951, that prohibits a direct appeal for votes on theground of the religion of the candidate. A sample of the speeches cited in the judgment is given below:

"We are fighting this election for the protection of Hinduism. Therefore, we do not care for the votes of the Muslims. This country belongs to Hindus and will remain so. You will find Hindu temples underneath if all the Mosques are dug out. Anybody who stands against the Hindus should be showed or worshipped with shoes. Prabhoo should be led tovictory in the name of Hindu. Though this country belongs to Hindus, Ram and Krishna are insulted. We do not want Muslim votes. A snake like Shahabuddin is sitting in the Janata Party. So, the voters should bury this party." The three-judge panel of the Supreme Court ruled that Bal Thackeray's statement during the 1990 election campaign, in which he urged Hindu voters to support Ramesh Prabhu, a fellow Hindu, and made disparaging remarks against Muslims, constituted corrupt behavior. Though Hindutva denotes Indian culture as a whole and not just the Hindu religion, the Supreme Court accepted Prabhoo and Thackeray's arguments that their statements did not amount to a plea for votes on the basis of their faith.

In *Aruna Roy* v. *Union of India*[10], The new National Education Policy of 2002, which mandated value-based instruction for school children based on the principles of all religions, was contested as being anti-secular and in violation of Article 28. The court ruled that the

[8] AIR 1995 SC 605
[9] AIR 1996 SC 176
[10] AIR 1995 SC 293

 [ISSN 2581-5369]

Constitution's secularist tenets do not forbid the study of religion in schools. The functioning of the Constitution for more than 50 years, in the opinion of Justice Dharmadhikari, has demonstrated that complete neutrality toward religion and apathy for all forms of religious instruction in institutions have not contributed to the eradication of misunderstanding and intolerance among groups of people of different religions, faiths, and beliefs. As a result, secularism is open to evolving good intent as well as understanding and respect for diverse religions. The cornerstone of secularism is the State's obligation to treat everyone equally regardless of their choice of religion. Secularism can be practiced by adopting either a fully neutral or favorable attitude toward religions, building one religious community based on such mutual understanding and respect for each religious faith, which can eventually eradicate interreligious distrust and intolerance, and engaging in other nonreligious activities.

In another case of *State of Karnataka* v. *Praveen Bhai Thogadia*[11], Supreme Court observed that, "Secularism is not to be confused with communal or religious concept ofan individual or group of persons. It means that the State should have no religion of its own and no one could proclaim to make the State one such or endeavour to create a theocratic State. Persons belonging to different religions live throughout the length and breadth of the country. Each person whatever is his religion, must get an assurance from the State that he has protection of law freely to profess, practice and propagate his religion and freedom of conscience. Otherwise, the rule of law will become replaced by individual perception of one"s own presumption of good social order. Furthermore, it was noted that fundamentalism of any kind cannot be allowed to pass for political ideas to the harm of the greater interests of society and the essential needs of the welfare state. Religion also cannot be merged with secular State activities. All laws, state actions, and most importantly the Constitution have as their primary objective the welfare of the State. They all share the same goal, which is to further the general welfare and interests of society, rather than those of any one person or particular organization with a distinctive identity. It is unthinkable that there could be social wellbeing without comradery, love, and tolerance for all.

III. RATIONALIZATION OF RELIGION

The rationalization of religion in India encompasses the judiciary's vital role in defining and distinguishing religious matters within the framework of a constitution that lacks a precise definition of religion. This process necessitates the delineation of what constitutes religion, the demarcation between sacred and secular domains, and the identification of elements deemed "essential" to religious practice, safeguarded from state intervention. It involves a delicate

[11] AIR 2004 SC 2081

 [ISSN 2581-5369]

balancing act, protecting religious freedom while permitting legitimate state involvement in matters such as public order and social welfare. This complex and evolving discourse is marked by landmark cases and legal principles that guide the judiciary's efforts to uphold secularism and religious freedom in the Indian constitutional landscape. In the absence of a clear definition of religion in the Constitution, it is crucial to first look at how the courts have attempted to define religion with regard to the Constitution. It's interesting that in India, the judiciary is the one who decides what counts as religion and what doesn't. According to the Supreme Court, India's challenge with secularism is the blurring of the lines between "what are matters of religion and what are not." The courts are regularly requested to draw a line between sacred and secular matters, as well as to determine what constitutes a "essential part of religion" and is, therefore, outside the purview of government interference, as well as what is "extraneous or essential" and falls into the category of matters in which government action is permitted.

While interpreting the term religion, in case of, *Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar*[138] Supreme Court quoted the meaning of religion is following words:

"that the term religion has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His will. It is often confounded with cults of form or worship of a particular sect, but is distinguishable from the latter. We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon article 44(2) of the Constitution of Eire and we have great doubt whether a definition of 'religion' as given above could have been in the minds of our Constitution-makers when they framed the Constitution. Religion is certainly a matter of faith with individuals or communities and itis not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else, but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."

In *S.P. Mittal* v. *Union of India & Ors*[12], Supreme Court made following observations inmatter

[12] AIR 1983 SC 1

 [ISSN 2581-5369]

of religion; "Religion, undefined by the Constitution, is incapable of precise judicial definition either. In the background of the provisions of the Constitution and the light shed by judicial precedent, it can at best be said that religion is a matter of faith. It is a matter of belief and doctrine. It concerns the conscience i.e. the spirit of man. It must be capable of overt expressions in work and deed, such as worship or ritual. So religion is a matter of belief and doctrine concerning the human spirit expressed overtly in the form of ritual and worship. Some religions are easily identifiable as religious; some are easily identifiable as not religious. There are many in the penumbral region which instinctively appear to some as religion and to others as not religions. There is no formula of general application. There is no knife-edge test. Primarily, it is a question of the consciousness of the community, how does the fraternity or sodality (if it is permissible to use the word without confining it to Roman Catholic Groups) regard itself, how do others regard the fraternity or sodality. A host of other circumstances may have to be considered, such as, the origin and the history of the community, the rituals observed by the community, what the founder, if any, taught, what the founder was understood by his followers to have taught, etc. In origin, the founder may not have intended to found any religion at all. He may have merely protested against some rituals and observances, he may have disagreed with the interpretation of some earlier religious tenets. What he said, what he preached and what he taught, his protest, his distant, his disagreement might have developed into a religion in the course of time, even during his life-time. He may be against religion itself, yet, history and the perception of the community may make a religion out of what wasnot intended to be a religion and he may be hailed as the founder of a new religion."

The Supreme court tried to define the term 'religious denomination' which is used in Article 26 in *Acharya jagdishwarananda Avadhuta* v. *Commissioner of Police,* Calcutta[13], (popularly known as *Anand Marga* Case). The petitioners in this case attempted to argue that Ananda Marga was a recently founded religious group, but the court rejected this argument as being without validity. Ananda Marga was described by the court as a sect of the Shaivite order, a well-known subset of Hinduism, in its subsequent statements. The court unequivocally determined that Ananda Marga is a religious denomination rather than an official religion. In determining whether or not Ananda Marga constituted a separate religion, the court took into account the teachings of Ananda Murt, which the court determined were primarily based upon the essence of Hindu philosophy. The court also took into consideration the point maintained in *Sastri Yagnapurushadji* v. *Muldas Bhudardos Vaishya and anr*[14] that; "Even a cursory study

[13] AIR 2004 SC 2984
[14] (1966) 3 SCR 242

 [ISSN 2581-5369]

of the growth and development of Hindu religion through the ages shows that whenever a saint or a religious reformer attempted the task of reforming Hindu religion and fighting irrational or corrupt practices which had crept into it, a sect was born which was governed by its own tenets but which basically subscribed to the fundamental notions of Hindu religion and Hindu philosophy." The court took into account the point raised in the Shirur Mutt case when deciding whether Ananda Marga can be referred to as a denomination of Hinduism. "With regard to Article 26, the first concern is what the specific definition or connotation of the term "religious denomination" is, and whether a mathematician might be considered a religious denomination. According to the Oxford Dictionary, a "denomination" is "a group of people grouped under one name: a religious sect or body having a common faith and organization and designated by a distinctive name."

The term "religious denomination" in Article 26 of the Constitution must derive its meaning from the word "religion," and if that is the case, the term must also meet the following three requirements: It must be a group of people who share a common set of doctrines or beliefs, i.e., a common faith; it must have a common organization; and it must be designated by a distinctive name. In this case, the court determined that the Ananda Marga satisfies all three requirements, making it eligible to be classified as a religious denomination within the Hindu faith.

IV. TEST OF ESSENTIALITY OF RELIGION

Every religion consists not merely of certain doctrines of faith or belief, but also matters of practice which, though associated with religion, really constitute "secular" activity, having economic, financial or political aspects. Articles 25(2) (a) empowers the State to regulate or restrict such secular activities. Hence, the court has necessarily to determine, when such State regulation is challenged, on grounds of religion, whether the relevant activities form an integral part of that religion or a merely secular activity associated withreligious practice; in the former case, the State regulation would be invalid, while in the latter case, the court has to uphold it as valid· The essential practices test has been used by the Court to decide a variety of cases. These can be classified under a few headings. First, the Court has made recourse to this test to decide which religious practices are eligible for Constitutional protection. Second the Court has used the test to adjudicate the legitimacy of legislation for managing religious institutions. Finally, the Court has employed this doctrine to judge the extent of independence that can be enjoyed by religious denominations. In some earlier cases, court was of opinion that no one other than that particular denomination has right to decide whether particular ceremony it is an essential

 [ISSN 2581-5369]

part of religion or not. Thus, in *Ratilal Panachand Gandhi* v. *State of Bombay*[15], case, it was said:

"Religious practices or performances of acts in pursuance of religious belief are as much as a part of religion as faith or belief in particular doctrines…No outside authority hasany right to say that these are secular activities."

Similar view was expressed in the dissenting judgment of Justice Lakshman in *Commissioner of Police* v. *Acharya Jagdishwarananda Avadhuta*[16], wherein it was observed: "What constitutes an essential part of a religion is primarily to be ascertained with reference to the doctrine of that religion itself and the court cannot say that a belief or practice is not part or religion."

But even in the earlier case of *Shirur Mutt case*[147], in which the petitioner, the superior or *mathadhipati (mahant)* of the *Shirur Matt* monastery challenged the validity of Madras Hindu Religious and Charitable Endowments (HRCE) Act 1951 on the principal ground that it infringed Article 26 of the Constitution. The court had made it clear that secular activities, even where associated with religion, were subject to State regulation, and that, accordingly, the court had the competence to determine (against the contention of the community or denomination, if necessary) that a particular activity was secular and not a matter of religion.

Shirur Mutt was a landmark judgment because it validated a major portion of the HRCE Act, 1951, which was the first State legislation to put into place an elaborate mechanism for Hindu temples and *Maths.* Several other States followed suit with similar legislation and they were taken to Court but *Shirur Mutt* has remained the model of the Court.

In *Bijoe Emmanuel* v. *State of kerala*[17], it was observed that the question is not whether a particular religious belief or practice appeals to our reason or sentiment, but whether the belief is genuinely and consciously held as part of the profession or practice of religion. Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held, it attracts the protection of Article 25. In *Mohd. Hanif Qureshi* v. *State of Bihar*[18],the petitioner claimed that the sacrifice of cows on the occasion of *Bakrid* was an essential part of his religion and therefore the State law forbidding slaughter of cows was violative of his right to practice religion. The court rejected his argument and held that the sacrifice of cow on the *Bakrid* day was not an essential part of Mohammedan religion and hence could be prohibited by the State

[15] AIR 1954 SC 388
[16] AIR 2004 SC 2984
[17] AIR 1987SC 748
[18] AIR 1958 SC 731

 [ISSN 2581-5369]

under clause 2 (a) of Article 25. In *Moulana Mufti Sayeed Mohd. Noorur Rehman Barkariq* v. *State of West Bengal*[19], the Calcutta High Court has held that restrictions imposed by the State on the use of Microphones and loudspeakers at the time of *Azan* is not violative of right under Article 25 of the Constitution. Azan is certainly an essential and integral part of *Islam*, but use of microphone and loudspeakers are not an essential and integral part. Microphone is a gift of technological ages, its adverse effect is well felt all over the world. It is not only a source of pollution but it is also a source which causes several health hazards. Traditionally and according to the religious order, *Azan* has to be given by the Imam or the person incharge of the mosques through their own voice and this is sanctioned under the religious order.

In a significant judgment in *Church of God (Full Gospel) in India* v. *K.K.R.M.C. Welfare Association*[20], the Supreme Court has held that in the exercise of the right to religious freedom under Articles 25 and 26, no person can be allowed to create noise pollution or disturb the peace of others. The custom of religious prayer through the use of loudspeakers is not an essential element of any religion. To insist that the person concerned should be a member of a particular caste born of particular parents of his caste can neither be said to be an insistence upon an essential religious practice, rite, ritual, observance or mode of worship nor has any proper or sufficient basis for asserting such a claim. It was held that any custom or usage irrespective of any proof of their existence in pre-Constitutional days cannot be countenanced as a source of law to claim any right when it is found to be violative of human rights, dignity, social equality and specific mandate of the Constitution and thelaw made by Parliament. No usage which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be accepted or upheld.[152] This position has since been made clearer, more than once. The words of Gajendragadakar J., in *Govindlalji* v. *State of Rajastan*[21], could be quoted: "In deciding the question as to whether a given religious practice is an integral part of thereligion or not, the test always would be whether it regarded as such by the community following the religion or not."

In case of *Shri Adi Vishweshwara of kasi ViswanathTemple* v. *State of U.P.*[22], court held that the concept of "essentiality" is not itself a determinative factor. It is one of the circumstances to be considered in "adjudging" whether particular matters of religion or religious practice or belief are an integral part of religion. It must be decided whether the practices or matters are considered integral by the community itself. In determining this question, the court cannot act

[19] AIR 1999 Cal. 15
[20] AIR 2000 SC 2773
[21] AIR 1963 SC 1638
[22] (1997) 4 SCC 606

 [ISSN 2581-5369]

on its fiat, but shall have to take evidence of the followers of that religion and also the scriptures which would reveal its tenets excluding superstitions or "unessential accretions" to that religion.[23] On the other hand, once it is proved or admitted that a particular activity is an essential part of a religion, the court cannot further insist that;

i) It is being performed from time immemorial;or

ii) The doctrine involved is sound according to the court‟s opinion;or

iii) That it must be established as a customary right; or

iv) That it involves expenditure of money of the use of marketable commodities; or

v) That it relates to matters like food and dress; or

vi) That it differs as between different sects or denominations of the same religion.

vii) The courts retain, however, the power to glean out superstitious beliefs from the integral parts of a religion.

In *Worter Karamlki* v. *State of Meghalaya*[24], The petitioner, a Seng Khasi believer who lived in Maslong Village, Meghalaya, belonged to a community of thirteen houses and 86 people. They had a burial place that had been given to them by village leaders for all of time. Nevertheless, despite the petitioner's frequent complaints to the appropriate authorities eliciting no action, the respondents threatened to evict them from this land. They were thus prevented from performing the last rites and cremating their departed family members on the aforementioned land in accordance with their religious customs. The petitioners then filed a writ petition with the High Court asking for relief in response. According to the court, their fundamental right to freedom of religion was violated by the denial of these rights and the removal from the cremation place. Cremation of deceased adherents of the Deng Khasi sect was considered an essential part of their spiritual practices. Religion is strongly based in one's own personal beliefs and includes moral standards, customs, rituals, and acts of worship that are all regarded as fundamental to one's faith. Therefore, it was the Court's responsibility to defend and uphold the petitioners' religious freedoms. As a result, the Court mandated that the Deputy Commissioner allow the petitioner's group to keep using the aforementioned ground for cremations. The authorities were required to offer the community an alternate, adequate cremation location, nevertheless, if it was found that using the village's cremation ground had a negative impact on the environment.

[23] *Rana Muneswar* v. *State*, AIR 1976 Pat. 198
[24] AIR 2010 Gau 51

 [ISSN 2581-5369]

V. JUDICIARY INTERPRETING MEANING OF 'RELIGIOUS INSTRUCTION'

In *D.A.V. College* v. *State of Punjab*[25], in the instance Article 28 of the Constitution, which forbids the teaching of religion in State-funded educational institutions, was violated by Section 4 of the Guru Nanak University Act, which instructed the State to make provisions for the study and research of Guru Nanak's life and teachings. The court disagreed with the argument and declared:

"To provide for academic study of life and teachings of the philosophy and culture of anygreat saint in India in relation to world civilizations cannot be considered as marking provision for religious instruction. Religious instruction is that which is imparted, for inculcating the tenets, the rituals, the observances, ceremonies and modes of worship of a particular sect or denomination. What is prohibited under Article 28(1) is that no religious instruction should be imparted in a State educational institution; it does not prohibit moral or academic instruction. Therefore the teachings of Guru Nanak in a university, wholly maintained out of State funds do not violate Article 28(1)."

It was held in in *Aruna Roy and Others v. Union of. India and Others* [26] case that It is not possible to interpret Article 28(1) as forbidding "study of different religions" both inside and outside of India. The study of philosophy, which is inherently predicated on the study of religion, would be forbidden if that restriction were to be interpreted to include the phrase "religious instructions." As a result, the kids would be denied the opportunity to learn about their own faith as well as the religions of others they contact and live with in India. The Constitution does not forbid religious study, so that is how the constitutional clause should be worded. Furthermore, it was decided that Article 28(1) does not forbid the introduction of religious studies in public educational institutions, including those that receive full or partial state funding. It doesn't go against "secularism," which is a fundamental tenet of the Constitution. Understanding or researching the elements that all religions have in common is just a first step; it is not a non-secular phase.

VI. JUDICIARY ON RELIGION PUBLIC ORDER, MORALITY AND HEALTH

In *Saifuddin* v. *State of Bombay*[27], Supreme Court held that Article 25 of the Constitution guarantees every individual, whether a citizen or non-citizen, the fundamental right to freedom of conscience and the unrestricted ability to openly profess, practice, and propagate their

[25] AIR 1971 SC 1737
[26] (2002) 7 SCC 368
[27] AIR 1962 SC 853

 [ISSN 2581-5369]

religion. However, it's important to note that this guaranteed right is not absolute; it is subject to several key considerations. These include maintaining public order, upholding morality and health standards, adhering to other provisions within Part III of the Constitution, adhering to existing laws that regulate secular activities associated with religious practices, and complying with laws related to social welfare and reform. It's noteworthy that Article 25 addresses individual rights, distinct from the rights of organized religious bodies covered under Article 26. Consequently, every member of a community has the freedom, provided they do not infringe upon the corresponding rights of others, to profess, practice, and propagate their religion, along with the protection of their freedom of conscience. Individuals have the prerogative to hold or not hold specific religious beliefs and practices based on their personal convictions, and they cannot be coerced to adopt any particular creed or religious customs against their will. The Constitution grants individuals complete freedom in their relationship with their Creator, if they believe in one. However, this freedom is subject to certain limitations imposed by the State in the interest of public order, among other considerations. While individuals possess the absolute right to their religious beliefs, their actions stemming from those beliefs can be subject to restrictions, particularly those established by competent legislatures in the interest of public order and other societal concerns. For instance, religious practices that involve harmful actions such as human or animal sacrifice may be regulated or entirely prohibited by the State. In summary, although the Constitution guarantees freedom of conscience and belief, actions driven by those beliefs may be subject to restrictions in the interest of the broader community, as determined by competent legislatures. Such restrictions often aim at achieving social reform and safeguarding public well-being, as exemplified by legislation that has curtailed practices like widow immolation, dedicating young girls to deities, or social exclusion due to dietary choices.

In *Dr. Ismail Faruqui* v. *Union of India*[28], Supreme Court declared that all religious places have equal status and by a majority decision, the Supreme Court has ruled that the State possesses the sovereign authority to acquire places of worship, including mosques, churches, temples, and the like, independently of Article 300-A of the Constitution, especially when such acquisition is deemed necessary for the preservation of law and order. Such acquisition, in and of itself, does not contravene Articles 25 and 26 of the Constitution. The protection afforded by Articles 25 and 26 is specifically directed toward religious practices that constitute an integral and indispensable aspect of a given religion. While acts of prayer or worship indeed qualify as religious practices, performing them at any conceivable location where such acts may be

[28] AIR 1995 SC 605

 [ISSN 2581-5369]

undertaken is not considered an indispensable religious practice. In the context of secular India, a mosque holds an equivalent status to other places of worship, such as temples and churches, and is not accorded any superior standing. Furthermore, as Muslims can do Namaz (prayer) anywhere, including in public, a mosque is not necessary for the practice of Islam. It is vital to understand that the right to worship does not grant free access to worship at any location where it is possible to do so, unless the right to worship at a specific location is inextricably linked to the right to worship in general. By taking adverse possession, a mosque's title may be forfeited under the Mohammedan Law that governs India. On December 6, 1992, the President referred the case to the Supreme Court for its advisory opinion after the disputed building at the Babari mosque in Ayodhya was demolished, causing disruptions in peace and order throughout the nation. The Union Government bought the entire piece of land containing the mosque in an effort to ease the problem. The petitioners said that this action violated their rights under Articles 25 and 26 of the Constitution because they were denied the opportunity to worship at the mosque while Hindus were allowed to do so. The Act was upheld by the Court as legitimate because it did not interfere with fundamental aspects of religious practice. While the freedom to practice one's religion is a fundamental aspect of that freedom, that freedom does not include the absolute right to worship wherever one chooses. The same decision as Supreme Court has given in *Ramjanambhumi*[29]case, was given by the Gujrat High Court in *Gulam KadarAhmadbhai* v. *Surat Municipal Corporation*[30],that while providing prayers or worship is a religious practice, it is not always an essential or integral aspect of that practice unless the location has a special importance for that religion that makes it a vital or integral part of that religion.

In *Rev Stainislaus* v. *State of M.P.*[31], In this historic decision, the Supreme Court determined that forced conversion poses a threat to public order and upheld the law forbidding such conversions as a result. Two Acts, the Madhya Pradesh Dharma Swatatrya Adhiniyam, 1968, and the Orissa Freedom of Religion Act, 1967, both passed by the state legislatures of Madhya Pradesh and Orissa, respectively, were challenged as being illegal in this particular case. The argument supporting the challenge was that these Acts violated the appellant's fundamental rights as guaranteed by Article 25(1) of the Constitution and that the State Legislature did not have the authority to enact them because they did not fall under the purview of Entry 1 of List II or Entry 1 of List III of the Seventh Schedule. Instead, it was argued that they fell under Entry

[29] Supra.
[30] AIR 1998 Guj. 234
[31] AIR 1977 SC 908

 [ISSN 2581-5369]

97 of List I, making Parliament the only body with the power to enact laws rather than state legislatures. Contrary to the appellant's claims, the Supreme Court came to the conclusion that Entry 1 of List II did apply to the challenged Acts since their goal was to prevent public order disturbances by outlawing conversions carried out in a manner that offended the community's conscience. The court defined "public order," explaining that any disturbance that has an impact on community life as a whole rather than just an individual could be deemed a breach of public order. Therefore, it would probably raise concerns about a potential breach of public order that would have an effect on the larger society if an attempt were made to incite communal sentiments, such as by alleging that someone had been forcibly converted to another religion. In order to maintain public order, legislation that aims to prevent forced conversions can be passed and is constitutionally valid.

In *Gulam Abbas* v. *State of U.P*[32] According to a Supreme Court ruling, moving a property with religious ties in order to avoid disputes between two religious communities or sects does not violate a person's right to freedom of religion because it is done to preserve public order. The execution of religious ceremonies on certain plots and properties inside the region was the subject of a protracted conflict between the Shia and Sunni populations of Mohalla Doshipura, Varanasi, which led to violent riots and legal actions that reached the Supreme Court in one particular instance. The Divisional Commissioner served as the Chairman of the committee, which the Supreme Court constituted with seven members—three each from the Shia and Sunni communities—in order to find a durable solution. The committee suggested moving two Sunni tombs to create a barrier between Shia and Sunni shrines. The Sunnis argued that following this advice infringed their rights under Articles 25 and 26 of the Constitution, and therefore opposed its adoption. The Supreme Court, however, dismissed their claims and held that the petitioners' rights under Articles 25 and 26 were not violated by the court's order to implement the committee's recommendations. It stressed that the maintenance of public order is a condition of the enjoyment of fundamental rights protected by Articles 25 and 26 rather than an absolute right. By maintaining public order during religious rites and events attended by members of both religions, it was thought that the recommendation to transfer the graves served the interests of society as a whole. The consent of the parties involved becomes irrelevant if the Court determines that such implementation is helpful for upholding public order.

In *Anand Marga* case[33], The Supreme Court ruled that the procession of the Ananda Margis' Tandava dance, which featured deadly weapons and human skulls, was not regarded as a

[32] (1984)1 SCC 81
[33] AIR 2004 SC 2984

 [ISSN 2581-5369]

necessary part of their religious practice. As a result, the order made pursuant to Section 144 of the Criminal Procedure Code, which forbade such processions in the interest of public order and decency, did not infringe upon the constitutional rights of the petitioners as provided by Articles 25 and 26. Ananda Marga is a unique religious denomination within the meaning of Article 26 even though its core beliefs are substantially in line with Hinduism. Although the Tandava dance is a prescribed religious practice for Ananda Marga members, doing it in public does not automatically grant permission because the religious order is very new. The Section 144 order did not forbid Anand Margis from participating in processions or meetings in public areas, but it did specifically forbid them from carrying objects that could endanger public safety and violate moral standards, such as daggers, trishuls, and skulls. Although the judiciary has typically taken a broad and inclusive stance on the right to exercise and spread religion, it has consistently rejected the claim that this right includes the purposeful insult of other people's religious beliefs. Thus in *Ramji Lal Modi* v.*State of U.P.*[34], it was decided that S. 295A, I.P.C., was protected by Article 19(2) after taking into account the provisions of Articles 25 and 26, which, although protecting the freedom of religion, expressly rendered it subject to public order. Not every insult or attempt to offend a person's religion or religious beliefs was punishable under S. 295A; rather, it only applied to acts or attempts performed with the explicit and deliberate objective of offending the religious sensibilities of a specified class of persons. As a result, S. 295A only punished the most severe types of insult to religion, etc. These severe forms of insult had a demonstrable tendency to disrupt public order.

VII. JUDICIARY ON RELIGION AND SOCIAL REFORM

The judiciary has played a significant part in social change by appointing pujaris in Hindu temples and opening Hindu temples to everyone, including sudras. The judiciary has always favored social reform laws whenever they have been challenged on religious grounds. In *Javed* v. *State of Haryana*[35] According to the Supreme Court, Article 25 of the Constitution is not violated by Section 175(11)(q) of the Haryana Panchayati Raj Act, 1994, which prohibits those with more than two children from running for Sarapanch and Panch seats in the Panchayat. This clause's legality was contested on a number of grounds, including the claim that it violates Article 25 of the Constitution since it restricts the right to practice one's religion. The argument stated that any restrictions on this practice would be considered as a breach of the right to freedom of religion as guaranteed in Article 25 of the Constitution. According to Muslim personal law, marriage with up to four women is authorized, largely for the sake of breeding.

[34] (1957) S.C.R. 860
[35] AIR 2003 SC 3057.

 [ISSN 2581-5369]

The Supreme Court did, however, uphold the validity of this clause. The Supreme Court's reasoning was founded on the premise that the Article 25-guaranteed freedom of religion is constrained by factors like as morality, health, and public order. Therefore, legislation promoting social reform and welfare is permitted under the Constitution itself. Although Muslim personal law permits up to four marriages, it does not compel or demand that anyone marry four women. Without breaching the fundamental right to freedom of religion, bigamy or polygamy-promoting practices can be controlled through legislation.

In *Ram Prasad* v. *State of U.P.*[36] Rule 27 of the U.P. Government Servants Conduct Rules, which stated that a government employee could not wed a second wife while the first wife was still alive without the state government's consent, was found to not violate Article 25 because performing a second marriage could not be viewed as practicing, professing, or spreading the Hindu religion. Even if bigamy were seen to be a fundamental aspect of Hinduism, the challenged law was nonetheless protected by Article 25(2)(b).

(A) Fundamental rights as a limitation to religious freedom.

In *Tejraj Chhogalal Gandhi And Anr.* v. *State Of Madhya Bharat And Ors*[37] brought up significant issues with regard to denominational temples. The respondent's act of placing a Shivling in a Jain temple and barring Jains from engaging in their worship there gave rise to the case. The court ruled that the mere presence of a Shivling in the temple and its use by the Hindu community did not substantiate the claim that the temple also belonged to Hinduism because it was acknowledged and supported by documentation that the temple had a long history as a public Jain temple and that there was no historical evidence of it being dedicated to the Hindu public. It was obvious that the temple's members had a fundamental right under Article 25(1) to enter and practice their religious worship in line with Jain principles and customs because it served only as a public Jain temple built for the benefit of the Jain community. According to the Shirur Mutt case ruling, this freedom under Article 25(1) included practices, rituals, and ceremonies in addition to questions of faith and belief.[38]. The Shivling's presence, as well as the Hindu community's devotion of it, ran counter to Jain doctrine, Tirthkara veneration, and the feelings of the temple's Jain worshipers. Jains' basic rights were being violated by the State in violation of Articles 25(1) and 26(b), and these actions could not be justified by the rights' being subject to public order, morality, or health.

[36] AIR 1961 All. 334
[37] AIR 1958 MP 115
[38] AIR 1954 SC 282

 [ISSN 2581-5369]

In *Sarla Mudgal* v.*Union of India and others*[39] According to the ruling, a Hindu man who marries a Muslim woman twice without ending his first marriage would be guilty of bigamy under Section 449 of the Indian Penal Code and would be punished accordingly. It is not against their freedom of conscience or their right to freely profess, practice, and spread their religion to bring legal action against such people under the Criminal Law. The freedom guaranteed by Article 25 must be exercised within the restrictions of the Constitution and without impinging on the constitutional rights of others. Every person has a fundamental right under the constitution to not only hold and practice the religion of their choice but also to express that religion and its ideas in ways that respect other people's rights to religious freedom and personal expression.

(B) Authority of the State to control Secular Activities of Religious Denomination

In the several judgments Supreme Court has taken reformative and liberal view in deciding "appointment of *pujaris* as secular activity". The Supreme Court has never been hesitant to revoke a religious denomination's traditional authority to nominate pujaris. By doing this, the Supreme Court has advanced the cause of ending the caste system and the dominance of a single caste or sect in matters of religion. On this issue, we may state that the Indian Constitution's aims of equality, fraternity, and secularism are being worked for by the Supreme Court.

In case of *Seshammal* v. *State of Tamil Nadu*[40], Supreme Court cited the recommendations of the committee on untouchability, Economic and Educational Development of the Scheduled Castes in its report in 1969, "The hereditary priesthood in the Hindu Society should be abolished, that the system can be replaced by an ecclesiastical Organization of men possessing the requisite educational qualifications who may be trained in recognised institutions in priesthood and that theline should be open to all candidates irrespective of caste, creed or race." It was held that the hereditary principle of appointment of all office holders in Hindu temples should be abolished and noted that the Government's enactment of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1970, which abolished hereditary succession of the post of priest, is a further step towards social reform.

In *A. S. Narayan* v. *State of Andhra Pradesh*[41] it has been held that the term 'religion,' as used in Articles 25 and 26 of the Constitution, pertains to an individual's personal faith and belief system. It represents the connection between a person and the cosmos, their Creator, or a Higher Power. Essentially, religion revolves around an individual's personal faith, belief, or

[39] AIR 1995 SC 1531
[40] AIR 1972 SC 1586
[41] (1996) 9 SCC 548

 [ISSN 2581-5369]

relationship with what they perceive as the cosmos, their Creator, or the entity that governs the existence of living beings and the forces of the universe.

The petitioner in this case challenges the legality of the Andhra Pradesh Charitable and Hindu Religious and Endowments Act. He is the Chief Priest of the renowned and historic Hindu temple at Thirumala, commonly known as the Balaji Temple in North India. The Act eliminates the hereditary privileges of archakas (priests) and other office holders on the grounds that it violates their constitutionally protected right to freedom of religion under Articles 25 and 26. The claim was that the removal of hereditary privileges, which the temple's founders established for the use of archakas and others in charitable and religious organizations and endowments for the service of the temple, interferes with religious rituals and customs that are fundamental to the faith. The Act is constitutionally sound, according to the Court, and does not contradict Articles 25 and 26 of the Constitution. A religious practice or vital component of religion is not the hereditary right to choose priests. The freedom of religion, as guaranteed by Articles 25 and 26, is not unqualified and may be subject to state regulation, including actions that are commercial, financial, or otherwise secular in nature. Archaka appointment is regarded as a secular activity that can be governed by legislation. The Act does not interfere with any religion's religious practices or rituals; rather, it only controls the secular features of religious organizations and endowments. Archakas are regarded as temple employees.

In *N. Adithayan* v. *Travancore Dewaswom Board*[42], held that, The determination of what qualifies as an integral component of a religion or a religious practice falls under the purview of the courts, and it should be assessed in relation to the tenets of a specific faith or practices recognized as religious. This judgment holds significant implications, as the Supreme Court has asserted that Brahmins do not possess an exclusive privilege in conducting worship in a temple. The court ruled that if a non-Brahmin possesses the necessary education and skill in ritual performance, they may be appointed as a pujari (temple priest). The decision to sustain the appointment of a non-Brahmin as a pujari in the Kongoopilly Neerikoda Siva temple in Alangad village, Ernakulam, Kerala, was made by a bench made up of Justices S. Rajendra Babu and Doraiswami Raju. The court ruled that non-Brahmins may not have been explicitly forbidden from doing puja or playing the position of Santikaran (pujari) just because of their non-Brahmin status if, in the tradition or custom of any given temple, Brahmins had historically been the only ones to do so. Instead, it can be because others were denied the chance to learn about rituals, study Vedic literature, carry out religious rites, or go through the initiation necessary to wear

[42] AIR 2002 SC 3538

 [ISSN 2581-5369]

the holy thread. Therefore, there is no foundation for claiming that, in accordance with the rights and freedoms protected by Article 25 of the Constitution, only a Brahmin, in this circumstance, may perform the religious rites and rituals in the temple. Furthermore, it is untrue to assert that any departure from this would violate these constitutional protections.

In *Bhuri* v. *State of J. & K.*[43], The Jammu & Kashmir Mata Vashno Devi Shrine Act, 1988, which was passed to enhance the management, administration, and governance of the temple and its endowment, was challenged as being illegal in this case on the grounds that it infringed upon the petitioner's fundamental right to freedom of religion, which is protected by Articles 25 and 26 of the Constitution. The Act established guidelines for the State's appointment of priests and abolished the hereditary post of temple priest. According to the Supreme Court, the priests' work is a secular activity that the State may regulate in accordance with Clause (2) of Article 25 of the Constitution. The judge made a distinction between the idea of "religious service" and the person rendering it. An essential component of a religion's faith and belief is the act of performing religious services in accordance with the doctrines, customs, and practices unique to a place of worship; as such, it cannot be regulated by the State. The State does, however, have the power to control the selection of priests and set their salaries. The government may also decide to forego its regular portion of the sacrifices presented to the deity. While performing rituals is a "integral part" of the religious freedom guaranteed by Article 25 of the Constitution, the court highlighted that hiring a priest to perform these rituals is not. The court ruled that a priest holds an official job inside the temple and is subject to disciplinary actions comparable to those that apply to other employees of the temple, despite their close involvement with the performance of ceremonial rituals and daily worship of the deity.

(C) Throwing Open of Temples

In *Vekataramana Devaru* v. *State of Mysore*[44] The trustees of the Sri Vekataramana Temple in Mulki contested the Madras Temple Entry Authorization Act, 1947, which aimed to eliminate the restriction preventing Back Ward Class from entering Hindu public temples, after their request for exemption from the Act's provisions was denied by the government. The appellants argued that the temple was a private temple, a claim upheld by the trial court. However, the High Court rejected this assertion but granted a limited concession in favor of the appellants by allowing them to restrict access to the general public during specific ceremonies that were exclusive to members of their denomination. The Supreme Court was asked to decide whether

[43] AIR 1997 SC 1711
[44] 1958 SCR 895

 [ISSN 2581-5369]

a legislation protected by Article 25(2)(b) might be used to restrict a religious denomination's ability to control its own religious affairs, as allowed by Article 26(b) of the Constitution. According to Justice Venkatarama, the word "religious institutions of public character" specified in Article 25(2)(b) includes temples built for the benefit of particular groups of the public, including denominational temples, in addition to temples devoted to the general public. The court determined, as a matter of fact, that the Sri Venkataramana Temple in Mulki was indeed a denominational temple. After citing the meaning given to the expression "matters of religion" in *The Commissioner Hindu Religious Endowment Madras v. Shri Laxmidhar Tirtha Swamiyar of Shirur Mutt* [45] according to which matters of religion in Article 26 (b) included even practices which were regarded by the community as part of its religion, Ventarama Aiyar J. said:

"…under the ceremonial law pertaining to temples, who are entitled to enter into them for worship and where they are entitled to stand and worship and how the worship is to be conducted are all matters of religion. The conclusion is also implicit in Article 25 which after declaring that all persons are entitled freely to profess, practice and propagate religion, enacts that this should not affect the operation of any law throwing open Hindu religious institutions of a public character to all classes and sections of Hindus."

According to Article 26(b), the appellant would have the right to prevent anyone except "Gowda Saraswath Brahmins" from entering the temple for worship. Under Article 25, a law that allows public temples to be accessible to all categories of Hindus is considered valid. The term "public" in its ordinary sense includes any segment of the public, and the temple in question would be considered a public institution under Article 25(2)(b). Section 3 of the Madras Act would fall under the protection of this provision. As a result, there appears to be a conflict between these two Articles. However, when the right asserted is not one of completely and universally excluding the public from worshiping in the temple at all times but rather an exclusion from specific religious services limited by the foundation's rules to members of the denomination, then the issue is not whether Article 25(2)(b) completely supersedes and extinguishes this right. Instead, it's a matter of finding a way to regulate the rights of those protected by Article 25(2)(b) in a manner that respects both sets of rights. In the words of the court, "If the denominational rights are such that implementing them would significantly diminish the right granted by Article 25(2)(b), then, in accordance with our understanding that Article 25(2)(b) prevails over Article 26(b), the denominational rights must be set aside. However, in cases where this is not the

[45] 1954 SCR 1005

 [ISSN 2581-5369]

situation, and after accommodating the rights of the denomination, there remains a substantial aspect of the right to worship for the public, rather than just a mere semblance of it, there is no reason why we should not interpret Article 25(2)(b) in such a way as to honor Article 26(b) and acknowledge the denomination's rights concerning matters that are distinctly denominational, while leaving the rights of the public in other respects intact.

VIII. INTERPRETATION OF RIGHTS OF RELIGIOUS DENOMINATION REGARDING MOVABLE AND IMMOVABLE PROPERTY

In *Narendra* v. *State of Gujarat*[46], Supreme Court observed the meaning and scope of term "religious denomination" and rights of such denomination, it quoted;

"It is well known that the practice of setting up *Maths* as centres of theological teaching was started by *Shri Sankaracharya* and was followed by various teachers since then. After *Sankara*, came a galaxy of religious teachers and philosophers who founded the different sects and sub sects of the Hindu religion that we find in India at the present day. Each one of such sects or sub-sects can certainly be called a religious denomination, as it is designated by a distinctive name, in many cases it is the name of the founder and has a common faith and common spiritual organization. The followers of *Ramanuja,* who are known by the name of *Shri Vaishnabas*, undoubtedly constitute a religious denomination;and so do the followers of *Madhwacharya* and other religious teachers. It is a fact well established by tradition that the Udipi *Maths* were founded by *Madhwacharya* himselfand the trustees and the beneficiaries of these *Maths* profess to be followers of that teacher. The High Court has found that the *Math* in question is in charge of the *Sivalli* Brahmins who constitute a Section of the followers of *Madhwacharya.* As Article 26 contemplates not merely a religious denomination but also a Section thereof, the *Math* or the spiritual fraternity represented by it can legitimately come within the purview of this Article. The other thing that remains to be considered in regard to Article 26 is, what, is the scope of clause (b) of Article 26 which speaks of management 'of its own affairs in matters of religion?" The language used implies that there may be certain matters within a religious denomination or its subsections that do not fall under the category of religious affairs and, therefore, are not protected by the guarantee provided in this clause. The key question is determining the boundary between what constitutes religious matters and what does not. According to Article 26(b), a religious denomination or organization holds full autonomy in deciding which rituals and ceremonies are essential in accordance with their religious principles, and external authorities have no authority to interfere in these decisions. Furthermore, it was clarified that the right

[46] AIR 1974 SC 2098

 [ISSN 2581-5369]

granted by Article 26(c) to own and acquire property for managing religious affairs does not supersede the state's right to compulsorily acquire property in line with Article 31(2) of the Constitution. It was argued that when property is acquired by the State through lawful means and under the provisions of Article 31(2), and there are no valid grounds for challenging the acquisition, including religious institutions, the right to own that property is transferred to the State. Consequently, there is no longer a right to claim ownership of that specific property, subject to considerations of public order, morality, and health, rendering Article 26 irrelevant in such circumstances. It was also highlighted that the Supreme Court has determined that the provisions of the mentioned Act were enacted to promote agrarian reform and are squarely protected by Article 31-A's saving provision. Justice Goswami, speaking on behalf of the Court, emphasized that the right protected under Article 26(c) is not absolute and unqualified, and it can coexist with reasonable regulations imposed by the State, provided that these regulations do not directly undermine the essence of this freedom. The Act does not infringe upon this freedom in a manner that significantly impairs its substance. Individual fundamental rights must harmonize with the exercise of other fundamental rights by different parties and align with reasonable and legitimate exercise of state power in accordance with the Directive Principles for the overall welfare of society. The Court's role is to strike a balance between competing interests.

In *Durgah Committee* v. *Hussain*[47], Supreme Court held that Article 26 must be carefully examined and its protection should be limited to religious practices that are deemed essential and integral to a religion, and nothing else. Property management was under the control of officials, and Article 26 doesn't grant new rights to any denomination or section that they didn't previously possess. Instead, it safeguards and guarantees the preservation of rights that such denominations or sections already had. If a denomination never had the right to manage property in favor of a denominational institution according to the reasonable terms on which the endowment was established, then they cannot be assumed to have gained that right through Article 26. The prevailing practices and customs, which should align with the terms of the endowment, should not be disregarded. Consequently, deeming the Act illegal and demanding administration and management by the denomination is inconsistent with Article 26. The Court noted that the right protected under Article 26(c) is not absolute and unconditional, and it can coexist with reasonable regulations imposed by the State, as long as these regulations do not substantially undermine the essence of that freedom. The Act, in this case, does not encroach on this freedom in a manner that directly affects its core substance. Individual fundamental

[47] AIR 1961 SC 1402

 [ISSN 2581-5369]

rights cannot exist in isolation; they may need to coexist harmoniously with the exercise of other fundamental rights by different parties and align with reasonable and legitimate exercises of state authority in pursuit of the Directive Principles for the overall welfare of society. The Court's responsibility is to strike a balance among conflicting claims of various interests.

In *Ratilal Panachand Gandhi* v. *State of Bombay*[48], in which it has been determined that a religious sect or denomination has the right to manage its own affairs with regard to religion, including the right to use trust assets or income for religion and for religious purposes and objects specified by the trust's founder or established by custom prevailing in a specific institution. It was further stated there that, even though the original objectives of the founder could still be carried out, diverting the trust property or funds for purposes the charity commissioner or the court considered expedient or proper constituted an unwarranted intrusion on religious institutions' right to manage their religious affairs. It was decided that the State can only intervene if the trust fails or is rendered incapable of being carried out completely or in part.

In case of *B.M. Sukumar Shetty, Managing* v. *State By Its Secretary, Revenue*[49], The Supreme Court has clarified that not every aspect of religion enjoys the protection provided by Articles 25 and 26 of the Constitution. The Constitution does not intend to shield every religious activity from interference, and it does not extend its protection to all mundane or human activities simply by labeling them as religious. It is important to approach Articles 25 and 26 with a practical perspective. Given the inherent complexity of defining terms like "religion," "matters of religion," or "religious beliefs and practices," it becomes exceedingly challenging, if not impossible, to create precise boundaries.

The right to practice and observe rituals, as well as the right to manage religious matters, is safeguarded under these articles. However, the right to oversee the administration or management of a temple or endowment is not an inherent aspect of religion or religious practice that is beyond statutory regulation. These secular activities are subject to state oversight through appropriate legislation. In contrast, aspects of religion and religious practices that are integral components of a religion remain protected. It is well-established in legal precedent that the administration, management, and governance of religious institutions or endowments are secular activities, and the state can regulate them through appropriate laws.

IX. JUDICIARY ON FREEDOM FROM TAXES UNDER ARTICLE 27

[48] 1954 SCR 1035
[49] ILR 2005 Kar. 5241

 [ISSN 2581-5369]

In *Ratilal Panachand Gandhi* v. *State of Bombay*[50], When the word "taxes" was mentioned, the question of whether "fees" fell under the tax category was brought up. According to a Supreme Court decision, a tax is in the character of a coercive exaction of money by a public authority for public purposes. The imposition is imposed for public use to pay for state-wide expenses, without taking into account any special advantages that the tax payer will experience. The only reward that comes from paying taxes is a portion of the state's general benefits, which is a common burden. Fees, on the other hand, are contributions paid primarily in the interest of the public, but for a special service rendered or for a special task done for the advantage of the individuals from whom the fees are demanded. On the basis of this distinction between tax and the fee, Supreme Court in *Sri. Jagannath* v. *State of Orissa*[51], ruled that the tax imposed by the Orissa Hindu Religious Endowments Act, 1939, was more akin to a charge than a tax. The contribution was only required to cover the costs of the Commissioner and his office, which served as the framework for the proper management of the religious institution's operations. the apparatus put in place to ensure proper management of the religious institution's affairs. The goal of the donation was to ensure that religious institutions were properly run rather than to nurture or preserve Hinduism or any of its denominations.

In *Suresh* v. *Union of India*[52], A division bench of the Delhi High Court has ruled that if a religious leader is regarded as a national figure who has contributed to India's "cultural heritage," rather than as the founder or promoter of a specific religion, then State spending to honor their memory and even the publication of their teachings would not violate Article 27. The government of India's plan to commemorate the Nirvana Anniversary of Lord Mahabir, the Jain religion's founder, gave rise to the dispute now before the High Court. The program included, among other things, the construction of stone pillars bearing quotations from him, the establishment of a library of Jain literature, the teaching of children about Bhagwan Mahavira's teachings, the publication of a book on those teachings, and the screening of documentaries about Jain pilgrimage sites. In India, no sane individual would object to admiring geniuses like Mahavira. As a result, the High Court affirmed the State's expenditure on such events in the interest of the country as a whole rather than a specific faith.

X. JUDICIARY ON PERSONAL LAW

In the *State of Bombay* v. *Narasu Appa Mali*[53], The court ruled that even if personal laws

[50] Supra.
[51] AIR 1954 SC 400
[52] AIR 1975 Del. 168
[53] AIR 1952 Bom 84

 [ISSN 2581-5369]

violate fundamental rights, they are nevertheless valid because they are not considered part of the body of laws currently in effect. The court also declared that religious sects had their own autonomy and that personal laws were recognized as being independent of the Constitution. Scriptures and religious books were not susceptible to judicial inspection, according to the court perception that personal laws did not lie under its scope.

In the remarkable *Mohd Ahmed Khan* v. *Shah Bano Begum*[54] (popularly known as *Shah Bano* case) judgment of the Supreme Court of India took a stand contrary to the one it adopted in *Narasu Appa Mali*[55] case. The Shah Bano case included an elderly Muslim woman who filed a lawsuit to challenge the terms of her husband's divorce. Shah Bano, a 65-year-old lady, filed a petition in 1978 asking her husband, who had left her for another woman after more than 40 years of marriage, for monetary maintenance (alimony). Shah Bano was only entitled to support for three months under Muslim law. The Supreme Court, however, upheld her entitlement to continuing assistance. According to the court's decision, Muslim Personal Law (Shariat) supersedes Section 125 of the Criminal Procedure Code when it comes to divorce-related issues.

The Supreme Court also reminded the Central Government of the urgent need to create a uniform civil code that would be applicable to all citizens throughout the whole nation. The court expressed sorrow about the ineffective implementation of Article 44 of the Constitution, which calls for the effort to establish such a uniform civil code. The court observed, "It is a matter of regret that Article 44 of our Constitution has remained a dead letter… It provides that the State shall endeavor to secure a uniform civil code for the citizens throughout the territory of India. There is no evidence of any official activity for framing a uniform 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 laws. A common civil code will help the cause of national integration by removing disparate loyalties to laws, which have conflicting ideologies. No community is likely to lead the way by making gratuitous concessions on this issue." The Muslim community criticized this decision because it overruled Muslim personal law in favor of the secular Criminal Procedure Code. Some people claimed that the judgment was against Islamic law and quoted the Qur'an to support their claim. The Muslim Women (Protection of Rights on Divorce) Act, 1986, was enacted by the Congress government, which had an absolute majority, as a result of this case. Even the most destitute Muslim divorcees were essentially denied their right to spousal maintenance under this Act, which effectively nullified the

[54] 1985 SCR (3) 844
[55] AIR 1952 Bom 84

 [ISSN 2581-5369]

Supreme Court's ruling. Subsequently, in *Daniel Latifi* v. *Union of India*[56], validity of the Muslim Women(Protection of Rights on Divorce) Act, 1986 was challenged. The Supreme Court used the harmonious construction principle and interpreted the law very much in accordance with its Shah Bano decision. The Supreme Court's decision in the matter of Mohd. Ahmed Khan v. Shah Bano Begum looked to be reversed by the Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWPRDA, 1986). Initial interpretations of the MWPRDA, 1986 made it appear that a Muslim husband was only obligated to provide for his divorced wife financially during the iddat period before turning that responsibility up to her family members. This issue resurfaced in the case of Danial Latifi v. Union of India[57] when the constitutional validity of the MWPRDA, 1986 was challenged. The claim was that because Muslim women were denied maintenance benefits comparable to those offered to other women under Section 125 of the Criminal Procedure Code, 1973, the law was discriminatory and breached the right to equality guaranteed by Article 14 of the Indian Constitution. Furthermore, it was argued that the rule would violate Muslim women's constitutional right to life under Article 21 of the Indian Constitution by rendering them impoverished. The Supreme Court maintained the legality of the MWPRDA, 1986 by a creative interpretation. According to the Court, a Muslim husband has a duty to provide for his divorced wife in a reasonable and equitable manner going beyond the iddat term. The phrase "provision" from the MWPRDA, 1986, which states that "at the time of divorce, the Muslim husband is required to consider the future needs of his wife and make advance preparations to meet those needs," served as the foundation for this interpretation. This case is significant because it struck a balance between Muslim personal law and the Criminal Procedure Code of 1973 by establishing for the first time that a Muslim husband's obligation to pay maintenance to his divorced wife extends beyond the iddat period and that he must do so within that period. Further court also compared religion and law in *Lily Thomas* v. *Union of India*[58] case. Faith in religion comes from the depths of the heart and mind. Religion is a system of thought that connects a person's spiritual nature to a supernatural being; it is a subject of sincere devotion, firm belief, and pietism. Religion, faith, and dedication are difficult to compare one to the other. When viewed from this perspective, one cannot allow someone to take advantage of their exploitation by mockingly adopting a different religion where multiple marriages are legal in order to renounce the first marriage and forsake the wife. This is because religion is not a good that can be exploited. Under all personal laws, the institution of marriage

[56] 2001 (7) SCC 740
[57] Ibid.
[58] AIR 2000 SC 1650

 [ISSN 2581-5369]

is a frightened institution.

In *Sarla Mudgal* v. *Union of India and others*[59] The court reiterated the necessity of a single civil code. A uniform civil code is necessary for national unification, according to Justice Kuldip Singh. "The traditional Hindu Law Personal Law of the Hindus governing inheritance, succession, and marriage was given as early as 1955–1966, underscoring the function of a unified civil code in fostering unity in the nation," he stated. There is absolutely no justification for protracted delays in the implementation of a national uniform personal law. The learned judge continued, “Those who wanted to remain in India after the division knew that Indian leaders did not support the two-nation or three-nation theories and that there would only be one nation in the Indian republic—the Indian nation.” No group could assert that it was a separate entity based on religion, the learned judge said.

XI. CONCLUSION

India officially declared itself a secular state by amending its Constitution through the 42nd Amendment, incorporating the term "secular" into the preamble. The Constitution guarantees the rights of various religious groups, particularly safeguarding the interests of minorities through cultural and educational rights. The preamble emphasizes the liberty of thought, expression, belief, faith, and worship, while also promoting fraternity among citizens. Discrimination based on religion in public spaces or elsewhere is prohibited, ensuring equality before the law and equal protection of the law. Interestingly, the Indian Constitution not only respects religiosity but also provides equal protection to those with anti-religious views or atheistic beliefs. The state refrains from interfering in "matters of religion" as long as actions do not undermine public order, health, or morality. India does not endorse any official state religion, even though certain constitutional provisions may appear to favor Hinduism, given the country's majority Hindu population. Throughout its history, the Indian judiciary has consistently defended secularism whenever it was threatened, and various laws enacted after independence ensure the preservation of India's secular character. In contrast to the strict separation between state and religion established by the U.S. Constitution, the Indian Constitution allows for a more nuanced relationship between the two. The Indian Constitution and judiciary can intervene in religious matters with the aim of promoting reform and rationalization of religious practices. Additionally, the Indian government has the authority to allocate funds in the name of promoting "Indian culture" to support schools run by religious organizations, maintain places of worship, facilitate pilgrimages, and aid social service agencies

[59] AIR 1995 SC 1531

 [ISSN 2581-5369]

operated by faith-based organizations. Furthermore, India's reservation policy is based on both caste and religion, addressing historical inequalities and ensuring equitable opportunities for marginalized communities.

The Indian Constitution, a product of the struggle for independence, serves as the primary protector of India's secular state. It stands as the most significant legacy of the nation's leaders, who framed it to ensure a secular and unified India. Secularism played a vital role in uniting the Indian people in their fight for freedom against British rule. The Constitution itself contains numerous provisions that uphold India's secular nature, even though the country has a predominantly religious population. Despite several communal riots in the post-independence era, India has successfully maintained its secular identity. The Constitution's unequivocal support for a secular state is evident, particularly in the provisions related to Fundamental Rights (Part III), which form a strong foundation for India's secularism. Although the terms "secular" and "secularism" were initially omitted from the Constitution, their essence was clearly understood by the framers. These terms were officially added to the preamble through the 42nd Constitution Amendment Act in 1976, making secularism one of India's declared goals alongside sovereignty, democracy, socialism, and republicanism. The Constitution guarantees freedom of conscience, equality before the law, and non-discrimination based on religion in accessing public places. It also prohibits religious instruction in government-funded educational institutions while permitting religious instruction in schools maintained by religious groups. India's secularism underscores the idea that the state is neutral in matters of religion, limiting the role of religion in the public sphere, and emphasizing the importance of discussion and social consensus beyond any single religion. Despite challenges in practice, these principles of secularism have become integral to India's accepted political values.

In essence, a "secular State" is not one that eliminates religion but rather one where the State maintains a distance from religious affairs. It ensures that there is no discrimination based on religion or faith and prevents the dominance of one religion or the imposition of majoritarian religious sentiments. Secularism can be practiced through a completely neutral stance toward religions or through a positive approach, where one section of religious individuals respects and understands the beliefs of another section. In light of these principles, it is evident that India can be characterized as a secular State. The ideals of a secular State are clearly enshrined in the Indian Constitution, and these provisions are substantially put into practice.

India's commitment to secularism is not about the eradication of religion but rather about fostering a society where diverse religious beliefs coexist harmoniously, free from discrimination or religious dominance. The Indian Constitution serves as a robust foundation

 [ISSN 2581-5369]

for this secular vision, ensuring that all citizens, regardless of their religious affiliations, enjoy equal rights and protections. While challenges may arise in practice, India's continued adherence to these principles reflects its commitment to secularism as a guiding principle of its democratic and pluralistic society.

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 [ISSN 2581-5369]