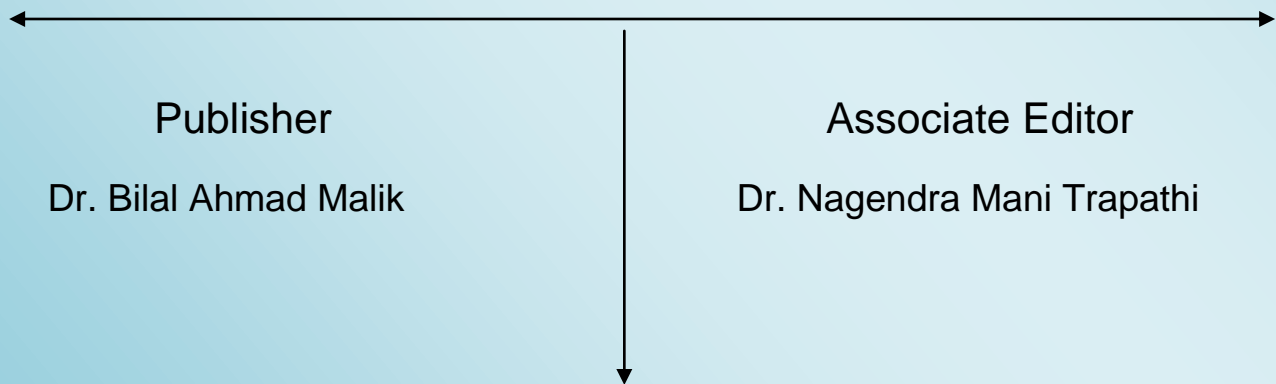


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INDIAN RELIGION RELATED LAWS

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INTRODUCTION

Religion is the science of soul. Morality and ethics have their foundation on religion. Religion played an important part in the lives of the Indians from the earliest times. It assumed numerous forms in relation to different groups of people associated with them. Religious ideas, thoughts and practices differed among these groups, and transformations and developments took place in the various religious forms in course of time. Religion in India was never static in character but was driven by an inherent dynamic strength.

In the background of the provisions of the Constitution and the light shed by judicial precedent we may say 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 expression in word and deed, such as worship or ritual.¹

RIGHT TO RELIGIOUS FREEDOM

Interpreting the constitutional provisions relating to freedom of religion the Supreme Court has observed: The right to religion guaranteed under Articles 25 & 26 is not an The Constitution uses but does not define the expressions 'religion 'and 'religious denomination' and therefore the courts have found it necessary to explain the meaning and connotation of these words. The Supreme Court has observed that: absolute or unfettered right; they are subject to reform on social welfare by appropriate legislation by the state.

(1)SP Mittal v Union of India AIR 1983 SC 1

The Court therefore while interpreting Article 25 and 26 strikes a careful balance between matters which are essential and integral part and those which are not and the need for the State to regulate or control in the interests of the community.²

The right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right; they are subject to reform on social welfare by appropriate legislation by the State. The Court therefore while interpreting Article. There have been numerous other rulings explaining the scope and connotation of the religious liberty provisions in the Constitution. Given below is a summary of the major rulings:

1. Articles 25-30 embody the principles of religious tolerance that has been the characteristic feature of Indian civilization from the start of history. They serve to emphasize the secular nature of Indian democracy which the founding fathers considered should be the very basis of the Constitution.³
2. Freedom of conscience connotes a person's right to entertain beliefs and doctrines concerning matters which are regarded by him to be conducive to his spiritual wellbeing.⁴
3. To profess a religion means the right to declare freely and openly one's faith.⁵
4. Religious practices or performances of acts in pursuance of religious beliefs are as much a part of religion as faith or belief in particular doctrines.⁶
5. What constitutes an integral or essential part of a religion or religious practice is to be decided by the courts with reference to the doctrine of a particular religion and includes practices regarded by the community as parts of its religion.⁷
6. The right to profess, practice and propagate religion does not extend to the right of worship at any or every place of worships that any hindrance to worship at a particular place per se will infringe religious freedom.⁸

(2) AS Narayana Deeshitalyu v State of Andhra Pradesh (1996) 9 SCC 548.

(3) Sardar SuednaTaiirSaifiiddin v State of Bombay AIR 1962SC 853.

(4) RatilalPanachand Gandhi v State of Bombay AIR 1954 SC388.

(5) Punjab Rao v DP Meshram AIR 1965 SC1179.

(6) RatilalPanachand Gandhi v State ofBombay AIR 1954 SC 388.

(7) Seshammal v State of Tamil Nadu AIR 1972 SC 1586.

(8) Ismail Paruqi v Union of India (1994) 6 SCC 360.

7. Under Article 25 to 'propagate' religion means 'to propagator disseminate his ideas for the edification of others' and forth purpose of this right it is immaterial 'whether propagation takes place in a church or monastery or in a temple or parlor meeting.'⁹
8. To claim to be a religious denomination a group has to satisfy three conditions: common faith, common organization and designation by a distinctive name.¹⁰
9. The expression 'matters of religion' in Article 26 extends to acts done in pursuance of religion and covers rituals, observances, ceremonies and modes of worship.¹¹
10. A religious denomination has the right to lay down the rites and ceremonies to be performed by its members.¹²
11. A 'common burden' (e.g., land revenue) which is imposed on all does not violate the right of a religious denomination.¹³
12. Property of a religious denomination violating the agrarian form and land ceiling laws can be lawfully acquired by the State.¹⁴
13. A law which takes away the right of administration from a denomination and vests it in a secular body would infringe upon the Constitution.¹⁵
14. Since the State is secular and freedom of religion is guaranteed both to individuals and groups, it is against the constitutional policy to pay out of public funds any money for the promotion or maintenance of a particular religion.¹⁶

(9) Commissioner, Hindu Religious Endowments, Madras v Lakshmindra Thirtha Swamiar of Sri Shirur Mutt AIR 1954 SC 282.

(10) SK Mittal v Union of India AIR 1983 SC 1.

(11) Jagannath Ramanuj Das v State of Orissa AIR 1954 SC 400; Dargah Committee v Husain AIR 1961 SC 1402.

(12) Ramanuj v Tamil Nadu State AIR 1972 SC 1586.

(13) Govt. of Tamil Nadu v Ahobila AIR 1987 SC 245.

(14) Narendra v State of Gujarat AIR 1974 SC 2098.

(15) Ratilal Panachand Gandhi v State of Bombay AIR 1954 SC 388.

(16) Commissioner, Hindu Religious Endowments v LT Swamiar AIR 1954 SC 282.

COMMUNITY-SPECIFIC - CONSTITUTIONAL PROVISIONS

Side by side with the foretasted general provisions relating to religious neutrality of the State and religious liberties of the people, we find within the Constitution of India a number of religion-based and religion-related provisions for certain communities who can be classified as follows:

- a) The Hindus, Buddhists, Jains and Sikhs, who are mentioned in the Constitution by their denominational names; and
- b) Certain groups who are mostly Christian by religion but the special provisions do not mention them as denominational groups. Since all these constitutional provisions relate to particular religious communities; these will be considered at length, community wise. This covers special laws meant for various religious communities. Given here is a brief classified checklist of all such provisions.

The community-specific provisions of the Constitution reflect the Indian concept of secularism as discussed above and do not change or detract from the ocular character of the State in India.

PROVISIONS FOR HINDUS, BUDDHISTS, JAINS & SIKHS

The Constitution includes the following special provisions for the Hindu, Buddhist, Jain and Sikh communities:

- a) Declaration of abolition of untouchability (mainly a Hindu religious custom) and prohibition of its practice in any form -Article 17.
- b) A Directive Principle of State Policy requiring the State to take steps to prohibit slaughter of cows and calves (reverence for whom is customary among the Hindus) - Article 48.
- c) Declaration of the validity of pre-existing and future laws made to throw open Hindu places of worship to all sects and sections of the Hindus (with a supplementary provision giving the power for the Buddhist, Jain and Sikh shrines) - Article 25, Explanation I.
- d) A special provision for the grant of specified annual maintenance allowances be given from the State exchequer for the upkeep of Hindu temples of a certain denomination in two South Indian states, Kerala and Tamil Nadu - Article 290A.
- e) Declaration of wearing and carrying a kirpan (sword) a Fundamental Right for the Sikhs - Article 25, 'Explanation II.

PROVISIONS FOR MAINLY CHRISTIAN GROUPS

The following special provisions were included in the Constitution for certain communities which are mainly Christian by religion:

- i. Some special provisions of a transitory nature for the Anglo-Indian community - Articles 331, 333, 336-37, 366(2).
- ii. A provision for the protection of the customary law and its administration among the Nag as in the Christian-dominated State of Nagaland - Article 370A.
- iii. A similar provision for the Mezzos in the Christian- dominated State of Mizoram - Article 370G.

PROVISIONS FOR MAINLY ISLAMIC GROUPS

The Islamic world is experiencing a revivalist trend and a return to religious fundamentalism. Regimes find it increasingly difficult to avoid responding to these popular pressures for Islam citation. The incorporation of Shari's crimes and procedure has become the touchstone of a regime's Islamic character. Yet, aspects of Shari 'arguably are contrary to the international consensus on human rights. As suggested, the notion of an independent and autonomous individual possessing rights against the state is alien to Islamic religion and culture. It is claimed by some that international human rights standards should be interpreted, applied, and qualified by domestic cultural and religious norms and practices.¹⁷ Others are willing to concede that certain rights are not fundamental and may be abrogated on the grounds of cultural relativism.¹⁸ Another group of commentators views such claims as permitting the abuse and subordination of individuals by regimes which often cynically wrap themselves in the mantle of traditionalism.

17. See Renteln, *The Unanswered Challenge of Relativism and the Consequences for Human Rights*, 7 HUMAN RIGHTS Q. 514 (1985).

18. See generally Donnelly, *Cultural Relativism and Universal Human Rights*, 6 HUMAN RIGHTS Q. 400 (1984).

RELIGION UNDER CONSTITUTION AND RELATED LAWS

Constitutionally, India is a secular country and has no State Religion. However, it has developed over the years its own unique concept of secularism that is fundamentally different from the parallel American Concept of secularism requiring complete separation of church and state, as also from the French ideal of *laïcité* - described as 'an essential Compromise whereby religion is relegated entirely to the private sphere and has no place in public life whatsoever'. Despite the clear incorporation of all the basic principles of secularism into various provisions of the Constitution when originally enacted, its preamble did not then include the word 'secular' in the short description of the country which it called a 'Sovereign Democratic Republic'. This was not an inadvertent omission but a well-calculated decision meant to avoid any misgiving that India was to adopt any of the western notions of a secular state.

Twenty-five years later - by which time India's own concept of secularism had been fully established through judicial decisions and state practice - the preamble to the Constitution was amended by the Constitution (Forty-second Amendment) Act 1976 to include the word 'secular' along with 'socialist', to declare India to be a 'Sovereign Socialist Secular Democratic Republic'. As will be seen below, there is a blend of secular and religious elements within the text of the Constitution and it is this admixture that defines and determines the contours of secularism to be acted upon by the State and the religious freedom to be exercised by individuals and communities in modern India.

We are a secular nation, but neither in law nor in practice there exists in this country any 'wall of separation' between religion and the State - the two can, and often do, interact and intervene in each other's affairs within the legally prescribed and judicially settled parameters. Indian secularism does not require a total banishment of religion from the societal or even State affairs. The only demand of secularism, as mandated by the Indian Constitution, is that the State must treat all religious creeds and their respective adherents absolutely equally and without any discrimination in all matters under its direct or indirect control. In an early case after the commencement of the Constitution court had examined the US principle of the 'wall of separation' between religion and State and Concluded that there are provisions in the Indian Constitution which are 'inconsistent with the theory that there should be a Wall of separation between Church and State.'¹⁹

(19) Narayanan Namboodripad v State of Madras AIR 1955 Mad 385. In the leading case of SR Bommai v Union of India (1994) 3 SCC 1

Various judges of the Supreme Court of India individually explained the significance and place of secularism under the Constitution in very meaningful words sampled below:

- The Constitution has chosen secularism as its vehicle to establish an egalitarian social order. Secularism is part of the fundamental law and basic structure of the Indian political System.
- Notwithstanding the fact that the words 'Socialist' and 'Secular' were added in the Preamble of the Constitution, the concept of secularism was very much embedded in our constitutional philosophy from the very beginning. By this amendment what was implicit was made explicit.
- Constitutional provisions prohibit the establishment of a theocratic State and prevent the State from identifying itself with or otherwise favoring any particular religion
- Secularism is more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions.

When the State allows citizens to practice and profess their religion, it does not either explicitly or implicitly allow them to introduce religion into non-religious and secular activities of the State. The freedom and tolerance of religion is only to the extent of permitting pursuit of spiritual life which is different from the secular life. The latter falls in the exclusive domain of the affairs of the State.

RELIGION UNDER CRIMINAL LAWS RELATED

Details of IPC Sections 153A, 295 & 295A

SECTION 153 A:

The purpose of the Section 153 A is to punish persons who indulge in wanton vilification or attacks upon the religion, race, and place of birth, residence, language etc. of any particular group or class or upon the founders and prophets of a religion. The jurisdiction of this Section is widened so as to make promotion of disharmony, enmity or feelings of hatred or ill-will between different religious, racial, language or regional groups or castes or communities punishable. Offence on moral turpitude is also covered in this section.

The offence is a cognizable offence and the punishment for the same may extend to three years, or with fine, or with both. However, the punishment of the offence committed in a place of worship is enhanced up to five years and fine.

Ingredients of Section 153A:

The act of promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste, community or any other group.

Acts prejudicial to the maintenance of harmony between different groups or castes or communities, if the acts disturb public tranquility.

Acts causing fear or alarm or a feeling of insecurity among members of any religious, racial, language or regional group or caste or community by use of criminal force or violence against them.

SECTION 295:

Section 295 of the I.P.C makes destruction, damage, or defilement of a place of worship or an object held sacred, with intent to insult the religion of a class of persons, punishable with imprisonment which may extend to two years, or with fine, or with both. This section has been enacted to compel people to respect the religious susceptibilities of persons of different religious persuasion or creeds.

Ingredients of Section 295:

- The accused must do such an act with the intention of insulting the religion of any person, or with the knowledge that any class of person is likely to consider such destruction, damage or defilement as an insult to their religion.
- The accused must destroy damage or defile any place of worship or any object which is held as sacred by any class of persons.

SECTION 295-A:

The object of Section 295-A is to punish deliberate and malicious acts intended to outrage the religious feelings of any class by insulting its religion or the religious beliefs. This section only punishes an aggravated form of insult to religion when it is perpetrated with deliberate and malicious intention of outraging the religious feelings of a class.

Ingredients of Section 295-A:

- The accused must insult or attempt to insult the religion or religious beliefs of any class of citizens of India.
- The said insult must be with a deliberate and malicious intention of outraging the religious feelings of the said class of citizens.
- The said insult must be by words, either spoken or written, by signs or by visible representation or otherwise.
- The offence under Section 295-A is cognizable and a non-bailable and non-compoundable offence.
- The police have a power under to arrest a person charged under Section 295-A without a warrant.

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