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## **Exercise of Religious Freedom Subject To State Restriction under the Indian Constitution**

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### **Abstract**

Freedom of religion' does not mean that every person can do what he feels under the veil of the religion. It does not mean that the religion is uncontrollable, unfettered. The framer of the Constitution provided some restriction on the freedom of religion, so that the valuable right of freedom of religion may not be misappropriated. The Constitutions of the democratic States guarantee freedom of conscience and the right to manifest one's religious beliefs in overt ways. But this freedom is to be ensured in a balanced manner so as not to endanger the security and wellbeing of the society, the maintenance of which is the prerogative of the State for the proper growth and progress of the people. Hence, Constitutions provide also the power to regulate and even to restrict this freedom. The manner and various reasons under which religious freedom comes under State restriction in India will be discussed in research paper.

**Keywords:** Constitution, Freedom, Religion, State, Restriction, Indian, law, Article, Secular Economic, political.

### **1. Introduction**

Article 25 (1) of the Constitution of India guarantees the individual's right to freedom of religion. The exercise of this freedom, however, is made explicitly subject to public order, morality, and health and to the other provisions of Part III of the Constitution, which lay down the fundamental rights. Exercise of religion means the performance of acts in pursuance of one's religious tenet.

In India the limitations laid on the exercise of religious freedom is really very emphatic. The Constitution of India does not presume that beliefs that are religious deserve absolute protection. Clause (1) of Article 25, therefore, begins with a number of safeguards. The right to religious freedom may be exercised only under these conditions. These are substantial conditions. Commenting on the provision protecting religious freedom under article 25 of the Constitution, Shri K. Santhanam remarked in the Constituent Assembly:

"Hitherto it was thought in this country that anything in the name of religion must have the right to unrestricted practice and propagation. But we are now in the new Constitution restricting the right only to that right which is consistent with public order, morality and health".

The Courts in India on various occasions interpreted the scope of freedom guaranteed to religion that reflects the mind of the framers of the Constitution. The Bombay High Court held in one of the cases that article 25 provided to all persons the right to freedom of religion. But the Court reiterated that this "right is not an absolute or unlimited right. In the first place, it is subject to public order, morality and health. In the second place, it is subject to other provisions of Part III".

In another case the Supreme Court of India ruled that article 25 of the Constitution guaranteed to every person freedom of religion. But the Court emphasized:

This is subject, in every case, to public order, health and morality...Subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution...to entertain such religious beliefs as may be approved by his judgment or conscience.

Similarly, the Calcutta High Court in interpreting the scope and limitations laid on the free exercise of religion as provided in clause (1) of article 25 held that this provision did not

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give, for example, a Hindu student the right to perform the ceremonies of his religion in the compound of a Christian college. Therefore, under article 25(1) of the Indian Constitution, every person is entitled to have the right to free exercise of religion. But this right is at the same time subject to State law in order to safeguard the security and welfare of all in the society as well as the individual because protection of human persons in their dignity is the concern of the Constitution of India.

## **2. Religious Freedom Subject To Public Order, Morality and Health**

### **2.1 Religious Freedom Subject to Public Order**

Article 25 (1) of the Constitution of India guarantees the individual's right to freedom of religion. The exercise of this freedom, however, is made explicitly subject to public order, morality, and health and to the other provisions of Part III of the Constitution, which lay down the fundamental rights. Exercise of religion means the performance of acts in pursuance of one's religious tenet.

By Article 25[1], the constitution itself makes freedom of religion subject to-[a] public order,[b] minority,[d]health and [e]others provisions of this part.

An order under the Section 144 of the Criminal Procedure Code prohibiting such a procession in the Interest of the public order and morality is not Violative of Article 25 of the constitution.

No freedom can flourish in a state of disorder, there for; it is the duty of the state to maintain peace and order so that people can enjoy the rights conferred on them by the constitution. If the enjoyment of a right by someone poses threats to peace and order to state. Then the state is empowered by the constitution to put restriction on enjoyment of such rights to the extent it is violative of peace and order. Restrict on this ground implies that the can pass a law to regulate religious meetings or processions in public peace like road, parks, streets, etc. Even a total prohibition of religious procession can be imposed if there is any danger to peace or communal harmony. The law also provide for the licensing of religious processions. It also declares certain acts to be offence if they trend to wound the religious feelings of any class of person or if it promotes disunity between different religious, racial or language groups, In view of these provisions many Sate have passed servel legislation prohibiting the slaughter of cow, and propagation of religion for the purpose of conversion by fraud, force, allurement or inducement, because such activities could cause law and order problem.

### **2.2 Religious Freedom Subject To Morality**

No state can allow immorality in the name of religious freedom, nor is it desirable. Religion aim at the moral wellbeing man but sometimes, certain religious practice have resulted immoral acts, It is the duty of the state to see that such immoral practice under the grab of religious freedom are not allowed to flourish in the society. For this the constitution has empowered the state to declare illegal such immoral practice or to regulate them on the ground of morality. Such immoral religious practices included Divadasi System, sati system, gambling on deepavli, etc

In India the State has imposed extensive regulations on the exercise of religion in the interest of public peace and order. There are three reasons arising from the peculiar nature of religious practices in the country that call for these measures.

First of all both Hinduism and Islam which have the largest number of followers in the country lack centralized organization and authority necessary to provide for the orderly conduct of religious practices in the public space. Secondly most religions in India place great importance to public display of religious celebrations in the form of festivals and processions spread over many days. Thirdly India being a multi- religious country, various religious communities having diametrically opposed belief systems and practices live side by side all over the country. Hence, it is not possible to permit them all to exercise their different religious beliefs to the fullest possible measure.

Hence, the State has enacted statutory restrictions to prevent breaches of peace and to protect people from possible violence arising from religious excitements associated with practice of religion in the public places. Thus Chapter XV of the Indian Penal Code declares certain religious acts are offensive if they tend to create breach of peace. It is surprising to note that the authors of the Code who composed it in 1860 commented, "There is perhaps no country in which the government has so much to apprehend from religious excitement among the people."

A section 295 to 298 of the Indian penal Code is more intended for keeping peace and protection of people against violence than for the protection of religion as such. These sections deal with cases where a person performs an act whereby the religious feelings of any class of citizen are wounded. Section 295 A specially limits the religious freedom of propagation by making it an offence to outrage the religious feelings of any class of citizens by acts incompatible with a civilized way of behaviour. The said section reads:

Whoever, with deliberate and malicious intentions of outraging the religious feelings of any class of citizens of India, by word either spoken or written, by signs or by visible representations or otherwise insults or attempts to insult the religion or the religious belief of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with a fine, or with both.

In the case of Public Prosecutor v. P. Ramaswamy, the Madras High Court had to deal with a case of this sort. In this case the respondent, Mr. P. Ramaswamy published certain articles with malicious purpose of outraging the religious sentiments of the Muslims. The author criticised various injunctions of the Quran. He was critical of the punishment sanctioned by the Quran, such as the stoning to death of persons who were found guilty of adultery which, according to him, was inconsistent with the provisions for divorce, remarriage and allowing a person to have as many as four wives. He also questioned the punishment of cutting off hands for theft as sanctioned by the Quran. The author concluded in his article that these provisions of Quran indicated that Allah was a fool and "a foolish and barbarous person like Allah has no place in this world". The Madras High Court found the respondent of the instant case guilty of section 295 A. In giving its verdict, the Court declared: [T]he Courts have to be circumspect and pay due regard to the feelings and religious emotions of different classes of persons with different beliefs, irrespective of the consideration whether or not they shared those belief or whether those beliefs were rational or not in the opinion of the Court

Under section 153 a of the Indian Penal Code, it has been declared a crime to promote, on grounds of religion, race,

language, caste or community, enmity between different religious, racial or language groups. This section holds an act as a criminal offence if it is detrimental to the maintenance of harmony between different religious groups or is likely to disturb public tranquility. The same is the object of section 34 of the Police Act that prohibits the slaughter of cattle or indecent exposure of one's person on any road, thoroughfare or other public place. Consequently, although the Islamic law sanctions cow sacrifice on Bakr-Id day, nevertheless, not to outrage the religious sentiments of the vast majority of the Hindus, the Supreme Court can provide alternative or regulatory measures as ruled in the Quareshi case.

In an Ananda Marg case, the Supreme Court held valid the order issued by the Calcutta Police Commissioner under section 144 of the Code of Criminal Procedure, which prohibited the 'Thandava dance' in public places. The Court asserted that carrying lethal weapons like daggers, and carrying human skulls posed danger to public order and morality and, therefore, the Police Commissioner's order to ban Thandava dance from the public places was valid.

A year after the Supreme Court ruled that Aurobindo was not a religious teacher; the Court decided that the Ananda Margis were a religious denomination. However, in Jagadishwaranand v. Police Commissioner, Calcutta Case, the Court refused to accept the *tandava* dance as an essential practice of the Ananda Margis. Writing for the Court, Ranganath Misra, J reasoned, 'Ananda Margi as a religious order is of recent origin and tandava dance as a part of religious rites of that order is still more recent. It is doubtful as to whether in such circumstances tandava dance can be taken as an essential religious rite of the Ananda Margis'.

Interestingly, a single Bench of the Calcutta High Court, in a rare occurrence, took a contrary line when asked to reconsider the case. Bhagabati Prasad Banerjee, J wrote:

The concept of tandava dance was not a new thing which is beyond the scope of the religion. The performance of tandava dance cannot be said to be a thing which is beyond the scope of religion. Hindu texts and literatures provide [for] such dance. If the Courts started enquiring and deciding the rationality of a particular religious practice then there might be confusion and the religious practice would become what the courts wish the practice to be.

This was a strong indictment of the essential practices doctrine followed by the Supreme Court since the 1960s, and a plea for reconsideration of the Court's role in determining the rationality of religious practices.

That was not the end of the story of the Ananda Margis. In March 2004, the Supreme Court again took up the issue and further narrowed the scope of essential practices to mean the foundational 'core' of a religion. The majority judgment said, 'essential part of a religion means the core belief upon which a religion is founded and those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts of practices that the superstructure of religion is built, without which a religion will be no religion'. However, A. R. Lakshmanan, J contested this definition of essential practices and wrote in his dissent. 'If these practices were accepted by the followers of such spiritual head as a method of achieving their spiritual upliftment, the fact that such practice was recently introduced cannot make it any the less a matter of religion.'

The Courts in India have been often faced with cases challenging the constitutional propriety of banning processions in some religiously sensitive areas. In a case that

arose from the State of Orissa, the Supreme Court was appealed to settle a long-standing dispute between a section of Hindus and Muslims in that State. The History of the instant case was that the leaders of Hindus and Muslims of some villages in Orissa entered into an agreement in 1931 about the manner of taking religious processions. According to this agreement, the Hindus should not play music near a mosque in order to enable the Muslims to hold their prayers in a calm atmosphere. In 1964 the Hindus filed a case before the Orissa High Court claiming that they were not bound by the 1931 agreement and that they were entitled to play music in religious and non-religious processions on the high way. The Orissa High Court rejected the petitioners' claim. On appeal, the Supreme Court upheld the verdict of the Orissa High Court and asserted that the restrictions on playing music and beating drums by the Hindus near the mosque were not justified.

As provided in article 25 (1) of the Indian Constitution, while the State protects the individual's right to free exercise of religion, the State is also duty bound to safeguard public order and morality because the State's coercive power is for the purposes of maintenance of law and order necessary to promote conditions fitting for the development of the people that is worthy of human dignity.

In this connection, one of the practices associated with religion, which came under the purview of the State in India, was the system of devadasi dedication. Many Hindu temples, particularly in South India, had the tradition of dedicating young girls to the deities as devadasi (literally, servants of God). The devadasis danced and sang before the deities in the temples and in religious processions.

It was also a belief prevalent among some sections of the Hindus that spiritual merit was gained by such dedication. The dedication ceremony was done by the performance of a spiritual marriage of the girl with the deity of the temple. Although religious in origin, in time it degenerated to such an extent that most of the devadasi became either temple prostitutes or took to prostitution.

As early as a century ago prominent members of the Hindu community in South India condemned the practice of devadasi dedication on account of immorality and promiscuity spread through the system. They also made it known that the practice of devadasi dedication was not an essential part of the worship in the temples. In 1924, the amended Section 372 of the Indian Penal Code declared that any person dedicating a girl for devadasi was liable to punishment. With the enactment of Madras Devadasi (Prevention of dedication) Act, 1947, the prohibition of the devadasi practice in any form was legally enforced in South India.

In addition, The Suppression of Immoral Traffic in women and Girls Act declared prostitution illegal if it is practiced within 200 yards of any place of public worship. The Act also makes it an offence to procure, induce or take women for prostitution. In the case that came before the Supreme Court of India from the State of Uttar Pradesh, the constitutional validity of the Act was challenged on the ground that the terms of the Act amounted to a restriction on the trade of prostitution. But the Court held valid the restrictions involved in the said Act, because it was a reasonable control in the interest of public morality to stem the evil of prostitution practiced in some localities. The above considered statutes and Court observations indicate that whenever the State prohibits immoral practices, religion

must give way to such actions, because under the secular provisions of the Constitution of India, the State is vested with power to uphold good values, on reasonable grounds, in the interest of common good.

### **2.3 Religious Freedom Subject To Public Health**

It is the duty of a welfare State to provide legal safeguards to protect individual's life and to maintain good health of the community. However, this life-saving objective of the State may run counter to certain religious beliefs and practices. According to the Penal Code of India, suicide is a crime that applies to the person who attempts it and those who support or assist to commit it. Similarly death by starvation or by self-inflicted torture to attain spiritual ends is also an offence under the same Code. The law, therefore, forbids suicide even if the act is motivated by religious intention.

Consequently, the practice of sati, for instance, though a part of Hindu religious belief and practiced by some sections of Hindus in some parts of India, was made a criminal offence by the law. In a case on sati brought before the Rajasthan High Court, the Sessions Judge issued a lenient sentence of six months rigorous imprisonment to all those who were found guilty of abetting sati on the ground that the people of that particular locality where sati was committed believed it to be their religious duty to induce the act. But Chief Justice Mr. Wanchoo of the Rajasthan High Court, who spoke for the Court in the instant case remarked: “

The reasons he (the Sessions Judge) has given for this ridiculously lenient sentence are rather strange in the middle of the 20th century. He is still not sure whether the people are wrong or right in their adoration of Sati...He seems to sympathies with the view of the people that it is their religious duty to help a woman who wants to become a Sati.”

The Rajasthan High Court, therefore, disapproved the term of six months rigorous imprisonment as lenient and extended it to five years of rigorous imprisonment so that people may realize the criminality of sati abetment and that they might in no manner induce or help a woman to commit sati.

Maintenance of good health of the public requires on the part of the State to take measures to prevent infectious diseases. Religious beliefs cannot contravene State regulation on this matter. Sections 269 and 270 of the Indian Penal Code, for example, empower the State to take punitive action against a person who is likely to spread such infections unlawfully and negligently. Similarly, the Epidemic Diseases Act provides rules for enacting special measures to control epidemic diseases.

In a case filed in the Orissa High Court, the petitioner was convicted on the ground that he refused to get himself inoculated against cholera in violation of a State measure under the Epidemic Diseases Act. The petitioner pleaded that he had “conscientious objection” against inoculation. He, moreover, contended that he had taken homeopathic medicine against cholera attack. The Court rejected his contention and ruled that since the petitioner could not prove that taking homeopathic medicine was similar to inoculation he could be convicted for his refusal to comply with the State order. These afore seen judicial decisions and State statutes re-enforce one thing in a significant way, namely that the free exercise of religion cannot contravene the constitutional objectives to protect institutions and values intended to promote human wellbeing in defense of human dignity.

### **3. Religious Freedom: Subject To Regulation of Economic, Financial, Political and Secular Activities Associated With Religion**

Article 25 (2) (a) empowered the State to regulate financial, political and secular activities associated with religion. The religious activities as such are not covered under the regulatory power of the State. It is not always easy to find out whether an activity will be covered under religious practice or under financial, political or secular activity associated with religion. Certain activities even if involve expenditure or employment of servants and priests or uses of marketable commodities cannot be said to be secular activities under Article 25(2) (a). On the other hand the management of property attached to a religious institution or endowment has been held to be a secular activity subject to the regulatory power of the State.

### **4. Religious Freedom Subject To Social Reform and Throwing Open Temples**

Article 25 (2) (b) enacts two exceptions (a) Laws providing for social welfare and social reform and (b) the throwing open of all ‘Hindu religious institutions of public character’ to all classes and sections of Hindus.

The freedom of religion under Article 25 (1) is, therefore, subject to the power of the State to enact laws for social welfare and social reforms. Thus, the banning of bigamous marriage was upheld as a measure of social reform. Similarly, the provisions of the Hindu Marriage Act, 1955 are protected under Article 25(2) (b). On the same basis the prohibition of evil of sati or system of ‘devdasi’ was upheld.

Article 25(2) (b) seeks to the State to throw open ‘Hindu religious institutions of a public character to all classes and sections of the Hindus’. Public institutions would include temples dedicated to the public as a whole also those for the benefit of sections or dominations thereof. The Article confers a right on all classes and sections of Hindus to enter a public temple for the purposes of worship. However, this right is not unlimited in character. In Venkataramana v. State of Mysore, the Supreme Court of India held that no Hindu can claim as part of rights protected by Article 25 (2) (b) that a temple must be kept open for worship at all hours of the day and night, or that he should personally perform those services which acharyas or pujaris alone could perform. Thus, the right recognized by Article 25 (2) (b) necessarily becomes subject to some limitations or regulations which arise in the process of harmonizing this right with that protected by Article 26 (b).

In the instant case the facts were that in order to remove the disability imposed on harijans from entering into temples dedicated to the Hindu public generally, The Madras Legislature enacted the Madras Temple Entry Authorization Act, 1947. The Government passes an order that the Act would be applicable to a temple belonging to Godwa Saraswati Brahmin Community. The trustees of the temple filed a suit which ultimately reached the Supreme Court. Their contention was that the temple being denominational one, they were entitled to the protection of Article 26 and it was a matter of religion as to who were entitled to take part in worship. They further contended that opening of the temple to communities other than Godwa Saraswath Brahmins was violative of Article 26 (b) of the Constitution and this void.

It was held by the Supreme Court that the 'matters of religion' in Article 26 (b) include even practices which are considered by the community as part of its religion.

From above, it is clear that the courts while interpreting clauses (a) and (b) of Article 25 (2) and specially sub-clause (b) "has sought to strike a reasonable balance between religious liberty of an individual or a group and the social control."

### **5. Religious Freedoms: Subject to the Rights of Others Provisions of Part III**

Clause (1) of article 25 of the Indian constitution declares that the exercise of religious freedom is subject to other fundamental rights guaranteed in part III of the Constitution. This requires a balancing of rights in the area of religion with other rights.

*Shri Venkatarama Devaru v. State of Mysore Case.* The facts of this case were as follows. The case arose out of the Madras Temple Entry Authorization Act passed by the Madras Legislature in 1947 and amended in 1949. The Preamble to the Act declared that the Act aimed at the removal of disabilities imposed by custom or usage on certain classes of Hindus with regard to entry into the Hindu temples in the Madras Province, which were otherwise open to the general Hindu public. Section 3 of the Act authorized persons belonging to certain 'excluded classes' to enter any Hindu temple and offer worship in the same manner and to the same extent as Hindus in general. A 'temple' was defined as 'a place, which is dedicated to or for the benefit of the Hindu community or any section thereof as a place of public religious worship'.

The trustees of Shri Venkataramana Temple, apprehending the application of the Act to their temple, sent a memorandum to the Madras Government claiming that their temple was a 'private temple', which exclusively belonged to a Hindu sect called the Gowda Saraswath Brahmins. Consequently, their temples were not within the scope of the Act. The Government of Madras rejected the petitioners' claim. Thereupon the petitioners filed a suit before the Supreme Court under Article 26 (b) that guaranteed to a religious denomination the right to manage its own affairs in "matters of religion". The petitioners pleaded that according to scriptural authority, the caste of the prospective worshippers was a relevant part of 'matters of religion' and, therefore, the enforcement of the Madras Temple Entry Authorisation Act to throw open their denominational temple to general public was violative of article 26 (b) of the Constitution. The petitioners also pleaded that since article 25(1) was subject to other fundamental rights guaranteed in Part III of the Constitution, the provision given in Article 25 (2) (b) was also subject to article 26 (b).

In delivering the judgment in the instant case the Supreme Court held section 3 of the Madras Temple Entry Authorisation Act *intra vires* of the Constitution. The Supreme Court observed, "the validity of section 3 of the Madras Act V of 1947 does not depend on its own force but on article 25 (2) (b) of the Constitution...and therefore, the trustees can succeed only by establishing that article 25 (2) (b) itself is inoperative as against article 26 (b). The court then commented that there were two provisions in the Constitution, article 25 (2) (b) and article 26 (b). These were of "equal authority, neither of them being subject to the other." Consequently, the rule of harmonious construction

had to be applied when interpreting them. Mr. Justice Aiyar who delivered the judgment of the Supreme Court said:

The limitation "subject to the other provisions of this part" occurs only in cl. (1) of Article 25 and not in cl. (2). Clause (1) declares the rights of all persons to freedom of conscience and the right freely to profess, practice, and propagate religion. It is this right that is subject to the other provisions in the Fundamental Rights Chapter. One of the provisions to which the right declared in Art. 25 (1) is subject to Art.25 (2). A law, therefore, which falls within Art. 25 (2) (b) will control the right conferred by Art. 25 (1), and the limitation in Art. 25 (1) does not apply to that law.

According to the judgment of the Court, clause (2) of article 25 supersedes clause (1) of the same article. Therefore, the petitioners' right to free exercise of religion is subject to the right conferred to every Hindu to enter any Hindu temple of public character. The provisions given in article 26 (b), the Supreme Court observed, were to be read in the light of the limitations contained in sub-clause (b) of clause (2) of article 25.

In *Rev. Stainiclaus v. State of M.P.*, where the constitutionality of Madhya Pradesh Dharma Swantanrya Adhiniyam, 1968 and the Orissa Freedom of Religion Act, 1967 was challenged on the ground that if they violate the right to propagate one's religion under Article 25(i) and (ii) the State legislature had no competence to enact such law as it did not fall within the purview of Entry I of List II and Entry I of List III of the Seventh Schedule but it fell within the residuary Entry 97 of List I. The Supreme Court rejected the contention of the appellant and held that these impugned Acts fall within Entry I of List II as they are meant to avoid disturbances to public order by prohibiting conversion of from one's religion to another in a manner reprehensible to the conscience of the community.

In *Masud Alam v. Commissioner of Police*, the banning of electrical loudspeakers was held valid. The court observed that every religion has right to have propagandists. But when such propaganda is made through loudspeakers in a crowded and noisy locality to detriment of public morals, health, order, it is prohibited by Article 25. A loudspeaker may take one to Hell instead of Heaven by very volume of its sound.

*Venkataramana v. State of Mysore*, the Supreme Court of India held that no Hindu can claim as part of rights protected by Article 25 (2) (b) that a temple must be kept open for worship at all hours of the day and night, or that he should personally perform those services which acharyas or pujaris alone could perform. Thus, the right recognized by Article 25 (2) (b) necessarily becomes subject to some limitations or regulations which arise in the process of harmonizing this right with that protected by Article 26 (b).<sup>81</sup> In the instant case the facts were that in order to remove the disability imposed on harijans from entering into temples dedicated to the Hindu public generally, The Madras Legislature enacted the Madras Temple Entry Authorization Act, 1947. The Government passes an order that the Act would be applicable to a temple belonging to Godwa Saraswati Brahmin Community. The trustees of the temple filed a suit which ultimately reached the Supreme Court. Their contention was that the temple being denominational one, they were entitled to the protection of Article 26 and it was a matter of religion as to who were entitled to take part in worship. They further contented that opening of the temple to communities other than Godwa Saraswath Brahmins was violative of Article 26 (b) of the Constitution and this void.

It was held by the Supreme Court that the 'matters of religion' in Article 26 (b) include even practices which are considered by the community as part of its religion.

Article 28 of the Constitution is specifically concerned with the question of religious instruction in three categories of educational institutions. It provides: (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds. (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institutions. (3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Clause (1) of the Article 28 refers to the first category of educational institutions, which is wholly owned by the State, where the prohibition to impart religious instruction is absolute. Neither the State nor a private agency may provide religious instruction in such institutions. Clause (2) of Article 28 deals with the second category of educational institutions in which the State does the administration in the place of a trustee. However, under this category the institution itself is established under a trust or an endowment wherein the terms of the trust or endowment require imparting religious instruction, which is protected under this clause.

Clause (3) of Article 28 deals with the third category of educational institutions. These are owned and managed by religious denominations, but come under the system of grants-in-aid. These institutions are free to impart religious instruction. The provision under article 28 (3) assures the conscience clause by which the State protects the individual's right to freedom of conscience by placing them above religion while at the same time the State acknowledges as well as protects religious pluralism.

### 6. State Aid and State Restriction of Freedom of Religion

In the present state of affairs, education is a costly sector in India as it is elsewhere. So, educational institutions need substantial grants by way of aid from the State. In this context, in dealing with education in the country, the Constitution guarantees to minorities the right to conserve their language, script and culture. The State also grants to all minority communities, whether based on language or religion, the right to establish and administer educational institutions of their choice as given in the articles 29 and 30. Article 29 reads:

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. Article 30 provides: (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution

on ground that it is under the management of a minority, whether based on religion or language.

State aid involves also State control over beneficiary institutions in order to see that the goal set by the government is better realised. Some of the methods of control exercised by the State such as inspection, process of granting recognition, auditing and qualification of teachers etc., are acceptable to all.

### 7. Conclusion

The Constitution of India guarantees religious freedom, which is indigenous to Indian religious ethos and to its socio-cultural context so as to satisfy the multi religious tradition of the country. Article 25 of the Constitution guarantees freedom of conscience. However, clause (2) of article 23 does not oblige exemption to conscientious objectors on religious scruples from compulsory service of the State when services of sort are necessary for public welfare and for the security of the country. Although religious practices protected under the provision of clause (1) of article 25 are free from State regulation unless detrimental to public order, morality, health and the fundamental rights guaranteed under Part III of the Constitution, nevertheless these practices cannot be protected if they contravene social welfare and reform measures initiated by the State as provided under sub-clause (b) of clause (2) of the same article.

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17. Section 3 (3) of the Madras Devadasi (Prevention of dedication) Act, 1947 (Madras Act 31 of 1947).
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19. Sections 5 and 7 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act 104 of 1956).
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21. Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act 104 of 1956).

22. The Indian Penal Code, 1860 (Act 45 of 1860).
23. Sections 306, 309 of the Indian Penal Code, 1860.
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25. P.C. Jain, op.cit., 267.
26. Sections 269, 270 of the Indian Penal Code 1860 (Act 45 of 1860).
27. Section 2 of the Epidemic Diseases Act, 1897 (Act 3 of 1897).
28. J. Choudhury v. The State, AIR 1963 Orissa 216.
29. Tejsingh v. The State, AIR 1958 Raj 169 (DB).
30. P.C. Jain, op.cit., 267.
31. Sections 269, 270 of the Indian Penal Code 1860 (Act 45 of 1860).
32. Section 2 of the Epidemic Diseases Act, 1897 (Act 3 of 1897).
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34. Commissioner of H.R.E. v. Nakshmindra, A.I.R. 1954 S.C. 282; Ratilal v. State of Bombay, A.I.R. 1954 S.C.
35. Bombay v. Narasu Bapa Mali, A.I.R. 1952 Bombay 84;.
36. Taheer Saifuddin v. Tyebbhaji Mooraji, A.I.R. 1953, Bom. 183.
37. Sardar Syedna Taher Saifuddin Saheb v. State of Bombay A.I.R. 1962 S.C. 853 at 864.
38. A.I.R. 1958 S.C. 255
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