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Religion below constitution and associated legislation

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Abstract
Religion is a binding factor for People of Indian Origin (PIO) and may well be so for Indians in other parts of the world. There is a ferociously upheld perception within the Malaysian Indian community that switching religions is tantamount to discarding one's identity, the ultimate betrayal of the ancestral lineage. One ceases to be Indian once one embraces Islam. One ceases to be Punjabi once one practices Buddhism or Christianity. Switching religions is taboo amongst the PIO and is a cause for expulsion from the basic family unit and ultimately, the cultural group altogether. Asian states of our times adhere to different models of religion-State relations, most of them recognizing one or another faith as the State, or otherwise privileged, religion. Among those which do not, the most notable example is India. The Constitution does not recognize any of India's different faith traditions as the State or otherwise privileged religion.

Keywords: Religion, People, Indian, Constitution, Associated, Legislation, relations, cultural.

Introduction
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 [1]. 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 nil religious creeds and their respective adherents absolutely equally and without any discrimination in all matters under its direct or indirect control. Religious conversion has become the focus of intense debate in modern India, surfacing in the realm of politics, the media and the judiciary. Starting in the 1950s, various states began enacting laws aimed at restricting religious conversions, under the guise of 'Freedom of Religion Acts'; a move illustrative of a longstanding but growing unease with conversions in a democratic country that recognizes Freedom of Religion [2]. These laws have become the subject of much dispute and scrutiny. On the one hand, there are those who advocate a restriction on conversion, so as to preserve peace and harmony in plural India. This view is common amongst various Hindu groups, who are averse to the proselytizing drive of minority Christian and Islamic communities.6 On the other hand, there are those who believe such a restriction results in an infringement of the Right to Freedom of Religion, as guaranteed by the Constitution of India [3].

Review of Literature
This study will analyze the constitutionality of the various anti-conversion laws enacted by the different states, by examining the laws currently in force and case- law of the Indian Judiciary, as well as the relationship between state and religion in contemporary India [4].

1. Legislation Affecting Religion
Before considering the development of the two religion clauses by the Supreme Court, one should notice briefly the tests developed by which religion cases are adjudicated by the Court. While later cases rely on a series of rather well-defined, if difficult-to-apply, tests, the

language of earlier cases ‘‘may have [contained] too sweeping utterances on aspects of these clauses that seemed clear in relation to the particular cases but have limited meaning as general principles.’’ It is well to recall that ‘‘the purpose [of the religion clauses] was to state an objective, not to write a statute.’’ The concept of neutrality itself is ‘‘a coat of many colors,’’ and three standards that could be stated in objective fashion emerged as tests of Establishment Clause validity. The first two standards were part of the same formulation [5]. ‘‘The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.’’ The third test is whether the governmental program results in ‘‘an excessive government entanglement with religion.

2. Freedom of Religion in the Indian Constitution

Constitutionally, India is a secular nation with no preferred religion. However, over the years it has developed its own unique concept of secularism; one which is very different from the American notion of secularism, requiring complete separation of church and state, as also from the French model, where religion is relegated completely to the private sphere and has no place in the public one. When the Indian Constitution was originally enacted, the word ‘secular’ was absent from the preamble’s short description of the country, which it called “Sovereign Democratic Republic’. This was a deliberate decision by the drafters, so as to clear any misgivings that India would adopt the Western model of a secular state [6]. Twenty five years later, after the Indian concept of secularism had fully evolved through case-law and state practice, the preamble was amended so as to include the word ‘secular’. Indian secularism does not require total separation of religion and state; the two can interact with each other, within the legally prescribed parameters. It only mandates that the state treat people of all religions absolutely equally and without discrimination.

3. General Constitutional Provisions on Religion

▪ Equality & Non-Discrimination

The Constitution of India contains in its Chapter on Fundamental Rights several provisions that emphasize complete legal equality of its citizens irrespective of their religion and creed and prohibit any kind of religion-based discrimination between them. Among these provisions are the following:

1. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
2. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them, either in general or in the matter of access to or use of general and public places and conveniences.
3. There shall be equality of opportunity for all citizens in the matter of employment or appointments under the State and no citizen shall, on grounds only of religion be ineligible for, or discriminated against, in respect of any employment or office under the State.
4. The traditional religious concept of 'untouchability' stands abolished find its practice in any form IN .strictly forbidden.
5. If the State imposes compulsory service on citizens for public purposes no discrimination shall be made in this regard on the ground of religion only.

▪ Limits of Religions Freedom

The Fundamental Right to religious freedom cannot be enjoyed in an absolutely unrestricted way. There are limitations within which these rights can exercised, as also lawful restrictions which can be imposed by the State on such rights, as detailed below:

1. The right to freedom of religion is, in general, subject to public order, morality, health and the other provisions of the Constitution.
2. Despite the right to religious freedom, the State can pass laws providing for social welfare and reform and also to regulate or restrict any secular activity - economic, financial, and political, etc. - even though it may be traditionally associated with religion.
3. Despite the minorities' right to establish and maintain educational institutions, no citizen can be kept away from any State-aided or State- maintained educational institution only on religious grounds.

4. Establishment of Religion

‘‘For the men who wrote the Religion Clauses of the First Amendment the ‘establishment’ of a religion connoted sponsorship, financial support, and active involvement of the sovereign in religious activity [7].’’ However, the Court’s reading of the clause has never resulted in the barring of all assistance which aids, however incidentally, a religious institution. Outside this area, the decisions generally have more rigorously prohibited what may be deemed governmental promotion of religious doctrine.

Financial Assistance to Church-Related Institutions

The Court’s first opportunity to rule on the validity of governmental financial assistance to a religiously affiliated institution occurred in 1899, the assistance being a federal grant for the construction of a hospital owned and operated by a Roman Catholic order. The Court viewed the hospital as a secular institution so chartered by Congress and not as a religious or sectarian body, thus avoiding the constitutional issue. But when the right of local authorities to provide free transportation for children attending parochial schools reached the Court, it adopted very restrictive language. ‘‘The ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another [8]. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion [9, 10]. But the majority sustained the provision of transportation. While recognizing that ‘‘it approaches the verge’’ of the State’s constitutional power, still, Justice Black thought, the transportation was a form of ‘‘public welfare legislation’’ which was being extended ‘‘to all its citizens without regard to their religious belief.

Conclusion

There was a time in Indian history when religion provided, regulated, and fully controlled the legal and judicial system of the country. Today the situation is the other way round. In the secular India of our times, it is the law of the land that determines the scope of religion in the society, and it is the judiciary that determines what the laws relating to the scope of religion say, mean, and require. This religious aspect remains duly reflected in the Constitution and the quickly growing body of national laws. It has also not remained outside the ambit of judicial activism generally witnessed in India. A study of India's particular models of secularism and religious liberty reveals an appreciable balance of religious and secular interests. Judicial decisions of the higher courts in religious cases of various nature and kinds generally reflect an attitude of objectivity and impartiality. There have been some aberrations, few and far between, at times pointing to the presence of committed judges or those influenced by particular religio-political ideologies.

References

1. Frankfurter, Felix. Mr. Justice Holmes and the Supreme Court, Cambridge: The Belknap press of Harvard University Press, 1961, 59.
2. Freedman, Jane. Secularism as a Barrier to Integration? The French Dilemma. In International Migration. Blackwell Publishing, 2004, 42(3).
3. Frykenberg, Robert Eric. The Construction of Hinduism as a "Public" Religion: Looking Again at the Religious Roots of Company Raj in South India. In Religion and Public Culture: Encounters and Identities in Modern South India, ed. Keith E. Yandell and John J Paul, Richmond, Surrey, UK: Curzon. 2000, 3-26.
4. Galanter Marc. Secularism, East and West. In Bhargava (ed.) Secularism and Its Critics. New Delhi: Oxford University Press, 1998
5. Ganguly, S. The Crisis of Indian Secularism, on-line Journal of Democracy, on-line text, 2003, 14(4).
6. Gupta Dipankar. Secularisation and Minoritisation: Limits of Heroic Thought. Economic and Political Weekly 1995; 30(35):2203-07.
7. Jacobsohn, Gary Jeffrey. Bommai and the Judicial Power: A View from the United States. Indian Journal of Constitutional Law 2008; 2:38–66.
8. Juergensmeyer, Mark. New Cold War? Religious Nationalism Confronts the Secular State. California: University of California Press, 1994.
9. Kashyap SC. Our Constitution, New Delhi: National Book Trust, India 1995; 51(6):54.
10. Lijphart A. Constitutional Design for Divided Societies, Journal of Democracy 2004; 15:96-109.