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## Freedom of religion: Rights, duties and restrictions

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### Abstract

Secularism is one of the basic features of the Constitution of India. The Constitution guarantees fundamental rights to citizens by making them irrelevant to their religious beliefs. Secularism does not mean to declare a heretical state or state to be atheist but to keep the state and religion independent of each other. The nature of freedom of religion under the Fundamental Rights is helpful in explaining the concept of secularism. According to Articles 25 to 28, citizens have the right to freedom of religion and this right is also protected from interference by the state like other fundamental rights. The state should not interfere in the matters of religion, it is considered the essential feature of the secular government system. The state has no religion but its citizens have the right to preserve their religious faith.

Where it is a fact that the state will not interfere in matters of religious right, the question arises whether these rights are absolute, will the policy of non-interference fail to deal with any negative impact on law and order etc. Through this paper, an attempt has been made to know on what grounds the state can interfere with the rights of religious freedom and limit them, bring them under restrictions.

**Keywords:** Freedom of religion, fundamental rights, secularism, restrictions

### Introduction

Before 1976, the word secular was not a part of the preamble in the constitution, but many such provisions were already present in the constitution which showed its secular nature. The position of doubts about secularism has been clarified by the Supreme Court on various occasions and the actual meaning and nature of Article 25 has also been explained.

Article 25 is necessary because it clearly describes the various components of religious freedom. It is necessary to refer to the definition of secularism given by the Madras High Court <sup>[1]</sup> in a case according to which - *a secular state does not mean an irreligious or heretical state but a state which does not have any one specified religion.*

In the case of Atheist Society of India Vs State of Andhra Pradesh <sup>[2]</sup>, the Supreme Court has highlighted an important issue according to which *breaking of coconut on the occasion of foundation stone, inauguration ceremony etc., recitation of worship, chanting etc. is a part of Indian tradition and cultural Heritage too. Secularism does not mean denying the existence of God. This may not seem appropriate to an atheist, but the Constitution does not guarantee the faith of an atheist.*

It also becomes clear from the nature of Article 25 that the State shall not have any specific religion, that is, the State cannot discriminate among citizens on the basis of religion. Here discrimination means not giving priority to any particular religion in policies, schemes etc. Article 25 gives the right to the citizens to maintain doctrinal beliefs, rituals, religious functions, ceremonies, culture, way of worship under the rights of religious freedom granted. All the above rights shall be equally available to the citizens of India at the same time. In the case of SR Bommai Vs Union of India <sup>[3]</sup>, the Supreme Court has held that *secularism is the positive concept of treating all religions equally.*

### Freedom of religion and conscience

Conscience has a prominent place in religious freedom under Article 25. That is, this article provides freedom of conscience. The conscience is related to the soul. Freedom to adopt any religion from self-realization, freedom to choose any medium to establish one's relationship with God, etc. Therefore, any citizen can follow any religion according to his wish and adopt the rituals, ceremonies, religious texts and books related to it. The state can neither have any control over it nor can the state interfere.

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In fact, Article 25 provides protection to the freedom of religion as well as all the activities that come under it.

### Limitations on freedom of religion

Religious freedom does not mean that any act which is not just before law, which is against public policy, contrary to the objectives of justice or which is likely to hurt the public sentiment, should be given freedom to do so. Religious rights of one citizen cannot be availed of on the terms of religious beliefs of another citizen. When it comes to things of national importance, religious freedom should be construed in strict terms. Religious freedom policy cannot suppress the Directive Principles and Fundamental Duties.

The perverted form of religious freedom in our country was seen when the national anthem was made a point of contention. A request was made to the school administration by the parents of some students of a school who belonged to a particular community not to organize the national anthem during the holiday. There is nothing like religious worship in the national anthem, yet it was told against a particular religion. The school principal referred the matter to the education department. Eventually, those students were expelled from the school. One of the parents filed a petition in the Kerala High Court<sup>[4]</sup> which was dismissed. The High Court held that *the right guaranteed under Articles 25 and 26 is not absolute. The unity and sovereignty of the country is paramount*. But the Supreme Court did not agree with this decision of the Kerala High Court and set aside its order making the recitation of the national anthem mandatory<sup>[5]</sup>. In fact this attitude of the Supreme Court was surprising and unfortunate.

Similarly, in the case *State of West Bengal v Ashutosh Lahiri*<sup>[6]</sup>, a provision of the West Bengal Animal Slaughter Control Act, 1950 was challenged which provided for the first slaughter of a goat on the occasion of Bakrid and the slaughter of a cow if seven Muslims agreed. Was giving a discount. The question before the court was whether cow slaughter was an essential part of Islam. The Supreme Court gave a negative answer to this saying that an activity can be said to be an essential part only when there is no alternative to it. In this case the goat can be sacrificed in the first place, then it is no longer necessary to sacrifice the cow.

### Restrictions

Freedom cannot be achieved without any restrictions. The characteristic of human nature is that while exercising the rights, he crosses the limit and due to this all the difficulties arise before the administrative setup. Duties run parallel to rights. Just as the Constitution provides Fundamental Rights to the citizens, in the same way it also expects the citizens to perform the Fundamental Duties. Religious freedom should not become a challenge to justice, administrative structure, public interest etc. That is why some restrictions have also been provided under Article 25.

**Public order, morality and health:** All these three components are considered to be one of the main objectives of religion. A religion in its practice must comply with these three factors. Public order, morality and health are essential for the wellness of the society and where dangerous situations arise on them, they can be avoided.

**Example:** *Demonstration of violence in public in the name of religion, killing of cow, obstructing traffic by gathering*

*on public roads, display of deadly weapons in public place, doing obscene acts etc.*

Permission to do the above acts cannot be allowed in the name of religious freedom as all these have a negative impact on morality, health and harmony in the society somewhere. Religious freedom does not allow threat to cause in the society.

The Indian Penal Code, 1860 provides for punishment by declaring those acts as offenses which in the name of religion or under the guise of religious freedom, can create a situation of imbalance within the society.

*Human sacrifice in the name of religion, killing of restricted wildlife, cutting of protected trees, hunting of endangered animals, child marriage, sexual abuse, noise pollution*<sup>[7]</sup> etc. cannot be recognized. Religious freedom has to be subject to public order, morality and public health at all costs.

### Regulation of economic, financial, political activities etc:

The meaning of religious freedom has been kept limited to purely religious elements only. Management related to religion has not been included in this. That is, the state can intervene in matters of public nature connected with religion. No person can be empowered to commit financial irregularities under the guise of religion, nor can anyone be entitled to

Which acts are purely religious and which are not, is to be determined on the basis of the facts and circumstances of each case. For a general understanding, it can be assumed that the functions which are not an essential part of any religion, even if they are necessary for religious work, will be subject to the interference of the state.

**Example:** *accumulation of money by an organization in the name of religion irregularly and through unknown sources, collecting benami property, tampering with the registration activities, trying to deviate the democratic system by forming a political party on the basis of religion, etc.*

**Social Welfare and Social Reform:** Society is a subject that has come to dominate almost all the issues. There has been a long struggle in history for social reform and social welfare. The judiciary has always been striving for equal justice to every section of the society. Therefore, the interest of the society is more significant than religious freedom. Society cannot move forward without eradicating the evils and malpractices. That is why all the social reformers in our country like *Swami Vivekananda, Raja Rammohan Roy, Dayanand Saraswati, Madan Mohan Malviya, Ishvarchandra Vidyasagar* etc. made tireless efforts in this direction. Therefore, where the state makes any such law with the object of ending any evil or malpractice, then it cannot be considered as an interference with religious freedom.

Among Hindus, *polygamy*<sup>[8]</sup>, *child marriage, Sati system, Jauhar* etc. were not considered as an integral part of religion and penal provisions were made to abolish their practice.

Recently, giving *triple talaq* was also declared an offence and a provision of punishment was made for it. However, a long debate ensued over whether it was an integral part of Islam. Triple Talaq comes under Muslim Sharia law which is applicable to Muslims but in India there is rule of law and not Sharia, here every custom, custom, custom is weighed with the constitution and whatever the objectives of the

constitution, human Rights are contrary to natural justice, it has been declared as unconstitutional. The same thing happened with triple talaq.

As far as Sikhism is concerned, wearing a *kirpan* is an integral part of it. The kirpan is like a sharp weapon which is forbidden to be carried in public places like railway stations, airports, places of public entertainment, but Sikhs have the right to wear a kirpan<sup>[9]</sup>.

### Conclusions

The right to freedom of religion is one of the basic features of a democracy. The state does not have the right to restrict or limit the rights of religious freedom enjoyed by the citizens. Therefore, the states adopt the policy of non-interference, but it is the responsibility of the states that the illegal interpretation or unauthorized exercise of any kind of freedom does not affect the economic, financial, social, political or legal machinery of the state. In this situation, the state not only gets the power to intervene but also to limit, control these rights. Even the judiciary becomes empowered to remove the distortions prevalent in such rights. Religious freedom cannot become a challenge to the procedure established by law in India. The welfare of the society, the interest of the nation and the national spirit are on the top priority. In conclusion, it can be said that neither the state can infringe on the religious rights unauthorizedly nor the citizens can claim the right to religious freedom unauthorizedly.

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