HUMAN RIGHTS DIMENSION IN FREEDOM OF RELIGION AND NEW DIMENSION OF SECULARISM IN INDIA

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ABSTRACT

Human Rights may be regarded as those fundamental and inalienable rights which are essential for life as Human being. Human rights are the rights which are possessed by every human being irrespective of his or her Nationality, Race, Religion, Sex etc., simply because he or she is a human being. Human rights are the foundation of all basic freedoms, liberties, justice, democracy and rule of law in the world. They are necessary to preserve, protect and promote peace in the world.

Freedom of religion is a principle that supports the freedom of an individual or community, in public or private to manifest religion or belief in teaching, practice, worship and observance. Freedom of religion is protected under various International instruments and under various provisions of Indian Constitution. In India every person has right to freedom to choose and practice his or her religion. Freedom of worship-of belief and non- belief is an important element of democracy, contributing to social peace, encouraging full political participation.

In India judiciary has played pivotal role in protection of basic human rights and fundamental freedoms by recognizing freedom of religion includes freedom of conversion also, which may play a significant role in the judicial history concerning protection of human rights particularly right to freedom of religion.

In this Article Author will discuss the new dimension of secularism, reason for conversion, Untouchability, religious fundamentalism, fanaticism, targeting religious minorities, religious hate speech which are hurdle to the National growth and internal security.

Keywords: Human Rights, Secularism, Freedom Of Religion.

INTRODUCTION

Human Rights may be regarded as those fundamental and inalienable rights which are essential for life as Human being. Human rights are the rights which are possessed by every human being irrespective of his or her Nationality, Race, Religion, Sex etc., simply because he or she is a human being. Human rights are thus, those rights which are inherent in our nature and without which we cannot live as human beings. Human rights are sometimes called fundamental rights or birth rights or basic rights or inherent rights or natural rights. Human Rights take new forms according to the changing requirements and needs of contemporary times.

Freedom of religion is a principle that supports the freedom of an individual or community, in public or private to manifest religion or belief in teaching, practice, worship and observance. Freedom of religion is protected under various International instruments and under various provisions of Indian Constitution. The Indian Constitution provides for the religious liberty of both the individual and associations of individual united by common beliefs, practices and discipline. The freedom of religion guaranteed by the Indian Constitution is not confined to citizens but extends to all persons including aliens. Thus religion refers to the body of ideas as well as the practices and performances peculiar to a religion.[1] It is considered by many people and most nations to be a fundamental human right.

Religion is a fundamental human right that protects the conscience of all people. The freedom of religion guaranteed by the Indian Constitution is subject to various restrictions. Religion is commonly but not always associated with a particular system of faith and worship of a transcendent diety or dieties. In human rights discourse it includes support for the right to non-religious beliefs, such as atheism or agnosticism. In 1993 the Human Rights Committee described religion or belief as theistic, non -theistic and atheistic beliefs as well as the right not to profess any religion or belief. Freedom of worship-of belief and non- belief is an important element of democracy, contributing to social peace, encouraging full political participation. Religious tolerance and equal treatment of all religious groups and protection of their life and property and places of their worship are an essential part of secularism enshrined in our Constitution.

Meaning of Freedom of Religion

The word ‘Religion’ which comes from the Latin word ‘Religare’ means ‘to tie,’ ‘to bind fast’

[1] Ratilal Gandhi’s case-1954- AIR-388.

religion is a system of belief in the existence of supernatural beings. According to 'Emile Durkheim' Religion is a 'unified system of beliefs and practices relative to sacred things.' It is difficult to define the term religion; however it may be described as 'Man's faith in a power beyond himself' or a belief in an Everlasting God', who manages the affairs in the world and gives reward or punishment to beings according to their Actions. What constitutes essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself, which are subject to judicial scrutiny for this purpose.[2]

In the case of Davis V. Benson[3] the U.S. Supreme justice Field observed that the term religion has reference to one's views of his relations to his CREATOR and the obligations they impose of reverence for his being and character and of obedience to his will. Constitution of India does not define the term religion. In Indian context, it is not always enough to say the term religion as reference to one's views of his relation to his creator, because a religion like Buddhism or Jainism does not believe in God or Creator. Thus the word 'Religion' is not to be confined to a system of beliefs, tenets or doctrines but should be seemed to include the scheme of forms, rites and ceremonies forming part of a religion or religious denomination or sect.

Historical Background Of Human Rights And Freedom Of Religion

In the development of the idea of the Fundamental rights of man, the notion of the law of Nature played the paramount and principal part, with the Stoics in Greek and Roman history, along with Cicero and subsequently with the Christian Fathers, it was Natural law, as lying behind and above all positive law, which was the transcending authority delimiting the earthly power of the State in relation to the Individual.[4] Human Rights are outcome of Natural Rights. Men are born and remain free and equal in rights, the purpose of all political association is the conservation of the Natural and Inalienable rights of Man; these rights are Liberty, Property, Security and Resistance to Oppression.[5] Magna Carta of England granted by King John in the year of 1215, which established the principle that everyone is subject to the law, even the King, and guarantees the rights of Individuals, the right to justice and the right to a fair trial. The Virginia Declaration of Rights of Men, including the right to reform or abolish 'inadequate' government. The Constitution of United States of America enumerated various Human Rights. French Declaration of 1789, is very important document which granted Right to Equality,

[2] Quereshi V. S.O. Bihar, AIR-1958 S.C. 731.
[3] 133 U.S. at 342, 1889.
[4] Implementation of Basic Human Rights, Manoj Kumar Sinha, Lexis-Nexis, 1st edition-2013.
[5] The New Universe of Human Rights, J.S. Verma, Universal law publishing co.pvt.ltd,2004,edition,page-42.

Liberty and Fraternity. These documents played very vital role in protection and conservation of Human Rights.

The Twentieth Century saw the codification of common values related to freedom of religion and belief in numerous International Treaties, Declarations and Conventions. The United Nations recognized the importance of freedom of religion or belief in 1948[6], which states 'Everyone shall have the right to freedom of thought, conscience and religion[7]. This right shall include freedom to have a religion or whatever belief of his or her choice'. Similar provisions can be found in other conventions and also Regional and Specialized human Instruments.

In 1966 the United Nations adopted the International Covenant on Civil and Political rights, which reads as 'Everyone shall have the right to freedom of thought, conscience and religion. It includes freedom to have or to adopt a religion or belief of his choice and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.'[8]In 1981 the General Assembly made studies towards achieving the goal of introducing a treaty on Freedom of Religion or belief, adopting the 'Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief. It lacks any enforcement procedures it remains the most important contemporary codification of the principles of freedom of religion and belief.

Human Rights as such are incorporated in various International Human Instruments, such as, the International Covenant on Civil and Political Rights-1966, and the International Covenant on Economic, Social and Cultural rights-1966, regional human rights treaties, National Constitutions, Legislations and even Judicial Pronouncements. The range of Human Rights as contained in these instruments, treaties and national legislations is very wide and covers variety of rights including traditional Civil and Political rights on one hand and newly developed economic, social, religious and cultural rights, one the other.

Constitution and Protection of Freedom of Relgion

India as a land of many faiths enjoyed a long tradition of religious tolerance. The tolerance shown by some Indian rulers indeed furnishes some of the outstanding instances of religious tolerance in World history. The Indian Constitution forbids promotion of any particular religion

[6] Universal Declaration of Human Rights-1948.
[7] Article-18 of Universal Declaration of Human Rights-1948.
[8] Article -18 of International Covenant on Civil and Political Rights-1966.

by the State. It enables the State to make grants for religious purposes without discriminating between followers of different faiths. The Constitution of India confers on every person the right freely to profess, practice and propagate religion. The provisions ensuring the freedom of religion that is, Articles 25 to 28 are incorporated in the form of justifiable fundamental rights and every citizen in the country irrespective of his religion is allowed to move the Supreme Court for enforcement of these rights which form the basic core of Constitutional Secularism.[9]

Constitution of India also protects the Freedom of Religion in its various provisions. Such as Article-13, declares the inconsistent laws against part-III or other provisions of the Indian Constitution as void, Constitution also provides for equality before law and equal protection of laws within the territory of India,[10] it extends to freedom of religious laws also. There shall not be any discrimination on the ground of religion.[11] Article -27 of the Indian Constitution provides for No special taxes for promotion of religion. The Indian Constitution explicitly provides for the state contributions to Hindu Temples and Shrines,[12] and also provides no religious instructions in State educational Institutions.[13] Constitution also protects the freedom of religion under Articles, 16, 29, 325, 330, and 332. Indian Secularism is very unique kind of secularism in the World.

The Constitution of India accepts the concept of secularism and provides for a secular state. However many modifications are made in the concept secularism in view of the State and Society in India. The Constitution of India has provided for its own form of secularism which is based on Indian tradition of tolerance and freedom of religion in modern times. In India the practice of Untouchability, is prohibited under Article-17 of the Constitution, for this purpose parliament enacted 'Protection of Civil Rights Act-1955, which punishes preaching and practice of Untouchability. Though India is facing these practices even today, which leads to conversion to other religion and set back to the growth of the nation.

Indian Judiciary and Freedom of Religion

The Judicial justice is the highest kind of justice to be done with aggrieved parties. Judiciary has played vital role as protector, provider and investigator in modern World. It is the duty of State to ensure Constitutional mandates. Liberty plays very important role in the inner and outer

[9] Article-32 of the Indian Constitution.
[10] Article-14 of the Indian Constitution.
[11] Article-15 of the Indian Constitution.
[12] Article- 290 of the Indian Constitution.
[13] Article -28 of the Indian Constitution.

personality of person. Freedom of Religion is one of such liberty. Religion is a personal matter and hence the State shall not interfere in the personal matters of Religion. In case of violation of the Fundamental Rights, the Judiciary has played very important role in India. In this way it is concluded that the concept of Freedom of Religion enshrined under Article-25 of the Indian Constitution is very dynamic concept. The Supreme Court of India is really supreme in protection of freedom of religion guaranteed under the Constitution.

In *The Commissioner, Hindu Religious Endowments, Madras v. The Sri, Lakshmindra Thirtha Swamira of Sri. Shirur Mutt*.[14] Supreme Court laid down first time the 'Test of Essential Religious Practices'. Court held that what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. Court holding the view that the Mahant was held to have a legal right in the property, which along with the beneficial interests therein, would be enjoined by him so long as he held his office. The term person under Article-25- meant individuals and the Mahant of Shirur muth was considered to be such a person eligible to exert his rights under said article.

Court also held that Shirur muth and its followers came under the purview of Article-26, which contemplated not only a religious denomination but also any section thereof. The issues pertaining to administration of religious properties were not matters of religion but in accordance with the law they can manage the property. Accordingly, provisions which allowed excessive interference of State officials in Shirur math's administration were struck down. Section-21 of the said Act[15]- held unconstitutional, since interference the freedom of religion. Section-76 of the Act- to be a statute imposing taxes which levied beyond the legislative competency of the State Legislature, thus, finding it liable to be struck down.

In *S.R. Bommai, v. Union of India,*[16]mainly discussed on Constitution of India-1950, Preamble and Articles-15, 16, 25,26,27,28,30,51-A, 356, Scope of Preamble, Secularism-Meaning, role of Religious tolerance, equal treatment of all religions and Concept of Positive

Secularism. Religion vis a vis Secularism is a part of the Basic Structure of the Constitution and also Effect of 42nd Amendment. Articles-14,15,16,26,30 and 44 by implication prohibit the establishment of theocratic State and prevent the State either identifying itself with or favoring

[14] AIR-1954-SC 282.
[15] Section-21- Power to enter religious institutions.
[16] AIR 1994 SC 1918.

any particular religion or religious sect or denomination.[17]Section 123 of the Representation of the people's Act-1951, which prohibits appealing to any religion or seeking votes in the name of any religion. Section-29-A, states that 'Every party contesting elections and seeking to have a uniform symbol for all its candidates has to apply for registration. While making such application, the association or body has to affirm its faith and allegiance to the principles of Socialism, Secularism and Democracy, among others.

In *Reverend Stainislaus v. State of Madhya Pradesh & Ors*.[18] The Constitutional validity of the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968, was challenged in the High Court of Madhya Pradesh and the constitutional validity of the Orissa Freedom of Religion Act, 1967 was challenged in the High Court of Orissa. The two Acts prohibit forcible conversion and make the offence punishable. In this case Court observed that the Legislative Competency of State Legislatures concerning Anti-conversion laws were upheld.

In *Indian Young Lawyers Association and others v. State of Kerala of others*,[19]Supreme Court lifted the ban on entry of women belonging to menstruating age group in the Sabarimala temple of Lord Ayyappa in Kerala, holding the view that such prohibition does not only violate the fundamental right to religion and equality, as guaranteed by the Constitution but is also highly regressive and derogatory in substance. The issue regarding exclusion of women in Sabarimala temple was brought before the Supreme Court in 2006 by an association of lawyers through Public interest litigation under Article 32 of the constitution. In recent past, there have been several cases where the issue of religion-based equality and protection of religious rights has cropped up before the courts.

In *Mohd. Hanif Quareshi and others v. The State of Bihar (1958-AIR-731)* challenged the Constitutional validity of the prevention of Cow slaughter laws, on the ground that they infringed their fundamental rights guaranteed under Articles-14, 19(1)(g) and 25 of the Constitution. They put total ban on the slaughter of all categories of animal of the species of

[17] Article-14, Equality before law, Article-15, Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, Article-16, Equality of opportunity in matters of public employment, Article-25, Freedom of conscience and free profession, practice and propagation of religion, Article-26, Freedom to manage religious affairs, Aritcle-27, Freedom as to payment of taxes for promotion of any particular religion,Article-28, Freedom as to attendance at religious instruction or religious worship in certain educational institutions, Article-30, Right of minorities to establish and administer educational institutions, Article-44, Uniform civil code for the citizens, Article-51-A, Fundamental duties and Artcle-356,Provisions in case of failure of Constitutional machinery in States.

[18] (1997-AIR 208)

[19] (2019)11 SCC 1.

bovine cattle. Court held that they did not violate the fundamental rights of the petitioners under Article-25 as it had not been established that the sacrifice of a cow on that day was an obligatory overt act for a mussalman to eschibit his religious belief and idea.

In *Dr. M. Ismail Faruqui and others v. Union of India*,[20]there was a long-standing dispute relating to the Ram Janma Bhumi-Babri Masjid structure in Ayodhya which led to communal tension and violence from time to time and ultimately led to the destruction of the disputed structure on 6th December, 1992. This was followed by widespread communal violence which resulted in large number of deaths, injuries and destruction of property in various parts of the country. The said dispute has thus affected the maintenance of public order and harmony between different communities in the country. As it is necessary to maintain communal harmony and the spirit of common brotherhood amongst the people of India, it was considered necessary to acquire the site of the disputed structure and suitable adjacent land for setting up a complex which could be developed in a planned manner wherein a Ram temple, a mosque, amenities for pilgrims, a library, museum and other suitable facilities can be set up. The Acquisition of Certain Area at Ayodhya Ordinance, 1993 was accordingly promulgated by the President on 7th January, 1993. By virtue of the said Ordinance the right, title and interest in respect of certain areas at Ayodhya specified in the Schedule to the Ordinance stand transferred to, and vest in, the Central Government.

Therefore the Central Government passed 'The Acquisition of Certain Areas at Ayodhya Act-1993, which provides for the acquisition of certain disputed area at Ayodhya and for matters connected therewith or incidental thereto. Then this Act was challenged on the ground that it violates the Articles 25 and 26 of the Constitution and the present case not fall within the ambit of Entry-42, List-III but is referable to Entry-1, List-II and, therefore, the Parliament did not have the competency to enact the same. In British India, the right to worship of Muslims in a Mosque and Hindus in a temple had always been recognized as a Civil right. Section-4 of the Act abates all pending suits and legal proceedings without providing for an alternative dispute mechanism for resolution of the dispute between the parties thereto. This is an extinction of the judicial remedy for resolution of the dispute amounting to negation of Rule of law, therefore, unconstitutional and invalid.

Section-4 can be severable from the remaining Act, accordingly, the challenge to the Constitutional validity of the remaining Act, is rejected. Pending Suits and other proceedings

[20] AIR (1994)SCC-360.

relating to disputed area, stand revived for adjudication of the dispute. Special reference made by the president of India under Article-143(1) of the Constitution is superfluous and unnecessary and does not require to be answered.

CONCLUSION

The protection of Human Rights is necessary for the development and growth of an Individual personality, which ultimately contributes in the development of the Nation as a whole. Human Rights and Fundamental freedoms are indivisible, the full realization of Civil and Political rights without the enjoyment of Economic, Social and Cultural rights, is impossible. Our civilization lacks humane feelings. Secularism is a passive attitude or religion tolerance. It is a positive concept of equal treatment of all religions. Laws can be made regulating the secular affairs of Temples, Mosques and other places of worship and mutts. One cannot conceive of a democratic form of government without the political parties. If the Constitution requires the State to be secular in thought and action, the same requirement attaches to political parties as well.

In India freedom of Religion includes freedom of Conversion also; Anti-Conversion laws passed by the State Legislatures are the violations of the Constitutional Mandates of Secularism. Certainly, these legislations affect the religious freedoms. Targeting religious minorities groups often takes place. Religious hate speech and religious fundamentalisms are great set back to the growth of the nation. Religious freedoms includes, privacy of religion, food and practices which are essential elements of religions. States are under obligation of Constitutional and International Instruments, to protect the religious freedoms. Political parties, group of persons or individual who would seek to influence electoral process with a view to come to political power, should abide by the Constitution and the laws including Secularism, Democracy, Sovereignty, Unity and Integrity of the Nation. They should not mix religion with politics. They are under the obligation of protecting human rights.