



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

RIGHT TO FREEDOM OF RELIGION AND THE UNIFORM CIVIL CODE

Dr. Umakanta Sahu

Asst. Prof., Pol. Sc.

DAV (Auto.) College, Titilagarh

Abstract:

UCC is the most widely debatable topic throughout India. India is a secular State in the sense that it has no state religion and every religion is equal in the eyes of state. India allows its citizen the Right to Freedom of religion as fundamental rights under part- III of Indian constitution. The concept of secularism is not static, definite or fixed. It changes with the change of practice of the religion, views and socio-political landscape of the country. The personal laws related to marriage, divorce, succession and inheritance, maintenance, custody of the children and adoption. By tradition the personal law is treated as religious though religion has nothing to do with it. Therefore the language of Art 44 needs correction to mean that the direction is to secure a uniform personal laws⁶.

Key Words:

Secularism, Constitutional Mandate, Personal Law, Freedom of Conscience, Right to profess, Religious Practice, Untouchability, Succession.

Introduction :

India is a Secular state. Secularism was a constitutional mandate¹, echoing directly or indirectly in the provision of the constitution since its formulation. The makers of the constitution wanted such a state and accordingly, right to freedom of religion have been included in the constitution. Indian constitution embodies positive concept of secularism i.e. all religion in our country (irrespective of their strength) have the same status and support from the state. In Indian context it basically means treatment of all religions on equal footing without any discrimination. The state has no loyalty to any particular religion and as such it is not religious or anti-religious; it gives equal freedom to all religion. It has no foundation of religion and it will not identify itself with any particular religious faith and no person shall suffer any disability or discrimination on the basis of religion². So, secularism means separation of state politics and non-religious area of life from religions as religion is purely one's personal affairs.

The ethos of secularism was made explicit by the 42nd amendment Act of 1976, when it added the term 'secular' to the preamble. Again secularism was declared as 'Basic structure' of the constitution in S.R. Bommai Case, 1994³. M. Ismaili Feruqui case the SC held that "the constitution guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasizing that there is no religion of the state itself. The preamble reads with the Article 25-28 emphasize this aspect and indicate the manner the concept of secularism embodied in the constitution has to be understood, any step inconsistent with constitutional policy is in plain words, unconstitutional".

The concept of secularism is not static, definite or fixed. It changes with the change of practice of the religion, views and socio-political landscape of the country. In a given period, secularism is defined by the politics and it is the political masters who choose to be secular or communal depending upon the time. People are not concerned with freedom of religion unless and until their freedom is encroached. Thus, people of India are given the Right to freedom to practice and profess any religion and ensure non-interference of the state in their religion matters.

Right to Freedom of Religion:-

Though the constitution guaranteed the freedom of religion to all persons the constitution has not defined the term Religion. However in Lakshmindra⁵ case observed “Religion is a matter of faith with individuals or communities and need not be theistic, there are well known religion in India which do not believe in God or in any intelligent first cause like Buddhism and Jainism.”

Article 25 says that all persons are equally entitled to freedom of conscience and profess, practice and propagate religion. Here freedom of conscience refers to inner freedom of the individual to establish his relation with the god in whatever way he desires. The right to profess implies the declaration of one’s religious beliefs and faith openly and freely. Right to practice implies performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas. Right to propagate implies that transmission and dissemination of one’s religious beliefs to others or exposition of the tenets of one’s religion. But it does not include right to convert other person to one’s own religion.

From the above it is crystal clear that Article 25 covers not only religious beliefs (doctrines) but also religious practices. But these rights are subject to public order, morality, health and other provisions regarding to fundamental rights. Further the state is permitted to (i) regulate or restrict any economic, financial, political or other secular activity associated with religious practice. (ii) Provide for social welfare and reform.

Further, as per observation of the SC, such religious practices should constitute an essential part of their religion. It must be so integral that the practice of religion becomes incomplete without it. So what practice of religion is secular is to be determined by the court on a case to case basis. Public order, morality, health other provisions regarding the fundamental right restrict the practice of Right to freedom of religion. Thus restriction of use of loud speaker or bursting firecracker are not against freedom of religion on grounds of public order. The disqualification of persona on the basis of number of children from the position of sarpanch is against religious freedom of the Muslims, but the legislation which safeguards the health of Muslim women is well within the restriction of freedom of religion. The right to freedom of religion of one person shall not hinder the fundamental right of others as freedom granted to one shall be granted to all.

The right of freedom of religion permits the state to make legislation which seeks to regulate or restrict any economic, financial, political or other secular activity associated with religious practice and further the state shall provide social welfare measures or reform or to throw open Hindu religious institution of a public character to all classes and section of Hindu. ‘The religious practices’ are to be distinguished from what are called ‘associated practice’. What is religious cannot be regulated, but the other practices can be regulated the essential of religion is religious practices but the non-essential are associated practices. The administration of religious property is secular activity and can be administered by law. Article 25(2) b was incorporated to remove the barriers of cast and untouchability.

Article 26,27 and 28 supplement the freedom of religion by giving freedom to manage religious affairs, freedom as to payment of taxes for promotion of any particular religion and freedom to attend religious instruction or worship in educational institution wholly maintained out of state funds.

One issue arises that the constitution on the one hand guarantees the right to freedom of religions as fundamental rights and on the other, direct the government under Act 44 to implement uniform civil code. Article 44 says “the state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.” A uniform civil code essentially means a common governing personal matters for all citizens for the country irrespective of religion. This is placed in part iv of the Indian constitution which are not enforceable by any court (Art 37). Most people believe that we don’t have common civil law in the country. But, in reality all civil laws are common, except one law, namely the personal law which varies with the different religion. The personal laws related to marriage, divorce, succession and inheritance, maintenance, custody of the children and adoption. By tradition the personal law is treated as religious though religion has nothing to do with it. Therefore the language of Art 44 needs correction to mean that the direction is to secure a uniform personal laws⁶.

Looking at the issue from purely legal prospective we can divide the Indian society in to two groups, (i) the majoritarian group- the personal laws of the whom have been codified namely the Hindus, Sikhs, Buddhists, Janis (all under the legal definition of Hindu) and minority group, namely Muslim, whose laws have not been codified. Now the mejoritarian group seeks the implementation of uniform civil code basing upon Article 14, which ensures the equality and Article 44 which directs the government to enact the UCC as early as possible. The minority group on the other hand may suggest that the freedom of religion granted to them under Article 25 mean no interference in their religious affairs and the right to profess, practice and preach their religion. As we have seen above, the freedom of religion only protects the essential and integral parts of the religion and not the non-essential, secular practices related to religion. Further, there it may be noted that government as per policy is entitled to bring any legislation which could remove the sufferings of the women or the downtrodden in these minority religions and thus it should be brought in. thus the law does not offer any difficulty in bringing about the necessary social reforms even if in terms of uniform civil code, however as seen in the past year the supreme court has declined to get itself involved in the question of uniform civil code and tossing the ball into the parliament's court(27). The problem thus is political and societal, political as in when the law makers or politicians cater to vote banks and social because religious teachers and the people in general refuse to look outside the prism and distinguish between a religious practice essential to the religion and social, political and economic practices linked with religion.

Conclusion:-

Article 44 was based on the concept that there was no necessary relation between religion and personal law in a civilized society. The SC stated that Article 25 guaranteed religious freedom whereas Article 44 sought to divest religion from social relation and personal law need to propagated and advertised for people to understand the uniform civil code will only take them ahead Ambedkar stated that the need for Article 44 was based on the belief and respect for all religion. This is not a fight over Hindus and Muslims but about the liberation of the oppressed. So conciliatory approach should be the need of the hour. Any religious practice contrary to Article 14 and 21 would have to be regulated, amended and restricted in lieu of Article 44.

References:-

- [1] M P Jain, "Indian Constitutional Law", Lexis Nexis Buttersworth, 1316.
- [2] Md Musa Ali, SECULARISM IN INDIA: CONCEPTS, HISTORICAL PERSPECTIVE AND CHALLENGES, Asia Pacific Journal of Research Vol: I. Issue XXIV, February 2015, ISSN: 2320-5504.
- [3] S R Bommai v. Unio n of India, AIR 1994 SC 1918.
- [4] M. Ismail Faruqui v. Union Of India, AIR 1995 SC 604.
- [5] Commr, HRE Madras V. lakshmindra, AIR 1945 SC 282.
- [6] P.B. Sawant, 'Common Civil Code, Mainstream, Vol, LIV No 27, June 24-30,2016, p-7.