Subject Name: Constitution Law
Topic Name: Freedom of Religion

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Introduction

Since its inception, the Preamble to the Indian Constitution has affirmed the commitment to safeguarding the liberties of its citizens, including freedom of thought, expression, belief, faith, and worship. This commitment, coupled with Articles 25 to 28, ensures equality in matters of faith and religion. The 42nd amendment in 1976, while adding the word "secular" to the Preamble, did not alter the constitutional position substantially but rather seemed to reflect political expediency.

The term "secular" holds multiple connotations, as evident in the Constitution. In the Preamble, it signifies the State's stance of impartiality towards all religions, refraining from favouring any particular faith in its actions. Additionally, "secular" also conveys a worldly or mundane context, as seen in Article 25(2)(a), where it refers to non-religious activities like financial matters related to religious institutions.

In the Indian ethos, Hinduism predominates, yet the respect for diverse beliefs and practices is deeply ingrained. Even without explicit constitutional guarantees, minority religions would likely enjoy full freedom—a contrast to neighbouring countries like Pakistan, Bangladesh, and others where religious minorities face restrictions due to the dominant faith.

Secularism, as practised in India, denotes the State's impartiality and neutrality towards all religions. Articles 25 and 26 embody the principle of religious tolerance, inherent in Indian civilization for centuries, emphasising equal respect for all religions. A secular State does not imply irreligiosity but rather neutrality in religious matters—protecting all faiths while refraining from interference.

Secularism, however, is not without its challenges. It may be exploited for communalism, bigotry, or anti-religious sentiments. In legal contexts, such as in the Santosh Kumar case, the judiciary has affirmed the promotion of cultural heritage, including Sanskrit language education, without violating secular principles. The concept of positive secularism in India does not advocate a strict separation

of religion and state like in the United States but rather fosters harmony among diverse religious beliefs.

Ultimately, Indian secularism fosters a spirit of inclusivity, respecting the devout, antagonistic, and atheist alike, thereby reflecting a nuanced understanding of religious pluralism and coexistence in a diverse society.

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Article 25: Freedom of Conscience and Religious Practice

Article 25 of the Indian Constitution safeguards the fundamental right to freedom of conscience and religious practice. It guarantees that all individuals, regardless of citizenship status, are entitled to hold personal beliefs and convictions relating to spirituality and morality.

Moreover, individuals have the right to openly declare and manifest their religious beliefs, perform religious rituals and duties according to their faith, and share their beliefs with others for the enlightenment of society.

While individuals enjoy the right to propagate their religion, this does not extend to forcibly converting others, respecting everyone's freedom of conscience.

However, these rights are subject to certain limitations and exceptions, including considerations of public order, morality, and health. Additionally, the State is permitted to regulate or restrict secular activities associated with religious practices and enact laws aimed at promoting social welfare, reform, or opening Hindu religious institutions to all sections of Hindus.

The term "religion" is not explicitly defined in the Constitution, encompassing diverse systems of beliefs, rituals, and observances. It is a deeply personal matter and varies among individuals and communities. Freedom of conscience allows individuals to establish their relationship with the divine, fellow humans, and the natural world according to their beliefs and convictions.

Each aspect of religious freedom—profession, practice, and propagation—has distinct meanings, emphasising the broad scope of Article 25 in protecting not only the right to hold beliefs but also the right to manifest them through outward acts and dissemination of ideas.

Overall, Article 25 safeguards the rich tapestry of religious diversity in India while ensuring that religious freedom is exercised responsibly, respecting the rights and beliefs of all individuals.

Limitations on Freedom of Religion

Article 25, Clause (1) stipulates that no action in the name of religion should undermine public order, morality, or public health. For instance, practices like 'untouchability' or the exploitation of individuals under the guise of religious customs, such as the system of devadasis, cannot be sanctioned.

In the case of Gulam v State of U.P. (AIR 1981 SC 2198), the court ruled that Muslims cannot obstruct a community procession citing that the music played is a nuisance or offensive to their sentiments. Similarly, in Gulam Abbas v State of U.P. (1984) 1 SCC 81, the Supreme Court's directive to relocate a religious property to prevent clashes between religious groups is deemed lawful as it serves the interest of public order.

In Gulam Kadar A. Menon v Surat Municipality (AIR 1998 Guj 234), petitioners contested the validity of Sec. 212 of the Bombay Provincial Municipal Corporation Act, 1949, which empowered the demolition of sections of two mosques in Surat district for road expansion.

The court ruled that while the Constitution doesn't forbid the acquisition of religious sites for public welfare, it emphasised the need for the state to treat places of worship with utmost respect and special consideration, aligning with the Indian concept of secularism.

The freedom of religion is also subject to other provisions within the Constitution, such as the right to freedom of speech and expression, freedom of assembly and association, etc.

In **Moulana Mufti Sayeed Mohd. Noorur Rehman Barkariq v State of W.B. (AIR 1999 Cal. 15)**, the Calcutta High Court upheld the state's restrictions on the use of microphones and loudspeakers during Azan, stating that while Azan holds significance in Islam, the use of modern amplification devices is not integral to the religious practice and can pose environmental and health risks.

According to religious tradition, Azan is to be proclaimed by the Imam or mosque authorities without technological aids, a practice sanctioned by religious doctrine.

Article 26: Freedom to Manage Religious Affairs

Subject to considerations of public order, morality, and health, every religious denomination or any of its sections is entitled to:

- Establish and maintain institutions for religious and charitable purposes,

- Manage its own affairs in matters of religion,
- Own and acquire movable and immovable property, and
- Administer such property in accordance with the law.

Religious Denominations

While Article 25 guarantees the right as an individual, Article 26 safeguards the rights of an organised body. The term 'religious denomination' under Article 26 must align with the concept of 'religion' and therefore must fulfil three criteria:

1. It must comprise individuals who share a system of beliefs conducive to their spiritual well-being, i.e., a common faith.
2. It must have a unified organisational structure.
3. It must be designated by a distinct name.

In this context, broad denominations such as 'Hinduism,' 'Muslims,' and 'Christians' qualify, as do narrower groups like the various philosophical schools within Hinduism (e.g., Advaitas, Saivites) or distinct sects among Muslims (e.g., Hanafi, Shia, or Chisti). Similarly, spiritual fraternities like maths are considered part of a denomination, as seen in the LT Swamiar's case.

In **S.P. Mittal v Union of India (AIR 1983 SC 1)**, the Aurobindo Society's establishment of Auroville in Pondicherry, despite its teachings of Sri Aurobindo, did not qualify as a religious institution or denomination.

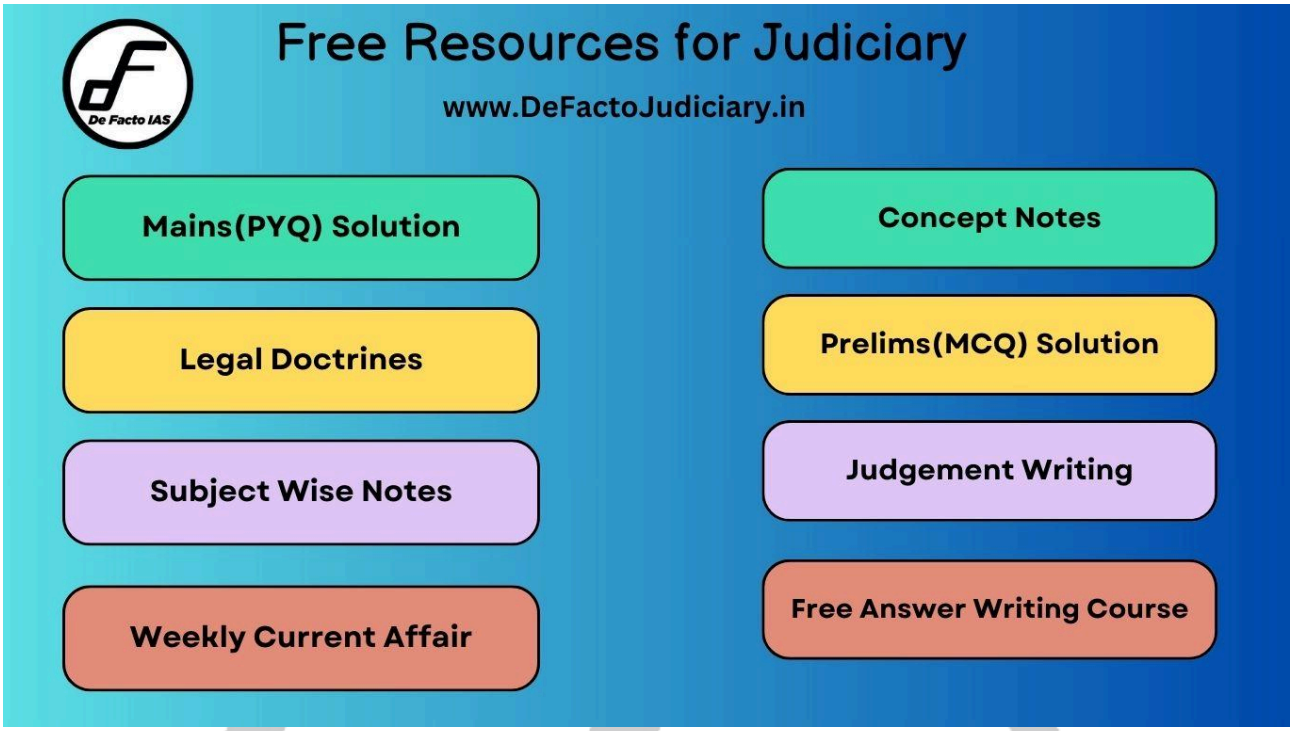
The court emphasised that Sri Aurobindo's teachings represented a philosophy, not a religion, and lacked the exclusivity and distinctiveness required of a denomination under Article 26.

Even if the society and Auroville were considered a religious denomination, as in the case of Ananda Marga, the impugned Act did not violate their rights under Article 25 or 26.

The Act regulated secular matters related to property management, which is permissible under Article 26(d).

In **Bramchari Sidheswar Shai v State of W.B. (1995) 4 SCC 646** ("Ramakrishna Mission case"), the court recognized the followers of Ramakrishna, organised under the name 'Ramakrishna Math or Mission,' as a religious denomination within Hinduism, entitled to the protections of Article 26. Article 26 does not grant new rights but safeguards existing ones.

Denominations are obligated to adhere to constitutional principles and laws, ensuring equitable treatment and compliance with legal norms in managing their affairs.



Right to Propagation and Religious Conversion

EV. STANISLAUS v STATE OF M.P. (AIR 1977 SC 908)

The case challenged the validity of the M.P. and Orissa Acts concerning freedom of religion, asserting that they contravened:

1. The right to propagate one's religion under Article 25(1), and

2. The legislative competence of the State, as religious matters were under List I (Union List).

These Acts aimed to prevent forced conversions, prompted by findings from a commission led by Justice K.C. Niyogi, which reported instances of coerced and deceptive conversions by Christian missionaries. Rev. Stanislaus, a missionary, contested these Acts, arguing they infringed his rights under Articles 25 and 26. The Supreme Court dismissed his claims.

The Court clarified that Article 25(1) grants the right to propagate one's religion by spreading its tenets, not by converting others forcibly. Deliberate attempts to convert others infringe on the "freedom of conscience" guaranteed to all citizens. However, it was argued that freedom of conscience extends to both adhering to and abandoning one's religion according to personal conviction, whether by self-choice or persuasion, provided objectionable methods are not employed.

The Court ruled that the Acts in question fell within List II or State List (Entry 1 - public order), aiming to prevent public disturbances. Attempts to incite communal tensions, such as alleging forced conversions, could potentially disrupt public order, impacting the wider community.

Right to Excommunicate

In **Saifuddin Saheb v State of Bombay (AIR 1962 SC 853)**, the head of the Dawoodi Bohra Community contested the constitutionality of the Bombay Prevention of Ex-Communication Act, 1949, arguing it infringed rights under Articles 25/26. The Act aimed to prevent excommunication, a power claimed by the community's head as integral to their religious beliefs.

The Supreme Court (by a 4:1 majority) invalidated the Act's provisions as violative of Articles 25/26, stating that excommunication based on religious grounds, such as deviation from religious tenets, fell under the community's right to manage its religious affairs (Article 26(b)). The dissenting judgement noted that excommunication creates a form of social exclusion, akin to untouchability, violating Article 17 of the Constitution.

The majority ruling permitted excommunication on religious grounds but not on secular grounds. Criticism has been directed at this judgement for its potential misuse to stifle dissent and reform within the Bohra community. The case awaits reconsideration by a Constitution Bench, possibly a 7-Judge Bench **(Central Board of Dawoodi Bohra Community v State of Maharashtra (2005) 2 SCC 673).**

In **P.M.A. Metropolitan v Moran Mar Marthoma (AIR 1995 SC 2005),** the Court held that excommunication of Catholics by the Patriarch was unlawful, as it deprived individuals of their right to worship, a fundamental right protected under the Constitution, subject to challenge in a court of law.

ARTICLE 27: Freedom Not to Pay Taxes for Religious Promotion

Article 27 stipulates that no individual shall be compelled to pay taxes for the promotion or maintenance of any specific religion or religious denomination. However, there is no objection if such taxes are utilised for the promotion of all religions.

The purpose of this article is to uphold the secular nature of the Constitution, which prohibits the state from favouring or supporting any particular religion or denomination through public funds. Therefore, if such a tax is levied, no individual can be coerced into paying it.

In cases where payments were demanded under government acts to fund the machinery responsible for administering the affairs of a religious institution, such contributions were deemed as fees rather than taxes.

Consequently, Article 27 was not applicable **(Sri Jagannath v State of Orissa AIR 1954 SC 400).** Similarly, contributions required under the Bengal Wakfs Act for the education of underprivileged Muslim children were considered fees for secular purposes, aimed at the proper management of Wakf properties, and thus exempt from Article 27 **(Nasima Khatun v State of W.B. AIR 1981 SC 302).**

Article 27 not only prohibits the imposition of taxes for religious promotion but also forbids the use of public funds for such purposes. However, the reconstruction of religious sites damaged during communal unrest, funded by the government, has been deemed valid. Similarly, the acquisition of land for constructing public temples has been upheld as not violating Article 27.

ARTICLE 28: Freedom Not to Attend Religious Instructions

Article 28(1) prohibits the imparting of religious instructions in educational institutions fully maintained by the State. In institutions recognized and aided by the State, individuals have the freedom to refrain from participating in religious instruction or worship. If the individual is a minor, the consent of their guardian is required for participation (Article 28(3)).

Clause (2) serves as an exception to Clause (1), stating that the prohibition on religious instruction does not apply to educational institutions administered by the State but established under an endowment or trust requiring religious instruction. Thus, such institutions are permitted to impart religious teachings.

In **St. Xavier College v State of Gujarat (AIR 1974 SC 1389)**, the Supreme Court ruled that if a person is a minor, the consent of their guardian is necessary to compel them to attend religious instruction.
In **Aruna Roy v Union of India (2002) 7 SCC 368 ("The Textbook Case"),** the Supreme Court upheld the validity of the National Curriculum Framework for School Education (NCFSE), dismissing claims that it aimed to "saffronize" education by the BJP-led N.D.A. Government. The Court held that emphasising education about religions, their fundamentals, inherent values, and comparative studies of religious philosophies does not violate Article 28 or secular principles.

The Court emphasised that Article 28 primarily prohibits the imparting of religious instructions concerning rituals and customs. It does not prohibit the study of religious philosophy and culture, especially for fostering a value-based social life in a society facing moral degradation. Secularism, a fundamental principle of the Constitution, promotes understanding and respect for different religions (religious pluralism) and prohibits state discrimination based on religious differences.

Article 28(1) does not preclude the introduction of religious studies in state educational institutions, including those partly or wholly aided by the State. Thus, the shift towards teaching religions in schools under the National Education Policy of 2002, aimed at educating children about common aspects of all religions, is not contrary to secular principles.