

## RELIGIOUS LAWS IN INDIA

---

**Divi Bhargavi\***

### INTRODUCTION

India is a secular country. The term secularism was inserted into the preamble of the Constitution through 42<sup>nd</sup> Amendment. The terms literally means that “the principle of separation of the state from religious institutions”. In the case of **S.R. Bombay v. Union of India**<sup>1</sup>, the Supreme Court held that Secularism is a basic feature of the constitution while stating that religion and politics of the state cannot be clubbed. India is a home of many people profession, practicing and propagating their religion. As per census recorder in the year 200, there are around 66,00,000 people in the country who are practicing religions other than six major religions, which are Hinduism, Islam, Christianity, Jainism, Buddhism, Sikhism. The religions which are being practiced in the country are being further classified into sub-divisions.

### ANALYSIS AND DISCUSSION OF THE TOPIC

Every single citizen of the country is guaranteed with fundamental right to practice of religion as per their will and wish. The same was enriched under **Article 25**<sup>2</sup> embedded under Part 3 of the Indian Constitution. The Provisions grants right to citizens of the country to practice, profess and propagate their religion but also makes sure that such granted freedom does not violate other’s right to freedom of religion. The right is not absolute; it was subjected to reasonable restriction so that the right does not intervene with the financial status, political status, secular status, social welfare, public order of the country. The freedom of animal or human sacrifices is not guaranteed under the Article. Article 25 covers the concept of essential religious practice within it. The essential religious practice is a test which determines of whether a practice is the key practice of a religion or the basis of such religion. If proved that a practice is an essential religious practice, the same shall be saved and protected by Article 25 and 26 of the Constitution. **Article 26 of The Constitution**<sup>3</sup> provided that, subject to the restriction laid under Article 25, every citizen can manage their religious or related affairs like maintaining or establishing religious trusts or organizations or institutions etc. **Article 14, 15**

---

\*BA LLB, THIRD YEAR, PRESIDENCY UNIVERSITY, BANGALORE.

<sup>1</sup> S.R. Bommai v. Union of India, AIR 1994 SC 1918

<sup>2</sup> The Constitution of India, 1950, Art. 25.

<sup>3</sup> The Constitution of India, 1950, Art. 26.

**and 16 of the Indian Constitution** lay down that no citizen shall be discriminated on the grounds of religion in matters of law, Prohibition of discrimination and employment opportunities under the state respectively. Though India is secular country, the realistic secularism in country is far from the policy of the constitution framers. Despite the guaranteed fundamental right of freedom to religion, lot number of controversies is revolving around the religious beliefs. Form the oldest fight of Sabarimala to the very recent Hijab issue, religion and equality often overlapped with each other and were up for judicial clarification.

### NOTABLE INCIDENTS OF RELIGIOUS FIGHTS

- Sabarimala case (**Indian Young Lawyers Association & Ors v. The State of Kerala**<sup>4</sup>)

In the year 1990 a petition was filed in the High court of Kerala seeking to pass an order banning/restricting the entry of women into the temple citing reason that the deity in the temple is celibate. The petition was allowed and the High court banned the entry of women between the age group of 10-50 years into the temple. And when the case went up for an appeal, the Supreme Court in the year 2018 with a ratio of 4:1 held that the ban which was subjected on women from entering the temple violated their rights guaranteed under Article 14, 15, 19(1), 21 and 25 of the constitution and had ruled that women belonging to all age groups can enter into the temple. The judgment in the case of was appreciated by few at the same time it was criticized by majority. The verdict faced outrage from the Ayyappa worshippers. Many religious organizations kept their dissatisfaction about the judgment which further created unrest among the male section of the worshippers. The state government also threw up its hand saying that it cannot implement the Supreme Court judgment with regard to the shrine's issue. Since the judgment was followed by violent protests and agitations, a review petition was filed in the year 2019 citing the reason that the prohibition on entry of women between 10-50 years is the customary practice of the shrine.

- Ayodhya case (**M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors**<sup>5</sup>)

The case was the longest running dispute between Hindus and Muslims of Ayodhya. The issue is over the land and the construction in such land which was claimed to the Ram Janam Bhoomi by a certain sect of Hindus while on the other hand it was also

---

<sup>4</sup> Indian Young Lawyers Association & Others v. The state of Kerala, **Writ Petition (Civil) No 373 of 2006.**

<sup>5</sup> M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors, Civil Appeal Nos 10866-10867 Of 2010

claimed by Sunnis of the locality that bairagis of Hanumangarhi had destroyed the mosque. The issue caused violence all over the country which resulted in 50 casualties in the firing incident of Aayodhya by Uttar Pradesh Policee. The dispute was also used by many political leaders to increase their vote bank. Aayodhya dispute still constitutes as a subject matter in the political campaigns by political leaders with the intention to grab the attention using the name of religion. Country witnessed outrage, agitations, disturbances, protests, riots what not everything as consequences of the dispute. However, in the year 2019, the Supreme Court directed for the land handover to a trust for the construction of Hindu temple. The verdict was opposed by many organizations while few others supported.

Marking from 1969 Gujarat riot, 1984 Anti-Sikh riots, 1989 Bhagalpur Riot to the very recent 2022 Hijab Row were initiated in the name of religion and were concluded in the name of religion.

## CONCLUSION

India is a secular country. Despite it being a secular country, the state does not have any religion of its own. The constitution of the land allows every citizen to practice a religion as per his or her will. However, the right is neither absolute nor unconditional. The right is subjected to reasonable restrictions so as to save the public order in case of arousal of any kind of outrage<sup>6</sup>. Law and religion are supplementary and complementary to each other since they go hand-in-hand. But much more strict regulations shall be framed by the state or there should be amendment taken place in order to rescue religion from political leaders who use its guise for their personal and political benefit.

---

<sup>6</sup> Blog.ipleaders.in, <https://blog.ipleaders.in/right-to-freedom-of-religion-articles-25-28/>, last visited (14<sup>th</sup> July 2022).