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NAAC ACCREDITED 'A' GRADE



Topic: Right to Freedom of Religion

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## **Right to Freedom of Religion**

India, as declared by the Preamble of the Constitution, is a secular state, i.e., a state which observes an attitude of neutrality and impartiality towards all religions. A secular state is founded on the idea that the state is concerned with the relation between man and man and not with the relation between man and God which is a matter of individual conscience. The attitude of impartiality towards all religions is secured by the Constitution by several provisions. Indian Constitution gives fundamental right to religious freedom to all, irrespective of whether they are citizens or non-citizens.

Articles 25-28 guarantees fundamental right to Freedom of Religion in India. However, none of these Articles has given any definition of religion. The Supreme Court in several of its judgment has tried to define religion; "Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism or Jainism which do not believe in God." In another case the Supreme Court further observed that "religion is the spirit of belief which binds men to a supernatural being. It includes worship, belief, faith, devotion etc. and extends to rituals." However, the Supreme Court has pointed out that a person can enjoy his right to freedom of religion only so long as it does not conflict with the enjoyment of similar rights by others.

We will now look at the contents of Articles 25-28:

- a) Article 25 (1) gives to all persons equally the right to freedom of conscience and also the right to freely profess, practice, and propagate religion. This right, however, is not absolute; it is subject to public order, morality and health.
- b) Under Article 25 (2), the state, by its existing law, or a newly made law, may-
  - i. Regulate or restrict any economic, financial, political or other secular activities associated with religious practice.
  - ii. Ensure social welfare and reform or throw open Hindu religious and public institutions to all sections of Hindus

Two additional explanations have been appended to Article 25. Firstly, the wearing and carrying of kirpans shall be regarded as included in the profession of the Sikh religion. Secondly, Hindu religious institutions referred to above shall include religious institutions of Sikhs, Jains and Buddhists as well.

- c) Article 26 provides protection to every religious denomination. According to this Article, every religious denomination has the fundamental right to:
  - i. Establish and maintain religious and charitable institutions
  - ii. Manage its own affairs in religious matters
  - iii. Acquire and own movable and immovable property, and
  - iv. Administer such property following law

All the above rights, however, are subject to public order, morality and health. It may be noted here that while Article 25 gives rights to individuals, Article 26 gives the right to religious denominations. That is, the right given by Article 26 is collective.

- d) According to Article 27, a person cannot be compelled to pay any taxes, the earnings from which are spent for the promotion or maintenance of any religion or religious denomination.

This article has been evidently inserted to maintain the secular character of the Indian state. However, levying of a fee to provide some services in a religious place is permissible. For example, levying a fee on pilgrims attending a religious fair to take care of their health, safety and welfare is perfectly valid.

- e) In the interests of secularism, Article 28 imposes restrictions on religious instructions on educational institutions. The provisions of this article are as follows
  - i. According to Article 28 (1), religious instructions cannot be given in any educational institution maintained wholly out of state funds.
  - ii. According to Article 28 (2), if an educational institution is administered by the state but has been established under any endowment or trust on condition that religious instruction in this institution will be compulsory, then in such a case, the restriction imposed by Article 28 (1) shall not apply.
  - iii. According to Article 28 (3), a student studying in an educational institution recognized by the state or getting grant out of state funds cannot be asked to participate in any religious instructions or attend any religious worship conducted in this institution without his consent, or if he is a minor, without the consent of his guardian.

However, in *Aruna Roy vs. Union of India, 2002*, the Supreme Court gave the ruling that Article 28 has imposed restrictions on religious instruction and not on the study of religion. Therefore, there is no bar on the study of religion or research on religion in an educational institution.

The Indian state gives right to religion to every citizen as it is a country where people of various religious communities live. The bold pronouncements of the right to religion in the Constitution are indeed very progressive. It appears more progressive when we consider that the other half of the truncated territory, consisting of a large mass of Hindu minority, has adopted Islam as a state religion. But India, despite being predominantly occupied by Hindus, has very nobly chosen to be secular. And this right to freedom of religion as a fundamental right makes the foundation of secularism in India even stronger.