



Part III

Fundamental Rights

ARTICLE 25

Right to Freedom of Religion

25. Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

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Freedom of 'conscience' is absolute inter freedom of the citizen to mould his own relation with god in whatever manner he like. The Courts have defined freedom of conscience as the freedom of a person to entertain any belief or doctrine concerning matters, which are regarded by him or her to be conducive to his or her spiritual well being

To "profess" a religion means to declare freely and openly ones faith and belief. The constitutional right to profess religion means a right to exhibit one's religion in such overt acts as teaching, practicing and observing religious precepts and ideals in which there is no explicit intention of propagation involved. Taking out religious processions, worship in public places, putting on specific garments include within the ambit of profession of religion.

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To 'practice' religion is to perform the prescribed religious duties, rights and rituals, and to exhibit his religious belief and ideas by such acts as prescribed by religious order in which he believes

To 'propagate ' means to spread and publicize his religious view for the edification of others. But the word "propagation" only indicates persuasion and exposition without any element of coercion. The right to propagate ones religion does not give a right to convert any person to one's own religion. The right to propagate religion means the right to communicate one's religious tenets to others by way of preaching, teaching and writing with the explicit intention of convincing others about the goodness of one's religion

ARTICLE 26

26. Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

ARTICLE 26

It is obvious from the language of the clauses (b) and (d) of article 26 that there is an essential difference between the right of a denomination to manage its religious affairs and its right to manage its property

This means that a religious denomination's right to manage its religious affairs is a fundamental right protected by the Constitution. No legislation can violate it except for health, morality and public order. But the right to administer property associated with religion can be exercised only "in accordance with law". In other words, the State can regulate the administration of religious property by way of validly enacted laws

ARTICLE 25

Sabrimala issue

- On 28th September 2018, the Supreme Court by a 4:1 majority struck down Rule 3(b) of the Kerala Hindu Places of Worship (Authorization of Entry Act), 1965 by virtue of which a ban was imposed on women between the ages of 10 to 50 years from entering the Lord Ayyappa Temple at Sabarimala in Kerala.
- The practice was termed as “unconstitutional” and as a form of “untouchability” within the meaning of Article 17 by Justice Dr D.Y. Chandrachud. The majority judgment was delivered by CJI Dipak Mishra and Justice A.M. Khanwilkar while, Justice. R.F. Nariman and Justice Dr. D.Y. Chandrachud wrote separate concurring opinions. The only woman judge on the Bench, Justice Indu Malhotra, gave a dissenting opinion.

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What is religion?

Religion has its basis in “a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being”, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral part of religion and these forms and observances might extent even to matters of food and dress

ARTICLE 25

What is an essential practice doctrine?

- The doctrine of “essentiality” was invented by a seven-judge Bench of the Supreme Court in the ‘Shirur Mutt’ case in 1954. The court held that the term “religion” will cover all rituals and practices “integral” to a religion, and took upon itself the responsibility of determining the essential and non-essential practices of a religion.
- Essential religious practice test is a contentious doctrine evolved by the court to protect only such religious practices which were essential and integral to the religion.
- “The question is not whether a particular belief or practice appeals to our reason or sentiment but whether the belief is genuinely held as a part of the profession or practice of religion”
- The essential religious practice test means that any religious practices that are so ‘essential’ to a religion or form the basis of a religion, will fall within the protection of Article 25 and 26 and should be protected as such. Any other activities related to it with the exceptions to those already mentioned in the Constitution will be covered in the exceptions to the right to religion.

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The Constitution Bench had ruled in 1994 that “A mosque is not an essential part of the practice of the religion of Islam and namaz (prayer) by Muslims can be offered anywhere, even in open.”

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ARTICLE 25

Sabrimala verdict

Moving on to determining whether the practice of denying women of certain age groups their right to worship can be regarded as an essential part of Hindu religion or is it equivalent to any doctrine of the religion. There is no scriptural or textual evidence that supports this discriminatory practice. Therefore, the practice of barring women from entering the temple cannot be accorded the status of an essential religious practice of the Hindu religion. As a matter of fact, it is an essential aspect of the Hindu religion to allow Hindu women to enter a temple as devotees and followers of Hindu religion and offer their prayers to the deity.

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Former Chief Justice of India, Dipak Mishra along with J. AM Khanwilkar concluded that the practice of banning women from entering the temple is not an essential part of Hinduism, instead, that allowing women devotees in the temple is an essential part of the religion. It was also concluded that the Ayyappas do not constitute as a religious domination

“In no scenario, it can be said that exclusion of women of any age group could be regarded as an essential practice of Hindu religion and on the contrary, it is an essential part of the Hindu religion to allow Hindu women to enter into a temple as devotees and followers of Hindu religion and offer their prayers to the deity.”

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The only woman judge, J. Indu Malhotra, dissented in her opinion and maintained that the issue concerns deep religious sentiments that the court should not interfere in unless there is any aggrieved person from that section or religion. She held that notions of rationality should not be seen in matters of religion and that the shrine and the deity are protected by the Article 25 of the Constitution. Her dissent is justifiable on many counts. One of them being that she is completely correct when she says that practices that are “pernicious, oppressive, or a social evil” can be subjected to judicial review.

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Justice Chandrachud went on to say that the Constitution is not bound by any religious practices. While it was widely contested whether the court had the mandate to interpret religious practices, the judges held that irrespective of a religious practice being essential or not, the constitutional values will and should prevail over essential and certain aspects of religion.

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Criticisms of essentiality doctrine

- The 'essentiality doctrine' of the Supreme Court has been criticised by several constitutional experts.
- Scholars of constitutional law have argued that the essentiality/integrality doctrine has tended to lead the court into an area that is beyond its competence, and given judges the power to decide purely religious questions.
- As a result, over the years, courts have been inconsistent on this question — in some cases they have relied on religious texts to determine essentiality, in others on the empirical behaviour of followers, and in yet others, based on whether the practice existed at the time the religion originated.

ARTICLE 25

Muslim women's entry into mosques

- In April 2019, the SC was moved to seek directions for allowing Muslim women to enter mosques through the main door, and to have the “Islamic right to visual and auditory access to the ‘musalla’
- The petition said that “this act of prohibition is void and unconstitutional as such practices are not only repugnant to the basic dignity of a woman as an individual but also violative of the fundamental rights guaranteed under Articles 14, 15, 21 and 25 of the Constitution”.

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Female genital mutilation among Dawoodi Bohras

- In 2018 a Bench of SC referred the matter in 'Sunita Tiwari vs Union of India and Ors' to a larger Bench of the Supreme Court.
- The petition, filed under Article 32 of the Constitution, had questioned the constitutionality of the practice of Female Genital Mutilation (FGM) or 'khatna', or Female Circumcision (FC) or 'khafd', which the petitioner said was carried out on every girl child in the Dawoodi Bohra community.
- The petition relied on the UN Convention on the Rights of the Child and the Universal Declaration of Human Rights and urged that the practice is violative of Article 21 (right to life and personal liberty).
- The Bench submitted that the matter should be referred to a larger Bench, which the SC accepted.

ARTICLE 25

Entry of Parsi women married to non-Parsis in the Agyari

- The petitioner, moved the High Court in 2010 after her friend who too, like her, was a Parsi married to a Hindu, was denied entry to the Tower of Silence during her mother's last rites some years before.
- In the court, petitioner argued that the question was, "in the case of marriage between a Hindu and Parsi, does it result in automatic conversion of religion?" The matter hence raised issues of gender justice.
- In December 2017, a Constitution Bench observed that "DNA does not evaporate" after marrying outside one's religion", and that by marrying outside her religion, a woman does not "surrender her affection to her father".

ARTICLE 27

27. Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

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ARTICLE 28

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.—(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

ARTICLE 28

In Aruna Roy V/s Union of India, the Supreme Court has ruled recently that article 28 does not ban a study of religions. The whole emphasis of Art, 28 is "against imparting religious instruction". There is no prohibition on 'Study of religious philosophy and culture, particularly for having value based social life in a society which is degenerating for power, post or property

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ARTICLE 29

Cultural and Educational Rights

29. Protection of interests of minorities.—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

ARTICLE 30

30. Right of minorities to establish and administer educational institutions.—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

¹[(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

ARTICLE 32

30. Right of minorities to establish and administer educational institutions.—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

¹[(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

PYQ

Does the right to clean environment entail legal regulations on burning crackers during Diwali? Discuss in the light of Article 21 of the Indian Constitution and Judgement(s) of the Apex Court in this regard.

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PYQ

Which of the following are envisaged by the Right against Exploitation in the Constitution of India?

1. Prohibition of traffic in human beings and forced labour
 2. Abolition of untouchability
 3. Protection of the interests of minorities
 4. Prohibition of employment of children in factories and mines
- Select the correct answer using the code given below.

- (a) 1, 2 and 4 only (b) 2, 3 and 4 only
(c) 1 and 4 only (d) 1, 2, 3 and 4

Practice Question

1. Which of the following are the grounds on which discrimination of citizens for admission into educational institutions is constitutionally prohibited?

1. Religion and Race 2. Sex and Place of birth
3. Nationality and Colour 4. Age and Nativity

Choose the correct answer from the codes given below:

- (a) 1, 2, 3 and 4 (b) 1 and 2
(c) 1, 2 and 3 (d) 1, 2 and 4

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Practice Question

2. Article 30 of the Indian Constitution deals with the :

- (a) Freedom of conscience
- (b) Right to propagate religion
- (c) Cultural and educational rights of the majority community
- (d) None of the above

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Practice Question

3. Which of the following statements are true with regard to the Fundamental Rights of the minorities in educational matters?

1. The minority has only the right to administer the educational institutions.
2. The minority has the right to establish and administer educational institutions.
3. The right is absolute and not subject to any restriction.
4. Reasonable restrictions may be imposed to promote efficiency and prevent maladministration.

Select the correct answer using the codes given below:

- (a) 1, 2 and 3 (b) 2 and 4
(c) 2, 3 and 4 (d) 1 and 3

Practice Question

4. In India, if a religious sect/community is given the status of a national minority, what special advantages it is entitled to?

1. It can establish and administer exclusive educational institutions.
2. The President of India automatically nominates a representative of the community to Lok Sabha.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) 1 and 2 only
- (d) None of the above

Practice Question

5. Which one of the following pairs is correctly matched?

- (a) Writ of Habeas Corpus : Available against private individuals as well
- (b) Writ of Quo-Warranto : Available against subordinate courts only
- (c) Writ of Certiorari : Available against autonomous bodies only
- (d) Writ of Prohibition : Available against public servants only

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“It does not matter how slowly you go as long as you do not stop.”

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THANKS!

Any questions?

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