

THE HABIT OF FORGETFULNESS OF FUNDAMENTAL DUTIES PROVIDED UNDER INDIAN CONSTITUTION: A TRAGEDY

Written by *Dr. Surendra Meena*

Assistant Professor, Seth Motilal Law College, Jhunjhunu, Rajasthan, India

ABSTRACT

Fundamental rights are mentioned under Part III and fundamental duties are provided under Part IVA of the Indian Constitution. Fundamental duties were added in the Constitution by 42nd and 86th Constitutional Amendment by the Indian Parliament. The fundamental principle of legal jurisprudence is that rights and duties are dependent on each other and one cannot exist without the help of other. Coming to current Indian perspective, it is very sad to point out that the habit of Indian citizens which has been developed is, to give preference and importance to fundamental rights *ONLY AND ONLY*, whether essential or absurd fundamental right whatever it may be and discard, neglect and avoid and hate the performance of fundamental duties on this or that ground or pretext. Further, when the courts interpret law to avoid absurd results or privilege or right (like the “right to religion”) a statute’s “spirit” over its “letter”- in circumstances that were unanticipated by the legislature they are justifiably seeking to serve the common good that legislation is presumed to embody, they are prevented by the aggressive approaches by the citizens, authorities and media. One may take the current example of right to “religion” which is threatening the legal system of India as well as the social fabric of India society prevailing from time immemorial and thus making life more absurd religion is treated as opium to mankind and is away from logic because we do not know whether God exists or it does not, but it is giving all pain and sufferings not only in India to its citizens but citizens of all over the world also and divided as well as dividing the family, society, country and the world too. One may refer the example of Western countries, African and Asian countries situations in this regard where it is making the life more absurd and insensible.

Thus, in the present Indian scenario, now a day's nobody even wants to listen or read, not to talk the observance of even any one out of the eleven fundamental duties provided under Article 51Aⁱ, of Indian Constitution. So, it is stupid and unreasonable, not at all logical or sensible, and ridiculous to give less weight and preference to fundamental duties and always to talk about their fundamental rights. On this issue there exists no difference between the literate or illiterate, highly sophisticated elite class of Indian society or poor, downtrodden, illiterate and rustic or rude people of country side. Thus, the net result is that even the absurd fundamental rights like "right to religion" is being given more and more weight, preference, importance in its observance and compliance rather much less weight, importance and preference in observance of fundamental duties which are of the same importance and relevance like fundamental rights, because the social and national fabric cannot stand or survive without the help of other.

Thus, in the last it can be said that it is a tragic real story of the Indian legal system and also of the Indian citizens that fundamental duties are in forgetfulness, abundance and neglected today, which is not a good sign for Indian democracy and society.

RIGHT TO RELIGION UNDER INDIAN CONSTITUTION

India's Constitution, specifically Articles 25–28, protects the right to religious freedom. India's secular status was formally recognised in the preface to the country's constitution in 1976, a full two decades after the country's independence in 1947. In India, everyone has the constitutional right to openly and freely advocate for and engage in their chosen religious tradition. However, religious intolerance has sparked riots and bloodshed on multiple occasions, most notably the anti-Sikh riots in Delhi in 1984, anti-Muslim riots in 2002, and anti-Christian riots in 2008. Despite broad condemnation, the perpetrators of the violence are rarely held accountable.

Being the cradle of four main world religions (Hinduism, Jainism, Buddhism, and Sikhism), India has a religious diversity that is unparalleled. Even though Hindus make up close to 80% of the population, India is home to several regions with populations of other faiths, including Jammu and Kashmir with a Muslim majority, Punjab with a Sikh majority, and Nagaland with

a Christian majority. Majorities of Muslims, Sikhs, Christians, Jains, and Zoroastrians all live in the nation. A little more than 14 percent of India's population identifies as Muslim, making Islam the biggest minority religion in the country. According to Rajni Kothari, founder of the Centre for the Study of Developing Societies has written, "*India is a country built on the foundations of a civilisation that is fundamentally non-religious.*"ⁱⁱⁱ

The word "secular" appears in the Preamble of the Indian Constitution, suggesting that the government will not favour any particular faith or interfere with its practise. By including religious rights as basic rights, however, it protects particular faiths and communities from persecution. Article 25 says "*all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality and health.*"ⁱⁱⁱ Further, Article 26 says that "*all denominations can manage their own affairs in matters of religion. All these rights are subject to be regulated by the State*".^{iv}

The word "Hindus" in Article 25(2b) refers to all sects, groups, and schools of Hinduism, including Jains, Buddhists, and Sikhs. The wording in question makes many Hindu personal rules applicable to Sikhs and Buddhists, which has prompted complaints from the latter two faiths. Nonetheless, the same article protects the freedom of Sikhs to carry a Kirpan. There is no need to register for a religion. A religious group can be outlawed by the state if it causes social unrest, promotes terrorism or rebellion, or breaks the Foreign Corrupt Practices Act. No new foreign missionaries have been admitted by the government since the 1960s, though long-term, established missionaries may renew their visas. There are numerous provisions in the law that make it illegal to insult a group of people based on their race, faith, or nationality in writing, on film, or in person.

FUNDAMENTAL RIGHTS

In Article 25 of the Indian Constitution, the right to religious expression is enshrined as a basic human right. To quote Article 25:

"Article 25(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”.^v

Article 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”*.^{vi}

As stated in its preamble, article 26 was enacted for the express purpose of safeguarding the right guaranteed to a “religious group” or segment thereof. Article 25 of the Constitution limits the rights guaranteed by Article 26 to the promotion of public order, morality, and health and pre-empts any other section of Part III of the Constitution that might otherwise impose such a restriction.^{vii}

Article 27- Freedom to promote any faith by paying taxes. – *“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”*.^{viii}

Article 28- Religious freedom in some educational facilities- *“(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 recognized 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 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.”*^{ix}

Freedom of Religion: Individual's Rights

The Constitution protects the right to religious freedom for “all people” within the following limits:

1. Every individual has the constitutionally protected freedom to fully exercise their religious beliefs, including the right to openly and publicly worship and teach others about their faith.^x
2. No one shall be forced to pay any taxes whose proceeds are expressly appropriated to promote or maintain any particular religious denomination.^{xi}
3. Schools that receive State money in their entirety are prohibited from providing religious education, and students at any school recognised or funded in whole or in part by the State are not obligated to participate in religious education or services unless they voluntarily opt in.^{xii}

FUNDAMENTAL DUTIES

The following are among the most fundamental responsibilities that each person has to their country, as outlined in the Constitution's new Chapter on Fundamental Duties, which was added by the Constitution (Forty-second Amendment) Act of 1976:

1. With the goal of uniting India's diverse population regardless of their religion, language, or location, we must work to foster peace and unity.^{xiii}
2. It is important to recognise and protect the history of our diverse cultural traditions.^{xiv}

Against Conversions

There can be no subversion or misinterpretation of Article 25 of the Indian Constitution, which guarantees fundamental human rights. India's anti-conversion policies need to be understood in this light. Laws prohibiting compulsion or coercion in religious matters are enacted on the assumption that such changes occur and must be stopped. Controversy surrounds these kinds of laws because they could be misused by communal forces with the tacit permission of the state's or nation's ruling political party.

The All Indian Christian Council has coordinated the country's numerous anti-conversion or so-called "Freedom of Religion" laws into a single document. For the most part, the primary goal of the Freedom of Religion Bills enacted by several Indian states was to stop people from becoming Christians. The "Orissa Freedom of Religious Act, 1967" was the first of its kind, and Orissa was the first state to pass it. In 1968 Madhya Pradesh and in 1978 Arunachal Pradesh were carved out of the same territory. It was a point of contention for Catholics, who argued that sharing the gospel was central to their religion. Article 25 of the Constitution was cited in challenges to legislation passed by the high courts of Orissa and Madhya Pradesh. The Supreme Court supported the laws saying, "*What is freedom for one is freedom for the other in equal measure and there can, therefore, be no such thing as a fundamental right to convert any person to one's own religion*".^{xv} This move was criticised because it ignored Article 25 and it did not differentiate between forced conversion and conversion by persuasion.

If a Scheduled Caste Hindu, Sikh, or Buddhist converts to another religion, he or she is no longer considered a member of that group and no longer qualifies for any special treatment. But if that individual later converts back to Hinduism, he or she will get those privileges back. Several court rulings have confirmed the positive impacts of conversion and reconversion for "members of the Scheduled Castes."^{xvi}

SECULARISM AND SECULARIZATION

Freedom of faith is protected under India's secular constitution. The government has the right to regulate religious groups' secular actions. Article 25 guarantees protection for any part of a person's life that is "essentially or integrally linked with religion," with the other provisions of Part III of the Constitution still in effect. The State may secularise something if it is not essential to a faith.

According to the Supreme Court's decision in **A.S. Narayana Deekshitulu v. State of A.P.**^{xvii}, the two terms are not synonymous.

Secularism and secularisation are not synonymous. The term "secularisation" refers, at its core, to a decrease in religious observance. While secularism is a political philosophy shared by the

majority of Indians, the country's founding document aims to strike a balance between state and religious freedom. Therefore, secularism explicitly rejects all forms of supernaturalism or superstitious beliefs or actions or acts that are not fundamentally or integrally matters of religion, religious belief, religious faith, or religious practises. That is to say, secularism, which attempts to contribute to the secularisation of matters of religion or religious practises, stands in opposition to non-religious or anti-religious practises. Untouchables, for example, were thought to be a component of Hindu religious belief. However, it is condemned by human rights advocates and is outlawed in all forms by Article 17 of the Indian Constitution, making violations of this law a criminal offence under the country's Human Rights Protection Act. Article 15(2) and related clauses accomplish Article 17's goals.^{xviii}

Articles 25 and 26 of the constitution guarantee the right to freedom of faith, which is subject to public order, morality, and health. Although section 295 A was a law establishing an offence pertaining to religion, the Supreme Court held in **S. Veerabardan Chettiar v. E.V. Ramaswami Naiker**^{xix} that the law was passed in the interest of public order. This same court also noted in **Ram ji Lal Modi v. State of U.P.**^{xx}, "*the right to freedom of religion assured by those articles (Articles 25 & 26 of the constitution) is expressly made subject to public order, morality and health. Therefore, it cannot be predicted that he freedom of the religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interest of the public order*".^{xxi}

JUDICIAL PRONOUNCEMENTS

It is an apt saying that the judiciary can make or mar the development of a nation by way of interpreting the provisions of law in a country. Regarding Indian Constitution the judiciary, from the very beginning has acted as a watchdog while interpreting the fundamental rights provided under the Constitution. Since religion is a very sensitive issue, hence while dealing the freedom of religion, Indian judiciary has acted in a balancing manner.

By analysing the reasoning behind judicial actions and decisions, the language used in them, the legal strategies employed by the parties and the Court, the role of public opinion and

political considerations, and the potential long-term effects of judicial decisions, we can gain insight into the nature and scope of judicial review.

The Indian Supreme Court ruled in **S.R. Bommai v. Union of India**^{xxii}, that “secularism is a fundamental feature of this Constitution.” All faith practises and beliefs are respected equally by the state. Religious practise is a personal affair and has no place in public gatherings. The State has the power to pass laws that regulate secular activities. According to Justice Ramaswami, atheism is not compatible with equality. To Indians, freedom is a source of strength and progress. While the American doctrine of secularism– the idea of building “a wall of separation between Religion and State”– is widely rejected, the Indian Constitution incorporates the positive notion of secularism. Spirituality and personal religion are two distinct concepts in positive secularism. To be clear, the State takes no position on religious belief or practise. The State takes no position regarding religious affiliation, and accordingly accords equitable respect to all faiths.

The Supreme Court ruled in **Santosh Kumar v. Secy. Ministry of Human Resources Development**^{xxiii}, that teaching Sanskrit, the “mother of all Aryan languages,” in schools under the purview of the Central Board of Secondary Education (CBSE) does not conflict with the principles of neutrality. For the sake of preserving our cultural legacy, the court ordered the CBSE to add Sanskrit as an elective subject within three months.

The new National Education Policy, 2002 was challenged in **Aruna Roy v. Union of India**^{xxiv}, on the grounds that it violated Article 28 and was anti secular because it encouraged the teaching of all faiths to schoolchildren. The Court ruled that teaching about different faiths in public schools does not conflict with the Constitution’s neutral principles. According to Justice Dharmadhikari, after more than 50 years of the Constitution being in effect, it is abundantly clear that the State’s neutrality towards religion and indifference to all religious teachings within its institutions have not contributed to eliminating mutual misunderstanding and intolerance between different segments of the population. Because of this, secularism can be interpreted in a good light, one that fosters tolerance and respect for all faiths. Secularism boils down to the government not taking sides in religion disputes. For the sake of the people and the country as a whole, they said religion should take a back seat to matters of public order,

morality, health, and government policy aimed at protecting the nation's independence, territorial integrity, and political stability.

The Indian Supreme Court ruled in **Ismail Faruqui v. Union of India**^{xxv}, that Article 300-A of the Constitution does not prevent the government from acquiring religious buildings like mosques, churches, temples, etc. if doing so is essential to preserve public safety. Articles 25 and 26 of the Constitution are not violated by the purchase itself. Articles 25 and 26 safeguard tenets of religion that are central to the faith. Despite the fact that a given activity may be classified as sacred, it is not necessarily central to the religion in question.

The Supreme Court has defined the position of the State in religious matters in two seminal decisions: **A.S. Narayana v. State of Andhra Pradesh**^{xxvi}, and **Vaishno Devi Shrine**^{xxvii}. The Christian faith is an awful when people embrace the holy nonsense of “my religion right or wrong” and “my religionists alone to me pertain,” they are embracing Satan in his decadent state, as they have plunged into spiritual illiteracy and missed the divine essence of the lessons of the sages, prophets, and seers. Tolerance and kindness are dead ideologies in this degenerate, barbaric society. One man on Earth is used as the blind ammunition of his divine competitors in the heavens; such is the perverse reversal of greater meanings. Religions, however, cannot be wished away or eradicated, but they must be humanised and weaned from cannibalistic practises. Religious pluralism in the human world should be governed by a rule of comity between denominations rather than a zoo of savage faiths.^{xxviii}

CONCLUSION

Thus, it is clear that citizens' religious freedom is a question of individual choice. The courts in India and overseas have strengthened and firmly established religious freedom protections, while simultaneously limiting the free rein granted by those protections to the fringes of society. It is an undeniable truth that individual interest cannot always and, in all circumstances, may prevail over social and State interests; without society and the State, individuals would quickly cease to exist. This liberty, then, must not be considered totally unrestricted; rather, it must be used with moderation.

ENDNOTES

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- ⁱ Article 51A, Part IVA of the Indian Constitution.
- ⁱⁱ “*Thousands call for justice for victims of 1984 Sikh massacres - Amnesty International India*”, Amnesty International India, Archived from the original on 16th October, 2015.
- ⁱⁱⁱ Article 25 of the Constitution of India.
- ^{iv} Article 26 of the Constitution of India.
- ^v Article 25(1) of the Constitution of India.
- ^{vi} Article 26 of the Constitution of India.
- ^{vii} *Dr. Subramanian Swamy v. State of Tamil Nadu*, AIR 2015 SC 460.
- ^{viii} Article 27 of the Constitution of India.
- ^{ix} Article 28 of the Constitution of India.
- ^x Article 25(1) of the Constitution of India.
- ^{xi} Article 27 of the Constitution of India.
- ^{xii} Article 28 of the Constitution of India.
- ^{xiii} Article 51A(e) of the Constitution of India.
- ^{xiv} Article 51A (f) of the Constitution of India.
- ^{xv} *Rev. Stainislaus v. State of Madhya Pradesh & Ors.*, 1977 SCR (2) 611.
- ^{xvi} *S. Swvigaradoss v. Zonal Manager, FCI*, AIR 1996 SC 1182 (1996) 9 SCC 548.
- ^{xvii} *Sri Adi Vishveshwara of Kashi Vishwanath Temple v. State of U.P.*, 1997, 4, SCC 606, 629-630.
- ^{xix} AIR 1958, SC 1032.
- ^{xx} AIR 1957 SC 620.
- ^{xxi} *Ibid.*
- ^{xxii} AIR 1994 SC 1918.
- ^{xxiii} AIR 1995 SC 293.
- ^{xxiv} AIR 2002 SC 3176.
- ^{xxv} (1994) 6 SCC 360.
- ^{xxvi} AIR 1996 SC 1765.
- ^{xxvii} *Bhuri v. State of J&K*, AIR 1997 SC 1711.
- ^{xxviii} *Abdul Hussain v. Sliamsitt Huda*, AIR 1975 SC 1612.