



INDIAN JOURNAL OF  
LEGAL REVIEW

VOLUME 4 AND ISSUE 1 OF 2024

INSTITUTE OF LEGAL EDUCATION



## INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 4 and Issue 1 of 2024 (Access Full Issue on – <https://ijlr.iledu.in/volume-4-and-issue-1-of-2024/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



© Institute of Legal Education

**Copyright Disclaimer:** All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>

## SECULARISM AND RELIGIOUS RIGHTS IN THE INDIAN CONSTITUTION: A COMPREHENSIVE ANALYSIS

**AUTHORS** – MAYANK DWIVEDI<sup>1</sup> & PROF. ARVIND P. BHANU<sup>2</sup>, LLM STUDENT<sup>1</sup> AND ADDITIONAL DIRECTOR<sup>2</sup>,  
AMITY UNIVERSITY, NOIDA

**BEST CITATION** – MAYANK DWIVEDI & PROF. ARVIND P. BHANU, SECULARISM AND RELIGIOUS RIGHTS IN THE  
INDIAN CONSTITUTION: A COMPREHENSIVE ANALYSIS, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (1) OF  
2024, PG. 1408-1413, APIS – 3920 – 0001 & ISSN – 2583-2344.

### **ABSTRACT**

The framers of the Indian Constitution, under the leadership of Dr. B.R. Ambedkar, incorporated secular principles into its framework, as reflected in the Preamble's declaration of India as a sovereign, socialist, secular, and democratic republic. Articles 25 to 28 guarantee freedom of religion and prohibit discrimination based on religion. This paper examines the Constituent Assembly debates surrounding secularism and religious rights, highlighting key perspectives and debates.

During the Constituent Assembly debates the Constitution framers questioned the feasibility of a secular state, advocating either for explicit state indifference to religion or the affirmation of indigenous faith and culture. Dr. B.R. Ambedkar addressed various viewpoints, advocating for a middle ground that balances religious freedom with concerns of social harmony and misuse of public funds. The debates on invoking "In the name of God" in the Constitution elucidate the significance of spiritual beliefs in Indian culture, with proponents arguing for its inclusion to acknowledge the nation's deep-rooted spirituality.

Analysis of constitutional provisions under Articles 25 to 30 delves into the protection of religious freedom, the management of religious institutions, and the rights of minorities to establish and administer educational institutions. Legal precedents offer insights into the interpretation and application of these provisions, emphasizing the delicate balance between religious freedom and state regulation in a diverse society.

This paper provides a comprehensive understanding of secularism and religious rights in the Indian Constitution, shedding light on its evolution, debates, and legal framework.

### **Making of Indian Constitution**

The framers of the Indian Constitution, led by Dr. B.R. Ambedkar, incorporated secular principles into the constitutional framework. The Preamble declares India to be a sovereign, socialist, secular, and democratic republic. Articles 25 to 28 of the Constitution guarantee freedom of religion and prevent discrimination based on religion.

Government's policies aimed at fostering a scientific and rational outlook, promoting education, and building a modern, secular state. The Indian judiciary has played a significant role in upholding secularism. Landmark decisions, such as the Kesavananda

Bharati case, have reinforced the supremacy of the Constitution and secular principles.

### **Constituent Assembly debate**

**Shri Loknath Mishra** was a critique of the notion of a "Secular State" as a way to avoid confronting the country's ancient culture. He questioned the feasibility of divorcing religion from life and suggested either explicitly acknowledging the state's indifference to religion or affirming the importance of indigenous faith and culture. He submitted that the allowance for propagating religion can be paradoxical and potentially harmful, especially in the context of Hindu culture's historical suppression. They argue against the inclusion of

propagation of religion as a fundamental right in the constitution, fearing it may lead to conflict and undermine societal harmony. He further advocated for a more cautious approach, suggesting that religion should be left to self-regulate without constitutional endorsement.<sup>2261</sup>

*“Gradually it seems to me that our ‘Secular State’ is a slippery phrase, a device to by-pass the ancient culture of the land. The absurdity of this position is now manifest in articles 19 to 22 of the Draft Constitution. Do we really believe that religion can be divorced from life, or is it our belief that in the midst of many religions we cannot decide which one to accept?”*

*If religion is beyond the ken of our State, let us clearly say so and delete all reference to rights relating to religion. If we find it necessary, let us be brave enough and say what it should be.*

*Indeed, in no constitution of the world right to propagate religion is a fundamental right and justiciable. The Irish Free State Constitution recognises the special position of the faith professed by the great majority of the citizens. We in India are shy of such recognition. U. S. S. R. gives freedom of religious worship and freedom of antireligious propaganda. Our Constitution gives the right even to propagate religion but does not give the right to any anti-religious propaganda. If people should propagate their religion, let them do so. Only I crave, let not the Constitution put it as a fundamental right and encourage it. Fundamental rights are inalienable and once they are admitted, it will create bad blood. I therefore say, let us say nothing about rights relating to religion. Religion will take care of itself. Drop the word ‘propagate’ in article 19 at least. Civilisation is going headlong to the melting pot. Let us beware and try to survive.”*

**Dr. B R Ambedkar** explained the various viewpoints on the matter: one advocating for religious instruction with no compulsion, another opposing all religious instruction, and a third suggesting restrictions even on educational institutions partly funded by the

state. The speaker argues for a middle ground, citing concerns about the misuse of public funds, the complexity of religious diversity, and potential social disruptions caused by religious controversies in schools. He defended the prohibition of religious instruction in state institutions and clarified the provisions regarding religious instruction in community-run institutions receiving state aid, emphasizing the need for parental consent for students from other religious backgrounds.

#### **Preamble: to invoke “In the name of God”**

During the Constituent assembly debate **Shri H. V. Kamath**, expressed his belief that there is a notable absence of reference to God in the Indian Constitution. He felt it odd that he had to plead for an amendment to include an invocation to God in the Constitution. Kamath argues that attempting to remove God from thoughts or documents doesn't erase the concept of God itself. He referenced various religious traditions in India, highlighting their invocation of God at the beginning of ceremonies or scriptures. Kamath emphasized the spiritual essence ingrained in Indian culture and history, where actions are seen as offerings to God. He mentioned prominent leaders like Mahatma Gandhi, Subhas Chandra Bose, Sardar Patel, Rajendra Prasad, and Rajagopalachari, who have emphasized the importance of acknowledging God in daily life and national endeavours. He quotes statements from Rajagopalachari and Rajendra Prasad emphasizing the role of God in significant events like the Hyderabad operations and the struggle for independence. Overall, Kamath argues that given the deeply spiritual nature of Indian culture, it is fitting for the Constitution, a sacred document, to also acknowledge the presence of God.

**Shri Mahavir Tyagi**, proposed an amendment to Article 49 of the Constitution to allow individuals the option to either “solemnly affirm” or “swear in the name of God.” He supported this amendment, which is similar to one proposed by Mr. Kamath, as it ensures freedom of faith for all citizens. Tyagi expressed pride in the

<sup>2261</sup> Constituent Assembly Debate Vol. VII

consideration of bringing God's name into the Constitution, stating that it does not contradict the secular nature of the State. He argues that individuals, even when taking official oaths, do so in their personal capacity and according to their personal faith, which does not affect the secular character of the State until the oath is taken officially. He further argued that personal religion is distinct from organized religious practices, focusing on internal devotion to a supreme being and moral obligations. He acknowledged the importance of a secular state for a diverse nation like India but believed that including the name of God in the Constitution would actually reinforce secularism by unifying the nation under a common belief. He criticized the misconception that a secular state means the absence of God and highlights how such interpretations have led to misunderstandings. He emphasized that India's culture and civilization revolve around the idea of God and that removing God from public life would diminish the nation's spiritual freedom. He shared concerns about recent attempts to halt the recitation of religious texts in public spaces, seeing it as a threat to both political and spiritual freedom. He advocated for invoking God in the Constitution and Preamble, citing examples from other countries where prayer is part of official proceedings. He concluded by stating that India should remain a nation that believes in and acknowledges God, emphasizing the importance of a godly state rather than a godless one.<sup>2262</sup>

The debates in the Constituent Assembly when Article 28 of the Constitution was being considered are illuminating and helpful in understanding the expression 'religious instruction' used in the said Article. See the following part of the debates: -

Pandit Lakshmi Kanta Maitra raised a question regarding educational institutions wholly managed by the government, such as the Sanskrit College in Calcutta. These institutions teach the Vedas, Smritis, Gita, and Upanishads.

Article 22(1) prohibits religious instruction in institutions funded entirely by the state. Maitra wondered if teaching these texts would be considered religious instruction, potentially leading to the closure of such institutions.

Dr. B. R. Ambedkar responded that he was unsure about the character of these institutions. However, he distinguished between religious instruction and research or study. Religious instruction involves dogma, such as beliefs in one God or the last Prophet in Islam. Study, on the other hand, is different. The Vice-President interjected, mentioning that Sanskrit College students also study Sanskrit sacred books alongside their university courses, which is not considered religious instruction.

### **Constitutional Provisions**

India is linguistically, religiously, and culturally diverse. The Indian Constitution recognizes this complexity and the significance of religion in the lives of its people and provides for the 'right to freedom of religion' under **Articles 25 to 28**. These provisions ensure that every individual has the right and freedom to choose and practice their religion. Further, the Constitution makers made the provisions for 'Cultural and Educational Rights' under **Article 29 and 30**. Let's delve into the details of these constitutional provisions:

**1. Article 25** of the Indian Constitution guarantees the fundamental right to freedom of religion. It encompasses various aspects related to the freedom to profess, practice, and propagate religion. However, this freedom is subject to reasonable restrictions imposed in the interest of public order, morality, and health. In other words, while individuals have the right to practice their religion, it should not disrupt societal harmony or harm others' well-being.

Article 25 makes a distinction between religious practices and secular activities associated with religious institutions. The state has the authority to regulate or restrict secular activities that may be linked to religious practices. These secular activities include social reforms, economic endeavors, and other non-core religious

<sup>2262</sup> [https://eparlib.nic.in/bitstream/123456789/763285/1/cad\\_25-11-1949.pdf](https://eparlib.nic.in/bitstream/123456789/763285/1/cad_25-11-1949.pdf)

aspects. Importantly, religious denominations or any section thereof have the right to manage their own religious affairs, including establishing and maintaining religious institutions, as long as they do not violate other laws or public order.

In the case of *Vaishno Devi Shrine Board v. State of Jammu and Kashmir (AIR 1997)*, the validity of the Jammu and Kashmir Mata Vaishno Devi Shrine Act, 1988 was challenged. This act aimed to improve the temple's management and governance. However, it faced objections based on a perceived violation of the petitioner's fundamental right to religion. The act abolished hereditary priestly positions and vested the state with the authority to appoint priests. The Supreme Court ruled that a priest's service is a secular activity and can be regulated by the state under clause 2 of Article 25.

Similarly, in the case of *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay (1962)*, the Supreme Court emphasized that the freedom to manage religious affairs includes the right to determine essential practices within a religious denomination. The court's decision clarified the boundaries of religious freedom while respecting the state's role in maintaining public order and morality.

**2. Article 26** of the Indian Constitution grants citizens the freedom to manage their religious affairs, subject to considerations of public order, morality, and health.

**Article 26(a):** This provision ensures the right of every religious institution to establish and maintain institutions for religious and charitable purposes. The terms "establish" and "maintain" are closely linked. First, a religious institution must establish itself, and only then does it gain the right to maintain and administer an institution. Importantly, this right applies to both majority and minority religions. In the case of *TMA Pai Foundation v. The State of Karnataka (AIR 2003)*, the court affirmed this right for all religions.

**Article 26(b):** Religious institutions have the right to manage their own affairs in matters of religion. The state cannot interfere unless such management adversely affects public order,

morality, or health. For instance, in *S.P. Mittal v. Union of India (AIR 1983)*, the Aurobindo Society's sayings were not considered religious institutions, and the government's takeover of the Aurobindo Ashram did not violate Articles 25 and 26.

**Article 26(c):** This article addresses the right of religious denominations to own and acquire movable and immovable property. However, the state can regulate such property through appropriate laws.

**Article 26(d):** It pertains to the right to administer religious property in accordance with the law. The state's role is to ensure compliance with legal norms while respecting religious autonomy.

**3. Article 28** of the Indian Constitution deals with the freedom of religion in educational institutions. It safeguards the rights of individuals, religious groups, and educational institutions concerning religious instruction, worship, and attendance at religious ceremonies.

**State-Funded Institutions:** Article 28(1): "No religious instruction shall be provided in any educational institution wholly maintained out of State funds". This provision ensures that government-funded public schools remain secular and do not provide religious teachings.

**Art. 28 (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".

**Art. 28 (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 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"

In Non-State-Funded Institutions i.e. educational institutions not wholly maintained

by state funds, religious instruction is permissible but requires parental or guardian consent. Students attending such institutions have the right to choose whether to receive religious instruction. Additionally, students of a specific religion can attend religious worship or instruction conducted by the institution.

The primary purpose of Article 28 is to maintain the secular nature of state-funded educational institutions while respecting individuals' freedom to follow their own religious beliefs or opt out of religious activities.

In the case of *Aruna Roy v. Union of India (AIR 2002)*, a Public Interest Litigation (PIL) was filed under Article 32. The petitioner contended that the National Curriculum Framework for School Education (NCFSE) violated constitutional provisions and was anti-secular. However, the court ruled that there was no violation of Article 28 and that studying religious philosophy for a value-based life in society was not prohibited.

#### **4. Article 29: Protection of interests of minorities:**

*"29(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"*

Any section of citizens residing in India with a distinct language, script, or culture has the right to conserve and promote that identity. This provision ensures the preservation and development of the unique heritage of minority communities. Whether based on religion or language, minority communities can establish and administer educational institutions tailored to their specific cultural and linguistic needs. Article 29 of the Indian Constitution safeguards the cultural and educational rights of minorities. Its purpose is to protect the interests of religious, linguistic, and cultural minorities in India.

*29(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"*

**Non-Discrimination:** Article 29 (2) prohibits discrimination against any citizen based on

religion, race, caste, language, or any combination thereof, especially concerning admission into educational institutions maintained or aided by the state.

#### **Legal Precedents:**

a. In the case of **D.A.V. College, Jalandhar v. The State of Punjab (1971)**, the Supreme Court clarified that setting up a university and teaching Punjabi language does not infringe on clause 1 of Article 29.

b. In **St. Stephen's College v. University of Delhi (1992)**, the court addressed whether minority educational institutions can reserve seats for students from their own community. The ruling affirmed that minority institutions may admit such students, provided the admission process is fair and transparent.

c. In **T.M.A. Pai Foundation v. State of Karnataka**, the Supreme Court upheld the autonomy of minority educational institutions, emphasizing their right to preserve their unique character and identity.

#### **5. Article 30: "Right of minorities to establish and administer educational institutions"**

Article 30 of the Indian Constitution safeguards the educational and cultural rights of religious and linguistic minorities, enabling them to create institutions aligned with their specific needs and aspirations while contributing to India's rich cultural fabric. The article 30 is defined as follows:

**Art. 30(1):** it gives right to all minorities, whether based on religion or language, have the right to establish and administer educational institutions. This includes determining the institution's type, affiliation, and staff appointments.

*"All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice."*

**Art. 30 (1A):** The state cannot discriminate against any educational institution based on its minority status while granting aid. The minority institutions should receive the same treatment and protection as majority-established

institutions. While minorities have the right to establish and manage educational institutions, they must adhere to reasonable regulations imposed by the state. These regulations ensure educational standards, welfare, and prevent maladministration.

*"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."*

Art. 30(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 30 recognizes the importance of minority communities in India's diversity. It allows minorities to preserve and promote their distinct culture, language, and religious identity through educational institutions.

#### **Legal Precedents<sup>2263</sup>:**

a. In the ***St. Xavier's College v. State of Gujarat (1974)*** case, the Supreme Court clarified that minority educational institutions can admit students from their own community, as long as the admission process is fair and transparent.

b. ***D.A.V. College, Jullundur v. State of Punjab (1971)***: In this case, the Supreme Court affirmed that minority institutions have the right to appoint teachers based on their qualifications and suitability. The court emphasized the importance of preserving the minority character of such institutions.

c. ***S.P. Mittal v. Union of India (1983)***: This case involved 'Auroville', a township founded on the ideals of Sri Aurobindo. The Tamil Nadu government took control of Auroville and enacted The Auroville (Emergency Provisions) Act, 1980. The Act's constitutional validity was

challenged, with one ground being its alleged violation of Article 29 and 30. However, the court held that the Act did not infringe upon these rights. To seek protection under Article 30, an institution must prove its status as a linguistic or religious minority, which Auroville could not establish due to its non-religious nature.

d. ***T.M.A. Pai Foundation v. State of Karnataka (2002)***: In this landmark case, the Supreme Court addressed the autonomy of minority educational institutions. While these institutions have the right to administer their affairs, including staff appointments, they must still operate within reasonable regulations imposed by the state.

<sup>2263</sup> [Article 30 in Constitution of India \(indiankanoon.org\)](https://indiankanoon.org)