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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

FREEDOM OF RELIGIOUS VS. STATE CONTROL: A STUDY UNDER ARTICLE 25-28

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Introduction

The Constitution of India enshrines religious liberty as a cornerstone of its democratic framework, recognizing both the individual's freedom of conscience and the collective rights of religious denominations. Articles 25 to 28 of Part III provide a constitutional guarantee of freedom of religion, while simultaneously subjecting it to limitations in the interest of public order, morality, health, and other constitutional principles.¹ Unlike the Western conception of secularism, which advocates a rigid separation of church and State, the Indian model adopts a doctrine of "principled distance," whereby the State maintains neutrality among religions while retaining the power to regulate practices inconsistent with constitutional values.²

This dual framework of protection and regulation has generated significant constitutional and judicial discourse. On the one hand, individuals and communities assert their right to religious autonomy; on the other, the State exercises its authority to reform religious practices, ensure equality, and preserve public order.³ The judiciary, through landmark cases such as *The Commissioner, Hindu Religious Endowments v. Shirur Mutt* and *Bijoe Emmanuel v. State of Kerala*, has clarified the scope of religious rights, while also upholding the State's prerogatives in regulating secular or socially harmful practices.⁴

¹ INDIA CONST. arts. 25–28.

² Rajeev Bhargava, *The Distinctiveness of Indian Secularism*, in *The Future of Secularism* 20, 25 (T.N. Srinivasan ed., 2007).

³ INDIA CONST. art. 25(2).

⁴ *The Comm'r, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*, AIR 1954 SC 282; *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615.

In contemporary India, this debate has assumed renewed importance in light of challenges such as the Uniform Civil Code, anti-conversion laws, and gender justice in religious practices.⁵ By studying Articles 25–28 through constitutional provisions, judicial precedents, and policy perspectives, this paper seeks to examine the tension between freedom of religion and State control, and to assess whether the balance struck thus far adequately preserves India’s secular and pluralistic character.

Constitutional Framework of Religious Freedom in India

The Indian Constitution enshrines the principle of religious liberty through Articles 25 to 28, which collectively safeguard both individual and institutional rights to practice religion. Article 25 guarantees to all persons the freedom of conscience and the right to freely profess, practice, and propagate religion, subject to restrictions of public order, morality, and health.⁶ It further authorizes the State to regulate or restrict secular activities associated with religion and to legislate for social welfare and reform, including the opening of Hindu temples to all sections of society. Article 26 extends the right to religious denominations to manage their own affairs in matters of religion, establish and maintain institutions, and own property, provided such activities do not contravene public order, morality, or health.⁷

Complementing these rights, Article 27 prohibits compelling citizens to pay taxes for the promotion or maintenance of any religion, thereby securing the secular nature of State finances.⁸ Further, Article 28 restricts religious instruction in State-funded educational institutions, while allowing private or trust-run institutions to impart such education.⁹ This nuanced structure demonstrates that India’s model of secularism is not one of absolute separation, as in the United States, but rather one of principled distance, wherein the State may intervene to promote social reform and equality.

Scholars such as M.P. Jain emphasize that these provisions reflect a balance between freedom of conscience and the State’s duty to maintain public order and social justice.¹⁰ Similarly, Granville Austin highlights that the framers of the Constitution envisioned secularism as a

⁵ Rev. Stainislaus v. State of M.P., (1977) 1 SCC 677; Shayara Bano v. Union of India, (2017) 9 SCC 1.

⁶ INDIA CONST. art. 25.

⁷ INDIA CONST. art. 26.

⁸ INDIA CONST. art. 27.

⁹ INDIA CONST. art. 28.

¹⁰ M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1160 (8th ed. 2018).

cornerstone of Indian democracy, seeking harmony between religious diversity and constitutional values.¹¹

Judicial Interpretation of Freedom of Religion

Judicial interpretation has played a decisive role in shaping the contours of religious freedom under Articles 25 to 28 of the Constitution. The Supreme Court, through landmark judgments, has sought to strike a balance between individual rights to religious liberty and the State's power to regulate religious practices.

The seminal case of *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt* established the "essential religious practices" doctrine, holding that religious denominations enjoy autonomy in matters of faith and practice, but the State may regulate secular aspects such as financial administration.¹² In *Bijoe Emmanuel v. State of Kerala*, the Court protected the right of Jehovah's Witness students who refused to sing the national anthem on grounds of conscience, reaffirming that freedom of religion includes the right to silence in matters of faith.¹³

Further, in *S.R. Bommai v. Union of India*, the Court underscored secularism as a basic feature of the Constitution, holding that the State cannot favor one religion over another.¹⁴ Similarly, in *Indian Young Lawyers Association v. State of Kerala (the Sabarimala case)*, the Court expanded the scope of Article 25 by emphasizing equality and non-discrimination in religious practices, even at the cost of overturning long-held traditions.¹⁵

At the same time, courts have consistently reiterated that the right to religion is not absolute. In *Ismail Faruqui v. Union of India*, the Court held that offering prayers at a mosque is not an essential practice, thereby permitting State acquisition of the disputed Ayodhya land.¹⁶ These rulings demonstrate that while the judiciary has been vigilant in protecting individual conscience, it also upholds the State's authority to intervene where public order, equality, or

¹¹ GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* 281–83 (Oxford Univ. Press 1966).

¹² *The Comm'r, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*, AIR 1954 SC 282.

¹³ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615.

¹⁴ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

¹⁵ *Indian Young Lawyers Ass'n v. State of Kerala*, (2019) 11 SCC 1.

¹⁶ *Ismail Faruqui v. Union of India*, (1994) 6 SCC 360.

social reform demand such regulation.

State Regulation of Religious Practices

While the Constitution guarantees religious freedom, it also empowers the State to regulate religious practices when they conflict with public order, morality, health, or other constitutional values. Article 25(2) specifically authorizes the State to make laws regulating secular aspects of religion and to enact reforms for social welfare.¹⁷ This provision has allowed the government to intervene in religious institutions, abolish discriminatory practices, and regulate financial and administrative affairs of temples and endowments.

For instance, in *Sri Venkataramana Devaru v. State of Mysore*, the Supreme Court upheld legislation mandating temple entry for all Hindus, including formerly excluded castes, stressing that the State could reform religious practices inconsistent with equality.¹⁸ Similarly, in *State of Bombay v. Narasu Appa Mali*, the Bombay High Court recognized that religious freedom does not prevent the State from enacting social reform laws, such as those abolishing polygamy among Hindus.¹⁹ More recently, State governments have been actively involved in managing the administration of temples and other religious institutions through statutory enactments, a practice justified by the secular regulatory powers of the State.

Another significant example is the prohibition of practices such as untouchability under Article 17 and the abolition of sati through the Commission of Sati (Prevention) Act, 1987, both reflecting the constitutional mandate of reform overriding religious sanction. Courts have also intervened in cases of animal sacrifice and superstitious practices where such activities posed threats to public morality or health.

Thus, State regulation seeks to balance religious freedom with constitutional morality. As the Supreme Court observed in *Acharya Jagdishwaranand Avadhuta v. Commissioner of Police, Calcutta*, the State can restrict religious activities if they endanger public order or social harmony.²⁰ The jurisprudence demonstrates that while individual conscience is protected, religious practices cannot override the larger interests of society.

¹⁷ INDIA CONST. art. 25(2).

¹⁸ *Sri Venkataramana Devaru v. State of Mysore*, AIR 1958 SC 255.

¹⁹ *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom. 84.

²⁰ *Acharya Jagdishwaranand Avadhuta v. Comm'r of Police, Calcutta*, (1983) 4 SCC 522.

Conflict Between Secularism and State Intervention

The Indian model of secularism is unique, as it does not mandate a strict separation between religion and State but instead embraces the principle of “equal respect for all religions.”²¹ This model allows the State to intervene in religious practices for reform while maintaining neutrality among different faiths. However, this very arrangement creates tensions between the individual’s right to freedom of religion under Articles 25–28 and the State’s duty to enforce constitutional values such as equality and social justice.

A classic example of this conflict arose in the *S.R. Bommai v. Union of India* decision, where the Supreme Court declared secularism to be a basic feature of the Constitution, implying that any State action promoting one religion over another is unconstitutional.²² Yet, the Court has also upheld interventions in religious practices, even when such measures conflict with long-standing traditions. The *Indian Young Lawyers Association v. State of Kerala (Sabarimala case)* illustrates this dilemma, as the Court permitted women of all ages to enter the temple, emphasizing gender equality over traditional religious customs.²³

Similarly, the abolition of triple talaq in *Shayara Bano v. Union of India* reflects judicial prioritization of constitutional morality over personal law rooted in religion.²⁴ These interventions, while promoting social justice, often provoke resistance from religious communities, who view them as encroachments upon faith. Critics argue that such judicial activism risks undermining pluralism by imposing a homogenized view of constitutional morality.

Thus, the conflict between secularism and State intervention lies in balancing the preservation of religious diversity with the promotion of constitutional values. As the Court noted in *Aruna Roy v. Union of India*, secularism in India means not total exclusion but principled engagement with religion to ensure harmony and equality.²⁵

²¹ Rajeev Bhargava, *The Distinctiveness of Indian Secularism*, in *The Future of Secularism* 20, 25 (T.N. Srinivasan ed., 2007).

²² *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

²³ *Indian Young Lawyers Ass’n v. State of Kerala*, (2019) 11 SCC 1.

²⁴ *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

²⁵ *Aruna Roy v. Union of India*, (2002) 7 SCC 368.

Contemporary Challenges and Policy Innovations

In contemporary India, the tension between religious freedom and State control has become increasingly complex due to emerging social, political, and legal challenges. One major issue is the debate over a Uniform Civil Code (UCC) under Article 44 of the Constitution, which seeks to replace personal laws based on religion with a common code for all citizens.²⁶ While proponents argue that the UCC would ensure gender justice and national integration, critics fear it may erode religious autonomy and pluralism.

Another area of contention lies in anti-conversion laws enacted by several States, which seek to prevent conversions by force, fraud, or allurement.²⁷ Although these laws are justified as safeguards against exploitation, they have been criticized for restricting an individual's right to freely propagate religion under Article 25.²⁸ Judicial scrutiny, as seen in *Rev. Stainislaus v. State of Madhya Pradesh*, upheld such laws by distinguishing between the right to propagate and the right to convert.²⁹

Religious education in schools also raises constitutional questions. Article 28 prohibits religious instruction in State-funded institutions, yet debates continue over the inclusion of value-based education derived from religious traditions. Similarly, issues relating to minority rights under Articles 29 and 30 intersect with religious freedom, particularly in the management of educational institutions.

Technological and social changes add further challenges. The rise of social media has amplified religious polarization and hate speech, necessitating regulatory mechanisms that balance free expression with communal harmony.³⁰ Policy innovations such as promoting interfaith dialogue, strengthening anti-discrimination laws, and ensuring transparency in the management of religious endowments are essential to address these concerns.

Ultimately, the future of religious freedom in India depends on maintaining a balance between respecting religious pluralism and upholding constitutional values of equality, liberty, and

²⁶ INDIA CONST. art. 44.

²⁷ INDIA CONST. art. 25.

²⁸ Gujarat Freedom of Religion Act, No. 22 of 2003, INDIA CODE (2003).

²⁹ *Rev. Stainislaus v. State of M.P.*, (1977) 1 SCC 677.

³⁰ Aparna Chandra, *Free Speech and Religious Hate Speech in India: Balancing Liberty and Equality*, 12 NAT'L L. SCH. INDIA REV. 123, 128 (2000).

secularism.

Conclusion

The constitutional scheme under Articles 25 to 28 reflects a careful balancing act between the protection of religious freedom and the authority of the State to enforce constitutional morality, equality, and social justice. The framers of the Constitution envisioned India as a secular and pluralistic nation where individuals could freely profess, practice, and propagate their faith, yet subject to reasonable restrictions to safeguard the interests of the wider community.³¹ Judicial interpretation, through doctrines such as “essential religious practices,” has further refined this balance, though not without controversy and criticism.³²

In practice, the State’s intervention in religious affairs has often been justified in the name of social reform—abolition of untouchability, temple entry legislation, and the banning of triple talaq are illustrative examples.³³ Yet, such interventions also raise concerns about the extent to which the State can intrude into matters of faith without undermining the autonomy of religious communities. The conflict between secularism and State control is thus not merely theoretical but deeply embedded in India’s socio-political reality.

Looking ahead, contemporary challenges such as the debate on the Uniform Civil Code, regulation of conversions, and gender equality in religious practices demand nuanced policy and judicial responses.³⁴ A pluralistic democracy like India must ensure that freedom of religion is not reduced to a hollow promise, while also preventing religious practices from becoming a shield for social injustice.

Ultimately, the success of India’s constitutional framework depends on its ability to sustain a delicate equilibrium—one where the dignity of individual conscience, the autonomy of religious communities, and the imperatives of constitutional morality coexist in harmony.³⁵

³¹ INDIA CONST. arts. 25–28.

³² Shirur Mutt, AIR 1954 SC 282.

³³ Shayara Bano v. Union of India, (2017) 9 SCC 1.

³⁴ Rev. Stainislaus v. State of M.P., (1977) 1 SCC 677.

³⁵ Aruna Roy v. Union of India, (2002) 7 SCC 368.

Suggestions:

Refine the “Essential Religious Practices” Doctrine

Courts should move away from acting as arbiters of theology and instead adopt a “constitutional values test”, focusing on equality, dignity, and non-discrimination while reviewing religious practices.

Ensure Uniform Regulatory Framework

The State should create a transparent and uniform system for regulating the financial and administrative affairs of religious institutions, preventing misuse without encroaching upon matters of faith.

Promote Interfaith Dialogue and Social Harmony

Policy initiatives must encourage dialogue among different religious communities to reduce conflicts and strengthen secularism as “equal respect for all religions.”

Balance State Intervention with Autonomy

State intervention should be limited to areas where practices conflict with constitutional morality, public order, or social justice. Respect for religious autonomy should remain the default principle.

Strengthen Anti-Discrimination Protections

Specific legal mechanisms should be introduced to prevent caste, gender, or community-based exclusion in religious spaces (e.g., temple entry, women’s rights in religious practices).

Contextual Approach to Uniform Civil Code (UCC)

Any move towards UCC must be gradual and consultative, respecting pluralism while ensuring gender justice and equality across personal laws.

Encourage Transparency in Religious Education

Religious education should be regulated to ensure that it promotes ethical and moral values without violating Article 28’s prohibition in State-funded institutions.