

A STUDY ON FREEDOM OF RELIGION IN INDIA

AUTHOR:

Mrs. K.KALISELVI B.A.,B.L.,LL.M.,

RESEARCH SCHOLAR

SAVEETHA SCHOOL OF LAW

SAVEETHA INSTITUTE OF MEDICAL TECHNICAL SCIENCES (SIMATS)

SAVEETHA UNIVERSITY

kaliselvi5118@gmail.com

CO-AUTHOR

G VENKATESH

RESEARCH SCHOLAR

SAVEETHA SCHOOL OF LAW

SAVEETHA INSTITUTE OF MEDICAL TECHNICAL SCIENCES (SIMATS)

SAVEETHA UNIVERSITY

Venkatselvi00@gmail.com

ABSTRACT

Secularism means that anyone can practice the religion they want or cannot practice if they don't want and the government cannot force them to practice any religion. They cannot make them part of any religion if they do not want to. India does not accept any religion as state religion. It maintains absolute impartiality towards all religions. Secularism in India means equal treatment of all religions by the state. The idea of secularism in India imagines acknowledgment of religious laws as official on the state, and equivalent interest of the state in various religions though the western idea of secularism envisions separation of religion and state. A secular state is one where there is no official religion of the state. It means that in all matters of religion it is neutral. The state should not have its own religion. It should treat all religions equally. Almost all the countries in the world guarantee freedom of religion in some form or the other. Such a guarantee assumes special importance in a multi- religion

country like India which owes its religious diversity to history rather than any recent or contemporary phenomena. Religion is a volatile issue in India and religious conversions add more to the volatility of the issue therefore various state governments have enacted anti-conversion laws with the purported aim of preventing conversions brought about by coercion or inducements. This research concentrates on the constitutional provisions on freedom of religion and recent issues of religious freedom in India.

Keywords: religion, secular, government, practice, impartiality, state

INTRODUCTION

India is home to people following different religions and having different faiths. As per the census of India 2001, there are 6,639,626 people who follow other religions apart from the six major religions which are Hinduism, Jainism, Islam, Buddhism, Sikhism, and Christianity. Religion has ancient roots and many of its important religious and philosophical texts were written in the first millennium BC. Two new faiths were introduced around the middle of the first millennium, one by Mahavira, the founder of Jainism, and the other by Buddha. Freedom of religion in India is a fundamental right guaranteed by Article 25-28 of the Constitution of India. Modern India came into existence in 1947 and the Indian constitution's preamble was amended in 1976 to state that India is a secular state. Indian constitution in its Part III provides endorsement to freedom of religion in India. This freedom is reserved not just for Indian citizens but is also conferred on anyone who resides in India.

India claims to be a secular nation with no state religion.

The researcher, through the current research aims to make an intrinsic analysis of the right to freedom of professing religion of choice in the 'Secular' nation of India.

Constitutional Provisions

- Article 25-It imparts freedom of conscience and free profession, practice and propagation of religion. It is available to persons.
- Article 26-It gives freedom to manage religious affairs. It is available to religious denominations.

- Article 27-It sets freedom as to payment of taxes for promotion of any particular religion.It is available to a person against religious denomination(s).
- Article 28-It gives freedom as to attendance at religious instruction or religious worship in certain educational institutions.It is applicable to educational institutions. A person can invoke it.

Current Trends

According to the 2011 census, 79.8% of the population of India practices Hinduism, 14.2% adheres to Islam, 2.3% adheres to Christianity, 1.72% adheres to Sikhism, 0.7% adheres to Buddhism and 0.37% adheres to Jainism.

Comparison with other countries

UK-In the UK, human rights are protected by the Human Rights Act 1998. The Act gives effect to the human rights set out in the European Convention on Human Rights. Article 9 - the right to freedom of religion and belief is one of the rights protected by the Human Rights Act.

CANADA-The Canadian Human Rights Act prohibits discrimination on the ground of religion as does section 15 of the Charter.

UAE-The Constitution of the United Arab Emirates provides for freedom of religion by established customs, and the government generally respects this right in practice; however, there are some restrictions (e.g. attempts to spread Christianity among Muslims are not permitted).

Sabarimala Verdict and Freedom of Religion

In 2017, a PIL was filed under Article 32 by the petitioners challenging the practice followed in Sabarimala temple which did not allow the entry of women from the age group of 10-50 years. A constitutional bench was set up in 2018 which held that the practice was unconstitutional and uplifted the ban on entry of women stating that followers of Ayyappa do not form a separate religious denomination but are Hindus only and, such a ban is not an

essential practice of the religion. From the inception of Article 25 and 26 in the Constitution of India, the power of deciding whether a practice is essential to a religion or not was only with the court. In the Sabarimala judgement, the court exercised its power and decided against the old and rudimentary practice which holds no value in today's society. India is developing and such practises which are gender biased, considering menstruating females to be impure have no place in the society. Though the Sabarimala verdict has opened pandora's box giving rise to a number of applications challenging practises which are biased mostly against women. The court has not been at fault in deciding in favour of women as the old custom was violative of the right to equality and was arbitrary in nature. The court held the practice unconstitutional.

OBJECTIVES

- To study the constitutional provisions on freedom of religion
- To compare the religious freedom in different countries
- To study the current trends and recent cases of religious freedom
- To review the public opinion on religious freedom

REVIEW OF LITERATURE

The manifestation of religion springs from an inner belief or conviction that supernatural (transcendental) powers exist that somehow affect – or perhaps even determine – the conditions of human life. This belief or conviction may take many different forms. **(Osuri)**

Faith and inner conviction become organised religions when faith is institutionalized. This is typically done through a designation of holy scriptures that constitute the content of faith; a working out of rituals symbolising the content of faith, and a constitution of authorities determining the proper understanding of faith. Naturally there are considerable variations among different religions, but institutionalisation is a necessary step if several persons are to share a common faith. **(Adrian)**

Another possible interpretation of the importance of faith in human life is that faith in itself is an instrument of spiritual peace, and that the supernatural powers therefore consist in and act

through the inner belief in God. Thus, religion may become a matter of solving an existential and emotional question about the meaning of an individual's life. **(Scharffs et al.)**

God is a power that influences people's lives directly by being able to make things happen. In accordance with that interpretation, events that some people would interpret as coincidental may be seen as expressions of God's will. The belief in God may also be reflected in the impression that there is a life after death, and that a person's actions in the present life will shape his or her life after death. **(United States. Department of State)**

The right to religious freedom is an individual right, but has a collective dimension in that the right extends to the manifestation of religion "in community with others". Thus groups of believers and churches may complain about what they perceive as a violation of the rights to associate and assemble for religious purposes. **(Jenkins)**

Forceful conversions violate the principle of freedom of conscience and constitute one of the gravest human right violations. On this premise, it can very well be said that the state is justified in making law for keeping in check the conversions brought about by illegitimate means and for the purpose of protecting freedom of conscience. **(Crosby)**

"Conscience" refers to a man's subjective sense of right or wrong. Freedom of conscience means that a person is free to entertain any belief or doctrine regarded by him as conducive to his spiritual well being. This implies that the state cannot enquire into or take notice of a man's religious or moral beliefs. **(Annicchino)**

Conversion is seen as a necessary corollary to propagation. From the very beginning of the debates, the rights relating directly to conversion were front and centre in the discussion of religious freedom, namely the right to free expression or profession of any religion. The fact that these rights were discussed alongside the right to propagation seems to suggest that the framers of the constitution were aware of connection between expression or profession, and the possibility of conversions. **(United States. Congress. House. Committee on Foreign Affairs. Subcommittee on Africa et al.)**

Undoubtedly there is no ground justifying conversions brought about by violence or other illegitimate means of coercion. Also, there is no justification as regards the religious

conversions for the purpose of escaping the rigours of law or defrauding the legal system. Forceful conversions violate the principle of freedom of conscience and constitute one of the gravest human right violations. **(Wenger)**

The idea that religious institutions should play a central role in understanding the First Amendment has become increasingly prominent in recent years. Litigation over the application of civil rights laws to ministers and the requirement that religious employers provide contraception coverage to their employees have elicited calls for a doctrine of church sovereignty based on an institutional conception of the Religion Clauses. **(Joustra)**

In Indian society, tension always lingers among multi-ethnic, multi-religious, and multi-linguistic communities; thus, in order to respect religious plurality, to control interreligious violence, and to protect communal harmony; the secular Indian state justifies limiting the freedom of expression. The dominant justification of the policies and practises of the Indian state were done by appealing to contextual secularism; contextual secularism advocates state-intervention for the sake of substantive values, such as human rights and democracy. It has been applied to manage Hindu-Muslim communal tensions and to maintain religious neutrality. **(Babie et al.)**

Religion has been at the centre of human societal existence since time immemorial. Though some scholarship claims certain tribes or civilizations existed without religion, it is not a well-accepted view. Religion is, and has always been, an indispensable and ineffable part of our lives. This tenet is especially evident in Indian culture. **(Boyle and Sheen)**

Religious freedom is premised on the belief that every human being has inherent dignity to explore his or her conscience and pursue the truth. Religion is a code of ethical rules and that the rituals, observances, ceremonies, and modes of worship are its outer manifestations. Religion also identifies with “feeling, emotion and sentiment, instinct, cult and ritual, perception, belief and faith.” **(Bielefeldt et al.)**

Religious experience is a unique personal experience for most who seek it. “It is an independent functioning of the human mind, something unique, possessing an autonomous

character.” In reality it is a relationship between the follower and his or her God.“It is something inward and personal, which unifies all values and organises all experiences.”(Saeed)

Religious freedom is essential for religious reform. Without such organic progress, religions—and the societies they deeply affect—can become stunted.³⁶ Thus, only greater freedom for religions and other identity-based groups can lead to social harmony.Repression, on the other hand, leads to violence.Long before the framing of the Constitution in India, the American Founding Fathers showed an understanding of “the vital role that religion plays in a free society. (Bhargava)

Religions can also be used to polarise societies.In India, religion has been used to divide people, initially by the British and later by those who believed in majoritarianism and indulged in communal politics.Today, India continues to face this challenge. A report by the United States Commission on International Religious Freedom criticised undue restrictions placed on free exercise of freedom of religion in India. (Calhoun et al.)

Reason that secularism was adopted as a fundamental principle is that “secularism extends beyond equality and freedom to declare that the state is not aligned to any particular religion.”Thus, secularism was also intended to assure minorities that the religion of the majority community would not be given any preference by the State. It is “this particular commitment that establishes the credentials of a Secular state.” (“Western Secularism”)

If freedom of religion is required to promote individual beliefs emanating from the inward association doctrine, an individual must have freedom to change his or her beliefs and religion. Restricting one’s freedom to change his or her religion has a chilling effect on the concept of freedom of religion.Religious conversion is generally preceded by some crisis, which may be religious, psychological, cultural, or by a life situation that opens people up to new options. (Beauchamp and Rios)

In India, the constitutional position on secularism was adopted to assure minorities that their culture, religion, and identity would be protected and that majoritarian views would not be

imposed on them. This was done to manage tension between religious groups, by placing them on equal footing vis-à-vis the State and by distancing the State from any specific religious affiliation. **(Copson)**

Religious conversion can be a fundamental coping mechanism for an individual, or a quest for a fresh perspective through a new religion. Restricting this individual choice to adopt a new religion seriously undermines the fundamental idea of inward association on which the freedom of religion in India is based. Religious conversion is a dynamic, multifaceted process of individual choice, which, at times, may have an element of rejection and disillusionment with his or her existing religion or its practises. **(Scott)**

METHODOLOGY

The research method followed here is empirical research. A total of 200 samples have been collected. The response were collected through online with a well framed and structured questionnaire. The secondary source used for the research is books, research articles, e-sources, articles, etc. The independent variables used in the research are age and educational qualification. The dependent variables are Religious unity in India, Religion or Humanity and Religious violence.

HYPOTHESIS

HA: There is a significant association between freedom of religion and religious violence in India.

HO: There is no significant association between freedom of religion and religious violence in India.

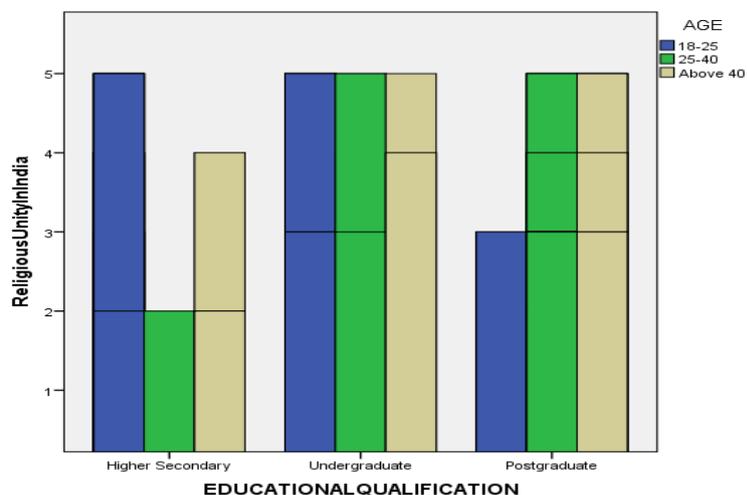
ANALYSIS

Table 1

ReligiousUnityInIndia

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	23	11.5	11.5	11.5
2	50	25.0	25.0	36.5
3	58	29.0	29.0	65.5
4	49	24.5	24.5	90.0
5	20	10.0	10.0	100.0
Total	200	100.0	100.0	

Figure 1



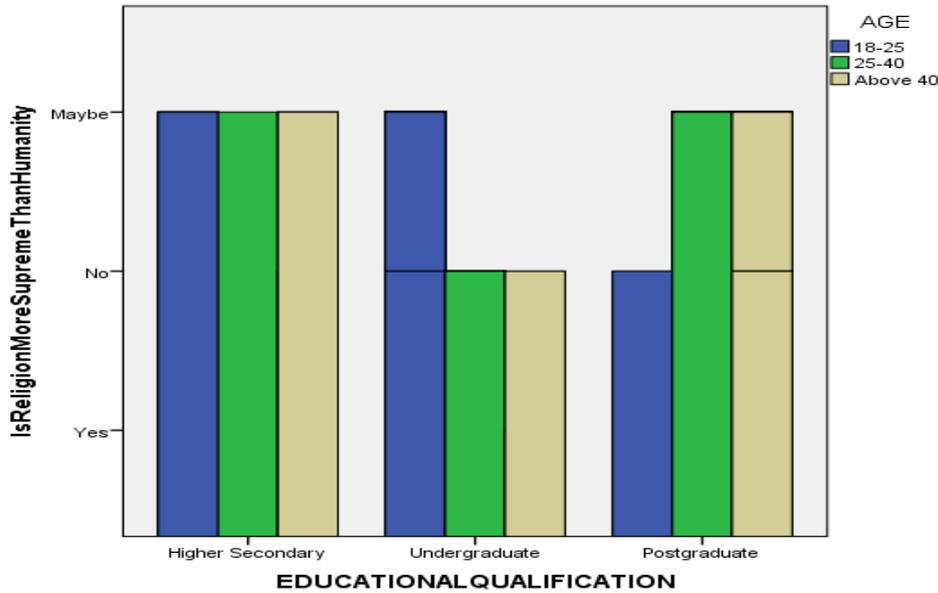
Legend

The question that has been put forward by the researcher to the public is to rate the religious unity found in India on the scale of 1-5. The responses were collected from various age groups of people online.

Table 2

		Is Religion More Supreme Than Humanity			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	32	16.0	16.0	16.0
	No	107	53.5	53.5	69.5
	Maybe	61	30.5	30.5	100.0
Total		200	100.0	100.0	

Figure 2



Legend

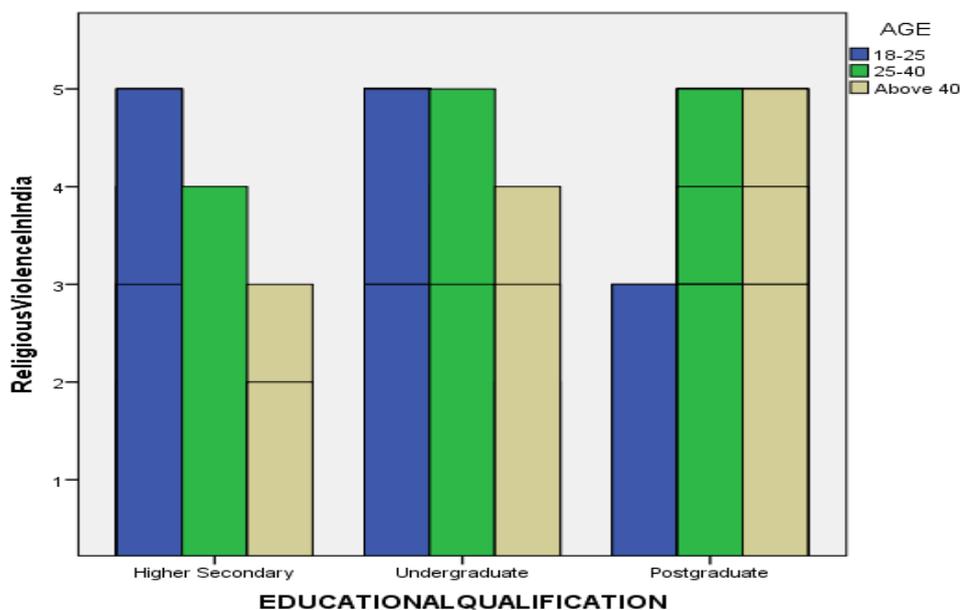
The question that has been put forward by the researcher to the public is whether religion is supreme to humanity with three options: Yes, No, Maybe. The responses were collected from various age groups of people through online.

Table 3

Religious Violence in India

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	15	7.5	7.5	7.5
2	62	31.0	31.0	38.5
3	66	33.0	33.0	71.5
4	31	15.5	15.5	87.0
5	26	13.0	13.0	100.0
Total	200	100.0	100.0	

Figure 3



Legends

The question that has been put forward by the researcher to the public is to rate religious violence in India on the scale of 1-5. The responses were collected from various age groups of people through online.

RESULTS

The first question is to rate the religious unity found in India on the scale of 1-5. The results are portrayed in the Graph 1. On analysing the results it was found that most of the people rated on the scale of 3 with 58 responses out of 200. The second question is whether religion is supreme to humanity with the options Yes, No and Maybe. The results are portrayed in Graph 2. On analysing the results it was found that most of the people answered No, that is 107 responses out of 200 stated No. The third question is to rate the religious violence in India on the scale of 1-5. The results are portrayed in Graph 3. On analysing it was found that most of the people rated on the scale of 3, that is 66 responses out of 200.

DISCUSSION

The table provides the frequency, valid percent and cumulative percent for religious unity in India. (Table 1)

The table provides the frequency, valid percent and cumulative percent for whether the religion is supreme than humanity. (Table 2)

The table provides the frequency, valid percent and cumulative percent for religious violence in India. (Table 3)

Majority of the respondents are students and the least number of respondents are the age of 18 to 25 on the religious unity in India. (Figure 1)

The age of the respondents who answered the survey clearly showed that people who are 18 to 25 years of age answered more when compared to people under the age of 25 to 40 and above 40 for the religion is supreme than humanity. (Figure 2)

The age of the respondents who answered the survey clearly showed that people who are 18 to 25 years of age answered more when compared to people under the age of 20 for religious violence in India.

The age of the respondents who answered the survey of comparative analysis clearly showed that people who are in the age of 18-25 of post graduate responded more to religious violence in India. (Figure 3)

LIMITATION

The major limitation of my study is the sample frame. It is collected through online survey link mode within Chennai, because of which most responses are from educated people. There is not much response from uneducated people. The restrictive area of sample size is also another major drawback. Another drawback is that there are not many responses from

transgenders. The current research is confined to a study on the freedom of religion and it is limited to the jurisdictional ambit of the Indian Jurisdiction.

CONCLUSION

India being a secular state provides equal protection to all the religions. Equal protection does not mean that it always aids and promotes its citizens to follow a religion and its practice, but at times it means to interfere and bring positive reforms for the betterment of the society. Religion occupies a vital place in human lives. Granting religious freedom permits different beliefs, opinions, deductions that people have in accordance to their own religion, to bloom as well as develop in society . It plays an integral part in influencing the minds and convictions of the people. It also plays an indispensable role especially in the Indian society in governing the conduct as well as the behaviour of the people. Indians are extremely possessive when it comes to their religion and they become alert as soon as any person tries to hinder it or creates an obstacle in their journey of religious worship. Law gives all the Indian citizens the sanction to practise this right in order to strengthen the harmony and oneness in the country, but at the same time the state has the right to interfere when the abuse or any kind of wrong usage of this right is projected in front of its eyes.

Right to freedom of religion is not only a right guaranteed by the constitution , but also at the same time is a duty expected to be followed, for the betterment and overall growth of the society.

REFERENCES

1. Adrian Melanie. *Religious Freedom at Risk: The EU, French Schools, and Why the Veil was Banned*. Springer, 2015.
2. Annicchino, Pasquale. *Law and International Religious Freedom: The Rise and Decline of the American Model*. ICLARS Series on Law and Religion, 2019.
3. Babie, Paul T., et al. *Freedom of Religion or Belief: Creating the Constitutional Space for Fundamental Freedoms*. Edward Elgar Publishing, 2020.
4. Beauchamp, Alexandra L., and Kimberly Rios. "Secularism in Science: The Role of

- Religious Affiliation in Assessments of Scientists' Trustworthiness." *Public Understanding of Science* , vol. 29, no. 2, Feb. 2020, pp. 194–210.
5. Bhargava, Rajeev. *Secularism and Its Critics*. 1999.
6. Bielefeldt, Heiner, et al. *Freedom of Religion Or Belief: An International Law Commentary*. Oxford University Press, 2016.
7. Boyle, Kevin, and Juliet Sheen. *Freedom of Religion and Belief: A World Report*. Routledge, 2013.
8. Calhoun, Craig, et al. *Rethinking Secularism*. OUP USA, 2011.
9. Copson, Andrew. "5. The Case against Secularism." *Secularism: A Very Short Introduction*, 2019, pp. 58–77, doi:10.1093/actrade/9780198747222.003.0005.
10. Crosby, Donald A. *Faith and Freedom: Contexts, Choices, and Crises in Religious Commitments*. Routledge, 2018.
11. Jenkins, Laura Dudley. *Religious Freedom and Mass Conversion in India*. University of Pennsylvania Press, 2019.
12. Joustra, Robert J. *The Religious Problem with Religious Freedom: Why Foreign Policy Needs Political Theology*. Routledge, 2017.
13. Osuri, Goldie. *Religious Freedom in India: Sovereignty and (anti) Conversion*. Routledge, 2013.
14. Saeed, Abdullah. *Freedom of Religion, Apostasy and Islam*. Routledge, 2017.
15. Scharffs, Brett G., et al. *Religious Freedom and the Law: Emerging Contexts for Freedom for and from Religion*. Routledge, 2018.
16. Scott, Joan Wallach. "The Discourse of Secularism." *Sex and Secularism*, 2019, pp. 1–29, doi:10.23943/princeton/9780691197227.003.0001.
17. United States. Congress. House. Committee on Foreign Affairs. Subcommittee on

Africa, et al. *Protecting Religious Freedom: U.S. Efforts to Hold Accountable Countries of Particular Concern : Hearing Before the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations of the Committee on Foreign Affairs, House of Representatives, One Hundred Thirteenth Congress, Second Session, May 22, 2014.* 2014.

18. United States. Department of State. *Annual Report, International Religious Freedom: Report Submitted to the Committee on International Relations, U.S. House of Representatives and the Committee on Foreign Relations, United States Senate by the Department of State, in Accordance with Section 102 of the International Religious Freedom Act of 1998.* 2002.

19. Wenger, Tisa. *Religious Freedom: The Contested History of an American Ideal.* UNC Press Books, 2017.

20. "Western Secularism." *A Short History of Secularism*, 2010,
doi:10.5040/9780755696642.ch-001.