

***Law Audience Journal, Volume 5 & Issue 3, 16th November 2023,
e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.497, Published at
<https://www.lawaudience.com/volume-5-issue-3-2/>, Pages: 118 to 138,***

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Cite this article as:

DR. SHEETAL THAKUR, “Analyzing Judicial Approaches to Secularism: A Comprehensive Study”, Vol.5 & Issue 3, Law Audience Journal (e-ISSN: 2581-6705), Pages 118 to 138 (16th Nov 2023), available at <https://www.lawaudience.com/analyzing-judicial-approaches-to-secularism-a-comprehensive-study/>.

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(E-ISSN: 2581-6705)

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Publisher Details:

**Law Audience Journal (e-ISSN: 2581-6705),
Sole Proprietorship of Mr. Varun Kumar, S/o Shri. Lehri Singh
Jaswal, S/o Late Shri. Parmeshwari Dass.**

**Ward No.5, H.No.23, Village & Post-Office Gagret, Sub-Tehsil
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Website: www.lawaudience.com.

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I. INTRODUCTION:

“The most important pillar is the judiciary and most significant state organ and so crucial that is impossible without the notion of democracy. The Indian constitution cannot secure the concept of basic rights as contained in part 3 of constitution. The concept of judicial review is crucial and indispensable to secure the basic rights in the Indian constitution.¹ In a democratic nation, the judiciary is supreme adjudicator and the responsibility to resolve the conflict among the individuals regarding this concept. In the concept of the federalism the relationship between the governments is controlled by the court. The judicial system in India today is complex.² The apex Court is the strongest court in the globe in comparison to another. The apex Court operated from Parliament until it relocated to a separate building. The highest Court of the India came in force in 1950. The apex Court of India is the biggest authority in India which is separate from all the other organs. According to the constitution of India, the concept of the secularism as a religious freedom is restricted under the judicial review of the public order, morality etc. The Supreme Court of India secure the religious freedom in the India by reviewing the conflicts that took place between the individual in the society and ensure them justice and to promote the ideology of the secularism under the Indian constitution.

If a person exercises freedom of practicing & propagating religion according to their decision, it is sometimes noted that exercising freedom creates difficulty for others. Judicial review is one of the guns of the judicial organ and against the misuse of discretionary power. So, in this chapter the researcher discusses about the Supreme Court view regarding the judiciary under the provision of the Indian constitution and examine the reasonable restriction imposed upon it. The researcher also discusses about the approach

¹ L.M. Singhvi, *The Evolution of the Indian Judiciary*, 367 (Ocean Books Pvt. Ltd, New Delhi, 1996)

² M.P Singh, *The Indian Legal, & Constitutional Evolution*, 130 (Universal Law Publishing, New Delhi, 8th edn., 2003)

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of the judiciary towards the uniform civil code which is the important credentials of the concept of the judiciary and in this chapter the researcher also discusses about the recent development took by the supreme in the ideology of the secularism. The last resort of the Supreme Court must be fair to the individual. The function of tribunal in determining to constitute the religion and vital religious exercise has stayed. It is anticipated from the Supreme Court that the parties are in a dispute for securing the justice. It becomes the best to the fairness in the hands of just government and there is no other tool to perpetrate unfairness on the ground, it is the judiciary that has taken under consideration the greatest acts of injustice in world. India's Supreme Court is called as the guardian of the Indian citizens basic freedoms, and the concept judicial review is important for establishing the concept of the fairness in the Indian society. The constitution of India confers the rights that not to be the violated. These rights are referred to as the basic rights. The preamble also ensures freedom of conscience, belief and the values and to promote the concept of the secularism in the Indian. The constitution of the India has basic right and religion according to the desire of the individual in the society. The state government will not intervene in of the religion. It is the established that the Court in the individual at the right aspect. The researcher focused upon the supreme view in the aspect of the religious freedom in the concept of secularism and its view on different ways. In this chapter researcher study the traditional case laws in the aspect of the religious freedom in the Indian constitution of the society”.

II. THE CONCEPT OF SECULARISM AS A BASIC STRUCTURE:

The constitution of India has contained the basic structure theory which is the important doctrine in the society. The parliament can amend the whole constitution under article 368³ but it cannot amend the basic structure of the Indian constitution because these principles are those on which

³ PN Bakshi, “The Constituion of the India”, 96 (Central book publishing house, Delhi, 2007)

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the whole constitution stands and if these principles are abrogated then the constitution falls apart. The ideology of the secularism is also the basic structure of the constitution of India. Which cannot be amended by the legislature and cannot be abrogated and also it is the essence of the Indian constitution. The Indian judiciary while interpretation the whole constitution held in many cases the doctrine of the basic structure. This doctrine is not inclusive in nature it is illustrative concept. The ideology of the secularism also held in many by the Indian judiciary as a basic structure doctrine.

The cases as motioned below:

In **Kesavananda Bharati v. State of Kerala**⁴, The 13 judges' bench of the supreme court which is the largest bench in the history of the India having the longest judgment report held that Freedom of the expression, values, faith as a part of the essential feature of the Indian Constitution. Now the ideology of the "secularism" is basic structure of the Indian constitution which cannot be amended.

In the leading case of **SR Bommai vs. Union of India**⁵, This is the landmark case of the apex Court and stated that case different judges of the apex Court mentioned that the importance of ideology of the concept of "secularism" **under the Constitution in the words stated:**

- *The Indian Constitution contained the concept of the secularism as mentioned to make equality in the society and the philosophy of the Secularism is the essential part of the basic legislation & it is fundamental structure of the Indian constitution in the legal system.*
- *Irrespective the fact that the term "Socialism& "Secularism" were inserted in the Preamble of Indian Constitution by the forty second amendment act 1976 and the ideology of the "secularism" was contained in philosophy in constitution. The 1976*

⁴AIR 1973 SC 1461

⁵ (1994) 3 SCC 1

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amendment of Indian constitution stated implicit terms which are also made express manner.

- The Indian Constitution article restrict the making of the concept of the aristocratic society and also stop country from identify the term within the favoring the concept of faith or the belief.*
- The concept of the Secularism as incorporated in the Indian constitution is more than only a attitude of the tolerant the faith. It is concept which is the positive one for the treatment equally in the aspect of the faith and the belief in the society.*
- When the State permits people to exercise and propagate their religion and it does not allow them to bring religion into the secular operations either expressly or impliedly. The Religion's liberty is only to the extent that it allows moral life to be pursued that is distinct from the secular character incorporated in the constitution and after that it falls within the state matters. So the terminology of secularism is the essential characteristics of the Indian constitution.*

In *Minerva Mills's case*,⁶ the Supreme Court has overrule which was inserted by the 1976 amendments it allegedly to destroyed the review of the judiciary which is regarded as one of the constitution's fundamental characteristics. Subsequently, in a sequence of judgments, the Supreme Court of India ruled that the concept of equality, the concept of the secularism, democratic type of government are some of basic characteristics of the Indian Constitution.

III. THE SUPREME COURT APPROACH TOWARDS RELIGIOUS FREEDOM:

The terminology of “Religion freedom” is not defined in the constitution of India. The apex

⁶ AIR 1980 SC1789

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court has defined it widely. According to the supreme court of India the religion is a matter of the values, beliefs with the individual. A religion has grounded in a system of the values which is considered by those who practice the religion as a temporal faith and according to article 25 and 26 the individual has a right of the conscience and freedom to practice, propagate any religion without any discrimination. The apex court defines this concept in a broad sense and interprets it in the various landmark judgments. The highest court also vast the scope of the religious freedom in the Indian constitution and widen the ideology of the secularism.

The various cases under article 25 & 26 as interpret by the apex court as follows:

Bijoy Emmanuel v State of Kerala,⁷ The high court held that if he has a religious duty of conscience, no person can be compelled to sing the "National Anthem" against his desire. Such religious duty would infringe the fundamental right guaranteed under the Indian Constitution, according to the apex court. The scenario as follows in brief: some students from a Kerala college were not included because they rejected to sing a song of the India's National Anthem. In this case, the learners who are petitioners stood silently and to sing the nation's National Anthem rejected by them. These learners belonged to "Jehva" witnesses who worshiped that religion and against religious convictions this practice was. The school authorities made it compulsory when National Anthem was sung for the learners to participate in the school assembly. The learners stood quietly in this scenario, not singing the Nation Anthem. The learners were released from the premises of the college. The learners were approaching the high court of the state. The HC rejected their application on the grounds that the "National Anthem" religious constraints appealed to the Indian Apex Court. The Apex Court ruled that there was no law requiring anyone to sing the National anthem and it is not disrespectful if a individual stood and did not join the ceremony.

⁷ (1984) JSCC 615

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State of Gujrat v. Mirzapur Moti Kureshi Kassab Jammam and ors⁸, This is the famous case regarding the cow slaughtering. State of Bombay made the Bombay Animal Preservation act 1948, which talk about the banning of the slaughtering of the animal. This act extended to the Gujarat also. The act was amended in 1994. The high Court struck Down the Impugned act as violation of the constitution and also ultra virus holding that statue impose the unreasonable restriction in the constitution of India. Chief Justice Das stated that the ban on the slaughter of the cow was valid and it is further stated by the court that total ban on the buffalos as they are capable of being used the milch was also valid under the Indian constitution.

Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat,⁹ In this case the apex court held that the closure of the municipal slaughter houses during a religious festival of Jain community is not an unreasonable restriction of the rights of butchers to carry on trade and business. Had the impugned period of time, the impugned resolution ordered closure of municipal slaughter houses for considerable period of time, the impugned resolution might have become invalid being an excessive restriction on the rights of the butcher of the city who practiced their profession of meat selling closure of period of 9 days was a very short time.

In Commissioner, HRE v. Lakshmindra¹⁰, the fact of the case is that the Madras Religious Act adopted by the central legislature in India. As mentioned in its preamble, the purpose of the Act was to strengthen the law on the administration of the religious The Act dealing with the state's authority over the general administration of Hindu religious institution. Section 19 of the Act talk with the issues related to the administration of the religious trust to be put under the Commissioner. The Commissioner was permitted for the correct administration of this religious trust to pass instructions, which he considered significant. Section 20 gave the Commissioner's apart officials authority to go of any religious institution for any inspection of exercising any power the only exception is that the officer should be Hindu. The Commissioner was also having

⁸ (2005) 8 SCC 534

⁹ AIR 2008 SC 1892

¹⁰ AIR 1954 SC 282

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the authority to appoint the official for the management of the institution.. The validity of the Act was questioned on that basis by petitioner who was owner of the temple which was under the crisis regarding finance. The Board came in to help and the petitioner agreed to the interference by signing the authority of attorney to the board manager. But the manager of the board uses his way to resolve the matters of the temple. This affects the power of the owner. The owner appealed to apex Court on the basis that manager whose authority were unconstitutional and infringed the constitutional mandates. In favor of temple the apex Court discovered the case. While providing the decision, it appears that the Court has defined the significance of faith. Besides the apex Court is included in the secularism connected with religion seemed to have given an indigenous significance. This Supreme Court decision was regarded one of Indian jurisprudence's most significant choices regarding the definition of religion. In this case apex court referred the *Davis v Beason*¹¹ case while defining the word "religion" refers to one's opinions of one's relationship and the responsibilities imposed on one's being and personality by obedience. With people or groups, religion is matter of belief. In India, there are well-known religions such as Jainism that do not think in God in First Cause. In the immediate case, the Supreme Court ruled that Article. 26 Consequently, a religious denomination enjoys independence in choosing which rites are crucial.

Tilkayat Govindlalji v. State of Rajasthan¹², The case emerged from the Nathdwar Act, which was passed through a board. The temple custodians questioned the Act before the state HC. The complainant's petitioned that section 19 of Act infringed the right of the denomination to administer its property of the Indian Constitution and infringed the right to manage its matters. In favor of the plaintiffs, the state HC decided the case. It was ruled that temple matters as referred to in section 17 of the impugned Act was too broad. The HC therefore found that the Act infringed the protection afforded to religious group in order to handle its religious matter. The Supreme Court overruled the High Court's judgment on appeal and held that the term temple

¹¹ 133 U.S. 333

¹² AIR 1963 SC 1638

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matters covered only the temple's secular matters and not to be referred by legislation. The Supreme Court also stated the two types of responsibilities given to the management board: first, the board had to handle the temple's properties and secular matters of it. Secondly, in accordance with the customs of the religious groups, the Board had to arrange worships, ceremonies in the temple.

Hon'ble Rangnath Mishra v. Union of India¹³, Letter was written by the complainant to the CJI asking him to give directions to the government to educate its individual in the matter of the basic obligation so that right balance could emerge both the obligation and the rights. The writ petition filed by the petitioner regarding this issue and the issue was taken up by the apex court and the national review commission also submits its report to take steps to create the awareness among the individuals in the society regarding basic duties as enshrined in the Indian constitution. The supreme court of India finally held that to direct the government to take the necessary steps for the implementation to the extent as possible.

Acharya Jagdishwaranand Avadhuta v. Commissioner of Police¹⁴ this case is famously known as the "Anandmarg case". The apex court in this case held that the "Tandav dance" at the public space by the margis of the anand carrying the weapon and skulls of the men was not an necessary religious right of the followers and therefore section 144 of the Criminal procedure code restricting such practice in the interest of the public morality was not a violation of article 25 & 26 as a religious freedom of the Indian constitution.

Ismail Farooqi vs. Union of India¹⁵, it was challenged that the violation of the basic right of individual in the country as contained in article 25 and 26 of the Indian constitution. The supreme court held that the "Masjid is not an important part of the religion of Islam and "namaz" can read in any place of Indian even in the open air under the sky as it is written under the Quran. The apex court validated the acquisition of the land and also stated that

¹³ JT 2003 (7) SC 206

¹⁴ (1984) 4 SCC 522

¹⁵ (1994) 6 SCC 360

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the state has authority to acquire any place of the worship in the society as mentioned under article 300-A of the Indian constitution for the maintenance of the law and order in the society. And it is also said by the apex that what is restricted under the article is the religious belief of the individual that is the necessary part of the religion in India.

Church of God in India v. K R.R Colony Welfare Association¹⁶, This case relates to the use in religious organizations of loudspeakers. Before thousands of years back, the religion present on this planet and some religions are very ancient. There was no progress in science when religions were formed on this planet. There is huge use of electronic devices in this era. These new instruments are used to create light that is harmful to the health. This case addresses such a problem that is the noise pollution which affects the health of the individual in the society. Church in the state uses bell so that “Christian” must understand the religious activities. It affects the harmony of the inhabitants so they complaint to restrict the bell in the supreme court of India. God's church asserted this as the church's basic right to practice religion. They exercise basic rights. The fundamental issue before apex Court is what to do in this situation. There are various customs are challenge before judiciary as violation fundamental rights of citizen. India's Supreme Court ruled that Church could not claim it is the affair of basic right because freedom is subject to the rights of the other individual. The health is the important for a individual and it is above all things in the society and if state regulate the activity that affect the health of the individual the such practice should be prohibited. There are different traditions that challenges before the courts as a breach of the freedom.

In **Shamal Mukherjee v. Nirmal Ranjan Mukherjee**¹⁷, The court also opined that the state shall not be mute spectator while a section of the society is hampered by the communal Vilene. An issue was found in the apex Court, that is whether government is bound to maintain the law and order in the society. The law and order is troubled because of communal riots between the communities and so it is the responsibility of the government

¹⁶ AIR 2000 SC 2773

¹⁷ AIR 2008 SC 568

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of the state to safeguard the country law and order. The apex court held that while a portion of the community is affected by the communal riots, then the government of the state will not be the silence watcher. Since we understand that India is a vibrant nation and it has the tiny religions living together for years in the peace and order but sometimes ill religious elements attempt to affect the brotherhood in the society. In this case, Supreme Court of India ruled that if religious groups are impacted as a result of communal riots then the state is obliged to keep the law and order in the society. The disturbance is regarded as the offense against the government, as it disturbs the culture in the country.

In *Darra Singh v. Union of India*¹⁸, the Supreme Court ruled that the State had no direct and substantial intervention with any religious affair relating to the religion. This prevents the state from doing unessential intervention in a specific community's religion or faith.

In *Bhurii Nath v. State of Jammu & Kashmir*¹⁹, Whether a individual who is non-Brahmin can be appointed as clergyman in temple, the apex court with a majority kept any individual who is well educated in every day routine of temple matters and who can perform all vital rites according to the religious convictions is qualified to be appointed as clergyman in temple. The fundamental issue was about a person's conversion to a different faith. Article 25 of the Constitution of India offers liberty to practice any religion in accordance with the individual wish.

*N. Aditya v. Travancore devasom board*²⁰, the Supreme Court held that the Brahmin do not have monopoly over the temple regarding performing all the rites in the temple. The individual who is not a Brahmin can be appointed as a pujari in the temple if the individual is well trained and well educated with the customs and tradition for the mantras to be recited. It also stated by the apex court that it does not matter a individual should be Brahmin in Hindu temple.

¹⁸AIR 2011 SC 1436

¹⁹ AIR 1996 SC 1711

²⁰ (2002) 8 SCC 106

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*Venkataramana v. State of Mysore*²¹, The high Court ruled that, as part of the freedoms protected by Article 25 Hindu could not claim that a temple should be kept open for worship at all time or he should execute the services that priest could execute. Thus, the right essentially becomes subject to restrictions arising in the process of harmonizing this right. In the case, the facts were in order to stop the disability imposed on the SC ST from entering in to the temple and the madras government enacted the law regarding this purpose. The temple other trustees lodged a lawsuit that eventually reached to the apex Court. The argued that the temple was religious group, they were entitled to prevent that it was a question of religious matter. They satisfied that opening the temple to community other than that violated Article 26 of the Indian Constitution. The supreme held that the religious affairs in the said Article include the belief which is considered by the community as religious.

*Bhargava v. UGC (University Of Grants Commission)*²², The Supreme Court permitted the art of the astrology though it was part of the religion. It is the legislation that should not provide the uncontrolled whenever a liberty is offered. In order to mention equilibrium, it is essential to provide provisional clause. If the people use complete liberty, it will generate tensions between two of the groups. The concept of the Religion is delicate problem in the globe. The one religions need to dominate the other so often that religious belief lead to disharmony in the society. The country like India is witnessing sad history; hence limitations on religious freedom were felt by the framers of the constitution. There are numerous reasons why liberty is the significant basis for secularism to exercise the religious freedom and the state intervention with the religious affairs. This limitation is provided for by Article 25 clause 2 of the Indian Constitution itself. The Rights are not complete, and that right is not, therefore. The clergyman questioned the 1976 law created by the government of the state. The legislation finished the priest of generation in the Temple. It was argued as a breach of religion's basic right to conscience. India's Supreme

²¹ AIR 1958 SC 255

²²(2004) 6 SCC 661

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Court issued a significant decision and held that priest is not inherited post and that it is a religious economic activity. Then, there is clearly stated the legislation states that state has an obligation to intervention in the religion's activity.

Krishna v. Mathura Ahir²³, The apex Court denied in intervenes in the religious tradition denying salvation to be taken by the lower minority individual. Any religion established cannot forced the religion in specific to have belief. There is no doubt that the spread of religion is basic right of the people. It is punitive offense if it is discovered that individuals are misappropriate technique to convert to another faith. There are instances of the conversions, which is the states have adopted in the conversion legislation to ban such conversions. There is a person faith by the decision, but any economic gain on the part of such activity is forbidden and the provision grants the liberty of exercise to any religion. The person can take part in any religion's operations. The religion that is present has much way for the adherents to observe the rituals. To practice these actions is to belief in a religion. If any individual wishes to practice Muslim religion then this must be fulfilled, he can be called as supporters of Muslim religion. Hindu are complicated religion where such an appropriate definition does not exist. Interestingly state that some are vegetarians and there many who are non vegetarians. Some believe in multiplicity of God and oneness of God. There is Because of this religion is described as lifestyle and no integrated criterion exists. As like the Hinduism don't have scripture. It is much unified religion and many beliefs are living in it. There is common prayer in the Hindu as like in the other religious practices. Due to this common practice it is called as life styles of the religion.

Narassu Appamali v State of Bomabay²⁴, The high Court upheld the Act of the Bombay as a valid one. The Chief Justice of the state of the Bombay HC, who stated that the religious freedom as guaranteed under the provision was not complete but it is subject to the certain restrictions that if the religious customs intervened to the public order then they not claim the preserving the State. He also stated that there is a sharp difference between religious values and

²³AIR 1980 SC707

²⁴ AIR 1952 Bom 84

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the tradition followed in the society.

In Alam Masud v. Commissioner of Police²⁵, Supreme Court in this case validates the prohibition of electrical speakers. The apex court noted is entitled to every religion. But when agenda is produced in a noisy location through loudspeakers to affect the public morals the provision in the Indian constitution prohibits it. A speaker can bring in to hell rather than of Heaven by the noise.

Durgah Committee of Ajmer v. Syed Hussain²⁶, The high Court discovered that the religion basic right given to religious groups was not violated by the article of that Act. The apex Court noted that the Act regulated only secular activities that were not vital or integral part to the religion. Justice Gajendragadhkar, who is in the Court's unanimous decision stated that it may not be out of the position to take a note of caution and noted that if the practices concerned are to be treated as the religion then they must be considered as an important aspect of that religion. It was also opined that even religious belief may be mere superstitious views and unessential to the religion. Until & unless such practices are to be an important component of the religion and their privacy claims under provision may need to be scrutinized.

Ramesh v. Union of India²⁷, the petitioner file a PIL under article 32 for issue of a writ in nature of prohibition restricting the serial telecasting and the defendant to enforce the basic right of the individual. The Supreme Court in this case held that however there is no infringement of the individual right under the religious freedom as stated under article 25 of the Indian constitution but the petitioner draw attention of the court to ensure that the atmosphere regarding the religion should be clean. There was no threat as the respondents had not act in the bad intention in telecasting the serial.

AS Narayan v. state of AP²⁸, The high court held that the term "Religion" is personal to the

²⁵ AIR 1956 Cal. 9

²⁶ AIR 1961 SC 1402

²⁷ (1988) 1 SCC 668

²⁸ AIR 1996 SC 1765

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individual in the society of having values in the religion. The religion bound a individual with the cosmos. The religion is a significant matter of the individual private belief with regard to the cosmos in which he believes the existence of the human beings.

Gulam Abbas v. State of UP²⁹, the high Court held that the direction given by the court for shifting the property related to the religious belief avoid the dispute between the religious faiths among the different groups in the society and does not affect the right of the religion as mentioned in the provision being in the interest of public. The fact of the case is that there were disputes between the Shias Muslims and the Sunnis in the state related to the performance of the rites by the member of the Shia community. To resolve the dispute the apex court appointed the board. The board recommends the 2 graves of the Sunnis. The Sunnis challenged before the apex court as violation of the said provision.

Worter Karamlki v. State of Meghalaya³⁰, The high court held that the denial of the rights and dispose them from cremation basis amounted to the infringement of the basic right of the individual as guaranteed under the provision of the Indian constitution. The tradition of burial the dead bodies belonging to the belief is a important part of their religion and it is duty of the court to preserve the right of the individual in the society. The court also directed the commissioner of the state to permit the complainant community for utilizing the said land.

Bramchari Sidheshwar v. State of WB³¹, this case is known as the Ram Krishna Mission Case. The Supreme Court in this case held that the disciple of the Ramakrishna who adhere to a system of the faith to their spiritual belief and who have organized collectively as a individuals and definite the name of the organization as a Ramakrishna mission can be regarded as the religious group within the religion as they satisfy the test of article 26 of the Indian constitution and so they can claim their religious right as guaranteed under the mentioned provision of the constitution.

²⁹ (1994) 6 SCC 360

³⁰ AIR 2010 Gau 51

³¹ (1995) 4 SCC 646

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Saifuddin Sahib v. State of Bombay³², In this case the petitioner challenged the Bombay ex communication act of 1950 on the basis that it infringed the rights guaranteed under article 25 & 26 of the Indian constitution. In this case Supreme Court struck down the provision under the act which violate the fundamental right of the religious freedom. The majority stated that where the ex communication was based on the religious basis such as infringement of the practices considered as a important part of the religion and it formed part of the management of the community through its religious head. The violate provision took away this right of the head to excommunicate even on the religious basis is the infringement of the article 26 of the Indian constitution.

Birakishore v.State of Orissa³³, the state temple act took the management of the secular activities from the Raja and vested it to the board as made on the basis of the said act of the state. The supreme court of the India stated that the act is valid as it did not have any effect on the religion practice and it did not infringe the provision of 26 of the Indian constitution.

Athiest Society v. Government of the AP³⁴, The complainant requesting to issue to writ of mandamus to prohibit the coconut breaking, performing the worship and chanting the mantra of the various religion at the state. The high court rejected their request and held that these activities are the part of the Indian tradition and invoke the blessing of the almighty for success of the project.

IV. RESTRICTIONS ON THE RELIGIOUS FREEDOM IN CONSTITUTION:

The religious freedom is guaranteed to the individual in the society but it is not absolute freedom but subject to certain limitation in the religious freedom such as public order, morality etc. likewise in the name of the religion the practice of the untouchability is prohibited in the country. Right to freedom does not give right to forcibly convert in to the other religion. The forcibly

³² AIR 1962 SC 853

³³ AIR 1964 SC 1501

³⁴ AIR 1992 AP 310

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conversion is the wrongful practice in the country. It is also stated that freedom does not mean that it affects the freedom of the other individual in the society. The religious freedom and its restrictions are interpreted by the Supreme Court in the number of the case as follows:

Religious freedom subject to the public order, morality etc:

In Rev. Stainslaus v. State of M .P,³⁵ the constitutionality of MP & Orissa Religious freedom Act, 1968 has been questioned on the basis that they infringe the right to one's religion under the provision and the legislature has no power to make such legislation as it not fall within the competence of the 7th schedule of the constitution. The apex Court dismissed the argument and ruled that these acts fall within the scope of the state list and since they are prevent disturbances of public order by banning the conversion of one's religion to another and it is also stated by the apex court that thing which affect the life of the community and does not merely the individual in the society would amount to disturbance of the public order of the society. There the legislation prohibiting such practice is valid according to the article 25 of the Indian constitution.

Javed v. State of Haryana,³⁶ the Supreme Court held that the Haryana Panchayati raj act which unfit the individual having more than 2 kids from contesting the election for the post of the “Sarpanch” does not infringed the article 25 & 26 of the Indian constitution. It was also stated that Muslim personal law allow marrying with four ladies in the society does not mean that it mandates it to do so and the right to contest election is not a essential right of the Indian constitution nor it is right under the another other law of the society. It is the right under the statute and also subject to certain restrictions.

The secular activities associated with religious practice:

Mohd.Haniff Quershi v. State of Bihar,³⁷The claimant stated that the sacrifice of cattle on the occasion of the bakraeid was an significant component of religion and therefore the government parliament forbidding the slaughtering of cows was a breach of his right to exercise religion. The

³⁵ AIR 1977 SC 908

³⁶ AIR 2003 SC 3057

³⁷ AIR 1995 SC 464

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apex court dismissed the argument and held that the sacrifice on bakraeid was not essential in the Muslim community and could therefore be prohibited by the state pursuant to Article 25 of the Indian Constitution.

SP Mittal v. Union of India³⁸, the petitioner challenged the challenge the validity of the Aurbindo act, 1980 on the basis that it was violate the right to religious freedom under the provision of the Indian constitution. The supreme court held that the memorandum of association and uttering shri aurobindo that the society were not religious institution make it clear that neither the society constituted the religious group and the teachings of the aurbindo did not make it necessary for the religion and therefore taking over the ashram did not violate the claimant right under the article 25 and 26 of the constitution of the India.

Adelaid Corporation v. Common wealth³⁹, supreme Court held that the individual could not be permitted in exercise of his religious freedom to carry the anti war agenda in the religion when the country is at the war. The activities though arise of the religious values by a specific institution were no preserved by the Indian constitution.

5.4.3 Social Reforms under article 25 of the constitution:

State of Bombay v. Varasu Bapamali⁴⁰, High Court held that an act which forbids bigamy practice was held valid in the Indian constitution as stated in the article 25 of the Indian constitution. The practice of the polygamy is not important part of the religion however it can be regulated by the law in the Indian. And it is further stated that the punishment was valid under the statute which restricted the practice of the polygamy in the India.

Venkataramana Devaru v State of Mysore⁴¹, The issue whether the clergyman appointment in the temple is secular or not was first discussed in the nation. The Court held that the appointment of Clergy is “secular activity” in any temple. In this manner, there is no

³⁸ AIR 1983 SC 1

³⁹ (1943) 67 CLR 116

⁴⁰ AIR 1953 Bom 84.

⁴¹ AIR 1958 SC 255

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complete freedom of the religion guaranteed under the Article 25. The exceptions are public order, morality, and health. In India, the judiciary plays a important role in the religious freedom. In the name of deity, religious groups can enjoy religious freedom and obtain the property.

V. FREEDOM FROM TAXES IN THE RELIGION:

RatiLal v. State of Bomabay⁴², The High court ruled that a tax is the core of the authority's compulsory extraction of the cash for the benefit of the society's public. For the purpose of meeting public costs, the imposition is produced without reference to any advantage to be conferred on the tax payers. Tax is the return which the tax payer gets in the benefit of the government. The old view that there must be “quid pro” for the fee has undergone the change in the society. The instrument of the “quid pro” is not sine quo non for a fee in the India.

Jagannath v. State of Orissa⁴³, the high Court held that the imposition of tax under the Orissa Religious trust act was in the essence of the fee and not the tax. The money was demanded for the purpose of meeting the head and his office which was set up for the management of the matters of the religion in the country.

VI. PROHIBITION OF THE RELIGIOUS INSTRUCTION:

D.V.A College V. State of Punjab⁴⁴, It is stated that the provisions do not mean the giving of religious education. A provision for the research into the teaching of any great in relation on the civilization of India and the world could not be considered as religious education. The court indicated that religious instruction is given for inculcating the, ceremonies, and the worship mode of a specific the group of the nation. The court rejected the request and held that sec 5

⁴² AIR 1954 SC 388

⁴³ AIR 1954 SC 400

⁴⁴ AIR 1971 SC 1737

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which talk about to promote the teachings of the Guru Nanak did not amount to promotion of the religion and hence the section is constitutionally valid.

Aruna Roy v. Union of India,⁴⁵ the validity of the national framework for the school education which talks about the education for the value enhancement based upon the religion and also comparative study of the religion was challenged before the court of law on the ground that it infringed the article 28 of the Indian constitution. The 3 judges bench of the Supreme Court in this case held by rejecting the plea and stated that the national frame for the education is not a violation of the said provision of the Indian constitution hence it is valid under the constitution of India. And this concept is also not against the ideology of the “secularism” in the Indian constitution.

Santosh Kumar v. MHRD,⁴⁶ The apex court held that the Sanskrit language introduction is a subject of the CBSE is not against the philosophy of the “secularism” in the Indian constitution. And the court also give direction to the CBSE to make important change in the syllabus within the 3 months to make Sanskrit as a subject for the heritage of the culture in India.

VII. JUDICIAL APPROCAH UNDER THE UNIFORM CIVIL COD:

Sarla Mudgal v. Union of India,⁴⁷ In this case, the apex Court ruled that only for the purpose of bigamy section 494 of the IPC transformation of a Hindu male to Muslim. The apex Court proclaimed such marriages as void. After referring to numerous judgments on the subject, the court ruled that until common civil law is reached for all Indian, there would be an incentive for spouse in Hindu to join the second marriage while the first wedding subsists to adapting the Islam. The Court also mentioned that the injustice committed against the first spouse, who was legally married. The Judges of different Courts became the primary tool for bringing about significant legal enhancement that also had an effect on the issue of common civil code. The

⁴⁵ AIR 2002 SC 3176

⁴⁶ AIR 1995 SC 293

⁴⁷ (1995) 3 SCC635

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apex Court stated that the law being the authority under which personal legislation was allowed to be complemented by the introduction of the Common Civil Code. The Apex Court has stated that the Religion related to the personal legislation were a concept of middle era which are “secular” and that are the religion created we can hardly build the country.

Lily Thomas and Others v. Union of India⁴⁸, The issue arisen that under Section 494 of IPC, whether a Hindu who is married and has a spouse becomes Islam and marries again commits bigamy. The Supreme Court ruled that none of the individual can contract second marriage until marriage is dissolved. The apex Court also stressed that in order to remove on the part of men to resort to Islamic conversion whenever they wish to have a second spouse, the legislature must enact the common Civil Code as prescribed by the Indian Constitution. But the apex court added that it is difficult to doubt the acceptance the common Civil Code and it can be stated that when social atmosphere is correctly constructed up by society's among the rulers rather than awaken the masses to embrace the shift.

John Vallamotom v. Union of India⁴⁹, Delivered by 3 judges Bench resulted in the domestic media where the apex court emphasized the need for Common Civil Code to be enacted in Article 44 of the Indian Constitution. In this situation, Section 118 of the Succession Act constitutionality was in question. It was argued that the aforementioned Section discriminated against the Christianity because it prevented a Christian from legating his property for the religious purposes. India's chief justice, has referred to the concept of the Common Civil Code with the other two judges.

Mohd. Ahmad v. Shah Bano Begum,⁵⁰ The Honorable Chief Justice of India indicated that it is matter that Article 44 of the Indian Constitution remains a dead Post. It stipulates that the State shall endeavor to ensure Common civil code for people throughout India. There is no proof of any formal exercise to frame a common civil code for the nation. By reducing disparate to

⁴⁸ AIR 2000 SC 1650

⁴⁹ AIR 2003 SC 2903

⁵⁰ AIR 1985 SC945

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legislation that have the concept of a Common Civil Code will assist the cause of national integration. It is the State that has the obligation to secure Common civil code for Indian.

VIII. RECENT DEVELOPMENT BY JUDICIARY IN SECULARISM:

Indian Young Lawyers Association v. State of Kerala⁵¹, In this case the temple located at the sabrimala in the district of the Kerala restricted the entry of the female devotees of the age group of 10-50 years to enter and pray in the Temple premises. Kerala high court legalized the interpretation and also forbidden the entry of the female since 1992. In September 2018 the apex court responded to the appeal in a liberal sense. The bench comprising the chief justice of India and other 4 judges gave the verdict of the case. The bench 4:1 held that “any exception placed the female because of the biological difference violated the Indian constitution and the apex court further held that the ban on the entry of the female of the particular age group in to the temple is the violation of the right to equality under article 14 of the Indian constitution and it also infringed the article 25 of the Indian constitution that is the religious freedom in the society.

ShayaraBano v. Union of India⁵², The Supreme Court through a constitutional bench consisting of 5 judges namely Justice Joseph, Justice Lalit, Justice Nariman, Justice Nazir and Justice Kehar heard the petition for prohibiting the evil practice of Triple talaq. The bench declared Triple Talaq as unconstitutional by the 3:2 majority and was of the view that the evil practice of triple talaq as contained in Muslim law is by nature arbitrary and observed that this form of talaq encourages a Muslim individual to break his marriage without considering of any consequences as well as not making an attempt to reconcile it.

⁵¹ 2018, SCC Online SC 1690

⁵² (2017) 9 SCC 1