Comparative Study of Secularism and Freedom of Religion under Various Constitutional Frame Work

CHAPTER: V

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5.1 Model of Secularism in Constitutional Democracy

An overview of the genesis and evolution of religious freedom. It outlines the conceptual and theoretical frame work of the concept of secularism as well as the varying practices of some constitutional democracies with respect to issues of religious freedom and secularism.

5.1.1 The concept of secularism-In America

In the U.S the notion of separation of State and religion in general, and the exact meaning of the ‘Establishment clause’ in particular, has been the subject of much debate and controversy. In the earlier period there were at least five perspectives as regards the notion of separation. Some have viewed the establishment clause’s purpose is primarily to ‘protect the Church from the State’, others have argued that it is designed to ‘protect the State from the Church’, and some also see it as a means to protect the individual’s liberty of conscience from the intrusions of either Church or State, or both buttressing one another, and others hold that, it is there, for the protection of individual States from interference by the federal government in governing local religious matters, still others argued it is meant to protect society and its members from unwelcome participation in and support for religion.

Despite this background, it is only after the 1940s many issues have become clear, since cases of infringement on religious freedom and whether certain practices represent government ‘establishment’ or support of religion have become the subject of scholarly scrutiny and frequent litigation.

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2 John Witte, Facts and Fictions about the History of Separation of Church and State, cited above at note43, PP. 12-17

3 Id., P. 1
As a result, it has been suggested that, the philosophical impetus behind the U.S secularism has always been to ‘protect religion from the State.\textsuperscript{4} In spite of this notion, still many perspectives and interpretations have been offered in several occasions, and two contemporary views are worth noting at this juncture. The first view is that the establishment clause prescribes strict government neutrality on all religious issues, including ‘neutrality’ between religious beliefs and non religious beliefs. The second perspective holds that the establishment clause only prohibits the government from preferring one religion over others, but does not disable the government from assisting religion in general so long as it offers equal treatment for all.\textsuperscript{5}

Some prominent Supreme Court justices have been pursued the second understanding, however, it has been noted that, majority of the U.S justices have rejected this interpretation and have taken the position that the government must be neutral between religious and non religious.\textsuperscript{6} As can be gathered from the land mark Supreme Court decision on Everson V. Board of Education (1947)\textsuperscript{7} the establishment clause is to mean, neither a State nor the Federal government may set up a Church and a government cannot pass laws that aid one religion, aid all religions or prefer one religion over another.

Moreover, a government cannot force a person to attend or to stay away from religion against his/her will or force him/her to profess a belief or disbelief in any religion. Furthermore, neither a State nor the Federal government may overtly or covertly take part in the affairs of any religious organization or groups and vice versa.\textsuperscript{8}

In order to help interpret the ‘establishment clause’ the Supreme Court develops a three part test, sometimes known as the ‘Lemon test’. This test draws its name from the 1971 decision Lemon V. Kurtzman.\textsuperscript{9} According to this test, first the governmental action at issue must have a secular purpose, second, its principal or primary effect must be one

\textsuperscript{6} Vincent Phillip Munoz, James Madison’s Principle of Religious Liberty, American Political Science Review, Carolina State University, Vol. 97, No.1, P.18.
\textsuperscript{7} Everson V. Board of Education, 330 U.S., (1947).
\textsuperscript{8} John Witte, cited above at note 123, P. 23
\textsuperscript{9} Lemon V. Kurtzman, 403, U.S. 602, 91 S. Ct 2105, 29 L.Ed, 2nd, (1971), P. 745
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that neither advances nor inhibits religion, third, and the governmental action must not exhibit an excessive government entanglement with religion.\textsuperscript{10}

When the courts apply the ‘Lemon test’, the governmental law or action must pass the three parts of the test to be consistent with the establishment clause. In applying the ‘purpose test’ the challenged governmental action or law must have been done for civic or secular purpose, for example to promote education, health or safety of the public.\textsuperscript{11}

In examining the purpose the courts use the ‘objective observer’ standard and may look at the text of the law, all surrounding circumstances, including history, context, ‘logical effect’ and manner of its implementation.\textsuperscript{12} As regards the second test, even through, the challenged law or governmental action meets the purpose test, if its primary effect advances or restricts religion; the law is facially invalid. However, a mere secondary effect that promotes or inhibits religion cannot render it void as long as the primary effect of the law is to further some legitimate governmental interest.\textsuperscript{13} The third test requires that the ‘nature’ and ‘character’ of the governmental action at issue must not indulge excessively in religious matters or must not allow excessive religious intrusion in governmental matters.\textsuperscript{14}

Some justices have been dissatisfied with the ‘Lemon test’ and offered alternatives. These are known as “Endorsement” test and “Coercion” tests. The ‘Endorsement test’ used to determine the fundamental question that, whether a ‘reasonable and informed’ observer would view governmental action or practices amounts to ‘endorsement’ of religion.\textsuperscript{15} The ‘endorsement’ test designed to prevent the government from conveying or attempting to convey a message that religion or a particular religious belief is preferred or promoted. Of course, some justices viewed and

\textsuperscript{10} Ids, P. 41
\textsuperscript{11} Ids, P. 42
\textsuperscript{12} Darlene N.Snyder, Forum on Public Policy, University of Illinois, at Spring Field, P.O.4, (www.forum.onpublicpolicy.com/archivesum07/snyder.pdf), last visited, 15/06/2009
\textsuperscript{13} Id, P. 5
\textsuperscript{14} Sherbert V.Verner, 374 U.S 398, 422 (1993) (Harlan J. dissenting,(www.belcherfoundation.org/lemon-test),last visited 24/06/2012,
\textsuperscript{15} Charles Haynes and Oliver Thomas, The Supreme Court, Religious Liberty, and Public Education, P43, (www.ASCD.org), See also, Aguilar v. C. Felton (1985)
treat the ‘Endorsement’ test within the purview of the first two components of ‘Lemon’ test. Others also handle it as a separate test altogether.\textsuperscript{16}

The ‘coercion’ test appears most often in the context of school prayer. Under this test the governmental action does not contravene the establishment clause unless, it provides ‘direct’ aid to religion in such a manner that create a perception favoring religion or particular religion or forces people to support or to take part in religion against their will.\textsuperscript{17}

The ‘Free exercise clause’ basically protects the individual’s belief and religious expression from government interference, while the right to hold religious belief is absolute; the right to involve in religious practices is not.\textsuperscript{18} To determine an issue of whether a governmental action has imposed a ‘burden’ on the right of religious exercise, the U.S Supreme Court has developed a standard of interpretation known as ‘Sherbert test’, this test derives its name from a case, \textit{Sherbert V. Verner} (1963).\textsuperscript{19} This test has four components; two of them apply to any person who petitions his ‘free exercise’ right has been infringed. The other two apply to the government organ accused of violating such rights.\textsuperscript{20}

In order to claim protection under the free exercise clause a complainant must show that his actions are motivated by a ‘sincere’ religious belief and have been ‘substantially burdened’ by the government’s action.

In this scenario sincerity of belief does not necessarily be ‘logical’ ‘rational’, ‘sensible’, even; ‘popular’ and the petitioner needs not be a member of an organized religious denomination.\textsuperscript{21} Yet, the belief must genuinely occupy a central place in the life of the possessor; something parallel to that of the spiritual belief holds by traditional

\textsuperscript{16} Religious Liberty in Public Life, First Amendment Center, P. 2, (www.firstamendmentcenter.org/rel- liberty//index.aspx), last visited, 08/102012
\textsuperscript{17} Ibid
\textsuperscript{18} Charles C. Haynes and Oliver Thomas, The Supreme Court, Religious Liberty, cited above at note 136, P. 44
\textsuperscript{19} Shrerbert V. Verner, cited above at note 114, (www.belcherfoundation.org/lemon- test.htm), last visited, 20/09/2012
\textsuperscript{20} Ibid
\textsuperscript{21} Charles Haynes and Oliver Thomas, The Supreme Court, Religious Liberty, cited above at note 136
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religious persons.\textsuperscript{22} In addition; the petitioner must demonstrate substantial burden as remote and incidental burden will not suffice. When these components are proven, the government has a burden of showing it is acting in furtherance of a ‘compelling state interest’ and it has pursued that interest in a manner less restrictive or least burdensome to the religious right under consideration.\textsuperscript{23}

According to the judicial precedent a ‘compelling’ interest has been described as ‘an interest of the highest order’ or vital interest’. And ‘least restrictive’ or ‘narrowly tailored’, would mean that the government action at issue must be neither ‘under inclusive’ or ‘overbroad’.\textsuperscript{24} A governmental law or action is ‘under inclusive’, when it regulates religious practice, but does not regulate (restrict) non-religious conduct that produces the same harm. If courts found the challenged law or action under inclusive, it implies the governmental interest is not compelling because it cannot be regarded as protecting an interest of the highest order.\textsuperscript{25} A law is also ‘over broad’ whenever it restricts religion or religious practice more than is necessary for the furtherance of the stated compelling governmental interest.\textsuperscript{26}

Since the decision of the Supreme Court on Employment Division V. Smith case in 1990s there is a significant shift as regards the ‘substantial burden’ test. The court ruled that as long as the law at issue does not specifically targets religion and its practices, and is generally applicable, the proof of substantial burden is irrelevant, even if the challenged law incidentally burdens religion and religious practices.\textsuperscript{27} The congressional law known as Religious Freedom Restoration Act (RFRA,1993), was designed to prohibit the government from ‘substantially’ burdening a person’s expression

\textsuperscript{23} The United States Precedent Describing the Compelling Interest Test the ‘Least Restrictive Means’, The National Center for Home Education (2009), (www.hsida.org/docs/nche/00000099-asp)
\textsuperscript{24} Federal Register, Vol. 64, No.21, Tuesday, Feb, 2, (1999), Rules and Regulations. (ftp.resource.org/gpo.gov/register/1999/1999-5102pdf)
\textsuperscript{25} Frederick Mark Gedicks, “The Permissible Scope of Legal Limitations on the Freedom of Religion or Belief in the United States,” (2006), Emory International Law Review, Vol., 19, PP. 1218 & 1296,
\textsuperscript{26} Church of Lukumi Babalu Aye, Inc V. City Of Hialeah, 508 U.S 520, 531, 32,546(1993)
\textsuperscript{27} Religious Freedom Restoration Act of 1993 (RFRA), Public Law 103-141,103rd Congress, H.R 130. Section 2(4) in Employment Division V. Smith, 494 U.S 872 (1990), the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise, (http//www.ssrn.com/=567398), last visited, 10/09/2011
of religion, even if the burden incidentally emanates from a generally applicable law, unless the government shows a compelling interest and is applying a means that is least restrictive.\(^\text{28}\) In 1997 when the U.S Supreme Court reviewed the Boerne V. Flores Case, it has ruled out that the RFRA itself is unconstitutional stating that Congress has no competence to change ‘substantially’ the free exercise clause.\(^\text{29}\)

To sum up until recently America took pride in ‘melting pot’ model of identity as most of the migrants to USA were from Western countries. But, today when massive immigration to America has been taken place from all over the World people having Asian, African, Hispanic, and Arab roots are forming sizeable communities, and the former model has become faded and a new ‘mosaic’ model of identity has emerged.\(^\text{30}\) As a result, at least in official discourse the American society is becoming more tolerant and accepting differences and diversity. The government also officially supports diversity and autonomy. It encourages an individualistic society, where citizens make choices with free will and the government intervenes as little as possible to give each person maximum freedom over his/her own life.\(^\text{31}\) For this and other reasons the American system gives more emphasis to free exercise clause than to strict separation. The free exercise clause is also reinforced by other rights found under the umbrella of broader rights protections available to all citizens, like freedom of speech and non-discrimination.\(^\text{32}\)

Perhaps for historical reasons, religion is not strictly confined to private life, in many occasions religion is seen in the public sphere. The issues of head scarf and other

\(^{28}\) Id, RFRA, section 3


\(^{30}\) Vincent J. Miller, , “Globalization: the End of Easy Consensus, and Beginning the Real work of Pluralism”, in Debating the Divine, (2008) PP. 65, 67...


\(^{32}\) Frederick Mark Gedicks, cited above at note 146, P.1 See Contra, (since the U.S 1Supreme Court’s decision 1990, (Emp. Div.V.Smith) parenthesis added, freedom of religion in the U.S is less a liberty than an equality right.
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religious attire have never been weighty political matters as compared to some European secular States.33

Public schools have broader autonomy to adopt their own rules pertaining to accommodation of religious expressions. Applicable laws vary depending on the State, thus, interpretation of the free exercise claims against State and local laws and regulations will rely on the regime of the specific State, even though, the underlining claims rest on the federal Constitution. In this respect the United States’ principle of secularism is by and large characterized as ‘individualized accommodation model, 34

5.1.2 The Concept of Secularism-In France

The history of France is embedded in the long struggle between the French kings and the Roman Catholic Church. Prior to the 1789 Revolution, the Catholic Church was heavily involved in the State affairs.35 Since the 1789 Revolution, however, one of the founding principles of the republic was secularism; by and large in the sense of protecting the State from religion.36 This was reinforced by inclusion of secular principles in the country’s founding documents such as the ‘Declaration of the Rights of Man and Citizen’ of 1789.37 Article 10 of the declaration provides that “No one shall be disquieted on account of his opinions, including religious views, provided their manifestation does not disturb the public order established by law.” One can understand from this provision that it basically emphasized on freedom of conscience, though, in that context the religious freedom is protected. In 1905 the principle of secularism in France was fully entrenched and articulated as a law.

The 1905 Constitution formalized the pre-existing principles in law, abolished Napoleon’s ‘concordat’ and set a number of new measures that strengthen the secularism

33 Ibid
37 Avalan Project: Declaration of the Rights of Man – 1789, (www.law.yale.edu/18th_century/ritsof.asp), last visited, 09/07/12
principle.\textsuperscript{38} The preamble to the 1946 Constitution also guarantees among other things ‘the provision of free, public and secular education at all levels.’ The Constitution of 1958 sets forth the secular principle ‘France shall be an indivisible, secular, democratic and social republic.’ This Constitution also ensures the equality of all citizens before the law, without discrimination on grounds of origin, race or religion.\textsuperscript{39} Due to historical and philosophical reasons the French notion of ‘Laicite’ (translated roughly as secularism), does give little room for religion and its expression in the public sphere.\textsuperscript{40} In general religious freedom is regarded as a human right, but never in isolation from other universal human rights. In this respect France does not allow a special status for religious freedom over freedom of conscience.\textsuperscript{41}

That is why many commentators referred to French’s version of secularism as ‘fundamentalist’ secularism. In an attempt to give an explanation for this strict notion of separation some writers suggest that the ‘monoculture’ feature of the French society, coupled with the government’s policy that stresses on ‘assimilation’ or in the French description ‘integration’, discourages maintaining distinctive identity.\textsuperscript{42}

It has been also believed that, the ideal of citizenship that is inscribed in official documents and reinforced by politicians across the political spectrum encourages every alien to be integrated in the French’s main stream culture.\textsuperscript{43}

Moreover, the role of the government in the lives of citizens is that of ‘Welfare’ State, which is driven by ‘utilitarian’ notions. As a result individual rights are seen as less important than those of society as a whole. This led to the view that religion is purely a personal choice and thus, a private affair.\textsuperscript{44} Therefore, one person’s right to exercise his/her faith in certain public context is seen as contravening, and inferior to the rights of

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\textsuperscript{38} Dilwar Husain, “France and Secularism a Comparative Over View”, Houston Journal of International Law (2007) (dilwar@islamic.foundation.org.uk)
\textsuperscript{39} ibid
\textsuperscript{40} Ewing Katherine Pratt, “Legislating Religious Freedom, Muslim Challenges to the Relationship between Church and State in Germany and France,” (22 Sept., 2000), P. 6. American Academy of Arts and Sciences.
\textsuperscript{41} Concordat Watch- Separation of Church and State, (www.concordatwatch.edu/showtopic.php?org_id)
\textsuperscript{42} Catherine J. Ross, cited above at note 152, P. 27
\textsuperscript{43} Deshmukh, Fiona, “ Legal Secularism in France and Freedom of Religion in the United States”, cited above at note 157
\textsuperscript{44} Ibid
\end{footnotesize}
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others that exist in a ‘neutral’ and ‘non-proselytizing’ sphere.\textsuperscript{45} The public school system is considered a pillar of the French society and experiment realm of democracy where republican values are nurtured, thus, education plays a central role in the concept of the citizen, since it shapes children in the republican ideal. \textsuperscript{46} That is why in France public schools are supposed to be neutral ground, where any religious expression is strictly prohibited.

Perhaps consistent with this political drive, on March 15, 2004 the French government approved a controversial bill aimed at preventing religious expressions in public schools.\textsuperscript{47} The law states that ‘‘in public elementary schools, junior high schools, and high schools, it is forbidden to wear symbols or attire, through which students conspicuously, exhibit their religious affiliation.’’\textsuperscript{48}

Though, technically, the legislation is neutral as it does mention no faith in particular, many people especially from the Muslim communities in France viewed it as anti-Muslim bias. The expulsion of three Muslim girls from school who refused to comply with the law was a case in point. The issue attracted massive publicity and outcry from within and outside of France; nonetheless, this did not prevent French courts from upholding the challenged law.\textsuperscript{49} Currently, there is an ongoing debate in France concerning this issue; everyone seems to agree on the fact of increasing cultural diversity, and its concomitant challenge to the French version of secularism.\textsuperscript{50} However, so far there is no consensus in the French public as to the right response to that emerging challenge. Moderates argue that the strict type of secularism in general the head scarf issue in particular would only strengthen religious militants, and call for amendment of the basic laws to allow flexibility and to mandate reasonable accommodations\textsuperscript{51} Traditionalists insist secularism is the cornerstone of French democracy and a

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\textsuperscript{45} RTE News: The Hijab ‘Controversy’ that isn’t, (www.rte.ie/news/2008/0612/hijab.html) \\
\textsuperscript{46} Deshmukh, Fiona, cited above at note 157 \\
\textsuperscript{47} Muslim Women, Human Rights and Religious Freedom: Europe under the Spot Light of National and International Law, March, (2004), Islamic Human Rights Commission, (www.ihrc.org) \\
\textsuperscript{48} Ibid \\
\textsuperscript{49} Catherine Ross, cited above at note 154, P. 25 \\
\textsuperscript{50} Islamophobia, Rekindles, Hijab Controversy in France, Controversy on French Secularism, (www.islamonline.net/english/news/2003-06/articles03.shtml) \\
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fundamental value of the nation, so the republic must uphold this basic tenet as firmly as it did against any religiously motivated intrusion in the public sphere.\(^\text{52}\)

In June 2009, in an historic address to both houses of the French Parliament, the French president Nicolas Sarkozy has opposed the wearing of the Muslim ‘burqa’ in public.\(^\text{53}\) President Sarkozi stated that “it will not be welcome on French soil, women imprisoned behind a mesh, cut off from society, deprived of all identity. That is not the French republic’s ideal of women’s dignity.” Following the president’s keynote speech, a group of cross-party law makers is already calling for a special inquiry into whether wearing the ‘burqa’ could undermine French secularism and seek to examine whether women who wear the veil are doing so voluntarily or are being forced to cover themselves.\(^\text{54}\)

**5.1.3 The concept of Secularism- In England**

A brief reference to the position in England should be in order. In England there is a close alliance between the church and the state. The Church of England became independent of the Pope in the sixteenth century and is the official Church of England. The monarch of England is the head of the Church. Though there is religious freedom in England, the Church of England has a special status in as much as the monarch of England must join in communion with the Church of England. A Catholic or anyone who marries a Catholic cannot be the monarch of England. It is probable that a Catholic may not even be Lord Chancellor.

The Church of England by certain internal measures can constitute a General Synod consisting of clergy as well laity and this assemble can put forth proposals regarding religious matters—such as communion, baptism, etc. these proposals do not have the force of law unless parliament has approved them by a simple resolution and have received the Royal assent thereafter. This is a simplified account of the relationship between the church and the State in England (For a detailed discussion, see Constitutional Law by E.C.S. Wade and Godfrey Phillips). The Established Church in Scotland is the

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\(^\text{53}\) President Sarkozy’s speech was the first a French president has made to parliament since 19th century—made possible by a Constitutional amendment introduced in 2008. www.enlishsabla.com/forum/showthread.php? , last vistied,18/08/2012

\(^\text{54}\) (http://news.bbc.co.uk/90/or/fr//2/hpe/8112821.htm)
Presbyterian Church and the General Assembly of that Church is the supreme legislative and judicial body.

The provisions touching the form of worship are of the authorship of the Church but become binding only under the authority of parliament, which may consist of Christians of any denomination, non-Christians and atheists. To this limited extent it can be said that there is no theocratic polity in England.

We have seen how under the secular Constitution of U.S.A. a state-aided school cannot impact religious education. Article 28(3) permits a state-recognized or a state-aided school to give religious instruction or to hold religious worship (Satyanarayan puja) provided no student is compelled to attend the instruction or the worship. It is very difficult for unwilling student to abstain from such classes. Willy-nilly such student will attend religious instructions which may not be educative and which may he propagandist. This is not secularism.

A broad overview of the global setting of secularism reveals a few important trends. First, the pattern of separation of religion and politics varies from State to State. Secondly, there is an emerging trend of increasing religious revivalism, which in theocratic States takes the form of greater fanaticism and in secular State involves a greater role of religious forces in the politics of the State. In the process religion gets politicized.

The First Amendment to the American Constitution unequivocally declares: “The Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof…” Commenting on this, President Jefferson declared, “I contemplate with sovereign reverence that act of the American people which declared their legislature should make no law ‘respecting an establishment of religion or prohibiting the free exercise thereof’ thus building a wall of separation between the church and the State.”

The U.S. Supreme Court elaborating this clause, asserted, “Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions or prefer one religion to another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing
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religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions… neither a State nor the federal government can openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.” This Amendment therefore, as Fred Krinsky observes, requires the “state to be neutral in its relation with groups of religious believers and non-believers, it does not require the state so as to handicap religions that it is no more to be used so as to handicap religions than it is to favour them.”

In keeping with such a concept of separation of State and religion, school prayers were banned under a Supreme Court ruling in 1962. Mormons had to accept monogamy before the State of Utah would be accepted into the Union, because civil law supersedes all religious laws. The American Constitution contains no reference to God and Art. VI specifies that “no religious test shall ever be required as a qualification to any office or public trust under the United States”.

The separation between the spiritual and the temporal is, however, not absolute, as is obvious in the appointment of Protestant, Catholic and Jewish priests in the armed forces, the tax exemption granted to churches, with at least 32 states having reference to tax exemption for religious organization in their Constitutions, the opening of Legislative Assembly sessions with prayers, etc. Churches are found to be campaigning for one issue or the other, particularly abortion, and the 1988 Presidential election witnessed the Church-based campaigns of Jesse Jackson and Pat Robertson. In spite of the first Amendment, it was only in 1960 that a Catholic could be elected as the President on account of ingrained prejudices. Herzberg pertinently remarks “Consequently, religion enjoy a high place in the American scheme of things, higher today, perhaps, than at any time in the past century. But it is a religion thoroughly secularized and homogenized a religion-in-general that is little more than a civic religion of democracy, the religionisation of the American way.” Separation of religion and the state notwithstanding, some anomalies exist and religion is increasingly coming to play a greater role in politics than was originally envisaged.

The French case is similar to that of the United States with purportedly complete separation of State and religion, together with full freedom to all religions. Art. 2 of the
French Constitution read, “France shall be a equality of all citizens before the law, without distinction of origin, race or religion. It shall respect beliefs.” There is to be no religious instruction in public schools, nor does it allow members of religious orders to teach in public schools. However, instances of intolerance may be seen, as in the expulsion of three Muslim girls from a public school for wearing a ‘hijab’-head scarf, to school.

In the United Kingdom, the Church of England remains the established Church with the king as its head. Ecclesiastical Courts still exist and their sentences are enforced by the state. The state protects me extensive properties and endowments owned by the Church. The bishops and archbishops are appointed by the Prime Minister and are members of the House of Lords. While there is no official separation of State and religion as such, the United Kingdom can be regarded as secular. There is no discrimination against minorities and freedom of religion is not denied. Combined with this is a democratic conception of citizenship regardless of religion. Religion is controlled by the state and not vice versa. And so, inspite of having an established religion, the U.K. can be regarded as secular.

5.2 Right to Freedom of religion in others Countries

Religion has been an integral and essential part of every society. People have been professing and practicing it differently in different societies. It has been observed that when a religion has spread to another region, other than the place of its birth, it has adopted itself, both in terms of ritual and social customs, according to the condition of that country. For instance, Islam in India is not the same as Islam in Arab countries There is, thus, an interaction between the practice of a religion and the geographical, social, economic and political conditions prevailing in the practicing country.

Religion is, primarily. A matter of faith and belief and as such it has little place for reason. It is for this reason that people become sensitive about their religion and cannot tolerate even a rational or healthy criticism of their religion. Such an attitude of mind gives birth to dogmatism and fanaticism. India is supposed to be a religious country above everything else; Hindus, Muslims, Sikhs and the followers of other religions take pride in their faiths and testify to their truths by breaking each other’s head. Nehru rightly observed: “The spectacle of what is called religion, or at any rate organized religion, in
India and elsewhere, has filled me with horror and I have frequently condemned it and wish to make a clean sweep of it.”

Religion is both an integrating as well as a divisive force in a society. History bears evidence to facts that whenever and wherever a religion comes into being, it integrates and unites its followers. Faith and a common ideology bring them together. There can be no doubt that the founders of great religions have been amongst the greatest and the noblest of men that the world has produced; but their disciples and the people, who have come after them, have often been far from great or good. Often, in the history, we see that what was mean to raise or make us better and nobler has made people behave like beasts. Instead of bringing enlightenment to people, it brings darkness to them; instead of broadening their minds, it has frequently made them narrow-minded and intolerant to others. In the name of religion, millions are massacred and cruel crimes are committed.

Religion not only divides the people, but it is divided in itself. A liberal interpretation of the traditional philosophy of a religion leads to the creation of a sect in a religion. These sects assume hostile postures towards each other. This hostility leads to clashes between them and, thus, the followers of a religion cut each other’s throats. History is full of the bloody wars fought between the Catholic and the Protestants, Shias and Sunnis, Akalis and Nirankaris. Thus, the problem of religion poses a problem for law and order in a state. Religion is a personal matter but when it assumes these diabolical dimensions and becomes a threat to peace and order, it is natural that the attention of the state be diverted towards it. The plus point about religion is that, to some extent, it helps in the shaping of the personality of the individual. It helps him to grow as a moral being. It imparts a set of moral values to the individual and gives a pattern of behavior. Thus, religion is important both to the individual and the state. Therefore, in the constitution of a state, religion finds a place. Even those states which are anti-religion and anti-god, give religion a place in their constitutions.

In ancient times, the Greek city-states had their own Gods. Each city-state worshipped its own God and everyone in that city state had a common God. There was

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55 J.L. Nehru, Autobiography with musings on Recent in India(London,1985), P.374
no organized religion in Greece. With the rise of Christianity into an organized religion, during the middle ages, the general acceptance was of the principle “Cujus regio ejus religio” that is, he who governs the state, also governs the religion. In other words, the religion of the ruler was the religion of the people. Later on, it was found that this principle led to the establishment of an intolerant state. Citizens, professing a religion other than that of the ruler, were not tolerated in the state. Innocent human blood was shed in the name of the religion and worst crimes were perpetrated both in the name of God and religion. It was observed that the worst tyrannies could not shake the faith of the people. The blood of the martyrs sowed the seeds of tolerance. With the advent of modern age, religious tolerance began to dawn upon human minds. When tolerance appeared on the horizon of scientific thought, the right to religion to the individual was conceded. This right has always been subject to the historical, political and social environment of a country and hence, variations are natural.

On the basis of their attitude towards religion, a casual observer may classify states into theocratic states with an official state-religion and secular states, with no state-religion. But for a keen observer, this classification seems too sketchy as it is based on one single criterion, i.e., whether there is an established state-religion or not. If one goes deeper into the matter, one finds that there are other criteria also and hence, different variations of both the types.

In attempting to distinguish between variations of the above types, Donald Eugene Smith’s model of secular state serves as a useful device for our purpose. According to Smith, there exist three sets of relationship in a secular state. The first set of relationship exists between state and religion, the second set of relationship and religion. These three sets of relationship have been taken as the basis on which the status of the right to religion in different countries is to be studies and classified.

5.2.1 Theocratic States

The relationship concerns state and religion, and it deals with the treatment accorded to religion by the state. Broadly speaking, in this category, there are four types of states, namely, theocratic, secular, communist/socialist and cooperative states.

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56 D. E Smith, India as Secular State (Princeton, 1963), P.49
Under the first type, the relationship between state and religion is rather intimate and close. Religion enjoys the patronage of state in the forms of an established state-religion. The United Kingdom, Nepal, most of the Islamic states and many more falls under this type.

In England, there is no separation of Church and State. The Anglican Church is an established church and the King of England is the supreme head of this church. That is why; he has the title of ‘Defender of Faith.’ This church has been established by the Act of Supremacy, 1534 whereby the King is accepted “as the only supreme head, on earth, of the church of England” which all powers and profits pertaining to that position, and in particular, the right to use all jurisdiction for the repression of error, heresy and other offences as any spiritual authority and ever lawfully possessed. The Act of Uniformity, 1549 prescribed the use of the Book of the New Book though, imposing no punishment on laymen who absented themselves from the services of the church. The passing of the above two Acts of Parliament makes the Anglican Church a constitutional reality. The law of the church is a part of the law of the land and English courts take judicial notice of it. Sweden can also be placed in this category. Like England, there also is a state-church known as the Church of Sweden, which dates back to the 9th century at present, about 95 percent of the population in that country belongs to the Church of Sweden.57

Many constitutions of many Islamic states to one particular religion. Constitutions of many Islamic states give a superior status to Islam. The Malaysian Federal Constitution states; “Islam is the religion of the Federation, but other religions many also be practiced.”58 Similarly, Article 4 of the Iraqi Interim Constitution of 1970,59 and Article 2 of the constitution of Hashemite Kingdom of Jordan,60 the opening sentence of the constitution of Kuwait,61 Article 2 of the Constitution of Bahrain,62 Article 2 of the

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57 Religion Today in Sweden. Courtesy: The Sweden Institute, Sweden in Secular Democracy, Vol.XII, Nos.2and 3, p.41
58 The federal constitution of Malaysia 1957, Article3(1)
59 The Iraqi Interim Constitution, 1970
60 The Hasamite Kingdom of Jorsan, 1952
61 The constitution of Kuwait.
62 The constitution of Bahrain, 1973
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The constitution of Algeria\(^{63}\) and Article 6 of the constitution of Morocco\(^{64}\) use the same above mentioned phraseology in different ways.

In a similar manner, Catholic and Evangelical faiths have been accorded the status of state-religion in many predominantly Catholic and Evangelical Lutheran countries. The constitution of Argentina states, “The federal government supports the Roman Catholic Apostolic Faith.”\(^{65}\) Likewise, the same phraseology has been used in Article 231 of the constitution of the Republic of Peru,\(^{66}\) Article 9 of the Principality of Monaco,\(^{67}\) Article 3 of the constitution of Bolivia,\(^{68}\) Article 2 of the Republic of Costa Rica,\(^{69}\) Article 37 of the constitution of Liechtenstein state, “Religious liberty and freedom of expression is guaranteed to all persons. The Roman Catholic Church is the state-church and as such enjoys the full protection of the state.”\(^{70}\) The Constitutions of Denmark\(^{71}\) and Norway\(^{72}\) declare that the Evangelical Lutheran Church shall be the established church of Denmark and as such it shall be supported by the state.

The latest addition to this category is the Republic of Sri Lanka and the Republic of Bangladesh. Article 9 of the constitution of the Democratic Republic of Sri Lanka states, “The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly, it shall be the duty of the state to protect and foster the Buddha Sasna.”\(^{73}\) Similarly, Article 20(1) of the constitution of Burma, as amended, reads “Buddhism, being the religion professed by a great majority of citizens of the union, shall be the state-religion.”\(^{74}\)

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\(^{63}\) The constitution of Morocco, 1970

\(^{64}\) The constitution of Morocco, 1970

\(^{65}\) The constitution of Algeria 1976

\(^{66}\) Article 4 of the constitution of Argentina.

\(^{67}\) The constitution of the republic of Peru, 1933.140

\(^{68}\) The Constitution of Principality Monaco, 1962

\(^{69}\) The Constitution of Bolivia, 1967

\(^{70}\) The constitution of Costa Rica, 1949.

\(^{71}\) The constitution of Liechtenstein, 1965.

\(^{72}\) Denmark’s Constitution of the United Kingdom act, 1953, Article 6

\(^{73}\) The constitution of Sri Lanka, 1978.

\(^{74}\) The constitution of Burma, 1948.
5.2.2 The Communist State

Under this type of the state the relationship of state is hostile to religion. The communist ideology is both anti-religion and anti God’s. The Communist ideology is based on dialectical materialism which is opposed to spiritualism. Spiritualism has its citadel in the church. The communist states are opposed to religion and there is a distinct separation of the church from the state and of the school from the church, so as to allow complete freedom for the exercise of one’s conscience.

The Soviet constitution provides, “In order to ensure to citizens freedom of conscience, the church in the USSR is separated from the state and the school from the church.”

Freedom of religious worship and freedom of anti-religious propaganda are recognized for all religions. Under the new revised constitution of the Soviet Union, there is a slight variation on the question of religious freedom. The position taken in the new constitution is “citizen of the USSR are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda. Incitement of hostility or hatred on religious grounds is prohibited. In the USSR, the church is separated from the state and the school from the church.”

In the 1936 constitution, the right to anti-religious propaganda was permitted to all religions, which means that one religion could well criticize the other and exposes its myths and falsehood. In actual practice, this right to anti-religion was not confined to religions only, but it extended to everyone. We find that the communist party members, in their individual capacity, criticized religion and exposed its historical exploitative role. During the years, it was found that religious people are very sensitive about their faith. They cannot withstand any criticism of their faith. It was observed that sometimes, it created a problem of law and order and even loyalty to the Soviet state, although these tendencies could not grow, due to the might of the all powerful state and the party. Later on, it was being realized among the party workers that the absolute right to anti-religions was not in the best interests of the state. That is way, when to constitution was revised, this right was accepted, with the proviso “Incitement of hostility or hatred on religious grounds is prohibited.” This sentence has very much restricted the right to anti-religion.

75 Article104 of the Soviet Constitution, 1936.
76 Ibid
77 Constitution of the Union of Soviet Socialist Republic, 77, Article52.
The constitution of the People’s Republic of Hungary also safeguards liberty of conscience of all citizens and also freedom of religious worship.\textsuperscript{78} The Czechoslovakian constitution provides for freedom of conscience and religious persuasion.\textsuperscript{79} It provides, “No person shall suffer prejudice by reason of views, as the word, faith or conviction though they cannot be advanced by any person as grounds for refusing to fulfill the civil obligations under the law.”\textsuperscript{80} The constitution further provides to every citizen the right to profess in private and in public any religious creed or to be without any religious persuasion.\textsuperscript{81} The constitution further puts a check on the right to religion by providing that this right shall not be exercised in a manner which may be contrary to public order.\textsuperscript{82}

The right to religious freedom is recognized in most of the Communist countries, under the chapter of the fundamental rights and duties of the Citizens. The constitution of People’s Republic of China provides:

“Citizens of the People’s Republic of China enjoy freedom of religious belief.”

“No State organ, public organization or individual many compel citizens to believe in, or not to believe in any religion: nor may they discriminate against citizens who believe in or do not believe in any.”

The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of the citizens or interfere with the educational system of the State. Religious bodies and religious affairs are not subject to any foreign domination.\textsuperscript{83}

A deeper study of the above article clearly indicates that the freedom of religion in China is not absolute as it is in the Soviet constitution. No one can be compelled to follow a religion. Religious activities cannot be as organized as may be detrimental to law and order, health and the educational system of the state. No country can interfere in

\textsuperscript{78} Section 54 of the Act of 1949.
\textsuperscript{79} The constitution of Czechoslovakia, Article15to17.
\textsuperscript{80} Ibid., Article15 (2).
\textsuperscript{81} Ibid. Article16.
\textsuperscript{82} Ibid. Article17.
\textsuperscript{83} Article 36 of the constitution of the Peoples of Republic chaina.1982
the name of religion, in the internal affairs of the state. The constitution of Bulgaria\(^4\) and the constitution of North Korea\(^5\) give right to religious freedom to their citizens.

The Communist states have no uniform policy on the question of the relationship between state and religion. It appears that before World War II, the Soviet Union followed a policy whereby the right to anti-religion was absolute, but we find that experience has made them wiser and they have diluted the absolute rights. The Soviet Union guaranteed a distinct freedom to profess and practice religion along with the freedom to carry out anti-religious propaganda. Atheism is specially mentioned under Article 52 relation to freedom of conscience. Such anti-religious freedom is not guaranteed under the constitution of any other communist country. It is no doubt that the Communist society has ideologically discarded religion but they have come to pragmatic terms with the social reality of religion. The Communist states that have come into existence after the Second World War have mellowed down their opposition to religion. It is being increasingly felt in these countries that opposition to religion makes people sensitive of the constitution of the People Republic of China. And, thus, a liberal view regarding religion is taken by some European Communist states.

A remarkable phenomenon, of the state recognizing the religion and regulating it according to the laws of the state, is found in German Democratic Republic. Catholics have become a powerful force in Poland. We find that in a few European Communist countries, excluding USSR, secularism in the sense of anti-religion is absent. The constitution of the German Democratic Republic provides as under:

(1) Every citizen of the German Democratic Republic has the right to profess a creed and carry out religious activities.

(2) The church and other religious communities are to arrange and carry on their activities in conformity with the constitution and legal regulations of the German Democratic Republic."\(^6\) We have, thus, observed that in the Communist state, the position regarding the relationship of the state religion is the very anti-thesis of the position in the theocratic states.

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\(^4\) The Constitution of the Peoples of Republic of Bulgaria, 1971, Article 52
\(^6\) Article of the Constitution of the German Democracy Republic
5.2.3 Co-Operative Secular State

Under this type of the State the relationship between state and religion has emerged in the form of the Indian secular state, which may be termed as ‘cooperative secular state’ It is a kind of synthesis between the theocratic and the Communist state. It does not tolerate anti-religious propaganda like the theocratic state, and yet, at the same time, it has no religion of its own. The state gives freedom of conscience and religion but hedges it with restrictions. The state is neither very close and intimate nor cold and indifferent or even hostile to religion. There seems to be a kind of cooperation between state and religion. For the profession and practice of religion, peace and order is very necessary and this is guaranteed by the state, which gives equal protection to all religions. On their part, the religions and religious organizations are expected to organize their activities in such a manner that they are not a menace to public order, health and morality. Thus, religion and state cooperate with each other because both are essential to each other. Canada and India belong to the category of cooperative secular state.

On the question of religion, the constitutional position in Canada is quite different from the United States and England, yet there is as much religious freedom in Canada as in England and America. Like England, there is no state-church in Canada on the other hand, the provision of the constitution of Canada specifically forbids the state “from establishing a religion” 87 Like the First Amendment of the US constitution. The traditional theory is that the Parliament of Canada and the provincial legislatures are their legislative powers except the one provided in the constitution. This principle was accepted in the past, nut in recent years it has not been fully accepted. 88 It has now been held that the powers “cover the whole area of self-government within the whole of Canada.” 89 The position, then, boils down to this that the Parliament and the provincial legislatures can enact within their respective fields an enactment touching religious liberty, both in regard to the individual as well as religious establishment. 90

The Preamble of an Act passed by the Canadian Parliament expresses an impartial sympathy towards all religions, thus, favoring the religious over the irreligious. Unlike

87 The British North America Act of 1867, Section 7
88 Murphy v. CPR1958 SCR; 626.
89 Ibid.
the United States, there is no problem with regard to laws which evince impartial sympathy towards the works of religious bodies and establishment but which aid all religions in a non-preferential manner or which prefer in general the religious over the irreligious.\textsuperscript{91} Though, the Bill of Rights in an Act of Parliament, not a constitutional Act, but in reflects the tenor of general opinion in Canada, approving cooperation between the church and the state. The Parish and Fabrique Act, 1839 of the province of Quebec is an exception to the doctrine of equality of religion as it confers power to levy and collect assessments, on properties belonging to the Roman Catholics for erection and repair of parish churches, chapels, parsonages, cemeteries, etc. the Act clearly provides that nothing in the Act shall render any class of Protestants or any person, whomsoever, other than persons professing the Roman Catholic religion, liable to be assessed or taxed in any manner for the purposes of this Act.\textsuperscript{92}

The Indian constitution, like the Canadian constitution does not associate the state with any particular religion. Like the Preamble to the Canadian Bill of Rights, the Preamble to the constitution of India ‘secular to all its citizens, liberty of thought, expression, belief, faith and worship.” The framers of the Indian constitution turned down several suggestions to put the word ‘secular’ in Article 1. This was turned down on the ground that it will give India a negative bent on the matter of religion and, thus, restricts the sphere of state activity as in the case of the United States. The state, in India, does not shut its eyes to religion; instead it has an open door policy to all religions through equal treatment to all religions and religious tolerance. In India, religion is an integral part of the life of its people. The state cannot, therefore, divorce religion; rather religion helps the state in the propagation and revival of cherished moral values among its citizens.

\subsection*{5.2.4 Secularism State v. Individual}

It is important to know that relationship exists between the state and the individual. This set of relationship deals with the issue of citizenship, as the relation between an individual and the state is that of citizen. The nature of citizenship and the rights of citizen depend very much on the attitude of state towards religion. On this basis,

\footnotesize
\begin{itemize}
\item \textsuperscript{91} Recognitions and protection of Human Right and Fundamental Freedoms, 1960(Canadian Bill of Right).
\item \textsuperscript{92} Section 58 of the Parish and Fabrique Act, 1839.
\end{itemize}
we can classify the states into two broad categories – the theocratic or non-secular state and secular state.

Theocratic states are those states which have a state religion and as such, the citizenship is based on religion. Here too, there are two kinds of states. One category of states is where the citizenship is offered only to those who profess and practice a particular religion. Vatican City is an example of it. Here only those who are Roman Catholic can be the citizens, others are only visitors. Here, the profession or practice of no other religion is permitted.

The other kind consists of the very many non-secular states with their own state-religions. Most of the Islamic states come under this category. Here, religion is the basis of the award of full citizenship in such states, the profession and practice of other religions is permitted. But the person believing in the state-religion can only become the head of the state and head of the government. Followers of the religion, other than the state-religion, are treated as second class citizens or non-citizen residents. Thus, there are no rights to equality in citizenship. All citizens have to equal rights. Pakistan comes in this category, along with other Islamic states where the non-Muslims can live but they cannot, as citizens, enjoy equal rights with Muslims.

There is yet another type of theocratic states, where inspire of the fact that the state has a religion of its own, the basis of citizenship is secular. In such states, in the matter of civic rights, there is no distinction between the followers of the state-religion and those who do not follow the state-religion. Equality before law and equality of opportunity and status is granted to all the citizens. United Kingdom, Sri Lanka, Denkark and Norway come under this category.

In a secular state, the basis of citizenship has nothing to do with religion. Here, a citizen may profess and practice any religion or even may not profess and practice any religion. Thus, atheists and agonists have as much right to citizenship as the followers of any religion. Here, religion is a private affair of an individual and in this private affair he is totally free. Here again, there are two broad categories. In the first category are those states which guarantee freedom of conscience, that is, the right to profess any religion and to conduct religious worship or atheistic propaganda. In these states, one has an absolute freedom in the matters any religion and to conduct religious worship or atheistic
propaganda. In these states, one has an absolute freedom in the matters of religion. He can profess a religion and practice it, but not propagate it. The right against religious propaganda is also permitted it. The right against religious propaganda is also permitted. Thus, in the Communist countries, one can criticize or even ridicule religion. The new Soviet constitution has provided that one cannot incite hostility or hatred on religious grounds. Thus, a kind of negative right to religion is accepted in these countries.

In the second category come those states where the freedom of religion means that one can profess, practice and propagate one’s own religion, but he will have no right to do so by injuring the sentiments of others. A criticism of a religion even by the followers of that religion is hardly permitted. Thus, in such states, the right to religion is a positive right. India, the USA, Canada, Australia and Switzerland are some of the examples of such type of states.

5.2.5 Individual and Religion

In present context we should know the relationship exists between the individual and religion, this relationship deals with the freedom of religion. There are two aspects of religious freedom. One is the philosophical aspect of religion which can be explained as conscience, faith and belief. These are a difference between the meanings of these terms. Conscience refers to man’s subjective sense of right and wrong. Thus, freedom of conscience means that a person is free to entertain any belief or doctrine which he regards as conducive to his spiritual well being. The state cannot enquire into or take notice of man’s religious or moral beliefs. Faith and belief are based either on one’s convictions or on inherited patterns of thinking. They are not based on reason; sometimes, they are opposed to reason as they are based on intuition, sentiments, emotions and feeling and do not always appeal to one’s intellect. The other aspect of religious freedom is the practical side of the religion which includes the right to profess, practice and propagate one’s own religion or belief. Under Article 25 of the Indian constitution both the liberty of conscience and the

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93 S. Radhakridhan, An Idealists View of Life (London, 1960), 2nd edn., p. 84
right to profess, practice and propagate religion have been made subject to state – control. This can only be a case of inaccurate drafting.⁹⁴

Regarding the philosophical aspect of religion, the freedom of conscience and belief should not be subject to control on the grounds of public order, morality and health. It is solely the concern of an individual to believe or not to believe in any doctrine or faith. Therefore, many countries have granted absolute freedom of conscience, belief or faith to their citizens. The Swiss constitution provides, “liberty of conscience and belief is inviolable.”⁹⁵ The Syrian constitution of 1930 also states that there shall be absolute liberty of conscience.⁹⁶ Similarly; the constitution of Brazil provides that the liberty of conscience and creed is inviolable.⁹⁷ The constitution of West Germany provides, “The freedom of faith and conscience and the freedom of religious and ideological (Weltanschauliche) profession shall be inviolable.”⁹⁸ In spite of the inviolability of the right to freedom of religion, all these constitutions put “reasonable restrictions” on the practice of religion.

The Swiss constitution lies down that the free exercise of forms of worship is guaranteed within the limits compatible with public order and morality.⁹⁹ Likewise, the constitution of Brazil states that free exercise of religious sects is assured so long as they are not contrary to public order or good morals.¹⁰⁰ Similarly, the Syrian constitution provides that the state shall guarantee and protect free exercise of all forms of worship consistent with public order and good moral.¹⁰¹ The judicial decisions of the American courts also point to the identical views, as cited in the above provisions. Justice Roberts expressed a similar opinion, in his judgment in Contwell v. state of Connecticut, when he

⁹⁵ Article141 (7), The constitution of Brazil, 1946.
⁹⁶ Article 13, The constitution of syria1930.
⁹⁷ Article141 (7), The constitution of Brazil, 1946.
⁹⁸ Article 50of the constitution of Switzerland, 1848.
⁹⁹ Article141 (7), The constitution of Brazil, 1946.
¹⁰⁰ Article13, The constitution of Syria, 1930.
¹⁰¹ Article141 (7) of the Constitution of Brazil, 1946. (.
ruled, “Freedom of conscience and freedom to adhere to such religious organizations or forms of worship as the individual may choose, cannot be restricted by law.”

It may be observed that in actual practice, the right to freedom to profess, practice and propagate one’s own religion, belief of faith is nowhere in the world an absolute right or an absolute freedom. The free exercise of religion. Implies certain restrictions. The nationality of these limitations will be determined by the fact of their being conducive to public order, health and morality. This basis is accepted, universally, in all the constitutions where these restrictions are placed.

5.2.6 Secularism State

Under this type of the state, the relationship between state and religion is rather nonexistent as state maintains a neutral stand in matters of religion and thus, remains indifferent to religion. The United States of America is a typical example of this kind.

In the original US constitution, there is no mention of either a state-church or religion rights of the citizens. The constitution is silent on this matter and does not express anything directly. Clause 3 of Article 6 of the constitution provides that “No religious tests shall ever be required as a qualification to any office of public trust under the United States.” Similarly, the right to freedom includes religious freedom along with freedom of expression, speech and other things.

The above neutrality of the American state was further strengthened by the First Amendment of the constitution as early as 1791. The First Amendment laid down that “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” The manifest object of enacting this provision was to effect a complete separation of the state from church, and also that religion from now onwards is treated as a private concern of the citizen and the state has nothing to do with it.

At the national level, a secular state was set up but the states were not prevented to have an established church. Massachusetts and Connecticut maintained their state-church till the beginning of the nineteenth century. Besides, any state could theoretically. Impose, if it so desired, restrictions on the liberty of worship. The US Supreme Court finally completed the process of the separation through its judgment, delivered in a case,

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102 (1940) 310US296, 303.
103 The Constitution of United State of America, 1789
wherein it declared, “that religious liberty was part of the liberty, which according to the Fourteenth Amendment, and no person could be arbitrarily or unreasonably deprived of by the state.” The separation between church and state, achieved through the combined effect of the First and the Fourteenth Amendment, does not mean that it acts as a restriction on the sovereignty of the American state. The restriction is not one from any outside authority but one which still remains universal. It only prefers to act within certain limits. The church, though separate and autonomous, is still within it. But, some of its affairs, being of a secular nature, are liable to be regulated by the municipal laws.

In Australia also, the constitutional provision whose origin can be traced to the First Amendment of the US constitution, forbids that state from establishing any religion. Australian constitution provides. “The Commonwealth shall not make any law for establishing any religion.” According of F. Cumbrae Stewant, this section 116 forbids:

1. Declaring a certain religion to be true and making its principles formally binding on the state;
2. Reforming abuses in an existing religion, and controlling changed in it;
3. Assisting a religion in making its decree anathemata effective; and
4. Giving state assistance in the plantation of a religion in a new area.

Similarly, Article 2 of the Turkish constitution provides, “The Turkish state is Secular.”

The constitution of Japan provides, “The state and its organs shall refrain from religious education or any other religious activity.” The constitution further states that no religious organization shall receive any privilege from the state, nor exercise any political authority. In the Eire constitution, there is a premise that the state shall not make endowments for any religion.

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104 Cantell V, connecticurt (1940), 310US296.
106 The constitution of the commonwealth of Australia, 1900, Article116
107 Australian Law Journal (946)207,208
108 The constitution of Turkey, 1945.
109 The constitutional Japan, 1946, Article
110 Ibid. Article22.
111 The constitution of Eire, 1937, Article44 (2).
However, in the matter of freedom to propagate one’s own religion, the states maintain different stands. On the basis of these divergent stands, the states can be grouped into following categories.

(1) In the first category are included those countries where the constitution has specifically granted a right to propagate one’s own religion, belief or faith, subject to reasonable restrictions. It may be significant to note that there are very few constitutions in the world that have conferred this right. India can claim to be a pioneer in this field. The right to propagate one’s religion has been recognized by the constitution as a fundamental right.\(^{112}\) The countries that have followed India include the Commonwealth of Bahams,\(^{113}\) Barbodos,\(^{114}\) Botswana,\(^{115}\) Guyana,\(^{116}\) Grenad,\(^{117}\) Fiji;\(^{118}\) and the Islamic Republic of Pakistan.\(^{119}\)

(2) In the second group may be included the theocratic states which permit the right to propagate only their own state-religion and prohibit any or all other religious. Under this category, the predominantly Islamic states, like Malaya, can be included. The constitution of Malaya provides, “Every person has the right to profess and practice his religion and subject to clause (4) to propagate it.”\(^{120}\) Clause (4) of this article provides, “States law may control or restrict the propagation of any religious doctrine or belief among person professing the Muslim religion.

(3) In the third group, we may include the socialist countries which not only permit the freedom of religion to their citizen but also allow anti-religion and anti-God propaganda. The Soviet constitution states: “Citizens of USSR are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion and to conduct religious worship or atheistic propaganda.”\(^{121}\) The 1954 constitution of the People’s

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113 Article 22(10) of the constitution of the Commonwealth of Bahamas, 1963.
114 Section (19) 1 The constitution of Barbados1966
115 Section11 (1) of the Constitution of the Bostswana196
116 Section 11(1) of the constitution of the Guyana, 1966
117 Section 9(1)of the Grenada constitutionorder,1973
118 Section 11(1) of the constitution of Fiji, 1971
120 Article 11(1) of the Constitution of Malasia1957
Republic of China provided, “Citizens enjoy freedom to believe and freedom not to believe in religion and propagate atheism.”\textsuperscript{122} It may be observed that in the constitution of 1982, freedom to propagate atheism has been deleted. The constitution of Bulgaria provides: “The citizens are guaranteed freedom of conscience and creed. They may perform religious rights and conduct anti-religious propaganda.”\textsuperscript{123} Similarly, the constitution of North Korea lays down that citizens have religious liberty and freedom of anti-religious propaganda.\textsuperscript{124}

(4) In the last group, we may place those countries which permit the profession and practice of religion, but forbid conversion through propagation. The constitution of Greece can be cited as one such example. It provides that freedom of religious conscience is inviolable but states that “proselytism is prohibited.”\textsuperscript{125}

From the above survey about the status of right to religion in various countries, this inference could be drawn that the right to religious freedom has been accepted in principle in most of the countries of the world. However, there is difference of degree to which this religious freedom is granted by the state to its citizens.

To conclude, it may be said that the right to religion has been deemed to be a fundamental right, because it has been considered fundamentally important for the development of the personality of the individual as it imparts certain moral values to him, provides a code of right conduct and makes him a social man. Religion is essential both to man and society. Even in the primitive societies, there were certain norms and modes of conduct, some beliefs and faiths which helped to guide the moral life of the tribe. We have observed that the Communist countries did not ideologically believe in religion and had taken a hostile posture towards religion. But, with the advance of time, it has started dawning upon them that anti-religious propaganda or atheistic propaganda does not take them forward. As a matter of fact, they have seen the futility of anti-religion propaganda or atheistic propaganda does not take them forward. As a matter of fact, they have seen the futility of anti-religion propaganda and, hence, their attitude towards religion has been

\textsuperscript{122} Articles 28, of the People's Republic of China, 1954.
\textsuperscript{123} Article 52, constitution of Peoples Republic Bulgaria, 1971.
\textsuperscript{124} Article 54, Constitution of the Democratic People of Korea, 1973.
\textsuperscript{125} Article 15 (1) of the Constitution of Greece, 1975
revised and they have, except Soviet Union, done away with the anti-religion propaganda.

The universal importance of religion, both for the individual and the society has been recognized. The UN Charter also accepted its importance. In chapter IX of the UN Charter, it has been laid down, “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of the people, the United Nations shall promote … universal respect and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”126

The Universal Declaration of Human Rights proclaimed, “Everyone has a right to freedom of thought, religion or belief and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”127

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126 Charter of the United Nations, 1945, Article55 (3).
127 Article 18 and 19 of the Universal Declaration of Human Rights, 1948