CHAPTER - IX

CONCLUSIONS AND RECOMMENDATIONS

"Freedom of religion is the core of our culture.
Even slightest deviation shakes the social fibre."¹

There is hardly a country in the modern world which can be compared with India from the point of view of religious diversity. India is well known not only for religious diversity but also for religious toleration. Even though, India is perhaps one of the very few, if not the only country in history, which was partitioned on a religious basis. India is a democratic country built on the pillars of justice, liberty, equality and fraternity.

According to Census of India 2001, out of 1028 million population of India, 828 million (80.5%) have returned their religion as Hindus followed by 138 million (13.4%) as Muslims and 24 millions (2.3%) Christians. 19 million (1.9%) persons follow Sikh religion, 8 million (0.8%) are Buddhists and 4.2 million (0.4%) are Jains.²

Indian Constitution forbids promotion of any particular religion by the State. It enables the State to make grants for religious purposes without discriminating between followers of different faiths. In the case of S.R. Bommai v. Union of India³ the Apex Court declared the secularism as a basic feature of the Constitution of India.

The religion is the backbone of the society. It has a pervasive influence over mankind. The historical development of religious rights and evolution of fundamental rights are dealt with under Chapter II. The function of religion, purpose of religion and necessity of religion have been incorporated in this Chapter.

The genesis of fundamental rights can be traced from the term known as “Magna Carta” in England. Magna Carta crossed the oceans in the 17th and 18th centuries and reached in United States. The first ten amendments of the

³ (1994) 3 SCC 1
Constitution of United States, commonly known as the Bill of Rights, were not intended to lay down any novel principles of Government, but simply to embody certain guarantees and immunities.¹

Various theories have been advanced by jurists in regard to the origin and nature of fundamental rights. The earliest of these is the doctrine of *Jus naturae*. This doctrine means that every fundamental right is inherent in man. In fact, it existed prior to the origin of the state, and the state is not competent to violate it, but must inevitably recognize and protect it. The theory transplanted by Blackstone leads to conclusion that ‘the first and primary end of human laws is to maintain and regulate these absolute rights of individuals’. Accordingly, civil liberty ‘is no other than natural liberty so far restrained by human laws, and no further, as is necessary and expedient for the general advantage of the public.’²

The term “religion” is a dynamic concept. It varies form time to time and place to place. Although the freedom of religion is guaranteed under the Constitution of India to every person but the term “religion” has not been defined in the Constitution of India nor under any other statute.

No one can dispute that truth (satya) righteous conduct (dharm), peace (shanty) love (prem) and non-violence (ahinsa) are the core universal values accepted by all religions. Religion is most mis-used and misunderstood concept. Everyone have to be made aware that basic concept behind every religion is common, only the practices differ. It is totally wrong presumption that the knowledge of different religion would bring disharmony in the society. But it would be correct to say that the knowledge of various religious philosophies is material for bringing communal harmony as ignorance breeds hatred because of wrong notions, assumptions, preaching and propaganda by misguided interested persons.

The philosophical foundations of the Indian concept of secularism lie in the concept of Dharma which is generally confused with religion. The word Dharma has various meanings. It is a code of righteous conduct, of obligations and duties,

¹ Dennis v. United States, 341 U.S. 494
of law and justice. It also meant the sum total of traditions, obligations and customs which bound together all the members of a caste or class and were called Kula-Dharmaat Sanaatanaah. It could also mean a code of conduct in polite society. Lastly, it means the law of the land, both the fundamental and particular branches of law, such as the law governing the duties of husband and wife.

Dharma and Religion:

The concept of Dharma as a fundamental law has a secular evolution. The word Dharma is derived from the root dhri which means ‘to support’ or ‘to hold together’; Dharayati iti dharma. “They call it Dharma because it is a force which supports or holds together – because it holds the people and society together.” What precisely was the force that held the society together? Manu provided a guide for righteous conduct which held the society together. It consists of the Vedas, the Smriti and Sadachar – that is the righteous conduct established by custom and public opinion; and if these three fail to provide the guidance, then conduct according to conscience. These are the four attributes of Dharma. Manu specified the ten elements of good conduct – contentment, forgiveness, mental discipline, non-stealing, purity of thought and action, curbing of sensory organs, cultivation of wisdom, acquisition of knowledge, learning, truthfulness and the control of temper. Thus, the comprehensive content of Dharma is completely secular and there is not a word in it about religion, faith or belief.

On the other hand, the meaning of ‘religion’ is quite different from what the concept of Dharma connotes. Religion means “belief in divine or superhuman power or powers to be obeyed and worshipped as the Creator(s) and ruler(s) of the Universe. It is the expression of such a belief in conduct and ritual.” Religion

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1 In Bhagavadgita Arjun’s unwillingness to fight was due to his fear that a fratricidal war would annihilate the entire Kuruvansha and this in turn would destroy all the ancient traditions and laws of the Kuru (1:40).
2 The injunction of Manu Smriti “Speak the truth, provided it is pleasant, and do not speak the truth which is harsh and bitter but do not speak falsehood in order to be pleasant – this is the ancient conduct.” (IV : 138).
3 In Sabha Parva, Draupadi, when dragged into Kuru Sabha, challenges the legal right of her husband to stake his wife after he had lost his own freedom and castigates the elders for their unwillingness to state the law (dharma) correctly.
4 Mahabharat, Karna Parva (1:10)
5 Manu Smriti, II.12 (as quoted in Manu, Bhartiya Vidya Nbhavan)
6 Ibid., VI, 92.
generally implies a common sacred book and a Prophet to initiate it. In this sense, Islam, Christianity, Buddhism, Jainism, Sikhism, Zoroastrianism and Confucianism, etc. may be treated as religions. But, Hinduism is not a religion because it has neither a prophet nor a commonly accepted sacred book. Hinduism is a dharma, way of life, a way of good life. Religion is more metaphysically and mystically oriented than Dharma. Religion is more dogmatic and less rational. Religion is heavily weighed in favour of the life after death, but Dharma is concerned more with the life in this world than with the other world after the death.

Hence, it would be wrong to equate Dharma with religion. The two words are not really synonymous.

In *Commissioner, Hindu Religious Endowments Madras, v. Sri Lakhmindra Thirth Swamiar of Sri Shirur Mutt*, the Supreme Court laid down the following proposition of law:

“(1) Religion means “a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being.

(2) A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well.

(3) Religion need not be theistic.”

The center of gravity in religion has shifted from authority to experience.... The fundamental principles of mystical religion are now widely accepted, and are, especially with educated people, avowedly the main ground.

Constitutional Scheme:

Article 25 is made expressly subject to public order, morality and health and to the other provisions of Part-III of the Constitution of India dealing with fundamental rights. In other words, if under the guise of exercising freedom of conscience or religion, any citizen performs an act which is inconsistent with public order, morality, health or any fundamental right guaranteed to other citizens in the country, his act will not be protected by Article 25. Religion, therefore, either in

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1 AIR 1954 SC 282
2 Radha Krishnan, S. : The Hindu view of life, 1949 P.60 278
theory or in practice or in propagation must not contravene public order, morality, health and the other fundamental rights guaranteed by Part III. This is made expressly clear by the provisions of Clause (2) of Article 25 because this clause provides that the State can make laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice and yet their validity cannot be impeached on the ground that they contravene the freedom of religion. Similarly, if a measure of social reform or social welfare is introduced in any Legislature, it cannot be attacked on the ground that it offends against any religious tenets, beliefs or practices.

Article 44, one of the directive principles of State policy, states that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. This directive principle still remains to be implemented. But Indian democracy is naturally careful in this matter and would hesitate to take the step of adopting legislative processes to translate this directive principle into an actuality until Muslim public opinion is sufficiently educated and awakened and appreciates the need for the introduction of a common code. That, in substance, is the basis of India's claim to be a secular democracy.

There is another aspect of freedom guaranteed by Part III, and that has relation to cultural and educational rights. Articles 29 and 30 protect the interests of minorities in that behalf. Minorities are given a right to establish and administer educational institutions of their choice, and a constitutional guarantee has been given to each minority to preserve and sustain its distinct language, script or culture.

The constitutional ideal, which can be gathered form the group of articles in the Constitution under the chapters of fundamental rights and fundamental duties, is to create social conditions where there remains no necessity to shield or protect rights of a minority or majority.

The abovementioned constitutional goal has to be kept in view by the Minorities Commissions set up at the Central or State level. Commissions set up for minorities have to direct their activities to maintain the integrity and unity of India by gradually eliminating the minority and majority classes. If, only on the basis of a different religious thought or less numerical strength or lack of health,
wealth, education, power or social rights, a claim of a section of Indian society to the status of “minority” is considered and conceded, there would be no end to such claims in a society as multi religious and multi linguistic as India is. A claim by one group of citizens would lead to a similar claim by another group of citizens and conflict and strife would ensue. As such, Hindu society being based on caste, is itself divided into various minority groups. Each caste claims to be separate from the other. In a caste-ridden Indian society, no section or distinct group of people can claim to be majority. All are minorities amongst Hindus. Many of them claim such status because of their small number and expect protection from the State on the ground that they are backward. If each minority group feels afraid of the other group, an atmosphere of mutual fear and distrust would be created posing serious threat to the integrity of our nation. That would sow seeds of multinationalism in India. It is, therefore, necessary that the Minorities Commissions should act in a manner so as to prevent generating feeling of multinationalism in various sections of people of Bharat.

Secularism:

Freedom of faith and religion is an integral part of social structure. Such freedom is not a bounty of the State but constitutes the very foundation on which the State is erected. Human liberty sometimes means to satisfy the human needs in one’s own way. Freedom of religion is imparted in every free society because it is a part of the general structure of the liberty in such a society and secondly because restrictions imposed by one religion would be an obstacle for others. In the past religious beliefs have become battlegrounds for power and root cause for suppression of liberty. Religion has often provided a pretext to have control over vast majority of the members of the society. Democratic society realizes folly of the vigour of religious practices in society. Strong religious consciousness not only narrows the vision but hampers rule of law. The Founding Fathers of the Constitution, therefore, gave unto themselves “we people of India”, the Fundamental Rights and Directive Principles of State Policy to establish an egalitarian social order for all sections of the society in the supreme law of the land itself. Though the concept of “secularism” was not expressly engrafted while making the Constitution, its sweep, operation and visibility are apparent from fundamental rights and directive principles and their related provisions. It was
made explicit by amending the preamble of the Constitution 42nd Amendment Act. The concept of secularism of which religious freedom is the foremost appears to visualize not only of the subject of God but also an understanding between man and man. Secularism in the Constitution is not anti-God and it is sometimes believed to be a stay in a free society. Matters which are purely religious are left personal to the individual and the secular part is taken charge by the State on grounds of public interest, order and general welfare. The State guarantees individual and corporate religious freedom and deals with an individual as citizen irrespective of his faith and religious belief and does not promote any particular religion nor prefers one against another. The concept of the secular State is, therefore, essential for successful working of the democratic form of Government. There can be no democracy if anti-secular forces are allowed to work dividing followers of different religious faith flying in at each other's throats. The secular Government should negate the attempt and bring order in the society. Religion in the positive sense, is an active instrument to allow the citizen full development of his person, not merely in the physical and material but in the non-material and non-secular life.¹

It is clear from the constitutional scheme that it guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasizing that there is no religion of the State itself. The Preamble of the Constitution read in particular with Articles 25 to 28 emphasizes this aspect and indicates that it is in this manner the concept of secularism embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional validity of any legislation on the touchstone of the Constitution. The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution.²

A secular state is not easy to define. According to the liberal democratic tradition of the west, the secular state is not hostile to religion but holds itself neutral in matters of religion. Secularism became the means and consciously pursued for full practical necessities of human life is liberate the human spirit from bondage, ignorance, superstition which have held back humanity. The goal of

¹ S.R. Bommai v. Union of India, (1994) 3 SCC 1 at P.163
² Ismail Faruqui v. Union of India (1994) 6 SCC 360 at P. 403
every civilized democratic society is the maximization of human welfare and happiness which would be best served by a happy organization.¹

In a pluralist secular polity law is perhaps the greatest integration force. A cultivated respect for law and its institutions and symbols; a pride in the country’s heritage and achievements; faith that people live under the protection of an adequate legal system are indispensable for sustaining unity in pluralist diversity.²

Our country is a free democratic and secular country. In our country people of all religions, castes and communities are equal under the Constitution vide Article 14 to 18, and they have a right freely to practice their religion, vide Article 25. This country does not belong to Hindu alone. It belongs equally to Muslims, Christians, Buddhists, Jains, Parsis, Sikhs, Jews etc. and all are equal under the law. Also, it is not that only Hindus can lie in this country as first rate citizens while others can lie only as second rate citizens. That is not so. In our country all citizens are and are entitled to live as first rate citizens. It is the greatness of founding fathers who made the constitution that at the time of independence in 1947 when the sub-continent was engulfed in religious madness they insisted that our country shall not be declared as a Hindu state. This was indeed very difficult to do at that time, because when passions are inflamed it is difficult to keep cool mind. There must have been tremendous pressure on our founding fathers to declare India a Hindu state, particularly since Pakistan had declared itself on Islamic State. It is the greatness of founding fathers that they kept a cool mind and resisted these pressure and provided for a secular state in India under our Constitution.³

Chapter IV contemplates scope and extent of Religious Rights under Part III of the Constitution of India. The primary purpose of this chapter is to recapitulate and summarize the important points discussed throughout the dissertation and highlight the emerging issues in the context of my topic “Fundamental Right to Freedom of Religion : A Socio-legal Study”. As already mentioned, the present work is primarily a study on the law having bearing on various issues of religion related to the Constitution of India. The Constitution of India, a landmark document in the history of India, has been given to the people of India by the

¹ S.R. Bommai v. Union of India (1994) 3 SCC 1
² Ismail Faruqui v. Union of India (1994) 6 SCC 36

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people keeping in view the importance of the religion in human life. The word ‘religion’ or ‘religious’ has been used as many as 30 times under Part III of the Constitution of India. It reflects the implication of religion under the Constitution. However, it is not only the document upon the issues of religion but a number of enactments have been passed dealing with various issues of the religion. There seems no full stop on the legislation upon religion till date.

Besides various other viewpoints and propositions of law, at least nine basic theme have run through the present dissertation. First, it has been seen that the right to freedom of religion as provided in the Constitution is being misused by the communities enjoying religious majority in the world. Secondly, provisions of Directive Principles of State Policy under the Constitution are being underestimated and article 44 is one of the such provision. Thus, groups of different religion are not being treated equally. Thirdly, equality of freedom (including religion) provided under the Constitution has not been judiciously protected. Minority institutions fully funded by the Government are treated differently. Fourthly, cow is being ill-treated as an animal for the purpose of Hindu religion only are not as an agricultural animal. Fifthly, problem of religious subsidy by the Government. Sixthly, problem of terrorism and violence and growth of 'Madarassas' in border areas. Seventhly, problem of increasing religious processions and religious activities everywhere and thus violation of Fundamental Rights of people. Eighthly, the prevalence of devdasi tradition in temples is a bad name for the country.

It is evident that the right to freedom of religion has been provided in the Constitution of India with certain restrictions. The issue of religion is one of the most widely covered/used term in all type of enactments. Criminal law, Civil law, Taxation, Election Law and Armed Forces enactments etc. all have some short of references on the religious provisions.

This study also reveals that Indian Courts have also dealt various issues related to religion.

Where there is plurality in a society, the object of law should be not to split the minority group which makes up the society, but to find out political, social and legal means of preventing them from falling apart and so destroying the society of
which they are members. The attempt should be made to assimilate the minorities with the majority.¹

**Equality of Religion:**

1. The principle of ‘equality of religion’, being an essential facet of egalitarianism, has, thus, found a place in the Constitution of India. Religious tolerance and equal treatment of all religious groups are essential parts of secularism. Indian Constitution has been built, *inter alia*, on such secular edifice. Though the term ‘secularism’ has not found expression in the original Constitution as adopted in 1950², the principles of secularism were embedded in various parts of our Constitution, in particular, the preamble, fundamental rights and directive principles of state policy. More particularly Articles 25, 26, 27 and 28 provide guarantee to various facets of right to freedom of religion with inbuilt restrictions and limitations thereof. It deals with these core concepts of freedom of religion. It is the most basic of various other concomitant rights of religious freedom.

Article 25 of the Constitution guarantees the right to every person, whether citizen or non-citizen, freedom of conscience and right to freely profess, practice and propagate religion. However, the Constitution has not granted these freedoms in absolute terms. They are made subject to: (i) Public order, morality and health; (ii) Other provisions of Part III i.e., other fundamental rights (iii) any law, whether existing or future, providing for regulation or restrictions of an economic, financial, political or other secular activity which may be associated with religious practice, and (iv) any law, whether existing or future, providing for social welfare and reform.

**Recommendation:**

In Article 25 of the Constitution of India, the following changes are suggested:

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² The term ‘secular’ was inserted to the Preamble of the Constitution by the Constitution (Forty-second Amendment) Act, 1976
"Explanation II to Article 25 should be omitted. For Sub-clause (b) of clause (2) of Article 25 "Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus" should be reworded to read as follows:-

(b) Providing for social welfare and reform or the throwing open of Hindus, Sikh, Jain and Buddhist religious institutions of a public character to all classes and sections of these religions."

**Freedom of Religious Conversion**

2. One of the most controversial substantial questions associated with freedom of religion for the last several decades in India is, whether ‘right to freedom of conversion’ is concomitant of ‘right to freedom of religion’ envisaged in Article 25 of the Constitution. There was a lot of sound and fury in the Constituent Assembly over the issue of religious conversion. Even before independence, many princely states had enacted Anti-conversion Laws. Because Britishers propagated Christianity among tribal by way of temptation. Missionaries were successful in converting large portion of tribal population into Christianity to divide not only Hindus-Muslims but within the Hindu community. Till date Muslim conversion and Christian conversion is continuing and they get international support in money, moral, publicity and view etc. from their respective community in world. British ruler enacted a large number of laws, however, anti-conversion laws were not even considered.

After independence, many states have enacted Anti-Conversion Laws in India. Many of them have been challenged for their constitutional validity. The Apex Court has upheld that these state Acts are not violative of Article 25 of the Constitution. The apex Court also held the provisions of reservations for the Scheduled Castes, Scheduled Tribes and Other Backward Classes cannot be enacted to the Christian and Muslim converts.

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1 Article 25...... Explanation-II – In sub clause (b) of Clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.
2 The National Commission to Review the working of the Constitution.
Unlike some of the International Instruments\(^1\), which expressly recognize freedom of conversion there is no express provision referring to the ‘conversion’ in the Constitution of India. Yet, the plain reading of Article 25 implies that the ‘freedom of conversion’ emerges from ‘freedom of conscience’.

H. M. Seervai\(^2\) himself has noted that the freedom conferred in Article 25(1) is subject to “public order, morality and health”. ‘Public order’ is the subject of a specific legislative entry in entry 1 of List II; ‘public health’ is a subject of entry 6 of List II. However, ‘public morality’ is not the subject of any specific entry, though it plays a larger role both in civil and criminal law. Thus, ‘public morality’ being one not found expression in any list; it would well be covered under entry 97 of List I.

Religious conversion has got wide implications on institutions of marriage, adoption and succession, etc. These are covered under entry 5 of List III viz., concurrent list. As stated above, the union legislature has got primacy over the states legislature to make laws on any of the entries in the concurrent list. This, places the parliament in a better position to make laws dealing with the implications of conversion on marriage, adoption and succession. Reference may also be made to, *Sarala Mudgal v. Union of India*\(^3\), where the apex court has suggested the Union Government to appoint a Committee to enact a Conversion of religion Act to check the abuse of religion by any person. This only envisages that ‘religious conversion’ can be a subject matter of union legislation for these purposes as well. But, conceivably there would not be any conflict between law made by the state legislature for the purpose of preservation of public order and the law made to define the implications of conversion on marriage, adoption and succession.

Thus, under the scheme of our Constitution both the Union legislature as well as the states legislatures can regulate religious conversion, but for different purposes.

The Apex Court has always been guided by the Latin Maxim – *boni judicis est ampiare juristic – Lionem*, that law must keep pace with society to retain its

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\(^1\) Article 18 of UDHR; Article 18 of ICCPR, 1966. Right to Conversion, under these instruments, connotes individual right of a person to quit one religion and embrace another voluntarily. They do not envisage right of a person to convert another to one’s own religion.


\(^3\) (1995) 3 SCC 635

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relevance, for if the society moves but law remains static, it shall be bad for both. In order to create a civil society in which respect for human dignity is the cornerstone of its functioning, the Supreme Court has zealously protected the human rights of individuals.

In view of the enormous diversity of our population in terms of race, language, religion, community, caste and culture, the Supreme Court has had the onerous task of protecting the ideals of secularism and respecting the sensitivities of all groups of people, and all this without compromising the need to impart real justice in the circumstances of the case. The *Mohd. Ahmed Khan v. Shah Bano*\(^1\) is an example of this.

**Recommendation:**

The anti-conversion laws that are in force in various states, such as, in Madhya Pradesh, Chhatisgarh, Arunachal Pradesh, Tamil Nadu, Gujarat, Rajasthan and Himachal Pradesh are not violative to Article 25 of the Constitution. Parliament has the requisite power to enact similar law, therefore, Parliament should pass an Anti-conversion Act to prohibit conversion by use of force, fraud or allurement.

**Environmental Pollution:**

3. Restricting the noise pollution is not any way violate the religious rights of any person as enshrined under Article 25 of the Constitution. Diwali is considered as a festival of lights, not of noises. Shelter in the name of religion cannot be sought for, for bursting crackers, and that too at odd hours.\(^2\)

**Recommendation:**

There is need for specific legislation to control and prevent noise pollution. Undoubtedly, Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act, 1986, Noise Pollution (Regulation and Control) Rules, 2000 are in field. Yet, compared with the legislation in developed countries India is still lagging behind in enacting adequate and scientific legislations. We need to have

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\(^1\) (1985) 2 SCC 556  
\(^2\) Noise Pollution (v), In Re (2005) 5 SCC 733
one simple but specific and detailed legislation dealing with several aspects referable to noise pollution in the name of religion and providing measures of control therefore.

**Uniform Civil Code:**

4. Article 25 guarantees religious freedom whereas Article 44 of the Constitution seeks to keep away religion from personal law. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. It is unjust for the state to discriminate between Hindus and Muslims. The traditional law of Hindus has been codified and modernized. The personal law of Muslims are not yet codified and modernized. They are governed by the Shariat as their personal law. Just as Muslim law of crimes and evidence is no more applicable and a common law of crime and evidence is applicable to all citizens, the time has come to enact and to enforce the common set of laws in regard to marriage, divorce, adoption and succession to all citizens irrespective of their religious persuasion. Without a uniform set of laws the people of India will not amalgamate to form an integrated nation.

Moreover, the different treatment for any religious group is violative of the International Convention on Civil and Political Rights, 1966 and The International Convention on the Elimination of All forms of Discrimination against Women, 1979. In this regard India’s binding obligations under International Law have also started attracting attention of legal experts and others.

A Common Civil Code will help the cause of the national integration by removing the contradiction based on ideologies. The Apex Court has in many cases favoured for framing a Common Civil Code in the country.\(^1\) Incidentally, Goa is the only State in India which has uniform civil code (The Portuguese Civil Code, 1867).

**Recommendation:**

For the benefit of equal rights to women in regard to marriage, divorce, adoption and succession, there is need for uniform legislations. So uniform civil

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\(^1\) Daniel Latiffe v. Union of India (2001) 7 SCC 740
code should be enacted for the protection of the oppressed, promotion of national unity, secularism, solidarity and human rights of women.

Thus introduction of Uniform Civil Code will not cause any extra cost to the state.

Uniform Civil Code containing inter-alia following provisions should be enacted by the Parliament under Art. 44:

1. Polygamy in all cases should be banned.

2. Divorce law must be in favour of women, because they are generally not economically independent, therefore, the amount of maintenance must be reasonable and adequate for divorced women and her children.

3. Women should be recognized as natural guardian of children.

4. Marriages\(^1\) in all cases should compulsorily be registered with the Registrar of Marriages.

5. Dowry and all gift items given at the time of marriage should compulsorily be disclosed before the Registrar of Marriages. The list must contain market value of goods gifted. It will reduced dowry disputes between bride and groom in future and it will also help in restraining black money in marriages.

Implementation of these suggestions will solidify national unity and national integration and socio-religious harmony in the country.

**Minority vis-à-vis majority Religious Rights:**

5. Minorities have right to open a medical or engineering college which has no relation with preservation of culture. Non-religious and non-cultural education can not be segmented into minority and majority. It is not conducive to the growth of a secular and integrated society. Education which is treated by minorities as an industry with a profit motive has no claim to minority protection. It is high time that the veil should be lifted and the divisive anti-national activities run on the cover of minority rights should be stopped.

\(^{1}\) Seema v. Ashwani Kumar, AIR 2006 S.C. 1158.
Articles 29 and 30 aimed the cultural, religious and linguistic rights of the minorities. The institutions established for commercial purposes can lay no claim for being protected under Article 30(1). Similarly, most of the so called minority institutions are imparting education through English, whereas, no section of muslim and Christians in India has English as its mother-tongue. So there is no need for such unwarranted discrimination against other religious groups. Muslims of some states like Andhra Pradesh, Karnataka, Tamil Nadu have established a number of ‘minority managed professional institutions’ which have opened up avenues for higher education for Muslims and other minorities. Government financial aid to these institutions can be linked to low tuition and other fees and partly to diversity of student population.  

Recommendation:  

Majority and minority must be treated equally where financial aid is given by the State. No special protection of rights should be given to any community which suppress the overall national development. Justice should be sought for all poor students irrespective of religion. Accordingly, Aligarh Muslim University Act, 1920, National Commission for Minority Educational Institutions Act, 2004 and Maulana Azad National Urdu University, 1996 should be amended. Such amendments are certainly need of the time.

Prohibition on Slaughter of Cow and its Progeny:  

6. The economy of the country is still predominantly agricultural. In the agricultural sector, use of animals for milch, draught, breeding or agricultural purposes has great importance. It has, therefore, become necessary to emphasise preservation and protection of agricultural animals like bulls and bullocks. With the growing adoption of non-conventional energy sources like biogas plants, even waste material has come to assume considerable value. After the cattle cease to breed or are too old to do work, they still continue to give dung for fuel, manure and bio-gas, and therefore, they cannot be said to be useless. It is well established that the backbone of Indian agriculture is, in a manner of speaking, the cow and her progeny and have on their back, the whole structure of the Indian agriculture and its


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economic system\(^1\).

The Apex Court has also held\(^2\) that sacrifice of cows on the occasion of Bakrid was not an essential part of Muslim religion and the state may prohibit cow slaughter. Some of the states have done so.

**Recommendation:**

The following should be implemented by a Central Legislation –

1. The prohibition on slaughter of the cow and its progeny, which would include bull, bullocks, etc. should be included in fundamental rights or as a constitutional mandate anywhere else, as an article of Constitution. It should not be kept only in the directive principles/fundamental duties as neither of these are enforceable by the courts.

2. Parliament should then make a Central law, applicable to all the States, prohibiting slaughter of the cow and its progeny. Violation of the law should be made a non-bailable and cognizable offence.\(^3\)

**Regularisation of Religious Subsidy:**

7. Although Indian secularism recognizes the institution of religion, it does not permit the state to sponsor or promote any religious activity. This finds expression in the Constitution, particularly in Part III that deals with the fundamental rights. Right to freedom of religion, provided in Articles 25, 26, 27 and 28, guarantees religious freedom to all citizens of India. All religions are equal before the state and no religion can be given preference over the other. Imparting of religious education in state-funded educational institutions and levying special taxes to support any particular religion are prohibited. A secular state cannot directly or indirectly, by way of subsidy or otherwise extend financial assistance to such activities. Muslims are certainly entitled to go to Haj at their own expense, but it is not right for a secular state to defray such expense from the public exchequer directly or indirectly. This will be clearly contrary to the spirit of Article 27, which

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\(^2\) AIR 1958 SC 731

\(^3\) The National Commission on Cattle.
prohibits compelling any person to pay taxes for the promotion or maintenance of any particular religion or denomination.

**Recommendation:**

In view of the above study, it is felt that the time has come to consider that religious pilgrims should not be given any subsidy to promote secularism and a law may be enacted to stop this practice/to regulate it in clear terms.

**Religious Instructions:**

8. As education has now been brought to the concurrent list by forty-second Amendment to the Constitution, a national consensus pertaining to National Policy on Education should be evolved. The expression “religious instruction” used in Article 28(1) has a restricted meaning. It conveys that teaching of Custom, ways of worship, practices or rituals can not be allowed in educational institutions wholly maintained out of state funds. It does not prohibit study of different religions existing in India and outside India. If religion is studied with the same academic regiour as say science is, there would be less space for misunderstanding prevalent in the world today. Some Islamist fundamentalism is advocating to impart religious training to the militants in ‘Madarsas’ in border areas.

**Recommendation**

We should consider the need of a central legislation to regulate the construction of religious institutions and religious instructions in view of the secular nature of the State (India).

**Regularisation of Religious Activities:**

9. A religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites are essential according to the tenets of religion. Essential part of a religion means the core beliefs upon which a religion is founded. What constitutes an integral or essential part of a religion has to be determined with reference to the doctrines, practices, tenets, historical background etc. of the religion. Test has to be applied by courts whether a particular religious practice is regarded by the community practicing that particular practice as an integral part of
the religion or not. The Apex Court time to time in various cases has provided
terms and conditions to regulate the religious procession and perform other
religious activities to preserve public peace and to avoid damages to public
proportions and religious sentiments.

Recommendation:

There is a need to consider for making law to regulate religious processions
and religious activities in public place by elaborating the constitutional provisions.

Prohibition of Devadasi Tradition:

10. The dedication of young girls to temples and goddess, that is, the devadasi
tradition, still prevalent in many parts of India, continues to perpetuate child
prostitution. The Bombay Devadasi (Protection) Act, 1934, the Karnataka
Devadasi (Prohibition of dedication) Act, 1982 and Andhra Pradesh Devadasi
(Prohibition of Dedication) Act, 1987 have proved completely inept at preventing
the pernicious practices of Devadasi. Lack of political will and other vested
interest in society have guaranteed the continuance of this sinister practice.

Recommendation:

The Bombay Devadasi (Protection) Act, 1934, the Karnataka devadasi
(Prohibition of Dedication) Act, 1982 and Andhra Pradesh Devadasi (prohibition of
Dedication) Act, 1987 call for strict implementation in letter and spirit to protect
young girls against sexual abuse, which is ironically sanctioned by religion, Custom
and tradition. The provisions of Immoral Traffic (Prevention) Act, 1956 should be
strictly implemented to deal with the prostitution.

Constitution of Indian Council on matters related to religion, language,
culture, caste, sex, place of birth and descent:

11. Religion has played an influential role. History demonstrates that religious
teachings and traditions of man have contributed to, or in some cases even caused,
humanity problems.
Religions have sparked military and persecution campaigns that have brought terror, misery, destruction, poverty, torture, forced confessions, compulsory conversions and countless deaths.

Secularism is sweeping in notions, and has itself become a religion. However, the importance of religion cannot be underestimated. There is no place in any field of legislation, where religious matters have not influence the legislatures.

Religious confusion seems everywhere (world over). Now the issue of reservation is not confined in government’s job but almost all field, viz. education, jobs in private sectors etc. and religion is one of the major issue in this field also. Justice Mishra Commission has proposed that Dalit converts to Christianity and Islam deserves reservation. National Commission for Scheduled Castes recommended that a quota for Dalit Christians should not eat into the existing 15% share of Scheduled Castes. The apex Court imposed 50% cap on the total reservation. Recent agitation in Rajasthan by a Community to get the benefit of reservation is well known. So what is the solution? Thus there is a great need of to constitute a Council to consider the various complicated issues of religion. This Council should be constituted by retired Supreme Court Judge, lawyers, social workers and religious leaders of all major religions. It will help to fulfill the solemn obligation of the State for equal treatment of all religions and to fulfill to belief that secular world is the answer.

**Amendment in the Indian Penal Code:**

Section 153A of Indian Penal Code, 1860 provides the punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc. and doing acts prejudicial to maintenance of harmony. This punishment of imprisonment should be substituted to “five” years in place of “three” years.

For the offence committed in place of worship, etc. under sub-section (2) of section 153, the punishment with imprisonment should be substituted as “seven” years in the place of “five” years.
For the offence committed under section 153B, the punishment with imprisonment should be substituted to “five” years in place of “three” years as the matter has great importance of national integration.

In Chapter XV of the Indian Penal Code titled “Of Offences Relating to Religion” the punishment of imprisonment under sections 295, 295A, 296, 297 and 298 i.e. “two years”, “three years”, “one year”, “one year” and “one year” should be substituted “Three years”, “five years”, “two years”, “two years” and “two years” respectively. Corresponding changes may be done in Criminal Procedure Code, 1973 also.

Role of Government:

I am urging the Government of India to place reform of law relating to religious matters high on its legislative agenda as I believe that the proposals would support and facilitate the secular image of the country. It is also urged that the Government should work to develop active learning tools and techniques to raise awareness, generate discussion and introspection among the people on good characteristics of all religions.

Role of a Judge:

The Judges should respond to the human situations to meet the felt necessities of the time and social needs, make meaningful the right to life and give effect to the constitution and the will of the Legislature. The court as the vehicle of transforming the nation’s life should respond to the nation’s needs and to interpret the law with pragmatism to further public welfare to make the constitutional animations a reality. Common sense is always served in the court’s ceaseless striving as a voice of reason to maintain the blend of change and continuity of order which is sine quo non for stability in the process of change in a parliamentary democracy. In interpreting the Act, the judge should be cognizant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act and interpret the provisions of the Act in the light of equality, social integration a fruition and make fraternity a reality.

Role of Media:
1. Media can play a significant role in addressing and advocating the prevention of furore on religious abuse through an intensive media campaign.

2. Systematic publication of articles in newspapers and magazines on the subject of religious frenzy and exploitation of illiterate should be done to generate awareness in society.

3. Programmes on Radio and Television should be broadcast on the rights of religion and protection of these rights.

4. Theatre can be identified as a tool for development and promotion of religious rights.

Hard work and merit are the main courses of progress. It can be achieved even without state protection. Shining example before us is of Parsee Community. R.K. Sidhawa in Constituent Assembly openly turned down with thanks any concession to Parsee Community. This community has made exemplary progress in every field of life and contributed to the nation without any special protection from the state. Dhar, dealt in detail of minority rights with reference to national integration and unity.¹

As every religion is founded upon certain tenets, and beliefs and adheres to certain practices, to what extent the freedom of religion should be permitted assumes great relevance and importance in a democratic society founded upon Rule of law. In a theocratic State, law and religion slide into each other and freedom for persons professing a faith other than the State religion is always minimal. They are treated as second class citizens and denied equality in many respects with persons belonging to the State religion. It is only in countries where the notions of Western Democracy have taken roots the society became open and freedom of religious belief has come to be recognized as an established value. In different democracies this freedom manifests in different dimensions.

For controlling the world animal instinct in human beings and for having a civilized cultural society, religions have come into existence. Religion is the foundation for value-based survival of human beings in a civilized society. The

¹ Dhar, Panna Lai: Minority Rights and National Integration.
force and sanction behind civilized society depends upon moral values. The philosophy of co-existence and how to co-exist is thought over by the saints all over the world which is revealed by various philosophers. How to co-exist, not only with human beings but all living beings on the earth, may be animals, vegetation and the environment including air and water, is thought over and discussed by saints and leaders all over the world which is reflected in religions. Religious values are backbone of social fabric as it is neither violative of constitutional or legal rights nor it offends moral values.

It is hoped that if the aforesaid recommendations are adopted, it will go a long way to meet the various problems which arise in the area of religious freedom. This research study is an humble effort just as a drop in ocean in words of Chanakya.

अनन्तशास्त्रं बहुदेवित्वम् ॥
अल्पश्च कालो बहवाच्च विन्या: ॥
यत्सार्थूंतं तदनामितां ॥
हंसो यथा क्षीर मियामुकिनम् ॥

The sources of learning are endless
The knowledge to be derived is immense
The time is very short and full of obstacles
The very essence of them has to be chosen
Like swan picks up milk lying mixed with water.