CHAPTER - II

HISTORICAL DEVELOPMENT OF RELIGIOUS RIGHTS
AND EVOLUTION OF FUNDAMENTAL RIGHTS

"The law has its epochs of ebb and flow, the flood tides are on us. The old order may change yielding place to new; but the transition is never an easy process."

Justice Cardozo

From the time immemorial, religion has exercised a pervasive influence over mankind. Though the Indian Constitution expressly incorporates freedom of religion as a Fundamental Right, the term religion has not been defined. The term is not susceptible to any precise definition and the attempts made in the past in this regard have proved futile. In practice, a religion is a particular system, or a set of systems, in which doctrines, myths, rituals, sentiments, institutions and other similar elements are interconnected.

A. DEVELOPMENT OF RELIGIOUS RIGHTS:

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. Religions of the East and the West, religions ancient and modern, religions which claim the adherence of millions as well as those which have relatively few followers – all these find their happy home in India and have been existing more or less in peace and harmony. They have always had their impact on Indian society, its economy, its politics and administration. While religious influence on the whole has been to the advantage of India, especially from the point of view of her cultural enrichment, religion has also played havoc with the country’s unity and integrity. India is perhaps one of the very few, if not the only country in history, which was partitioned on a religious basis.

2 Ibid.
After two centuries of foreign domination India became free in 1947. And that gave her the opportunity to organize a government of her own choice. It was this onerous task that was entrusted to the Constituent Assembly of India which had in it some of the most eminent men of their time. Through them the Assembly reflected not only the ideals and aspirations of the people of India at that time but also their moods and sentiments. They wanted to make India a democracy built on the pillars of justice, liberty, equality and fraternity. They wanted also to make India a secular democracy. This was necessary because of the religious diversity which was a dominant feature of India.

Despite the creation of Pakistan in 1947, there were still over 40 million Muslims in India scattered all over the country. There were in addition, some 10 million Christians, 5 million Sikhs, and sizeable numbers of Parsees, Jains, Buddhists, Jews and others. Those who professed the Hindu religion formed an overwhelming majority, some 85 per cent of the total population. If they chose to act together as a religious group in representative institutions, they could pass any law they liked and ensure absolute control over the governmental machinery in all its activities. A tendency toward such an attitude would have undermined the confidence of the religious minorities and democracy in India might soon have become a label without meaning and a form without substance.

The framers of the Constitution, therefore, thought of suitable and adequate guarantees to safeguard the interests of religious minorities in order to infuse confidence and a sense of security in them. The idea of guaranteed fundamental rights was the device that attracted them for this purpose. The right to freedom of speech and expression, and the right to form associations and unions are also rights which guarantee religious speech and expression and the right to form religious associations and unions. But the Constituent Assembly was not satisfied with such provisions alone in its bid to infuse complete confidence in the religious minorities. It went a step further and adopted a separate group of special provisions dealing solely with the right to freedom of religion. The freedoms provided under Articles 25, 26, 27 and 28 are conceived in most generous terms to the complete satisfaction of religious minorities. This was evident from the statements of their representatives in the Constituent Assembly as well as those outside. These provisions were in fact the result of an agreement with the minorities, almost
unanimously arrived at in the minorities Committee constituted by the Constituent Assembly. Such unanimity created an atmosphere of all-round harmony and confidence in all concerned. Further, these provisions embodied in detail one of the major objectives of the Constitution as declared in the Preamble: “to secure to all its citizens…….liberty of thought, expression, belief, faith and worship.”

It (Secular State) does not mean that we shall not take into consideration the religious sentiments of the people. All that a secular State means is that this Parliament shall not be competent to impose any particular religion upon the rest of the people. That is the only limitation that the Constitution recognizes.”

According to H.V. Kamath who was an active participant in the deliberations of the Constituent Assembly:

When I say that a State should not identify itself with any particular religion, I do not mean to say that a State should be anti-religious or irreligious. We have certainly declared India to be a secular State. But to my mind, a secular State is neither a God-less State nor an irreligious nor an anti-religious State.

Explaining the concept of a secular State, Lakshmi Kant Maitra, another active member of the Constituent Assembly, said: By secular State, as I understand it, is meant that the State is not going to make any discrimination whatsoever, on the ground of religion or community against any person professing any particular form of religious faith. This means in essence that no particular religion in the State will receive any state patronage whatsoever. The State is not going to establish, patronise or endow any particular religion to the exclusion of, or in preference to, others and that no citizen in the State will have any preferential treatment or will be discriminated against simply on the ground that he professed a particular form of religion. In other words, in the affairs of the State, the professing of any particular religion will not be taken into consideration at all. This I consider is the essence of a secular State.

The significance of secularism as it refers to the State in India has been

2 Constituent Assembly Debates. Vol.VII, p. 825
3 Constituent Assembly Debates Vol.VII. p. 831.
When India is said to be a secular State, it does not mean that we reject reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or that the State assumes divine prerogatives. Though faith in the Supreme is the basic principle of the Indian tradition, the Indian state will not identify itself with or be controlled by any particular religion. We hold that no one religion should be given preferential status, or unique distinction, that no one religion should be accorded special privileges in national life or international relations for that would be a violation of the basic principles of democracy and contrary to the best interests of religion and government. This view of religious impartiality, of comprehension and forbearance, has a prophetic role to play within the national and international life. No group of citizens shall arrogate to itself rights and privileges which it denies to others. No person should suffer any form of disability or discrimination because of his religion but all alike should be free to share to the fullest degree in the common life. This is the basic principle involved in the separation of Church and State. The religious impartiality of the Indian State is not to be confused with secularism or atheism. Secularism as here defined is in accordance with the ancient religious tradition of India. It tries to build up a fellowship of believers, not by subordinating individual qualities to the group-mind but by bringing them into harmony with each other.¹

Secularism as contemplated by the Constitution of India has the following distinguishing features: (1) The State will not identify itself with or be controlled by any religion. (2) While the State guarantees to everyone the right to profess whatever religion one chooses to follow (which includes also the right to be an agnostic or atheist), it will not accord any preferential treatment to any of them. (3)

No discrimination will be shown by the State against any person on account of his religion or faith. (4) The right of every citizen, subject to any general condition, to enter any office under the State will be equal to that of his fellow-citizens. Political quality which entitles any Indian citizen to seek the highest office under the State and religious tolerance form the heart and soul of secularism as envisaged by the Constitution. It secures the conditions of creating a fraternity of the Indian people which assures both the dignity of the individual and the unity of the nation. Such a concept of secularism is not only widely understood today but is also accepted in many parts of the world.

Without study of any reference to India’s social, religious and historical background, no adequate interpretation of the Indian constitutional provisions can be possible.

Religious freedom like other freedoms is not absolute and is limited in various ways. Though in the United states the Constitution guaranteed the free exercise of religion in absolute terms, the course of judicial decisions has been to put restrictive interpretations on them in the interest of public peace, morality and health, and national integrity. In India, apart from the limitation which are usually recognized in the United States, there are a number of other restrictions on religious freedom because of widespread illiteracy and unemployment, and superstition. The Constitution, therefore, does not start with the assumption that religion may freely be practiced or that beliefs which are religious deserve full protection. Unlike many other articles of the Constitution article 25 sets out a general proposition as to religious freedom subject to so many qualifications and restrictions.

The constitutional guarantee on religion is in four facets - freedom of conscience, freedom to profess, freedom to practise and freedom to propagate religion. Each one of these is subjected to limitations by the Constitution, but it is argued that the limited right of religious freedom has been further curtailed by the Supreme Court of India by enunciating that the Constitution protects only the essential and integral parts of religious freedom.

The main object of the constitutional provisions on religious freedom is not to debar the State totally from interfering with religious practices but to prevent it from discriminating in favour of one religion against another or from preferring one
religion over another.

India as a land of many faiths enjoyed a long tradition of religious tolerance. The tolerance shown by some Indian rulers indeed furnishes some of the outstanding instances of religious tolerance in world history.

The 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 so doing, the Constitution follows the long Indian tradition of not discriminating between religions. Without study of and reference to India's social, religious and historical background no adequate interpretation of the Indian Constitution can be possible.

This is the stringent law of nature. "अवसथानेहे भोक्तावर्ग कृतां कर्म शुभाशुभम्।" Hence why should one indulge in any activity which will have bad repercussions in this, as well as, in the next life.

Vedic literature therefore clearly instructs the pious and also the impious activities in which one should indulge:

'चूतम् , पणम् , स्थियायस्ना रथार्यम्, चहुतिविवः'

Gambling, drinking (intoxication), prostitution and animal slaughter are the prohibited sinful activities.

Those people who are really serious about their spiritual development should cautiously refrain from the above mentioned four sinful activities. In particular, the Kings, religiousists, the public leaders, brahmanas and sannyāsins should never come in their contact. (B.1-17-38, 41).

In present society also, there is more severe punishment for crime committed by a sane person than the same crime committed by an insane person⁴.

RELIGION: AN INTRODUCTION

It is difficult to define Religion. However, it may be described as "man's faith in a power beyond himself", or "a belief in an Everlasting God", who manages

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⁴ Section 84, Indian Penal Code, 1860.
the affairs in the world, and gives reward or punishment to beings according to their Karmas (Actions). It is also said to be “a fantastic reflection in people’s minds of external forces dominating over them in everyday life, a reflection in which earthly forces assume non-earthly forms. From the theological point of view (which philosophical idealism attempts to justify), Religion is linked with the eternal inner feelings of man, expressing his connection with some spiritual principle. Religion is a specific form of social consciousness, characterized by a unity of world outlook, feelings, and cult (ritual-magic ceremonies). The basic and decisive feature of Religion is belief in the supernatural.\(^1\)

Apart from the above Marxist view of Religion, Prof. Bettany has defined. “Religion broadly as man’s attitude towards the unseen, and whatever consequences his belief or attitude produce on his conduct or on his relations to fellow-men.”\(^2\) Religion has a close link not only with the ‘Supernatural’; but also with man’s social system. Therefore, Dr. Ambedkar took “Religion to mean the propounding of an ideal scheme of divine governance the aim and object of which is to make the social order in which men live a moral order.”\(^3\) In fact, Religion, as assumed to be emanated from ‘divine authority’, has become a social force embedded in institutions of worship, prayers, rituals and ceremonies of sacred and infallible nature. It has become a great source of power and prestige as Dr. Ambedkar, too, has recognized in these lines:

Besides, Religion is a social force, As I have pointed out Religions stands for a scheme of divine governance. The scheme becomes an ideal for society to follow. The ideal may be non-existent in the sense that it is something which is constructed. But although non-existent, it is real. For an ideal it has full operative force which is inherent in every ideal. Those who deny the importance of religion not only forget this, they also fail to realize how great is the potency and sanction that lies behind a religious ideal as compared with that of a purely secular ideal.\(^4\)

**NECESSITY OF RELIGION:**

\(^1\) A Dictionary of Philosophy, 1967, p. 387.
\(^2\) G. T. Bettany’s Encyclopedia of World Religions, 1968, p. 2
\(^3\) Dr. Babasaheb Ambedkar: Writings and Speeches, Vol.3, p.6.
\(^4\) Ibid., p. 23.
Necessity of religion in life is borne out of the following reasons:

(i) A Religion does not always propound what is useful to all human beings. It may take one-sided view of society and may establish standards for the benefit of the few. A few may dominate others. If that Religion is based on divinity and authoritarianism, then it can thwart the freedom of thought. Hence to safeguard the human freedom, Philosophy of Religion is essential. It may check the wrongdoings of religious fanatics and can investigate certain concepts, ideas and experiences of a religion.

(ii) The religious fundamentalism is another reason why we must have a necessity of Religion. As we find today, the fundamentalists belonging to almost all Religions create dissensions among the rank and file in the name of Religion. The wide-spread communal riots are the results of their narrow-mindedness and non-tolerant attitude towards other Religions. It is the tenets of Religion which exposes the evils of fundamentalism in modern societies. It is an approach which should be welcome by all liberals and democrats of the world.

(iii) There are many Religions in the world, which, have divergent views and practices. Among them, there must be inter-religious discussions in order to find out the points of agreement where they can work for the welfare of mankind. There may also be confrontation between them on the levels of thoughts and theories. It, therefore, becomes necessary for every Religion to have its own religious philosophers who can examine the related beliefs and dogmas, manners and practices, of their own Religions. They must entertain some philosophical discussions and discourses in order to modify their pre-conceptions of life and the universe.

(iv) The religious intuition is always changing; but if a Religion makes it a permanent thing, it becomes a tabulation. Every religious man wishes people to practice it, which goes against the spirit of freedom and independent pursuit of experiences. Although intuition is momentary; but its concept may be permanent, and this work can be performed by a religious philosopher. Hence to establish theories and concepts in a particular Religion, we need a specific knowledge of Religion.
Any philosophical thought is always dynamic and changing, because Philosophy welcomes changes of scientific nature, and it sees the human problems in a wide perspective. It comes in the forefront to solve them. From age to age, Philosophy evaluates the traditions, and criticizes what becomes or seems to be anti-human. Philosophy develops a critical attitude towards religious ideals and practices if they go wrong and harm the interests of mankind at large. Philosophy in every age criticizes the inherent weaknesses of a particular Religion. A religious man should not be an enemy of such a philosopher. He must rather face the criticism and make an appropriate answer to it. A Religion is a centre of human life, and if one attacks it, the religious man feels embarrassed and disturbed. Therefore, it becomes necessary for the religious man to study the new situation and alter and amend the religious notions according to the new bindings of Science and Philosophy. Beside the mobility of Philosophy, Science and Technology, a philosophy of a Religion must so adjust itself that it can accrue from it the maximum benefit to mankind.

For the above reasons, Religion is a study which ought to be welcomed by all those who believe in and adhere to the welfare of the rank and file in the world. It is really a weapon to set aright the dogmatism, fanaticism, authoritarianism, fundamentalism, communalism, which have become the trends of confrontation and controversy among the Religions of the world, Religion must develop as a powerful and influential field of studies so that the comparative knowledge of Religions can be discovered in the larger interests of mankind.

PURPOSE OF RELIGION:

Religion was never a matter of individual, private and personal life. A religion is social in the sense that it primarily concerns with society and not with the individual. Dr. Ambedkar found the answer of the purpose and function of the religion in these words of Prof. C.A. Ellwood — “It projects the essential values of human personality and of human society into the universe as a whole. It inevitably arises as soon as man tries to take valuing attitude toward his universe, no matter how small and mean that universe may appear to him. Like all the distinctive

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things in human, social and mental life, it of course, rests upon the higher intellectual powers of man. Man is the only religious animal, because through his powers of abstract thought and reasoning, he alone is self-conscious in the full sense of the term. Hence he alone is able to project his values into the universe and finds necessity of doing so. Given, in other words, the intellectual powers of man, the mind at once seeks to universalize its values as well as its ideas. Just as rationalizing processes give man a world of universal ideas, so religious processes give man a world of universal values. The religious processes are, indeed, nothing but the rationalizing processes at work upon man's impulses and emotions rather than upon his precepts. What reason does for ideas, religion does, then, for feelings. It universalizes them; and in universalizing them, it brings them into harmony with the whole of reality.

Now these mental and social values, with which religion deals, men call 'spiritual'. It is something which emphasizes as we may say, spiritual values, that is, the values connected especially with the personal and social life. It projects these values, ....into the universal reality. It gives man a social and moral conception of the universe, rather than a merely mechanical one as a theatre of the play of blind, purposeless forces. While religion is not primarily animistic philosophy, as has often been said, nevertheless it does project mind, spirit, life into all things. Even the most primitive religion did this; for in 'primitive dynamism' there was the feeling of the psychic, in such concepts as Mana or Manitou. They were closely connected with persons and proceeded from person, or things which were viewed in an essentially personal way. Religion, therefore, is a belief in the reality of spiritual values, and projects them, as we have said, into the whole universe. All religion -- even so-called atheistic religions -- emphasizes the spiritual, believes in its dominance, and looks to its ultimate triumph."

**FUNCTION OF RELIGION:**

Religion is to act as an agency of social control, that is, of the group controlling the life of the individual, for what is believed to be the good of the larger life of the group. Very early, as we have seen, any beliefs and practices

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which gave expression to personal feelings or values of which the group did not
approve were branded as 'black magic' or baleful superstitions; and if this had not
been done it is evident that unity of the life of the group might have become
seriously impaired. Thus, the almost necessarily social character of religion stands
revealed. We cannot have such a thing as purely personal or individual religion
which is not at the same time social. For we live a social life and the welfare of the
group is, after all, the chief matter of concern.¹

The function of religion is the same as the function of Law and
Government. It is a means by which society exercises its control over the conduct
of the individual in order to maintain the social order. It may not be used
consciously as a method of social control over the individual. Nonetheless, the fact
is that religion acts as a means of social control. As compared to religion,
Government and Law are relatively inadequate means of social control. The
control through law and order does not go deep enough to secure the stability of the
social order. The religious sanction, on account of its being supernatural has been
on the other hand the most effective means of social control, for more effective than
law and Government have been or can be. Without the support of religion, law and
Government are bound to remain a very inadequate means of social control.
Religion is the most powerful force of social gravitation without which it would be
impossible to hold the social order in its orbit.²

The idea and necessity of a true religion, as was expounded by Dr.
Ambedkar himself, may be summarized as follows:

1. That society must have either the sanction of law or the
sanction of morality to hold it together. Without either the society is
sure to go to pieces.

2. That religion as defined in the first proposition must be in
accord with science. Religion is bound to lose respect and therefore
become the subject of ridicule and thereby not merely lose its force
as governing principle of life but might in course of time disintegrate

¹ Dr. Babasaheb Ambedkar: Writings and Speeches, Vol.III, P. 410 (Quoted from: Religious
Reconstruction pp. 42-43.
² Ibid., pp.410-411. (Quoted form: Society in its Psychological Aspects, 1913, pp.356-357)
and lapse if is not in accord with science. In other words, religion, if it is to function must be in accord with reason which is another name for science.

3. That religion as a social code its morality must also stand together another test. It is not enough for religion to consist of a moral code, but its moral code must also recognize the fundamental tenets of liberty, equality and fraternity. Unless a religion recognizes these three fundamental principles of social life, religion will be doomed.

4. That religion must not sanctify or ennoble poverty. Renunciation of riches by those who have it may be a blessed state. But poverty can never be. To declare poverty to be a blessed state is to pervert religion, to perpetuate vice and crime, to consent to make earth a living hell.1

5. That Religion should be in accord with man's notions of the sort of religion he needs, as the standard for the regulation of his own conduct, and as the source of inspiration for his advancement and well-being.2

The modern age, however, has posed a great challenge to traditional religious faith. The 20th century, in particular, has exposed the entire mankind to the bitter experience of two disastrous world-wars, a prolonged cold-war, followed by the current militant religious fundamentalism, and world-wide terrorism. Religious leaders and institutions have been mute witnesses of these retrogressive steps of the modern man. The religious aspirations of mankind have been rudely shaken by these events3.

Dr. S. Radhakrishnan, the philosopher-statesman of India, wrote in 1967, as follows:

2 Thus Spoke Ambedkar. Vol. 4, p. 111.
We have grown in knowledge and intelligence, but not in wisdom and virtue. For lack of the latter, things are interlocked in perpetual strife. Religion has been, hitherto, used for fostering wisdom and virtue. But drift from religious belief has gone much too far, and the margin of safety has become dangerously small. The social pathos of this age has been exploited by countless individuals in different parts of the world, who pose as leaders, and proclaim their foolishness as wisdom. We are sowing grain and weeds at random.

(S. Radhakrishna: Recovery of Faith, 1967)

Indifference to traditional religious faith spread in Europe after the Renaissance in the 16th century A.D., with the advancement of the modern physical and natural sciences, and the crazy acquisition of wealth through unscrupulous trade and ruthless colonization of weaker nations by the stronger ones, with the aid of new technology.

The religious faith of the modern educated Indians has also been hijacked by this new wave of unbelief, through the modern European system of education introduced in India in 19th century, which still dominates her educational institutions, particularly her universities. It was against this unbelief imported from Europe, that Swami Vivekananda warned Indians, after his visit to western countries in 1893. In this reply to the address at Ramnad, the Swami made the following poignant observations:

There are two great obstacles in our path in India, the Scylla of orthodoxy and Charbydis of modern European civilization. Of those two, I vote for the old orthodoxy and not for the European system; for the old orthodox man may be ignorant; he may be crude; but he is a man, he has a faith, he has strength, he stands on his own feet; while the Europeanised man has no backbone. He is a man of heterogeneous ideas, picked up at random from every source.... He does not stand on his own feet, and his head is turning round and round. Where is his motive power of his work? In a few patronizing

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pats form the English people.....why are some of our customs called evil? Because the Europeans say so.¹

DEVELOPMENT OF RELIGIOUS FAITH IN MODERN SCIENTIFIC AGE.

Scientific inventions have enabled men to lead a comfortable life on the material plane, without resorting to prayer to God and adhering to austere religious practices. Technological progress has also reduced the geographical, social, and political barriers between nations, and promises to unite, mankind on the material plane without the assistance of self-discipline prescribed by religion. The rationalist approach adopted by the scientist is promoting a new sense of liberty and unbridled self-expression among men, questioning religious beliefs and practices, which call for self-restraint and introspection.

Science has, no doubt, sharpened our understanding of our external life, and enabled us to overcome numerous problems of the body and sense-organs. But it is doubtful, whether science can pronounce judgments on spiritual truths and values stated by religious scriptures and certified by prophets and sages. We can discover and control facts of external nature through science and technology. But the scientific method cannot explain the meaning and value of these facts, and how they are related to our inner life. In fact, obsession with the scientific method would become a hindrance to the exploration of our inner life, as such obsession induces us to stagnate at the level of sensory experience, and forget spiritual truth and values which are beyond sensory experience. That is why pursuit of science is presently, threatened to destroy mankind through destructive weapons, indiscriminate industrialization and environmental pollution. It has deprived us of a contented and peaceful life, advocated by our forefathers.²

Man cannot dispense with religious faith, however much he doubts and discards his traditional religion. In the last three centuries, religious faiths have been sought to be displaced by new cults and creeds such as nationalism, harmonism, socialism, and communism. Exponents of these new cults have sought

² Ibid, p. 444.
to carry mankind to a new millennium. But as we know, none of these new creeds has succeeded in its mission. The rise and fall of communism in this century is known to everybody. The majority of men still continue to rely on their traditional religious faith rather than on these new cults for attaining peace here and hereafter.

Swami Vivekananda in his address to the World Parliament of Religions at Chicago in 1893, portrayed the common task of all religious people in the following words:

The seed is put in the ground, and earth and air and water are placed around it. Does the seed become the earth, or the air, or the water? No. It becomes a plant; it develops after the law of its own growth, assimilating the air, the earth and water, converts them into plant-substance..... Similar is the case with religion. The Christian is not to become a Hindu or Buddhist, nor a Hindu or a Buddhist to become a Christian. But each must assimilate the spirit of the others, and yet preserve his individuality and grow according to his own law of growth.” We should help a Hindu to become a better Hindu, a Muslim to become a better Muslim, a Christian to become a better Christian.

Sri Aurobindo Ghosh, the prophet of a prospective supramental evolution of the human species, has described the task as follows:

All religions have saved a number of souls, but none has as yet become able to spiritualize mankind. For that, there is needed not a new cult or creed, but a sustained and all-comprehending effort at spiritual self-evolution....... Help men, but do not pauperize their energy; lead and instruct men, but see that their initiative and originality remain in tact.....

Swami Vivekananda, after attending the World-Parliament of Religions in U.S.A. in 1893, declared:

To other nations of the world, religion is one among many occupations of life. But here in India, religion is the one and only occupation of life. In this land are, still, religion and spirituality, the fountain, which will have to overflow and flood the world to bring a new life and new vitality to the western and other nations, which are now almost borne down and half-killed and degraded by political ambition and social scheming.¹

Sri Aurobindo Ghosh reaffirmed the aforementioned prophetic declaration of Vivekananda in his declaration on the Independence Day of India, 15th August, 1947, which coincided with his 75th birthday. He declared that India as a free nation, held the key to the opening of a new age for the whole world, for political, social, cultural and spiritual advancement of humanity.

Hindu legal system is perhaps the most ancient legal system of the world. They developed a very logical and comprehensive body of law at very early times. A sense of justice provides the whole body of law.

According to Hindu view, law owes its existence to God. Law is given in ‘Shruti’ (that which is heard-known as Vedas) and ‘Smriti’. The king is simply to execute that law and he himself is bound by it and if he goes against this law he should be disobeyed. Reason and justice have been considered by ancient Hindu smritikars as guides in legal matters:

केवल शास्त्रमानित्व न कर्तव्यो हि निर्गम्यः ||

युक्तिदीने विचारे तु धर्महानि: प्रजायते || तृत्त ||

(Decision should not be given by basing it on Shastras alone; there is failure of Dharma by a judgment devoid of reason)

धर्मशास्त्र विशेषे तु युक्तियुक्तो विचि: स्मृतः || नास्त् ||

(In the case of divergence between Dharmashastra, a principle based on reason has been declared to be right one )

Manu also says:

वेद स्रूतिः सादाचारः स्वस्य च प्रियमालनः
एतत् चतुर्विधः प्रायः साक्षात् धर्मस्य लक्षणम्

[The Vedas, Smritis, approved usages, and what is agreeable to one’s soul (good conscience), the wise have declared to be the quadruple direct evidence of law]

Ancient Hindu view was that “Law” is the command of God and not of any political superior (sovereign). The ruler is also bound to obey it an is under a duty to enforce it. Thus, law is a part of ‘Dharma’. This being the view about law, we find moral and religious injunctions mingled up with legal precepts. The idea of ‘justice’ is always present in Hindu concept of law.

The term ‘law’ means and includes different things in different societies. The corresponding word for the term ‘law’ in Hindu system is ‘Dharma’, in Islamic system it is ‘Hukum’, in Roman it is ‘Jus’, in French it is ‘Droit’ and in German it is ‘Richt’.

The Hindu society forms one of the most ancient societies in the world. It made remarkable advances and original discoveries in various fields of knowledge including law.

The aim of law must be to make man virtuous as Jenks observed in his work “The new jurisprudence”. The law may be defined provisionally as the force which makes for the righteousness. The provision of law is the establishment of rules for the regulation of human conduct amidst the diversity of inclinations and desires so to reconcile and harmonies the wishes of the individual with interest of the community in which ultimately the interest of individual is also concerned. Law is also defined as a body of Principles recognized and applied by the state in the administration of justice.

Hindu law as understood by the term Dharma very nearly fits in with these definitions and elaborate rules of procedural and substantive law have been laid down in ancient Sanskrit text with a method and system which may evolve the envoy on administration of modern law givers.
PROVISIONS RELATED TO RELIGION UNDER THE GOVERNMENT OF INDIA ACT, 1935

Under Section 298 of the Government of India Act 1935 it has been provided that the persons cannot be subjected to disability by reason of race, religion etc. The relevant provision of Section 298 is as under:

Section 298. Persons not to be subjected to disability by reason of race, religion etc. – (1) No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India, or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in [British India].

(2) Nothing in this section shall affect the operation of any law which –

[(a) prohibits, either absolutely or subject to exceptions, dispositions of agricultural land situate in any particular area and owned by a person belonging to some class recognized by the law as being a class of persons engaged in or connected with agriculture in that area or as being an aboriginal tribe, in favour of or for the benefit of any person not belonging to that class.]

(b) recognizes the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or custom having the force of law.

(3) Nothing in this sections hall be construed as derogating from the special responsibility of the Governor-General or of a Governor, for the safeguarding of the legitimate interest of minorities.

(4) In paragraph (a) of sub-section (2) of this section, 'agricultural land' in relation to any area where there is in force immediately before the commencement of Part III of this Act any law the operation of which is to any extent saved by the said paragraph (a), includes all such property and rights in or over property as are included in the expression ‘and’ as defined for the purposes of that law as them in
CONSTITUENT ASSEMBLY DEBATES ON RELIGIOUS RIGHTS

One of the highly complicated issues resolved by the Constituent Assembly at the time of the Constitution making concerns the right to freedom of religion. It will be of interest to note that the Constituent Assembly which framed our Constitution first met in the undivided India on 9th December, 1946. Its total strength was 389 of whom 205 was elected on the Congress vote which included 30 non-Congress men of great eminence like Dr. Radhakrishnan, Dr. B.R. Ambedkar, Dr. Alladi Krishnaswamy Ayyar, Pandit Hridayanath Kunzhrui and N. Gopalaswamy Iyengar. The basic preparatory work in the form of collection of background material and a draft comprising 244 Articles was done by Sir B.N. Rau and the Drafting Committee elected by the Constituent Assembly prepared the draft constitution which was deliberated and voted upon after approving some amendments. The Drafting Committee consisted of seven men of eminence Shri K.M. Munshi, Shri T.T. Krishnamachari, Dr. B.R. Ambedkar, Shri Alladi Krishnaswamy Ayyar, Shri N. Madhavrao, Shri D.P. Khattan and Shri Mohammad Sadulla. Dr Ambedkar was unanimously elected as the chairman of the Drafting Committee.

The Constituent Assembly had set up an Advisory Committee consisting of 72 members and the Advisory Committee in turn appointed Sub-Committees to study and submit reports on important matters like fundamental rights, rights of minorities etc. Those reports were studied by the Drafting Committee and debated by the Constituent Assembly before finally approving them.

Fourteen draft articles encompassing fundamental rights and the remedies available for their breaches were referred to the Sub-Committee on the fundamental rights headed by Acharya, J.B. Kripalani. Article 6 concerned the right to religious and cultural freedom.1

The guarantee of religious freedom was contained in the draft articles formulated by K.M. Munshi and B.R. Ambedkar. The clause, in Munshi’s draft, provided that all citizens would be equally entitled to freedom of conscience and

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right to freely profess and practice religion. The right was not unrestricted, for it had to be exercised in a manner compatible with public order, morality and health. Economic, financial or political activities, associated with religious worship, were not to be deemed as being included in the right to profess and practise religion. Two other safeguards were also provided. No person was to be compelled to pay taxes, the proceeds of which would be specifically appropriated for the payment of religious requirements of any community of which he was not a member; the religions were not to be compulsory for a member of a community which did not profess that religion. Similar provisions were also included in Ambedkar’s draft which in addition provided for freedom to preach and to convert; and further that every religious association would be free to regulate and administer affairs within the limit of law applicable to all.

Both Munshi and Ambedkar had included certain other proposals relating to freedom of religion which received some attention initially but were later dropped at one stage or the other. Notable among these was a clause by Ambedkar expressly enjoining the state not to “recognize any religion as state religion.” The Fundamental Rights Sub-Committee initially included this clause in the Draft Report (vide clause 19 of Annexure A). On reconsideration it decided to omit the clause. There were also two provisions in Munshi’s draft one of which said that minors would not be free to change their religion without the permission of their parents or guardians, while the other prohibited conversion from one religion to another brought about by coercion, undue influence, or the offering of material inducements. These clauses were reproduced in substance in Clauses 21 and 22 of the Report of the Fundamental Rights Sub-Committee. The Advisory Committee also laid down in Clause 17 of its Interim Report on Fundamental Rights that conversion brought about by coercion or undue influence would not be recognized by law. This was the subject of a heated discussion in the Constituent Assembly on 1 May, 1947 and was referred back to the Advisory Committee. The committee felt on further reconsideration that the clause enunciated a rather obvious doctrine and

1 Article 25, the Constitution of India.
2 Tripathi, op. cit., p. 172.
recommended that it be dropped altogether.

The Fundamental Rights Sub-Committee first discussed freedom of religion on 26 March, 1947 and adopted Munshi’s clause relating to the right to profess and practise religion with the significant modification that instead of being confined to citizens, the right was to be extended to all persons and at the instance of a Sikh member.

The recommendations of the Sub-Committee were set out in Clauses 16, 17, 18, 19 and 20 of its draft report of 3 April, 1947.

Clause 16 : All persons are equally entitled to freedom of conscience and the right freely to profess and practice religion subject to public order, morality or health and other provisions of this Chapter. Explanation I dealt with Kirpan being treated in the practice of Sikh religion. Explanation II : The right to profess and practice religion shall not include any economic, financial, political or secular activities that may be associated with religious worship. Explanation III: No person shall refuse the performance of civil obligation or duties on the ground that his religion so requires. Clause 17 : Every religious denomination shall have the right to manage its own affairs in matters of religion and to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes consistently with the provisions of this chapter. The right to build place of worship in any place shall not be denied except for reasonable cause.

Clause 18 : No person may be compelled to pay taxes the proceeds of which are specially appropriated to religious purposes.

Clause 19 : The State shall not recognize any religion as state religion.

Clause 20: No person, attending any school maintained or receiving aid out of public funds, shall be compelled to take part in the religious instruction that may be given in the school.

The Minorities Sub-Committee considered Clause 16 on 19 April, 1947. It accepted the suggestion made by M. Ruthnaswamy that certain religions like

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1 Article 25, clause (2)(a).
Christianity and Islam were proselytizing religions and that they should be permitted to propagate their faith. The Sub-Committee accordingly recommended a redraft of the clause which not only resorted the right to free practice of religion but also secured an additional right to propagate religion.

In regard to Clause 17, relating to freedom to manage religious affairs, there was only a brief discussion in the committee. Some members doubted the need of authorizing religious denominations to hold property as fundamental right and thus suggested the deletion of the clause. K.M. Munshi maintained that the consequence of the deletion of this clause would be to render religious freedom as meaningless. Frank Anthony pleaded that the clause was vital so far as the Christian community was concerned. The committee adopted a compromise by accepting a suggestion by Rajagopalachari that the clause might be retained but with the qualification that the right of religious denominations to own, acquire and administer property would be subject to the general laws.

There was little discussion on Clause 18. On a suggestion made by Rajagopalachari, the committee decided to replace the words “religious purposes” in this clause by the words “to further or maintain a particular religion or denomination.”

Clause 19 was adopted in the forming which it was recommended by the Sub-Committee on Fundamental Rights. With these changes, the clauses relating to religious freedom recommended by the Fundamental Rights Sub-Committee were reproduced by the Advisory Committee as clauses 13 to 16 in its Interim Report on Fundamental Rights.

All the clauses were moved in the Constituent Assembly for adoption on 1 May, 1947. there was not much discussion and the amendments that were suggested were carried out without controversy to Clause 13, relating to the free profession and practice of religion, Munshi moved an amendment which in effect sought to ensure that the freedom of religious practices did not come in the way of throwing open Hindu religious institution of a public character especially temples, to all classes and sections of Hindus. The amendment was accepted by the Assembly and Clause 13 was adopted as amended. In regard to clause 14 dealing with the freedom to manage religious affairs, Munshi again moved an amendment
which made it clear that the freedom to manage the religious affairs was available not only to religious denominations but also to sections of such denominations. It was accepted and Clause 14, as amended, was adopted. Clause 15 was adopted without any change.

Clause 16 provided that no person, attending any school maintained by the state or receiving state aid, could be compelled to take part in religious instructions or religious worship. This clause was referred back to the Advisory Committee on the suggestion of Vallabhbhai Patel, who saw some difficulties in it. The committee reconsidered this clause, in the light of the difficulties raised by Patel, but it did not find it necessary to suggest any change in the clause and recommended its acceptance by the Assembly in the form in which it was originally proposed by the Committee. When the clause came up again before the Assembly on 30 August 1947, several members considered that the clause did not go far enough and lent their support to an amendment, moved by Mrs. Renuka Ray, which proposed the following substitution: No denominational religious instructions shall be provided in schools maintained by the state. No person attending any school or educational institution recognized or aided by the state, shall be compelled to attend any such religious instructions."

B. EVOLUTION OF FUNDAMENTAL RIGHTS

Since, the 17th century, if not earlier, human thinking has been veering round to the theory that man has certain essential, basic, natural and inalienable rights or freedoms and it is the function of the state, in order that human liberty may be preserved, human personality developed, and an effective social and democratic life promoted, to recognize these rights and freedoms and allow them a free play.

The underlying idea in entrenching certain basic and fundamental rights is to take them out of the reach of transient political majorities. It has, therefore, come to be regarded as essential that these rights be entrenched in such a way that they may not be violated, tampered or interfered with by an oppressive government. With this end in view, some written constitution guarantee a few rights to the people and forbid governmental organs from interfering with the same. In that case, a guaranteed right can be limited or taken away only by the elaborate and form all process of institutional amendment rather than by ordinary legislation. These rights
are characterized as fundamental rights.

**GENESIS OF FUNDAMENTAL RIGHTS**

The Fundamental Rights as guaranteed by Article described as the Bill of Rights. The position in England in respect of these fundamental rights has been thus described by Lord Wright:

> There is no written constitution and no courts as its guarantee. Our liberties are at the mercy of Parliament. The only safeguard against abuse by Parliament of its powers is to be found in the democratic principles of free election, free speech, free discussion, freedom of the assembly and the like, in short in the instincts of a free people.¹

However, it must be added that basic human rights are scrupulously protected in English public life and whenever there is a breach, strong public resentment is expressed in no ambiguous terms. The public conscience in England is so articulate that the liberties of citizens are adequately protected even though there is no written constitution.

How did the concept of the Bill of Rights originate in England, it may be asked? According to Holdsworth, Magna Carta ‘stands at the head of those two or three documents which contain, or are supposed to contain, some of the fundamental principles of the British Constitution. Lawyers, historians and politicians of every period of our history have interpreted it from the standpoint of every period of that history. From this point of view we may compare it to the Twelve Tables’.² According to McKechnie ‘the greatness of magna Carta lies not so much in what it was to its framers in 1215, as what it afterwards became to the political leaders, to the judges and the lawyers, and to the entire mass of the men of England kin later ages’.³

Chronologically, the next constitutional charter was the Petition of Rights of 1628. As its preamble states, it concerns ‘diverse rights and liberties of the subjects’, and it declares several rights such as, (1) that no man be compelled to pay

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¹ Cambridge Law Journal, 1949, p.2
³ McKechnie, Magna Carta (James Maclehose & Sons, Glasgow, 1905), p. 436.
any tax 'without common consent by act of Parliament'; (2) that no man shall be
imprisoned or detained except in accordance with the laws and statutes of the
realm; (3) that the billeting of soldiers and sailors shall be abolished; (4) that
commissions for proceedings by martial law shall be revoked and annulled. The
requests made in the Petition of Right were intended to preserve the 'rights and
liberties according to the laws and the statutes of this realm'.

The next constitutional declaration, the Bill of Rights of 1689, is expressly
described as 'an Act declaring the rights and liberties of the subject'. These three
declarations were the forerunners of what is now described as the Bill of Rights. It
is true that these declarations dealt with the rights of individuals as such and were
not concerned with the rights of members of any collective group and they did not
speak of these rights as the natural or imprescriptible rights of man, but described
them as the positive rights of persons who owed allegiance to the Crown.

Then followed the Virginia Declaration of 1776. As Professor Goodhart
has observed, 'Magna Carta crossed oceans in the 17th and 18th centuries because
the colonists brought these documents with them'.

The Constitution of the United States adopted on the 4th of March, 1789, did
not contain any declaration of fundamental rights. It was in the first ten
Amendments brought before the Congress held on the 25th of September, 1789, that
they were introduced and they were finally ratified in December, 1791. The result
of these amendments has been thus described by J. Frankfurter, in Dennis v. United
States: The first ten Amendments to the Constitution, 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 which we had inherited from
our British ancestors.

In 1862, the Fourteenth Amendment was ratified by the States and it made
an important addition to the Bill of Rights. This Amendment imposes restrictions
on the authority of the States to interfere with the rights of the individual. The
following prohibition included in this Amendment is significant:

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2 341 U.S.494.
No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws; nor deny to any person within its jurisdiction the equal protection of the laws.

The Supreme Court of the United States, in *Munn v. Illinois*,\(^1\) has described the significance of this Amendment in these words:

While this provision of this Amendment is new in the Constitution as a limitation upon the power of the States, it is old as a principle of civilized government. It is found in Magna Carta, and, in substance if not in form, in nearly or quite all the constitutions that have been from time to time adopted by the several States of the Union.

The French Constituent Assembly gave its final approval to a Declaration of Rights on the 27\(^{th}\) of August, 1789. This Declaration has become the source of the charters of liberties not only on the continent of Europe but also in other parts of the world. This Declaration contains not only specific provisions guaranteeing several rights to citizens, but has also included general statements of a philosophic nature.

Professor Collard has pointed out that 'the Declaration passed beyond the cadre of purely juridical work of the Assembly. It is an expression of a worldwide conception and summarizes the philosophy of eighteenth century France. The Assembly considered it necessary to recognize and declare fundamental rules valid for all human societies. The rights thus simply declared and established were natural rights; they belonged to man as a human being, and partaking of his character they were sacred and inalienable'.\(^2\)

After the first World War, there has been a double trend in the evolution of the doctrine of the Bills of Rights. As the said rights were originally conceived, they proceeded on two basic postulates. The first was that the individual must be allowed the maximum liberty in order to ensure the maximum development of his rights.

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1. *(1876)* 94 U.S. 123.
2. Colliard, Liberts publiques, Chap. II (Paris, 1959)
life and activities. The second was that the liberty of the individual can be restricted only for the purpose of protecting the same kind of liberty of others. After the first World War and particularly after the second World War, principles of socialism and socio-economic justice became articulate and the rule of unrestricted individualism has had to submit to increasing limitations on individual rights in the general interests of the community as a whole. As an eminent publicist has observed, the new constitutions framed after the two World Wars were formulated at a time when social questions could not be ignored and the social sense of law was no longer a theory but life itself. Hence two simultaneous processes have taken place. On the one hand, protection of the social person had gradually begun to feature among fundamental rights. On the other hand, in the name of solidarity and public order, fresh limitations have been imposed on these rights.¹

Fundamental rights as enshrined in the relevant articles of the Indian Constitution can be classified under three categories: (1) those that can be claimed and enjoyed by any person irrespective of his nationality; (2) those which can be claimed and enjoyed only by citizens of India; and (3) those which can be claimed and enjoyed not by individual citizens as such, but by a group of individual citizens. The object of enshrining fundamental rights in the Constitution is to sustain the proposition that the system of Government recognized by the Constitution embodies the concept of a ‘limited government’ i.e., a government of laws, and not of men. As Justice Jackson has observed in Board of Education v. Barnette², the very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities … and to establish them as legal principles to be applied by the courts. One’s right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to the vote; they depend on the outcome of no elections’.

Part III. Articles 14, 15 and 16 deal with the right to equality. Article 14 guarantees equality before the law or equal protection of the laws within the territory of India, and this fundamental right can be claimed by even a non-citizen

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¹ Ollero, El derecho constitutional de la postguerra (Barcelona, 1949). Quoted by Sen op. cit., pp. 134-5.
² (1943) 319 U.S. 624.
residing within the territory of India. Article 15 deals with a specific application of
the doctrine of equality before the law. It provides that no discrimination can be
made against any citizen on grounds only of religion, race, caste, sex, place of birth,
or any one of them. It also provides that no disability, liability, restriction or
condition can be imposed on any citizen on any of the said grounds. Clauses (3)
and (4) of Article 15 provide for exceptions to the doctrine of equality.

The effect of these two clauses is that the State can make discrimination in
favour of women and children on the ground that they deserve special protection.
Similarly, the State can make any special provision for the advancement of any
socially and educationally backward classes of citizens or for the Scheduled Castes
and the Scheduled Tribes. The Constitution-makers were conscious that women
and children on the one hand, and members of the society and educationally
backward communities on the other, needed special protection because of their
backwardness. That is why two specific causes of Article 15 make special provision
allowing the State to depart from the doctrine of the right of equality before the law
in respect to them.

Article 16 deals with another category of cases which involve the
application of the right to equality. It provides that there shall be equality of
opportunity for all citizens in matters relating to employment or appointment to any
office under the State. Clause (4) of Article 16, however, makes an exception to this
principle in relation to members of any backward class of citizens which, in the
opinion of the State, is not adequately represented in the services under the State. In
other words, though equality of opportunity for State employment is guaranteed
under Article 16, it is open to the State to reserve certain appointments or posts in
favour of any backward class of citizens, provided the State is satisfied that the said
backward class is not adequately represented in its services. These then are the
three Articles which enshrined the basic doctrine of the right to equality before the
law.

It is necessary to explain what the right to equality means. The said right
demands equal treatment of equals in equal circumstances. It does not, however,
prohibit differentiation on a reasonable basis, which has a rational nexus with the
object of the statute in question. In other words, if the object of the legislation
requires some differentiation to be made in the treatment given to different classes of citizens, that differentiation would not be violative of Article 14, provided the differentiation is reasonable and there is a nexus between that differentiation and the object of the legislation. However, the rational basis which justifies the discrimination must not include grounds which have been expressly excluded by the Constitution. Besides, any legislation based on such differentiation is open to examination and review by the judiciary. The rule, therefore, has a twofold aspect: it implies parity or equal treatment of equals in equal circumstances and permits differentiation in certain specified circumstances.

Whereas Article 14 guarantees equality before the law to all persons including aliens, Article 15 and Article 16 are in their application limited to citizens, though their scope is otherwise very wide. That is one distinction between Articles 14 and 15. Another distinction between the said Articles is that when a law is challenged as violative of Article 14, there is always a presumption that the classification made by the impugned legislation is reasonable and whoever challenges the validity of the law has to prove the contrary. In regard to an alleged contravention o Article 15, there is no such presumption in favour of the validity of the classification.

The substantive aspect of this rule of equality before the law has been thus defined by the International Commission of Jurists:

The law passed by the legislature must not discriminate between human beings except insofar as such discrimination can be justified on a rational classification consistent with the progressive enhancement of human dignity within a particular society.1

The Supreme Court of India has thus explained the significance of the structure of Article 14 in *State of West Bengal v. Anwar Ali Sarkar:*2

The first part of the article, which appears to have been adopted from the Irish Constitution, is a declaration of equality of the civil rights of all persons within the territories of India and thus enshrines what American Judges

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2 (1952) S.C.R.284,293-94.
regard as the ‘basic principle of republicanism’. The second part which is a corollary of the first part and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favouritism, or as an American Judges put it ‘it is a pledge of the protection of equal laws’, that is, laws that operate alike on all persons under like circumstances. And as the prohibition under the article is directed against the State, which is defined in article 12 as including not only the legislatures but also the Governments in the country, article 14 secures all persons within the territories of India against arbitrary laws as well as arbitrary application of laws. This is further made clear by defining ‘law’ in article 13 (which renders void any law which takes away or abridges the rights conferred by Part III) as including, among other things, any ‘order’ or ‘notification’ so that even executive orders or notifications must not infringe article 14. This trilogy of articles thus ensures non-discrimination in State action both in the legislative and the administrative spheres in the democratic republic of India.

The Indian Constitution seeks to discover a rational synthesis between individual freedom, which is guaranteed by Article 19(1), and claims for the public good. Individual freedom and the fundamental rights pertaining to it which are guaranteed by Article 19(1) are, according to the Indian Constitution, not absolute. The liberty of the individual is no doubt important and can even be regarded as an essential feature of Indian democracy. But where the right of the individual is in sharp conflict with claims for the public good, the former has to yield to the latter and must submit to regulation. The public good is the end, and the achievement of the public good has to be attempted by the rule of law; in this attempt a synthesis has to be evolved between the two conflicting claims of individual liberty and public good. That is the scheme of Article 19, and so we find that whereas Article 19(1) enunciates seven kinds of rights to freedom, Clauses (2) to (6) of the said Article enumerate the circumstances under which and the manner in which the said rights can be regulated.

The seven rights to freedom recognized by Article 19(1) are the right (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India; (f) to acquire, hold and dispose of property; and (g) to practise any profession, or to carry on any occupation, trade or business.

The restriction or regulation of fundamental rights has to be reasonable; and in deciding whether any impugned restriction or regulation is reasonable, the court is required to make an assessment which is not always easy to make. In State of Madras v. V.G. Row1, the Supreme Court of India has dealt with this problem in these words:

It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable.

The right to freedom has another important aspect and that is in relation to freedom from criminal process. The Indian Constitution has made provisions to guarantee freedom in this behalf. Articles 20, 21 and 22 deal with this topic. Article 20 affords protection in respect of conviction for offences, and it provides

that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It will be noticed that this provision negates the idea of retrospective penalization for acts. It also prohibits retrospective enhancement of punishment. Having provided this protection against improper conviction, Article 20 lays down another important rule and that is that no person shall be prosecuted and punished for the same offence more than once. It also gives a guarantee to every citizen that he shall not be compelled to be a witness against himself.

Article 21 lays down that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22 provides protection against arrest and detention in certain cases. Article 22(1) provides that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult, and be defended by, a legal practitioner of his choice. Article 22(2) lays down that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detailed in custody beyond the said period without the authority of a magistrate.

The right to freedom of religion is the most distinguishing feature of Indian democracy: its faith in secularism. Articles 25 and 26 of the Constitution deal with this right. Article 25 provides for the freedom of conscience and free profession, practice and propagation of religion. This freedom, however, is made expressly subject to public order, morality and health and to the other provisions of Part III. This freedom also does not affect the operation of any existing law or prevent the State from making any law – (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and (b) 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.

Article 26 guarantees to every religious denomination, or any section
thereof, freedom to manage its religious affairs. This freedom includes the right (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law. This freedom again is subject to public order, morality and health but, unlike the freedom guaranteed by Article 25, not subject to the other provisions of Part III. The right to freedom of religion which is enshrined in these two Articles has to be read along with Article 14 and Articles 15 and 16 which prohibit discrimination on the ground of religion.

Article 25 is made expressly subject to public order, morality and health and to the other provisions of 'this Part', meaning the Part 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 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, as one of the directive principles of State policy, 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 from 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 ensure. 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 multi-nationalism in India. It is, therefore, necessary that the Minorities Commissions should act in a manner so as to prevent generating feeling of multi-nationalism in various sections of people of Bharat.

A nation may make a constitution, but a constitution can not make a nation. No constitution, written or unwritten is worth more than the political temper of the
community allows it to be worth. A constitution, however lofty its exhortations and sentiments, is not a self-executing document. It requires human agency to implement it. The political traditions of the people and the spirit of constitutionalism are what make a constitution work. Its essence is its practice.

The constitution is not an ephemeral legal embodying a set of legal rules for the passing hour. It sets out principles for an expending future and is intended to endure for ages to come and consequently to be adapted to the various crises of human affairs. Therefore, a purposive rather than strict literal approach to interpretation should be adopted. A constitutional provision must be constituted not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing condition and purposes so that a constitutional provision does not get fossilized but remains flexible enough to meet the newly emerging problems and challenges. This principle of interpretation is particularly apostle to the interpretation of fundamental right.

RIGHT TO RELIGION AS FUNDAMENTAL RIGHT UNDER THE CONSTITUTION OF INDIA

Article 25(1) of the Constitution provides: “Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion” primarily puts the individual above religion.

The freedom of religion is granted not only subject to public order, morality and health, but also subject to the other provisions of that part of the Constitution which guarantees the fundamental rights including the rights of liberty of the individual. While dealing with the scope of this Article, Professor P.K. Tripathi, considered that “the principles of giving primacy to the individual, placing him before and above religion, and recognizing freedom of religion only as incidental to his well-being and liberty.” Further, Article 25 also guarantees religious freedom equally to all the persons. The doctrine of equality and non-discrimination adopted in articles 14 to 16 are imbedded in article 25 which says: ‘all persons are equally

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1 In the United States, restrictions on these grounds are not mentioned specifically under the Constitution, but have been recognized through judicial process.
entitled to freedom of conscience and the right freely to profess, practise and propagate religion.' This implies respect for the beliefs of others. If all persons have an equal right of free exercise, one is bound to respect the sentiments and beliefs of others, otherwise he cannot expect others paying respect to his beliefs. This leads to mutual tolerance. In case of acute conflict as, for example, when one person because of his religious scruples claims slaughter of cows, and another its prohibition; or when one claim an unrestricted right to play music while the other wants a claim and peaceful atmosphere for his religious meditation or worship, a spirit of toleration has to be shown. Equally implies that persons of divergent views should not be coerced. Further, equality connotes that the state should be impartial while giving aid, facilities, protection and encouragement to all the religions. Article 27 specifically prohibits the state from levying tax for the maintenance of any particular religion. The prohibition of discrimination in various articles of the Constitution implies that whatever aid or encouragement is given by the state it should ensure for the benefit of all religious groups. Similarly in imposing restrictions on the free exercise of religion the state is duty bound to be strictly impartial. It may be that laws may fall short of the ideal of equality but there is no doubt that the underlying basis of the Constitution is to achieve this objectivity as early as possible.

End Note:
The development of religious rights is not instantaneous but gradual. It has developed since times immemorial. Religion is the fundamental basis for the development and sustenance of the society. It is a stabilizing force which prevents distortion of social fabric of life. With the passage of time, the Fundamental Rights were evolved as protective umbrella of religious as well as other human rights. So after a long discussion, founding fathers of the Constitution enshrined the right to freedom of religion as Fundamental Right under Articles 25 to 28 of the Constitution.