

**IMPLIED RIGHT TO RELIGION FOR ATHEIST UNDER INDIAN CONSTITUTION –
WITH SPECIAL REFERENCE TO LT SWAMIAR CASE**

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ABSTRACT

The ongoing occasion in Mathura, where an old swami-turned-agnostic, Balendu Swami, wished to sort out a private gathering for discourse of his (un)belief was mauled in light of the fact that he had harmed the religious opinions of the adherents, both Hindu and Muslim, is, aside from being an infringement of one's established rights, likewise conveys to the fore the long history and perseverance of secularism in human civilization. Chinese civilization has managed without god for a lot of its tough life, despite the fact that it has advanced the idea of Heaven. For sure, the Catholic preachers who landed in China from Europe needed to interpret god as the Lord of Heaven. A few Greek logicians from the 6th century BCE were self-broadcasted agnostics. In the realm of Islam, if the presence of god was not denied, some conspicuous scholars like al-Razi scrutinized the authenticity of prophet hood when all is said in done, including that of Muhammad and even the heavenly nature of the Quranic verses. In the Hindu domain, just the Vedanta, particularly the later form of Nyaya-Vaisesika, were mystical; by differentiate Buddhism, Jainism, Purva-Mimansa, Samkhya, Lokayata and the first Nyaya-

Vaisesika were methods of insight of submitted secularism, to refer to from late Debiprasad Chattopadhyaya's book Indian Atheism.

KEY WORDS: Atheisms, right to religion, freedom, implied right, history of religion

INTRODUCTION

In major philosophical frameworks, there was relentless contention whether the world had an interminable presence or had been made at some time. In the primary case, nature had so advanced through its own particular interior dynamism as to shape the planets, the earth, the stars, the universe with no intercession from an incidental source. In the second, a Creator was visualized who made the universe of his (sic!) claim will and gave it a practical, administrative request. The requirement for a Creator remains on the weakest ground, for if the universe couldn't appear without the assistance of a Creator, at that point intelligently the Creator would likewise have been made. The realists in the Hindu pantheon of rationality like the Charvakas contended that it is the collaboration of different issues which brought about the formation of a marvel which is not quite the same as the entirety of its individual constituents. The illustrations they gave were two, among a few: no individual element of container (betel) is fit for yielding the red shading on one's lips; the shading rises up out of the blend of all components of the skillet. Likewise, no element of alcohol can deliver inebriation independent from anyone else; it is the procedure of blend of the considerable number of components that makes the impact. The universe was also shaped as different gases associated and combined more than many centuries and it ended up automatic. Did we hear the early echoes of the Big Bang here?

AIM OF THE STUDY

To know about the implied atheist right and its implications in our legal system

To know about the conflict between atheist and theist

HYPOTHESIS

The implied atheist right is not protecting the effective functioning of right to freedom

The implied atheist right is protecting the effective functioning of right to freedom.

REVIEW OF LITERATURE

1. Religion, Law, Judiciary in modern India by *Tahir Mahmood*.

This mentioned article explains about all the constitutional, statutory and judicial framework of religions in India. This also briefs about the framework between freedom of religion and secularism.

2. India as a Secular State (Princeton University Press, New Jersey, 1963) by *Donald E. Smith*.

Among Indians the word 'secular' means non-sectarian or non-communal, but not non-religious. The intention of secular state is not to separate state and religion rather to not give any special preference to any particular state. In brief the function of the state must be non-religious.

3. Religious Conversion and Freedom of Religion in India by *Neha Chauhan*.

This article explains about the aspects of conversion which our Indian society has been dipped with in recent times, a case in point being conversion laws in India which have been a subject to innumerable inconclusive debates are the subject matter of this article

4. The Constitution of India. op, cit. 13 - 14/40 - 41 by *PB Gajendragadkar*. *This article has discussed about the religious denominations right to manage its religious affairs is a fundamental right protected by constitution of India. It is the Judiciary's onerous job to define religion for judicial purpose.*

5. The Commissioner, Hindu Religious Endowments Madras v. Sri Lakshmindra Thirtha Swamiar, AIR 1954 SC <https://indiankanoon.org/doc/1430396/> Has stated 'Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. Both in the American Constitutions the right to freedom of religion has been declared in unrestricted terms without any limitations, therefore, have been introduced by courts of law in these countries on grounds of morality, order and social protection.

SKEPTICISM IS AS MUCH A PERFECTLY FINE APPROPRIATE TO RELIGION

Doubt in god has been an attribute of generally civilizations. Yet, at that point, the disavowal of the flexibility to doubt is being introduced on the attestation of one truth as the

single Truth, which is supported by the energy of political regulation that amusingly looks for authenticity in maintaining antiquated qualities.

Indeed, even as the issues were generally questioned and talked about among theists and nonbelievers and inside each gathering, a noteworthy social change had happened around two centuries prior. While the antiquated social orders wherever were set apart by variety of convictions and additionally unbeliefs, facilitating polytheistic, pantheistic, animist, human, naturalist types of gods and convictions and also foreswearing of convictions, in this way making a wide range with adequate space for all, the declaration of a solitary truth in the monotheistic portrayal of god totally changed the situation. The mediation of a monotheistic god with Christianity changed the very terms of verbal confrontation in a manner of speaking. Judaism too is monotheistic, without a doubt, however not at all like Christianity; it's anything but a converting religion even as deliberate change to it by people under some strict conditions is passable. As a converting religion, Christianity laid cases to restraining infrastructure of the peculiarity of truth uncovered to humankind through Jesus, child of god. Understood in it was additionally the misrepresentation of every single other confidence, an unavoidable and beyond reconciliation strife with them and its own definitive widespread triumph. This commence was later acquired by Islam with similar qualities. Strikingly, these are additionally essential to the deep rooted foe of all religions, i.e. Marxism. Struggle with others and triumph over them is unpreventable in the cases over the imposing business model of the single truth. It is consequently that the entire of humankind must turn Christian, Muslim or communist, contingent upon one's inclination. A noteworthy office in the authorization of the peculiarity of truth has been State control. Be that as it may, history has driven humankind even inside the individual circles in various ways. Assorted variety and majority have advocated for themselves unendingly through the built up and implemented crystals. Today, acknowledgment of majority in lieu of peculiarity of vision is the standard.

It is in this manner basic that we in India all the more esteem and praise majority, regardless of whether of beliefs or societies or affirmation of nonattendance of confidence in god or religion. That is the quintessence of genuine Indian-ness, which has for a very long time maintained the privilege of opportunity of thought without hypothesizing the triumph of one feeling over another, one single truth over all others. This is likewise the start of the Indian

Constitution's certification of social liberties. Foreswearing of this opportunity is the extremely against proposition of the considerable heritage of Indian civilisation. In any case, at that point, this dissent is being prefaced on the attestation of one truth as the single Truth, which is supported by the political administration that incidentally looks for authenticity in maintaining antiquated qualities!

LEGAL PERCEPTION OF THE RIGHT TO FREEDOM OF RELIGION

The term 'religion' has not been characterized in the Constitution and it is scarcely defenseless of any unbending definition. The Supreme Court has characterized it in number of cases. A religion is absolutely a matter of confidence and isn't really mystical. Religion has its premise in "an arrangement of convictions or precepts which are respected by the individuals who proclaim that religion as helpful for their profound prosperity", however it would not be right to state that religion is nothing else except for a convention or conviction. A religion may not just set out a code of moral tenets for its adherents to acknowledge, it may recommend customs and observances, services and methods of love which are viewed as basic piece of religion and these structures and observances may degree even to issues of sustenance and dress.

Subject to specific restrictions, Article 25 presents a central ideal on each individual not simply to engage such religious convictions as might be affirmed by his judgment or inner voice yet in addition show his convictions and thoughts by such obvious acts and practices which are authorized by his religion. Presently what rehearses are secured under the Article is to be chosen by the courts with reference to the teaching of a specific religion and incorporate practices viewed by the group as some portion of its religion.

The courts have gone into religious sacred texts to find out the Commissioner of H.R.E. v. Lakshmindra, A.I.R. 1954 S.C. 282; Ratilal v. Territory of Bombay, A.I.R. 1954 S.C. 388; Taher Saifuddin Saheb v. Territory of Bombay, A.I.R. 1968 S.C. 662. Commissioner of H.R.E. v. Lakshmindra, A.I.R. 1954. S.C. 282 at 290. Seshammal v. Territory of Tamil Nadu (1972) 2 S.C.C. 11.

THE FREEDOM OF RELIGION UNDER THE INDIAN CONSTITUTION

In various cases the courts have remarked upon, clarified and translated the arrangements of the Constitution on balance, non-segregation and religious opportunity. The choices in the vast majority of these cases have been given in the settings of the privileges of specific religious groups or under special laws identifying with such groups. A brief on significant choices takes place after. In India the need to characterize religion was raised out of the blue by Dr. B.R. Ambedkar when the issue relating to individual law and its connection to religion came for exchange in the Constituent Assembly. He brought up: The religious origins in this nation are vast to the point that they cover each part of life from birth to death.

There is nothing which isn't religion and if individual law is to be spared I am certain about it that in social issues we will grind to a halt... There is nothing uncommon in saying that we should endeavor henceforth to confine the meaning of religion in such a way, to the point that we should not broaden it past convictions and such customs as might be associated with ceremonials which are basically religious. It isn't essential that the kind of laws, for example, laws identifying with tenure or laws identifying with progression ought to be administered by religion... I for one don't comprehend why religion ought to be given this tremendous far-reaching locale in order to cover the entire of life and to keep the governing body from infringing upon that field.

In the sentiment of Dr. B.R. Ambedkar, what constitutes a 'religion' or 'matters of religion' is to be determined by restricting to religious convictions and ceremonials, which are held as basically religious in a specific religion, which is under legal survey.

The Indian Constitution has no unequivocal meaning of 'religion' or 'matters of religion'. Under the order of article 32 of the Constitution, which gives the privilege to protected cures, it is left to the Supreme Court to settle on the legal significance of such terms. In the mid 1950s of every various cases the Courts in India had been looked with the issue of characterizing 'religion' as given in article 25 (1) and 'matters of religion' as given in article 26 (b). Scientist should now continue to analyze a portion of those particular cases, which were offered under the steady gaze of the Supreme Court of India for legal characterization.

Specialist consider some of instances of recorded significance where require emerged to give legal definition to "religion" and "matter of religion."

In *Rajasthan v. Sajjanlal*, A.I.R. 1975 S.C. 706, the Supreme Court overruled the Jain religious inhabitants as respect to the administration of Jain religious gifts.

(1) *Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Tirtha Swamiar of Shri Shirur Matt.* (From this point forward Researcher will be alluded to as the *Shri Lakshmindra* case); The *Shri Shirur matt* case emerged out of the Madras Hindu Religious and Magnanimous Endowments Act 1951 gone by the Madras lawmaking body in 1951. The protest of the Act, as expressed in its preface, was to revise and combine the law identifying with the organization and administration of Hindu religious and altruistic foundations and gifts in the State of Madras. The Act contained segments managing the forces of the State with respect to the general organization of the Hindu religious establishments, their accounts and certain different random subjects. Area 20 of the Act managed matters relating to the organization of Hindu religious gifts that should have been set under the general superintendence furthermore, control of the Commissioner. The Commissioner was approved to pass orders, which he considered vital, for the best possible organization of these religious blessings. He was to guarantee that the wage from these gifts was spent for the reasons for which they were established. Segment 21 of the Act gave the Magistrate, the Deputy and Assistant Commissioners, and such different authorities as

may be approved, the ability to enter the premises of any religious organization or some other place of love to exercise any power presented, or releasing any obligation forced by or under the Act, gave that the concerned officer practicing such power was a Hindu. Area 23 of the Madras Hindu Religious and Charitable Endowments Act of 1951 gave that the trustee of a religious establishment was to comply with all legitimate request issued under the Act by the Government, the Commissioner and other such authorities. Area expressed that the Commissioner was engaged to request that the trustee designate a director for the organization of the common issues of the foundation and in default of such an arrangement he could make the arrangement himself. Whatever remains of the areas managed the monetary parts of the religious bodies.

On sacred grounds, the legitimacy of the Act was tested by Shri Lakshmindra Tirtha Swamiar, the mathadhipati of Sirur math¹⁰ who expected additionally the office of mathadhipati of Udipi math when it was under money related emergency. The Hindu Religious Endowment Board ventured in now to help the Udipi math in escaping its budgetary issues. Obviously the Mathadhipati, Shri Lakshmindra Tirtha Swamiar, assented to the mediation as he marked over energy of lawyer to the chief selected by the Board. Be that as it may, it appeared that the supervisor needed his own route in all issues of the math. This caused the mathadhipati to withdraw his energy of lawyer and to overlook the endeavors of the Board, which recorded an argument against the mathadhipati. The mathadhipati engaged the Supreme Court on the ground that the Board, whose forces were charged to be illegal, had damaged his sacred certifications under articles 25 and 26 of the Constitution.

The Supreme Court found the case for the math. While giving the judgment, it appears that the Court has adopted an astute strategy to the importance of "religion." Besides the Supreme Court appeared to have given an indigenous significance whatever incorporates into the classification of "mainstream exercises" related with religion. This decision of the Supreme Court has been considered as a standout amongst the most imperative choices in Indian law with respect to the meaning of religion¹ Mr. Equity Mukerjea who represented the consistent choice of the Court called attention to that the determination of the debate depended on the elucidation of what 'is important of religion' are. He stated:

"Religion" has not been characterized in the Constitution and it is a term which in scarcely defenseless of any unbending definition. In an American case (vide Davis v. Benson, 133 U.S. 333 at 342) it has been said "that the term 'religion' has reference to one's perspectives of his connection to his Creator and to the commitments they force of respect for His Being and character and of obedien Constitution-producers when they confined the Constitution. Religion is unquestionably an issue of confidence with people or groups and it isn't really mystical. There are surely understood religions in India like Buddhism and Jainism, which don't have faith in God or in any Intelligent First Cause. A religion without a doubt has its premise in a framework of convictions or teachings that are respected by the individuals who maintain The Nature of Freedom of Conscience, Free Profession, Practice and Propagation of Religion Article 25 of the

Indian Constitution gives that: Freedom of still, small voice and free calling, practice and proliferation of religion.

THE FREE EXERCISE OF RELIGION

Article 25[1] a man has a two - overlap:- [a] opportunity of inner voice, [b] flexibility to affirm, hone and engender religion. The first cases call attention to that the Preeminent Court of India has held a principled approach towards religion when bid for legal meaning of 'religion' and 'matters of religion' ensured under articles 25 (1) and 26 (b) of the Constitution. When in doubt, it has kept up a liberal meaning of religion - as accepted in a large portion of the liberal law based States - covering in its ambit conviction, conventions and good codes, customs and observances, functions and methods of worship. However, sometimes, the Supreme Court did not falter to pass a strict meaning of 'matters of religion' as secured under statement

(b) Of article 26 of the Constitution restricting them just to those basics and required unmistakable acts important to express one's faith. These are where the Court found that specific demonstrations of ceremonies however authorized by a specific religion, on the off chance that permitted to perform would disregard, on sensible grounds, social solidarity and even make hurt life. With regards to a religiously plural society like India, where clashing worth frameworks regularly contend with each other, the principled approach of the Supreme Court on religious issues is to advance religious opportunity that secures human respect.

In this way, the Court may apply a liberal or a preservationist approach towards religion contingent upon which of the two better advances religious freedom steady with a set of qualities that secure the sacredness of human life and give an invigorating space to all to live in respect. Henceforth, the Indian legal tells in unambiguous dialect that the Constitution perceives the significance of religion in individuals' life, and that it holds religious freedom as a key estimation of the Indian political group yet not at the cost of certain substantive standards which are fundamental in the general public for all to lead an existence deserving of human nobility. Religion flourishes in India and it remains an indispensable part of Indian ethos. Its prevalent practices are diverse and regularly over the top as appeared by Dr. B.R. Ambedkar amid the level headed discussions in the Constituent Assembly In this unique circumstance, the principled approach established on reason as held by the Indian Supreme Court in regards to religion is a

critical necessity to keep religions to be credible in their practices. Such a translation of religion would remind adherents to shed away non-religious and, on occasion, even unreligious growths included to religious practices. It would illuminate the adherents of different confidence conventions not to defeat the true blue exercises of the State to encourage the reason for human respect distinct individual's religious flexibility as ensured by the Constitution of India is given in condition (1) of article 25. Some say that this piece of the article appeared to have been founded on the condition (1) of article 2 of the Constitution of Eire (1937).

Others say that the tenor of article 25 reverberates with the Karachi determination on the basic right received by the Indian National Congress in 1931 that proclaimed, "Each native might appreciate flexibility of heart and the privilege uninhibitedly to declare and hone his religion, subject to open request and morality." Dr. D.D. Basu commented that every one of the rights relating to religion gave in article 25 of the Indian Constitution have all the earmarks of being incorporated into the articulation 'work out' provision of the

TO BEGIN WITH AMENDMENT TO THE U.S. CONSTITUTION

The religious flexibility ensured under article 25 isn't restricted to the subjects of India just yet in addition applies to "all people" as spelt out in statement (1) of the said article. Question was brought up in the Ratilal case⁵⁸ whether the outsiders and specifically, the outside Christian ministers who were only occupied with spreading their religion, were additionally secured under provision (1) of articles 25 of the Indian Constitution.

Mr. Equity Mukerjea who represented the Court stated, "Article 25 of the Constitution assurances to each individual and not only to the subjects of India, the opportunity of heart and the privilege openly to pronounce, hone and to spread religion". Hence in the following segment, we might examine the diverse parts of the religious flexibility ensured under article 25 (1).

FREEDOM OF CONSCIENCE

Flexibility of 'inner voice' is supreme bury opportunity of the national to form his claim connection with god in whatever way he like. The Courts have characterized flexibility of still, small voice as the flexibility of a man to engage any conviction or convention concerning matters, which are respected by him or her to be helpful for his or her otherworldly well

Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Tirtha Swamiar of Shri Shirur Mutt, AIR 1954 SC 282, at 290. "Article 2 (1) of the Irish Constitution (1937) peruses: "Flexibility of heart and the free calling and routine with regards to religion are, liable to open request and ethical quality, ensured to each subject"being. The wording of article 25 of the Indian Constitution, be that as it may, appears to recommend that the person's entitlement to hold such conviction is liable to open request, ethical quality and wellbeing and to alternate arrangements of part III of the Constitution. Under the terms of article 25, it might be asked whether the State may assert any control over a person's opportunity of soul. Dr. Donald E. Smith contended that the State could have no control over a person's flexibility of still, small voice, and, in this way, the wording of article 25 which obviously suggested State's confinement was because of off base drafting.⁶¹ It appears to be, by the by, the confinements to which opportunity of still, small voice might be submitted as suggested in article 25 of the Constitution of India, are not coming about because of such error in drafting; rather the said article did not plan to secure opportunity of inner voice on religious doubts when it stands restricted to ensure open welfare, in light of the fact that the assurance ensured to religious flexibility is at the same time subject to open request, profound quality and wellbeing as well as to the next arrangements of Part III of the Constitution.

Subsequently, in its activity, article 25 is liable to statement (2) of article 23 that is one of the articles in Part III of the Constitution. Give us a chance to take a gander at this arrangement as given in article 23. This article states: (1) Traffic in individuals and poor person and other comparative types of constrained work are disallowed and any negation of this arrangement might be an offense culpable as per law.

(2) Nothing in this article should keep the State from forcing mandatory administration for open purposes, and in forcing such administration the State might not make any separation on grounds just of religion, race, standing or class or any of them.

Proviso (1) of article 23 ensures singular people against any type of constrained work or abuse. It is intended to secure the poise of the people not just against such activities of constrained work of any kind yet in addition against execution of such activities by other private subjects. This statement has two announcements. The first is that movement in people; poor person and other comparable types of constrained work are restricted. The second is that any

repudiation of the primary arrangement should be an offense culpable as per law.62 Clause (2) of article 23 is an empowering arrangement for the State, which makes special case for the State to force obligatory administration for open purposes gave that in forcing such administrations the State does not make any segregation on grounds just of religion, race, position or class or any of them.

It might be noticed that enrollment for military administration neither one of the to movement in individuals nor poor person nor other comparable types of constrained work damaging a individual's poise. Subsequently, it isn't influenced by the disallowance proviso of article 23 (1). Induction for military administration is, in any case, a type of obligatory benefit forced by the State for the security of the subjects' life and property. Henceforth, it takes after that once in a while, when the State regards it important to force obligatory military administration or different administrations for the insurance of the general population, article 25 does not ensure special cases to people because of religious compunctions.

It might be likewise reviewed that when the subject of enrollment for military benefit was examined at awesome length in the Constituent Assembly, nobody raised the question of allowing special case from such administrations.

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