

FREEDOM OF RELIGION

ARTICLE 25 TO 28

ARTICLE 25

- ART. 25.(1) 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, practice and propagate religion.
- 25(2) Nothing in this article shall 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; (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 .
- CONSTITUTION OF USA- FIRST AMENDMENT-
- *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;*
- AUSTRALIAN CONSTITUTION- S.116.
- The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion

- FREEDOM OF CONSCIENCE- inner freedom of an individual to mould his own relation with God
- RIGHT FREELY TO PROFESS,- (to declare freely one's faith and belief), PRACTICE(to perform religious duties) and PROPAGATE (to spread and publicize his religious views)
- SUBJECT TO PUBLIC ORDER, MORALITY & HEALTH.
- SUBJECT TO OTHER PROVISIONS OF THE CONSTITUTION
- STATE CAN BY LAW REGULATE: ECONOMIC, FINANCIAL, POLITICAL OTHER SECULAR ACTIVITY ASSOCIATED WITH RELIGION
- STATE CAN BY LAW PROVIDE SOCIAL WELFARE & REFORM AND THROW OPEN HINDU RELIGIOUS INSTITUTIONS OF PUBLIC CHARACTER TO ALL CLASSES

WHAT IS RELIGION?

- B.K. Mukherjea, J.
- The Commissioner, Hindu Religious Endowments, Madras vs. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt. (16.03.1954 - SC) : MANU/SC/0136/1954 Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine of belief.
- BIJOE EMMANUEL V STATE OF KERALA (1984) 1SCC 615

ESSENTIAL & NON ESSENTIAL PART OF RELIGION

- ISMAIL FARUQUI V UOI (1994) 6 SCC 360
- CHURCH OF GOD V KKRMC, WELFARE ASSN AIR 2000 SC 2773.
- JAVED V HARYANA AIR 2003 SC 3057

- **Shayara Bano and Ors. vs. Union of India (UOI) and Ors. MANU/SC/1031/2017**
- Justice K. Joseph
- On the statement that triple talaq was an integral part of the religious practice, could not be agreed. Merely because a practice had continued for long, that by itself could not make it valid if it had been expressly declared to be impermissible.
- **Justice Nariman and U. Lalit-**
- this form of Talaq was manifestly arbitrary in the sense that the marital tie could be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. This form of Talaq must, therefore, be held to be violative of the fundamental right contained Under Article 14 of the Constitution.
- **Justice Khehar and Justice Nazeer (DISSENT)**
- Personal law, being a matter of religious faith, and not being State action, there was no question of its being violative of the provisions of the Constitution, more particularly, the provisions relied upon by the Petitioners, to assail the practice of talaq-e-biddat, namely, Articles 14, 15 and 21 of the Constitution. [165]

- INDIAN YOUNG LAWYERS ASSN. STATE OF KERALA (Sabarimala Temple)
 - MANU/SC/1094/2018

- **Justice Misra & Khanwilkar**- The denial of right of entry to women denudes them of the right to worship. The right guaranteed under Article 25 was not only about inter faith parity but it is also about intra-faith parity.
- **Justice Chandrachud**- Exclusion was destructive of dignity. To exclude women from right of worship is fundamentally at odds with constitutional values.
- **Justice Indu Malhotra (DISSENT)**- Equality doctrine enshrined under Article 14 does not override the fundamental right guaranteed by Article 25. Constitutional morality in a secular polity would imply harmonization of the FRs with right of religious denomination to practice their faith and belief in accordance with the tenets of their religion irrespective of whether the practice was rational or logical.

- ARTICLE 26- Subject to public order, morality and health, every religious denomination or any section thereof shall have 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.

- (The Commissioner, Hindu Religious Endowments, Madras vs. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt. MANU/SC/0136/1954
- Justice Mukherjea:
- RELIGIOUS DENOMINATION- A collection of individuals, classed together under the same name specially a religious sect or body having a common faith and organization and designated by a distinctive name.
- Three conditions- 1. common faith, 2. common organization and 3. distinctive name

- **INDIAN YOUNG LAWYERS ASSN. STATE OF KERALA (Sabarimala Temple)-MANU/SC/1094/2018**
- The most important condition for a religious denomination is to have a common faith. There is nothing on record to show devotees of Lord Ayappa had any common religious tenets.
- **Durgah Committee, Ajmer v Syed Hussain Ali AIR 1961 SC 1402**
- Management of Religious Matters: It extends to acts done in pursuance of religion and therefore, contains a guaranteed of rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion.
- Own and Administer Property: (Different footing)
- Bira Kishore Deb v Orissa AIR 1964 SC 1501.- (Lord Jagannath Temple Act)
- S.P.Mittal v UOI AIR 1983 SC 1 (Auroville Temple)
- Durgah Committee, Ajmer- If right to administer never vested in a denomination Article 26 would not help.

- ARTICLE 27- NO TAX FOR PROMOTION OR MAINTENANCE OF ANY RELIGION OR RELIGIOUS DENOMINATION.
- ARTICLE 28- NO RELIGIOUS INSTRUCTIONS-
 - I. EDUCATIONAL INSTITUTIONS WHOLLY MAINTAINED OUT OF STATE FUNDS
 - II. EDUCATIONAL INSTITUTIONS RECOGNISED OR RECEIVING AID FROM THE STATE CAN GIVE RELIGIOUS INSTRUCTION WITH THE CONSENT OF THE GUARDIAN.
 - III. EDUCATIONAL TRUST/ENDOWMENT ADMINISTERED BY THE STATE- RELIGIOUS INSTRUCTION CAN BE GIVEN IF IT IS ONE OF OBJECTIVES OF THE TRUST/ENDOWMENT.

Dayanand Anglo Vedic (DAV) COLLEGE V STATE OF PUNJAB AIR
1971 SC 1731

- LIFE & TEACHINGS OF GURU NANAK.
- the provision for the study of the life and teaching of Guru Nanak afford any cause for complaint, since, in neither case there is any compulsion on any person to undertake such studies; nor is any of the communities prohibited from pursuing studies in respect of either Hindi or the life and teachings of any Hindu saint.