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## GR<sup>T</sup> EVOLUTION OF THE FREEDOM OF RELIGION

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**Abstract:**-The concept of religious freedom embodied in the Indian Constitution is largely based on western ideas; nevertheless India's philosophical, cultural and political background furnished a favourable climate for the reception of this concept. India's historical past dating back over four thousand years gives sample testimony of its Catholicity and toleration. Indeed, India has been described as a land of religious toleration. There exists multi-religious groups in the country, but in spite of this the constitution stands for a secular state. State has not identified itself with any particular religion but respects all faiths and religions equally. All religious groups or institutions enjoy equal constitutional protection without any form of discrimination. For the proper appreciation of the subject, the religious background has to be taken into account. India is among very few countries which has a predominantly religious outlook from ages. Chronologically, Indian History may be divided into Ancient, Medieval and British epochs. Most of the rulers of the first period were Hindus and those of the second were Muslim. The third period takes in British rule and the subsequent period of independence. In this study an attempt is made to trace the evolution of the freedom of religion in the pre and post independent era.

**Keywords:** Religious Freedom, Secularism and Independent Era.

### INTRODUCTION

Inevitably, religion, as one of the most important and persisting institutions of society, is confronted with the challenge to change and adopt itself to the new situations brought about by the impact of science and technology. In the developing countries there is a strong conviction that religion is the matrix of institutions' values and social norms that impede economic development and the modernization of society. In Indian life religion is connected with every institution like marriage, family, caste, community. Religion is also connected with language, education, politics etc. Thus India is a land of many religions and of numerous institutions.

Freedom of religion is the hall-mark of secularism. Broadly speaking secularism is a process of movement which aims at the development of the society on such moral and ethical grounds as have nothing to do with religion. Donald Eugene Smith explains the concept of secularism as follows:

"The secular state is a state which guarantees individual and corporate freedom of religion, deals with the individual as a citizen irrespective of his religion is not constitutionally connected to a particular religion, nor does it seek either to promote or interfere with religion upon closer examination it will be seen that the conception of a secular state involves the state, relations are;:-

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1. Religion and the individual (Freedom of Religion).
2. The state and the individual (Citizenship)
3. The state and religion (separation of state and religion)

In India there exists multi-religious groups, but despite of this the constitution stands for a secular state of India. There exists no state recognised church or religion. The state has not identified itself with any particular religion but respects all faiths and religious equally. All religious groups or institutions enjoy equal constitutional protection without any favour or discrimination.

#### **MAIN OBJECTIVE OF THE STUDY**

The key objective of the present study is to discuss the evolution of freedom of religion during the Pre-Independent and Post-Independent eras.

#### **METHODOLOGY**

The present study is based on purely theoretical aspect. So in this study library and case law methods are adopted to collect relevant material and data. It is with the help of the library and case law method that theoretical framework already available can be reviewed and its relevance can be tested. In the words of Good and Hatt. "It is important because all research inevitably involves the use of the book pamphlets, periodicals and documentary materials in the libraries.

#### **Evolution of Freedom of Religion during Pre-independent era**

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#### **Evolution of Freedom of Religion during Ancient Period**

Ancient Indian History covers the period from the beginning of known history to the establishment of effective Muslim rule in a substantial part of the country in 1206 A.D. Frequently historians distinguish between the pre-Aryan culture and post Ancient Indian Aryan Culture. The civilization during this period was predominantly secular and in its archaeological remains there is ample evidence of attempts to harmonize diverse religious cults different religious practices and forms of worship appear to have been tolerated concurrently in various regions.

The primary sources of our information concerning the religion, Law and Government of Ancient India are Vedas which were the outpouring of the Aryans. Many Buddhist and Jain books composed in Ancient India also throw light on Law and religion. Indian religious as well as secular works express definite views on the system of government and the duties of rulers. The root of ancient political thought is embedded in the principles of ancient Indian philosophy which recognised the concept of religious freedom. It should be noted that there was no institutional separation of state and religion in ancient India. Secularism meant support and toleration of all sects and beliefs.

Ashoka's edict seems to be the first charter of religious liberty ever to have been issued by a king. His Ideal of toleration makes him one of the greatest monarchs of history to solve the religious conflict of his time. Ashoka adopted a four-fold solution viz. (1) promoting the essence of all religions (2) reframing from the criticism of other faiths (3) gathering the exponents of different religions and (4) learning the texts of other religions. These measures could be successfully used to solve the communal problems of even to-day. His ideas of universal religion may perhaps be regarded as the precursor of modern reformist movements. Ashoka also started the long lived practice of appointing Religious censor or inquisitors whose main function was impartially to look after the spiritual needs of all sects. Generally no religious discrimination was practiced in public employment in the ancient period. After Ashoka, most of the rulers followed a unique policy of aiding all religions.

#### **Evolution of Freedom of Religion during Medieval India**

The society established by Mohammed in the 17th century A.D. was an integrated religion-political community. It gave no recognition either in theory or in practice to the distinction between spiritual and temporal. Religious devotion and political allegiance were merged for Mohammad was

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both the messenger of God and the divinely appointed Governor and Commander. This unitary tradition was continued by the early caliphs, but by the Ninth Century the “Ulaman” (Doctors of Islamic Law) succeeded in arrogating to them-selves the exclusive authority to define orthodox dogma, the periods of during medieval are the Delhi Sultanate (1211-1504) and Mughal empire (1526-1757)

Indian Muslim thought was called upon to define the relationship between Islam and the Muslim in the context of a situation never envisaged by the prophet. In carrying out This role, the Muslim ruler was necessarily dependent on the religious guidance of the “Ulama” for unlike the Caliph he could claim no past tradition of independent spiritual authority. The Muslim rulers were faced with the problem of ruling a vast majority of people who were alienate Islam. The resulting effect was that thousands of Hindus were converted to Islam by force; and public worship of Hindu images was forbidden. In many parts of the country, Hindu temples and their images were destroyed. The religious policies of the Indian Muslim rulers ranged from the tolerance and syncretism of Akbar to the bigotry and fanaticism of Aurangzib.

During the Sultanate and later under Aurangzib, many thousands were forcibly converted to Islam. Shahjahan appointed a superintendent of converts charged with special responsibility for making converts. With the rise of Muslim power in India. Hinduism faced the greatest challenge to itself. The long rule of Muslims about a thousand years only very few Muslims tried to play the role of fanatical persecutors and those of rulers, Akbar was the great and the most tolerant and benevolent ruler of the Medieval period. He encouraged the building of temples and abolished many. Socially discriminatory practices. It is a gratifying fact that the famous Golden temple at Amritsar was built on the land donated by akbar, and bhagawadgeetha was translated into Persian by poet Faizi. He is said to have recognised “reason to be the basis of all religion” and over-thrown the conception of state religion. Indeed he was the first Muslim king freed India from the domination by the religion community

Akbar also founded a new religious order called “Din-i-ilahi” but he never forced it on his subjects and it died in the Royal courtyard itself. Long before Akbar, Zain- ul-Abidin (1420-1470) the ruler of Kashmir had also shown unprecedented toleration. He was a man of liberal ideas. He admitted learned Hindus to his society and granted perfect religious freedom to all. Jehangir did not tolerate forcible conversion of non-Muslims to Islam. On the other hand, he allowed Christians to make converts. His own grand son was publicly baptised.

The above narration highlights some of the secular activities of only a few rulers. In the first place, it has been argued by some writers that the Medieval Indian State was negatively secular in that it subordinated religion to politics rather than politics to religion. In the second place, there were a number of cases of reconversion from Islam to Hinduism. In the third place, most of the Muslim rulers did not interfere with the exercise of private religious rites by Hindus and other non-muslims. In the fourth place, Akbar removed all restrictions on public religious worship and the building of places of worship of non-muslims. The state in ancient India was committed not merely to the protection of Hindu religion but to its active promotion as well. The Hindu king was by tradition “protector of Cows and Brahmins”. There was certainly no institutional separation of state and religion. Though this gave to the Hindu state a decidedly non-secular character, it possessed some features which could hold towards the growth of secularism. Ancient and medieval India is singularly void of religious wars of the kind which raged in 17th century Europe. This has been generally attributed to the wide prevalence of religious tolerance in India. Max Weber says “It is an undoubted fact that in India, religious and philosophical thinkers were able to enjoy perfect, nearly absolute freedom for a long period”. The freedom of thought in ancient India was so considerable as to find no parallel in the west before the most recent age.

#### **Evolution of Freedom of Religion during British Period**

During the early British rule in India, the East India Company followed the policy of religious neutrality or non-interference in the religious matters of the natives, because in the initial stage the British Company concentrated only on establishment of its commercial policy in India. This attitude of the company was disliked by missionaries who argued that the company was not only

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a commercial body, but also a Christian Gospel. These missionaries thought that by Christianizing India, they would help to improve its social and economic conditions and also make them more loyal to the British government. As per the views expressed by missionaries, the British Government had directed the company to meet the expenses for managing the affairs of the Church of England from the Company's Indian revenues. The caste Disabilities removal act 1850 received the first attention for codification out of all the commendations of the First Law Commission, because it removed a major obstacle from the Christian missionaries path. Religion was always expressly enumerated item of power of the central/state governments under the Indian Councils Act and the Government of India Act from 1858 to 1935.

After the Caste Disabilities Act 1850 came into force the requirement of religious affiliation ceased to be enforced as a requisite to succession. Though the above policy was taken as a victory for religious freedom, the change of orthodox Hindus that it was designed to help Christian missionaries was not altogether baseless. The British policy of neutrality in religious matters was dictated by practical and political reason. This means used by Britain to conquer and hold India included a good deal of the "Divide and rule" policy. During the period of the consolidation of British rule the Muslims were looked upon as the enemies of British authorities in India. The blame for the mutiny of 1857 was also laid at the door of Muslims and also expected, the mutiny of 1857 was in part atleast the result of the belief that the company was interfering with the religion of the natives. This resulted in transference of power from company to the crown in 1858, re-altering the policy of religious neutrality.

Queen Victoria in her proclamation declared that none will be favoured, molested or disqualified by reasons of his or her religious faith or observance and all shall equally enjoy the protection of Law. Though the policy of religious neutrality appeared to be quite convincing, it was never implemented honestly. It may be recalled that after the renewal of the company's character in 1879, parliament provided for the appointment of Bishops of the Church of England to supervise ecclesiastical matters in India, and the Company thus became officially connected with the Missionaries. This process continued even after the British Crown assured sovereign power and thus a government which professed religious neutrality, appointed and paid Bishops whose main function, it was alleged, was to convert Hindus and Muslims.

The end of the century witnessed also Hindu revivalism by the Arya Samaj and the new vedantism of Vivekananda. The aggressive militant nationalism of Bal Gangadhar Tilak in Maharashtra and Aurobindo Ghosh and Bipin Chandra Pal in Bengal was thoroughly imbued by religion. These men led by Tilak attempted to dominate the Indian National Congress, but failed to dislodge the moderates led by Gopal Krishna Gokhale who were secular in their outlook. They, however later succeeded in proving how the latent communal feelings could be harnessed for a political purpose. One of the first major steps to create a Hindu-Muslim rift was taken in 1905 by the partition of Bengal. Further it cannot be denied that this excess of religious symbolism was partly responsible for the rise of Muslim League in 1906, and the same league supported the Partition of Bengal.

On the introduction of democratic electoral process in India in the present century, the nature of the electorate became a matter of bitter dispute between the congress and the Muslim League. The Muslim League demanded a separate electorate for the Muslims and threatened a nation-wide agitation to press their demand. The demand found express recognition in the Indian councils Act 1909 which provided for separate electorates with reservation of seats for Muslims in the Indian and provincial councils. The Government of India Act, 1919 applied this principle no only to Muslims but also to other communities like Sikhs, Anglo-Indians, Indian Christians etc. This issue of communal representation even persisted in the three round table conferences held in London between 1930-1932. The result was that the same principle was continued under the communal Award, on the basis of which representation was given under the Government of India Act, 1935.

The rise of the Muslim League and the recognition of the principle separated communal electorates bring us the most crucial factor in modern Indian politics from the point of view of the growth of secularism. The ultimate result of these developments was the partition of India and the emergence of Pakistan as an independent Muslim State. This shows that while religious influence on

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the whole has been taken to the advantage of India, especially from the point of view of her cultural enrichment religion has also played havoc with the failure of secularism in pre-independent India was the only factor which partitioned the country.

#### **Evolution of Freedom of Religion during post-independent era**

The debates in the Constituent Assembly on the question of state neutrality are of such importance to an understanding of the eventual constitutional provisions. So an examination of the Debates in detail is essential. In framing the provisions to ensure state neutrality in certain religious matters, the founding fathers of the Indian-Constitution were greatly influenced by the American, Australian and Irish precedents.

#### **Freedom of Religion and Constituent Assembly:**

The first meeting of the Constituent Assembly was held on 9th December 1946. On December 11, Dr. Rajendra Prasad was elected its permanent Chairman. It was held in an atmosphere of uncertainty, because the Muslim League boycotted the Assembly. Inspite of this, the Assembly made a substantial progress and adopted objective resolution which later became the preamble of the constitution. It appointed various committees to deal with different aspects of the constitution. The reports of the Committee formed the basis on which the first draft a Drafting Committee of 7 member was set up under the Chairmanship of Dr. Ambedkar. The draft constitution was published in January, 1948. The people of India were given 8 months to discuss the draft and propose amendments. As many as 7,635 amendments were proposed and 2,473 were actually discussed. The Constituent Assembly held 55 sessions. The draft constitution was considered for 114 days. In all, the constituent Assembly sat for 2 years, 11 months and 18 days and the same Assembly pay attention for discussion about the provisions of freedom of religion.

The Constituent Assembly adopted early in May 1947, clauses 13, 14 and 15 of the Draft Constitution which dealt with freedom of Religion, out of which clauses 13 and 14 sought to guarantee to all individuals. Freedom of conscience, and a right to profess, practice and propagate religion and a right to establish and maintain religious institutions, and to manage their religious affairs, and to acquire and own property to all religious denominations and clause 15 sought to enjoy in the state from compelling an individual to pay taxes to maintain a religion or a denomination. The Assembly referred back to the Advisory Committee for minorities clauses 16 and 17, which dealt with restrictions on imparting of religious instruction in Educational institution and propagation of religion. Shortly after the adoption of these claims, the plan to partition India was announced. On 14th August, 1947, Indian Union was divided and Pakistan was formed. But neither the partition nor all that came in its trail deflected the constituent Assembly from the path of Secularism. On 3rd April 1948, it passed a resolution which according to K.M. Munshi, is a definition of Indian Secularism.

Whereas it is essential for the proper functioning of democracy; and the growth of national unity and solidarity that communalism should be eliminated from Indian life.

Secularism came up for discussion again when the Assembly took up the provisions of the draft constitution on Articles 19, 20 and 21 on freedom of religion, K.T. Shah and H.V. Kamath proposed amendments requiring the state to display an attitude of absolute impartiality towards religions and not to establish, endow, or patronize any religion. Kamath said that there should be no unification had led to pernicious consequences in Europe and England. Further he said that the state represented all its citizens and it should not identify itself with the religion of a section of its citizens. Loft Nath Misra, denounced that Article 19 which, inter-al is, guaranteed freedom to propagate religion, as "a charter of Hindu Establishment.

Indian Constitution". He found that the Article might "pave the way for the complete unification of Hindu culture, the Hindu Way of life and manners". He almost raised the cry of Hinduism in danger when he said that Islam had declared its hostility to Hinduism, and Christianity, its policy to penetrate by the back door on the out skirts of Hindu social life.

The Assembly did not pay much attention to the provisions on freedom of religion. The amendments to these 11 provisions proposed in the Assembly were unimportant to the debate; they evoked was instead. Ambedkar refused to reply to the debates; he merely accepted or rejected

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amendments. All the amendments unacceptable to him were unacceptable to the Assembly as well. The Chairman overruled Kamath's objection and said that Ambedkar could not be compelled to reply. The debates, therefore, shed no light on any provision on religious freedom.

Only the right to propagate religion attracted the members' attention. The debate, mostly pedantic, centrally round the activities of the missionaries and the fear of a member or two that the Hindus might be swept by Muslim and Christian propagandists. An interesting feature of this debate was Munshi's change of stand. In 1947 he proposed an amendment to clause 13 designed to reduce that right to the vanishing-point; in 1948 he defended that right stoutly. Clause 17 provided that "Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law". Munshi wanted the above clause to encompass fraudulent conversion and conversion of minors. He wanted no one to suffer any change in legal status or loss of rights as a result of such conversion.

There was disagreement among the members only on conversion of a minor. Frank Anthony and Micholos Roy vigorously opposed, while Purushottam Das Tandon strongly defended Munshi's amendment. Frank Anthony congratulated the majority in guaranteeing the right to propagate religion, viewed as the most fundamental of all rights by the Christians and pleaded that the majority should not take away with one hand that it had given with the other. He said that a ban on conversion of a minor "will virtually take away the right to convert" and that not a single parent, however deeply he may feel well even adopt Christianity as that would separate him from his children. Roy said that it was wrong to think that a minor had no conscience, and emphasized that the spiritual side of conversion should not be ignored. Tandon opposed the conversion of minors and asserted that a majority congress men was against retention of the word "propagate" in clause 13. He wanted that like many other transactions by minors' conversion too should not be recognised by Law. B.N. Latta reminded Tandon that it was yesterday that the majority of the congress men in the Assembly had agreed to its retention in Clause 13. Ambedkar urged the withdrawal of Munshi's amendment as it might raise many difficult problems such as legitimacy of child's burial or validity of a daughter's marriage performed according to Christian rites by parents converted to Christianity. On Patel's recommendation Clause 17 was referred back to the Advisory Committee on minorities. It was subsequently deleted from the draft constitution.

When the Assembly took up Article 19 (formerly clause 13) for consideration, voices were again raised against the right to propagate. Loknath Misra, as already noted, denounced that Article. Tajammul Hussain pleaded for deletion of the word 'propagate' from that Article as he felt that religion was a private affair and it was wrong to allow its propagation. Rohini Kumar Chaudari found that there was no provision in the constitution to prevent a propagandist from slinging need on other religions. He said that the missionaries had in the past reviled Lord Krishna and ridiculed idol-worship. He wanted a constitutional ban on such practices.

T.T. Krishnamachari pointed out that Article 19 entitled the Hindus and the Arya Samajists also to carry on their 'Sudhi' propaganda. Referring to the charges leveled against Christian missionaries, he said that conversion of many untouchables to Christianity was due partly to the dignity that Christianity gave them. He and Munshi emphasized that in view of the proposal to establish a secular state in India and to guarantee equality of treatment to all religions, no religion might have any particular advantage over another. Therefore the right to propagate "Cannot possibly have dangerous implications which the members think it has". Munshi pointed out that even after deletion from Article 19 of the right to propagate, propagation of religion would be available as a fundamental right to all religious groups under freedom of speech. Munshi declared that so long as religion is religion, conversion by free exercise of the conscience has to be recognised.

K. Santhanam observed that the right to practice religions, neither to unrestricted, was now subjected to various restrictions under Article 19 of the draft constitution. He thought that the restrictions rather than the right in that Article were important. Therefore, the State was competent to legislate with respect to fraudulent or coercive conversions.

After long discussion about making of constitution, for India the new constitution of India was adopted by the constituent Assembly on 26th November, 1949 and signed by the presidents Dr. Rajendra Prasad. Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 372, 380, 388, 391, 392 and 393 came into

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Force on 26th January, 1950 which is the date of the commencement of this constitution. Indian constitution part CII contains a long list of fundamental rights. Articles 12 to 35 deal with different fundamental rights which are guaranteed to the citizens. Articles 25 to 28, 29 and 30 deal with the aspect of Religion.

#### **SUMMARY AND CONCLUSION**

It is clear that in ancient India the State not merely recognised religious freedom in theory, but also gave effect to its recognition in practice. In describing attempts made to protect religious freedom, our object has not been to paint an absolutely ideal picture. There were, no doubt, instances of religious persecution and intolerance, but such cases were few and far between.

It may be noted that in India Secularism did not merely mean institutional separation of the state and religion. It signified protection of all religions by the state and not patronage of just one. During the medieval period of Indian History the state in India was not completely secular. It was not a theocracy either. Generally speaking the Muslim state in India was independent of religion; the real source of the King's authority was not religion but his military strength, and he was more largely guided by considerations of state expediency than anything else. The state being essentially military in character the king was the chief commander of forces.

Muslims came to India as a brave fighting and ruling class, and eventually made the country their home. Of course, there were clashes based on religious differences. Some Muslim rulers were also religious fanatics but most of them were quite enlightened. It may be pointed out here that some historians presented the history of the Muslim period in the darkest colours by indulging in misrepresentation and vilification. In the Mughal period only Akbar, the great succeeded to some extent to maintain secular activities in India.

The religious policy of the British was mainly guided by commercial imperial concerns. As a result they did not interfere much in the religious affairs of the Indians. On the other hand, they passed a number of Laws to prove their religious neutrality. However, many aspects of their rule were not consistent with their policy of religious neutrality. For example (1) they followed a policy of "divide and rule" on religious basis to fore-stall any united Hindu-Muslim revolt against them and encouraged the Muslim demand for a separate homeland (2) they supported the church of England and encouraged Christian Missionaries' activities as a result of which sizable numbers of Hindus were converted to Christianity (3) they also introduced English Education with a view to spread Christianity western Education, however, did not have the effect desired by the British. On the contrary, it introduced Indians to the new learning and liberal thought of the west. It is even arguable that the Indian renaissance and the congress movement were the direct corollary of the liberal ideas of the west. It was, in fact, an important contributory factor leading to the creation of a secular state in India.

The most significant roots of secularism are to be found however in the teachings of the leaders of the Indian renaissance and the activities of the Indian National Congress which admits all the challenges of communal organizations like the Muslim League and the Hindu Mahasabha stood firmly committed to the idea of creating a secular-state for India after it gained freedom.

The Constituent Assembly's main aim is to make India a secular state. The same assembly did not pay much attention to all the provisions of freedom of religion. The debates, therefore, shed no light on any provision on religious freedom, only the right to propagate religion attracted the attention of members. An interesting feature of debates is "Conversion from one religion to another brought about by coercion or undue influence prohibited and also prohibited the minor's conversion and guaranteeing, the right to propagate any religion to every one equally and freely".

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13. Clause 13: All persons are equally entitled to freedom of conscience, and the right to freely profess, practice and propagate religion, subject to public order, morality or Health, and to the provision of this part.  
Explanation 1: The Wearing or carrying of Kirpans shall be deemed to be included in the propagation of the Sikh religion.  
Explanation 2: The rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.  
Explanation 3: The freedom of religious practice shall not debar the state from enacting laws for the purpose of social welfare and reform and for throwing open Hindu religious institutions of a public character to any class or section of Hindus. Ibid., p.476.
14. Clause 14: Every religious denomination or a section thereof shall have the right to manage its own affairs in matters of religion and subject to the general law, to own and , acquire and administer property, moveable and immovable and to establish and maintain institutions for religious and charitable purposes Ibid., p.478.
15. Clause 15: No person may be compelled to pay taxes, the proceeds of which are specifically appropriate to further or maintain any particular religion or denomination Ibid., p.476.
16. Ghouse M.D., Secularism Society and Law in India - p.1 and also see Mushi K.M. Pilgrimage to Freedom (1967), p.310.
17. C.A.D. VIII quoted at p.316 (1949).
18. C.A.D. VII (1948), p.814.
19. Ghouse M.D., Secularism Society and Law in India, p.5.
20. C.A.D. iii p.481 and C.A.D. viii p.837.



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