*A Dissertation on*

# *"Analytical Study Of Religious Freedom Through Constitutional Prism In India And The USA"*


**Submitted to:**

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**Under the Guidance of:**

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**Submitted by:**

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## DECLARATION

I hereby declare that, I ***Mr. Aaditya P. Dave***, (20ML001) have prepared this dissertation entitled "**Analytical Study Of Religious Freedom Through Constitutional Prism In India And The USA"** under the able guidance of ***Dr. VK Upadhyay***, Assistant Professor for the grant of LLM Degree in the subject of Constitutional Law. The submission is that of my own and has been my own research work. To the best of my knowledge and belief it contains no material previously published and written by another person nor any material which has been accepted for the award of any other degree or diploma of this University ot other Institute of Higher Training and Education except where due acknowledgement has been made in the text.

Place: Ahmedabad

Date: /07/21

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# CERTIFICATE

This is to certify that the thesis work titled submitted to the Institute of Law, Nirma University, Ahmedabad by Mr. Aaditya P. Dave (20ML001) towards the ccompletion of of the requirement for the award of the LLM Degree for the subjkecct of the Constitutional Law is a bonafide record of work carried out by him under my supervision and guidance. To the best of my knowledge and belief it contains no material previously published and written by another person nor any material which has been accepted for the award of any other degree or diploma of this University or other Institute of Higher Training and Education except where due acknowledgement has been made in the text.

Place: Ahmedabad

Date: /07/2021

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Dr. VK Upadhyay

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## LIST OF ABBREVIATIONS

| | | |
|---|---|---|
| 1. | AIR | All India Reporter |
| 2. | Art | Art Article |
| 3. | Ed. | Edition |
| 4. | Hon'ble | Honourable |
| 5. | i.e. | that is |
| 6. | ILR | Indian Law reporter |
| 7. | No. | Number |
| 8. | Ors. | Others |
| 9. | PIL | Public Interest Litigation |
| 10. | SC | Supreme Court |
| 11. | SCC | Supreme Court Cases |
| 12. | SCJ | Supreme Court Journal |
| 13. | SCR | Supreme Court Reporter |
| 14. | u/a | Under Article |
| 15. | u/s | Under Section |
| 16. | Vol | Volume |

## LIST OF CASES

# ANALYTICAL STUDY OF RELIGIOUS FREEDOM THROUGH CONSTITUTIONAL PRISM IN INDIA AND THE USA

*"Religious liberty might be supposed to mean that everybody is free to discuss religion. In practice it means that hardly anybody is allowed to mention it."*

***— G.K. Chesterton***

## CHAPTER I: INTRODUCTION TO THE RESEARCH

### 1.1 INTRODUCTION:

In the world's Oldest Democracy to the formation of the World's largest Democracy in the year 1947, constitutionalism has travelled a lot. Beyond many notions. But, requirement of specific articles clearly laying down the religious freedom in the latter was felt. It may have been because the difference in the religious and ethnic diversity or in the approach towards the freedom. A lot of such difference also lies in the way in which the bill of rights is enforced versus how the third part of the Indian Constitution has and will see its enforceability and development. Hence, all such factors cause the difference of the basis in where and how the democracy – especially in relation to and the context of the religious freedom develops.

In India and the United States, in both the places, there exists religious freedom and that of expression as in the constitution itself. However, the nuances of them both differ not only in the wording of the provisions, but a lot on the interpretation that courts have given to them and also on how much handy have they come into play for the purposes of civil life. This research shall be an attempt to chalk out and compare those rights and the sub rights which arise out of the same. It shall also delve into how the lately, developments have taken place in India with respect to these rights and whether such a development could have taken place in the USA with respect

to the provisions they contain. It is a given that there are individuals and groups who would like to impose their will by neutering, if not eliminating, organized religion has become one such tool under the name of which, not only exclusionary but a lot of times, even the most repelling circumstances are born and take place.

Human Birth is an ascription of sorts, ascription to a certain race, status, caste (in the Indian context) and religion. Whether such ascriptions are capable of revision and if so, then to what extent has been a subject of human inquiry, a social project (for instance backward caste movements to get rid of caste-based inequalities in India) as well as contemporary political philosophy. Any discussion on religion in public sphere in India (as opposed to religion being a subliminal human experience) automatically brings the spotlight on secularism or more specifically Indian model of secularism. There can be no universal model of secularism as there is no universal religion.

India is a nation of many religions and freedom of religion has been accorded constitutional protection. Articles 25 to 28 constitute significant constitutional provisions on freedom of religion. It is also pertinent to mention here that the term religion is nowhere defined in the Indian Constitution but the term has been given expansive content by way of judicial pronouncements. Religion has been a volatile issue in the country capable of inciting sentiments which have often seen being translated into violent outpourings in the public sphere. The Constituent Assembly debates tell us a lot about in what circumstances were these rights introduced and how the rights were also misunderstood at times.

On the other hand, when we have a look at the United States, a long line of litigation has demonstrated the vitality, and resiliency, of the First Amendment, even if all do not agree with the results of the cases. A massive number of disputes have been litigated on a wide range of issues involving religion because the meaning of "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." These religion clauses have generated a greater amount of litigation involving religion, in particular, at the Supreme Court level than any other issue involving schooling.

A secular purpose is the first requirement to sustain the validity of any aspect touching upon religion, and upon this standard the Justices display little disagreement. There are adequate legitimate, non-sectarian bases for legislation to assist nonpublic, religious schools: preservation

of a healthy and safe educational environment for all school children, promotion of pluralism and diversity among public and nonpublic schools, and prevention of overburdening of the public-school system that would accompany the financial failure of private schools.

As against this, coming back to India, almost an indomitable and Continuous fight is kindled between the religious groups and either the court or the secular and liberal people. Be it the Haji Ali Dargah or Sabrimala Case, such fight is ensued almost inevitably. Hence, in view of this what is the current interpretation of the Constitutional and Fundamental Freedom to the right of religious freedom must be understood. To sum up, the Indian position on the freedom of religion entails noninterference of the state in religious matters and the only permissible interference is confined to matters incidental to religion. This is a skeletal model of Indian secularism. How this skeletal model works out when life and blood are infused into it is a matter of ongoing observation.

In another interesting development which we have seen in our country as for the 42nd Amendment. Even before the introduction of the word "secular" in our Constitution, we had base for that in the Constitution. But we introduced that. As compared to this there is no specific line in the USA Constitution. All these have varied and interesting connotations.

Juxtaposing this with the situation in the United States, it is a common perception today that, beyond what is called as the tripartite recognition commonly, (including the Roman Catholics, the Protestants and the Jews) But the increasing diversity is not being as readily accepted through any of the means – which the population feels. There are extreme totalitarian tendencies which are developing in the USA as well. The chronicle of Higher Education in every week lays down such incidents.

## 1.2 STATEMENT OF PROBLEM:

The problems because of which this research is undertaken includes the following points to summarize, which are elaborated later:

The inherent difference in the existing scope of difference between the two countries in the way they administer the fundamental rights, cause an incomparable difference between the two. This makes it imperative to have an analysis made in the scope of difference.

The tripartite recognition as stated earlier and the tiff and communalism in India – is the religious freedoms in the respective countries of any avail? Is the main question which needs an answer?

Notions of secularism in both the countries differ. Communalism in India is more rampant as per the reports and rumor. To identify and compare with relevance to the judicial instances as to how the secularism in both the countries is shaping up. Further when we particularly see Articles in the Indian Constitution, it is very intriguing to note how state interference so to speak can also be a factor to be considered.

To analyses the religious freedoms in the above given aspects that exist in both the countries, it becomes almost imperative that the provisions providing the same must be seen. Furthermore, it is well acknowledged fact, that the USA Constitution is quite precise as compared to that of the Indian one. Hence, despite of the clarity that is tried to be given through the Indian provisions, what are fallacies that both of these have in relevance to the social situations they stand in.

## 1.3 LITERATURE REVIEW:

1. ARTICLES:

   There are various articles which have been written on the topics which somewhere or the other touch the areas which have been mentioned above however, a complete analysis in the nature and direction in which I propose to do the same has not been done and at the same point of time, that has not been undertaken in the same manner. My main identified sources are as follows:

   A. Misperceptions of freedom of religion and Belief: Heiner Belfield Human Rights Quarterly Vol. 35, No. 1 (February 2013), pp. 33-34:

Freedom of religion or belief has been recognized as an international human right; however, some recent conceptualizations may blur its status as a human right by undermining the principles of universalism, freedom, and equality. This happens under different auspices, such as: combating defamation of religions, preserving a state imposed interreligious harmony, or promoting ideological versions of state secularism. In addition, some question the interrelatedness of freedom of religion and other human rights. By discussing typical misperceptions, this article aims to rebuild a consensus on the significance of freedom of religion or belief as a universal human.

My research is going to focus on the given sets of research and premise but this paper does not touch on the aspect as to how despite the universal nature of the religious freedom, mere nature of difference in the secularism in the nation state or the way in which the religious diversity is divided or the fact how the judiciary and other mechanism treats the right has a huge impact on the

B. Religious Freedom in Contemporary America: Franklin Hamilton Little.

This paper most part of it seems to focus on the shift in the tectonic plates of the secularism of the united states of America and how the first amendment there ensures but still problems are posed and are on the verge of the religious freedom in the country.

However, this article and research in most part of it does not touch what I am supposed to research for the instant matter, that is to compare and juxtapose the position with that of India and how the entirety of the thing is not dependent on the variable of the religious diversity only and does not account for the state interference.

C. The International Politics of Religious Freedom: Elizabeth Shakman Hurth

This research concentrates on how the USA has categorized the first freedom as one of the most important and imminent freedoms which have been laid down and how

the same have been subject to any of the tactics at Political Level. The nation states and how have they have dealt with the international imagery of religion is the focal point of this.

Even despite conduction of this research it does not answer the questions that I am specifically set to answer in this dissertation. My focus is to compare the nature of the rights with that of India and how the same can be of varying nature in the countries and what are the possible changes which can be made to the system of India in accordance with such insights.

D. Managing Religion and Judicialization of the Religious Freedom: James T. Richardson

Religious freedom is a highly valued goal for many citizens and political leaders around the world, especially in Western-oriented nations. Much ink has been spilled in defines of religious freedom and many have waxed eloquent about the virtues of promoting religious freedom. Most constitutions and other international documents around the world guarantee religious freedom even if those guarantees are sometimes honoured in the breach. Why this focus on religious freedom is occurring and how it is being addressed are the focus of this article.

On this very issue, it becomes an important material for the background and for the pedestal of how much research has been done with respect to the understanding of the religion in particular as related with the Indian Constitution as far as it is to be compared with that of the USA and drawing parallels which has not been done.

E. Secularism in India: Its Challenges and Future: Ranbir Singh Karamzin Singh
The present paper purports to examine and analyse the concept of Secularism in the context of world in general and India in particular. India is a secular state in the same way as it is a democratic state. Secularism is the only way of development in a plural society like we see today, the Indian Government has failed to establish a secular

society. Communal politics, religious militancy, poverty, illiteracy and political corruption are posing serious threats to secularism. But the present turmoil will certainly be ever if sincere efforts with more stable secular policy are made. Majority of the problems will automatically be solved and the country will become an abode of peace progress and prosperity.

In this view, this research shall help me in analysing the overall effect that the political and the democratic system of the country has on the religious freedom and the communal aspect of the same. Which I have to delve deeper into with the help of these resources.

F. Articles of Faith: Religion, Secularism and Indian Supreme Court: The primary view of this book satisfies on how the secularism has been moulded by the Indian supreme Court through various of its judgements. However, my research shall be wider on the scope comparing with the USA Counterpart.

## 1.4 OBJECTIVES OF THE STUDY:

1. To understand the structure of Religious rights as they exist in both the countries and how the same are to be understood in context of their own countries and social setup.

2. To compare and draw out the Judicial Pronouncements that have been given in the light of the provisions and hence to identify the provisions which have turned out in the better way.

3. To navigate through the various communal and other social events and then analyse if they have any background to the said effect.

4. To suggest alternative ways or provisions which could have been worked out in India.

## 1.5 RESEARCH QUESTIONS:

1. What is the different sort of religious freedoms with respective scopes that are afforded in both the countries constitutionally?
2. How is the interference from the state a relevant aspect in both countries with respect to the freedom of religion rights?

3. What is the outlook of judiciary in both the countries on these rights? different, to what extent and of what nature.

## 1.6 SIGNIFICANCE OF THE STUDY:

The research undertaken seeks to develop an analysis on how two democratic nations, having the religious freedom rights can differ in view of the language, judicial interpretation and the interference of the state. The research shall churn out the difference in scope, nature and area of operation of the said rights so as to enable and equip any future undertakings of research on this topic with a base of these rights in a detailed and meticulous manner.

## 1.7 SCOPE OF THE STUDY AND LIMITATION:

The scope of this study will include the analysis of the Constitutional Provisions as they stand. This is because they shall provide the first and the basic insight into the nature of the rights. This I shall include by expanding the horizon to the Judicial Approach. This is because, the interpretation of the Judiciary shall be the main in form of how the right has to be looked into and interpreted. Further on basis of interference of the state in the freedom of religious rights in the countries, I shall finally try to delve into the nature of the religious rights in both the countries and proceed to conclusions and suggestions.

The natural limitations of this research shall be about the assumption of variable factors to be static and also the lack of ability on the part of the researcher to go beyond the material available in library and the internet in view of the pandemic.

## 1.8 RESEARCH METHODOLOGY:

In order to undertake the research, the following methodology of analysis is proposed to be undertaken which is as:

The methodology to be adopted is doctrinal and analytical in nature where primarily the source shall be the constitutional provisions and the judicial pronouncements. However, I shall also try to take the support of research already made by the scholars on various related topics and try to expand the said aspect to other horizons which fit my research.

The analysis and assessment of the provisions will further lead to the development of the research on the pedestal of the scope of religious freedom and then the analysis of the interference of the state will require analysis of specific instances and then comparing them on basis of the constitutional provisions and permissions.

## 1.9 SUMMARY OF RESEARCH AND CHAPTERISATION:

**I.** For the entire brief of the reason why the researcher has the undertaking to research on the Instant topic and the usage of Research Methodology thereto, the first chapter, namely **Introduction to the Research** has been proposed. This shall enable the researcher to set the background for the purpose of the research.

**II.** **Freedom of Religion: A Conceptual Framework:** The said chapter shall include the requirement of the right to religion in the framework as it does exist and the rationale for grant of any such rights by the Constituent framers. It shall further undertake the task of describing the notions of the regulatory framework.

**III.** **Interference of State in the Religious Freedom:** The chapter includes the notion of despite such freedom which has been granted, how much interference is being made on behalf of the state on day in and out basis. This differs on the nature and the level of the related communal and social events which have been analysed in the wake of the country's changing scenario. s

IV. **Freedom of Religion: Scope in Indian Constitution:** the chapter aims to lay down the area in which the rights provided in our articles 25-28 operates and how the nature of the rights bundled with the other rights affect the substantive right to the freedom of religion in the people of India.

V. **Freedom of Religion: Scope in USA Constitution**: The United States as I have described in all the ways possible ass to how the administration of the federal government in one way or the other affects the religious rights of the people and although that the state is not entitled to lay down any law which impedes the same, it shall not be possible to do so without the intent of the government to trample the rights of the people.

VI. **Juxtaposition of the Rights and Comparison:** This chapter in a way contains the crux of how the entire gamut of rights which exist in both the countries exist and which way the rights seemingly and even otherwise contradict one another; therefore trying to come to the conclusions of which format of the right could have been better.

**VII. Conclusion and Suggestions:** In this chapter finally, the research concludes keeping in view the various developments and analysis which have been made during the research and therefore trying reach to meaningful suggestions**.**

# CHAPTER II: FREEDOM OF RELIGION: A CONCEPTUAL FRAMEWORK

## 2.1 INTRODUCTION

The freedom of religion is a right which lies in the very roots of not only democracy but also that of the well oft quoted concept of secularism. Apart from anything else, it is considered to be a right which is often associated with the rights which are originally human and which cannot be differentiated from the existence of human. Therefore, this freedom is one which is associated with the entire existence of human in the sphere of the international rights of human convention[1]. Therefore, even though I have undertaken for the research for two particular countries, the right which has to be discussed is all pervasive right and which shall require immediate discussions of various countries intermediately in order to fashion out how much the entire work is to be done.

There are various scholars who believe that, this right in particular is the one which is very controversial and which cannot be equated with other rights which are as basic as the right to life. However, the said aspect of this right to the freedom of religion does not come as a shocking wave in the world of academia[2]. The real problem lies in the fact that, this right is the sole right, in my submission, which is open to so many different interpretations, in simple view of the fact that, the religious rights in general and particularly here, are subject to and of various dogmas, which have no relevance with the fact that, the right in itself is drafted to be uniform. What I mean here is the fact that, though the codification of the right is quite generic and has to include all the religions, it

[1] Georg Jellinek, Die Erklärung Der Menschen Und Bürgerrechte, In Zur Geschichte Der Erklärung Der Menschenrechte 1-77 (Roman Schnur Ed. 1974)

[2] Manfred Nowak, U.N. Covenant On Civil And Political Rights: Ccpr Commentary 408 (2d Ed. 2005)

is not possible to a lot of times allow the profession of the religion, which would trample upon other rights of the constitution.

Let me explain this issue with a simple example. The issue relating to whether the entry of menstruating women in the sabarimala temple is a rather more complicated a question than it seems. There are various authors who have described the issue in a clear format of black and white and rather described the same as an all-pervasive issue of society and have clearly divided the same into a simplistic issue of masculinity and gender bias[3]. However, the Supreme court is now sitting in review of the matter where they are going to consider the whole aspect of the religious denomination and the religious aspect thereof.

## 2.2 FREEDOM OF CONSCIENCE

The researcher feels that, the issue of the freedom of conscience as along the freedom of religion is one of the major concerns for the countries worldwide. Therefore, it is imperative especially in the times of growing needs and majoritarian governments as to how to curtail the entire process by which the constitutional rights are bypassed.

Thereafter, there is one more view which is prevalent in the public sphere. It is the doctrine of tolerance[4]. The whole idea behind this doctrine stands on the footing that, once a person believes or adheres to some of the religious aspect or related aspect thereto, it shall be very imperative for them to understand that assertion of this right in the public sphere cannot be done so easily and more so, the word profession of religion would not include a sphere where the rights of the other

[3] Filippo Osella And Caroline Osella 'Ayyappan Saranam': MASCULINITY AND THE SABARIMALA PILGRIMAGE IN KERALA, Dec., 2003, Vol. 9, No. 4 (Dec., 2003), Pp. 729-754.
[4] Abdulkader Tayob Religion, Culture And Identity In A Democratic Society, JOURNAL FOR THE STUDY OF RELIGION , 2002, Pp. 5-13. Vol. 15, No. 2 (2002),

person is clearly harmed and violated. Therefore, it is important to understand and proceed with this view in the research that, in no way, is the scope of right of freedom of religion understood to be so wide as to harm or hinge on to the other parallel rights.

In the United States or in India, where the liberalization and the transformation of the societies are happening at a rate which is not precedented by any era, it is very clearly visible to the bare eye that, the influence of religion and culture in the public sphere reduces. Earlier the dogmas and the various important doctrines of the religions used to govern in one way or the other. Saudi Arabia is one big example of this even today. The exertion of a social right or a political right on one hand is allowed but on the other, the same exercise of the right would be hindered if it takes the shadow of religion. Hence, the influence of the religion in the minute matters, by and large has reduced in the country and the world in general.

## 2.3 ANALYSIS OF THE MATERIAL

There are many scholars who have worked on this field and have tried to explore the various nuances of this region. This is on the ground that, scholars like Castell and Casanova[5] are stating that in the information age, the work of religion shall be majorly restricted to the type of moral and other control where the law cannot prevail. One example which comes to my mind is the extent to which the customs and traditions are followed and how the entire aspect becomes about how the person is allowed to take certain steps in the order of happening of some event. Therefore, this one step also causes a lot of change in how the rights relating to freedom and religion are seen in general. Casanova[6] on the other hand goes to the conclusion that radical changes in the entire

[5] 2 THE POWER OF IDENTITY, Castells, M. 1997. The Information Age: Economy, Society And Culture.. Maiden, Massachusetts: Blackwell Publish

[6] PUBLIC RELIGIONS IN THE MODERN WORLD.Casanova, J. 1994. Chicago; London: The University Of Chicago Press (1994)

sphere of religion in itself is going to come which cannot be controlled in any manner in anytime soon. Therefore, apart from the cultural identity which a person keeps, he is also entitled to the protection of the state in which the he resides. Therefore, essentially this protection is not for the fact that, one particular right resides within the human, but on the other hand it is for the fact that, the human himself is a part and in a way an extension of the right which had been promised to be kept up and alive.

Before the research moves to the specific study of the two countries which have been undertaken and mentioned, it is important to understand, as to the scope of the right to religion and understanding the nature of this right. Now, the right to freedom of religion or the freedom of conscience as many calls it, it is important for the fact that, this freedom subsumes inside the freedom of thought. This is majorly done because, once a person has the right to privacy, can it be said that, the person is also having the right to do or to exercise the religion as to whatever he pleases in the private sphere. But this is where the catch lies. It is in the fact that, once a person has the eternal wish to exercise his own right within the public sphere, the right of religion which is enshrined in the constitution comes into place and is called in question. Now, a lot of scholars[7] believe that, the said sphere of rights is *forum internum* that is to say that the state has, in blatant words, no business to enter into the whole sphere of what the person does in his private sphere. But then this research wants to and aims to delve more on the notion as to how a particular religion, even if the same is professed in a manner which is permitted in their customs for e.g. Going to a temple or mosque etc. Can a right then be examined from that point of view only for the fact that,

[7] UN AND EUROPEAN HUMAN RIGHTS LAW AND PRACTICE Paul M. Taylor, Freedom Of Religion, (New York: Cambridge University Press, (2005)

if not done, there shall be an interpretation of the right which shall lead to almost a nullity in the paradigm of interpretation.

## 2.4 UNITED STATES

Under the Constitution of the United States, many scholars believe that the freedom of religion and the consequent freedom of conscience always have been inseparable in the following terms:

> *"Indeed, under American law, religion and conscience remained inseparable. Conscience was the door to religion; separating the two seemed unthinkable. To protect conscience was to protect re legion, and vice versa. In fact, the three most important practical components of freedom of con science were the right of private judgment in religious matters, the prohibition of any kind of religiously based discrimination, and the guarantee of freedom and an exemption from legal impose sit ion and legal restraints in religious matters, which was understood as a legitimate response to the tensions between religion and the legal system*[8]*"*

Therefore in the terms of the Constitution of the United States, there is going to be a major drawback when we discuss with that of India, more particularly because, the right to privacy and the right to conscience in its true sense has been discovered very lately by the Indian Constitution and it has been very recent times where the entire gamut of the rights have been recognized. Hence, the comparison shall be on different footing but based on the cases and the analysis of the same, it shall become a bi difficult to go for the said comparison as far as practicable. Major controversies

[8] Rafael Domingo Restoring Freedom of Conscience JOURNAL OF LAW AND RELIGION, VOL. 30, NO. 2 (June Pp. 176-193 (2015)

have exploded in America and away about the sense of religious freedom. Some errand an unencumbered religious freedom, with religion being granted a prime place in the public forum, trumping other considerations[9].

There is another important consideration which has been kept in the world especially because of the Fact that, religious freedom of the corporations is not consideration and it is only the individuals and the religious organizations and not corporations. Therefore, the scope of the right in the various ways also changes and it demands and it takes a lot of comparison with the substitute of its Indian right which has to be undertaken in this research. There is a lot of usage of the term which is known as the Judicialization of the religion which basically means that, a court of law generally interferes into the scope of religion in which the dogmas of the religion are not generally subject to any interpretation by the state or the judiciary. The people who disagree with the growing trends of this religion have a fact that, where the courts are considered to be special tribunals and therefore, they are equipped to deal with the legal matters.

## 2.5 OTHER FACTORS

However, it is stated that, there is an equally opposite view which states that, customs traditions and the religion is not based upon the fact that has anything to do with the law. Therefore, though the courts are equipped with the legally required knowledge but at the same point of time they do not have the wherewithal and the knowledge to interpret the religious dogmas. Therefore, it cannot be said that, the courts are allowed to interpret and go into the aspect of the religious freedom. However, in the fact of the matter, the Indian Supreme Court has in recent times not been able to

[9] Gamper 2014; Laycock 1994,2014

catch up with the standards that have prevailed over the world and it is now going to the aspect of the other rights as compared to the rights of religion.

It is also found in various countries of the European nations that the right to religion is their exercised in different manner than that of India. There are a lot of scholars who believe that human beings are also called as homo Morales because we are those model beings who have the basic wanting and desire in order to embark on a spiritual journey. Therefore, the right to freedom of religion is one of those intricate rights which can never be equated with other secondary or auxiliary rights. One such rights such as that of electing the year on leader in the country, it cannot be said that the right to religion is at par with or similar to this political right. The reason being that, the whole and soul of the right of the right to religion lies in the fact that its lives close to the person itself rather than any of its actions. There are various scholars including Alex who say that freedom of conscience is a right to an omission on the part of political community – right against its meddling in the exercise of one's being moral[10].

One more aspect of the freedom of conscience is the fact that whether the sovereignty of a state and the collective conscience of the country is more emphatic than the fact that the freedom of conscience belongs to the particular person. This cannot be answered except for recognizing that it is only one human being that can bind himself, however it is for the state as it as a nation and by the doctrine of parents patriae that that the state has the right to protect one citizen from the anarchy of the other.

Going about the freedom of religion in the United States there are various scholars including talk will who has stated that the religious aspect of the country had great influence and sway over the

[10] THEORY OF CONSTITUTIONAL RIGHTS Alexy, A Oxford ; New York : Oxford University Press, 2002 Pgs. 23-35

people souls in the whole of United States this was because not only directly but indirectly the Sabbath observance, the closing down of the American citizen Sundays, were very astonishing for a particular leader developing country religion was also in the United States strongly related to liberty it had its own direct influence on the various policies that were enacted by the government And various ways in which the limits of the innovations in the social and political sphere were set up by the government the religious opinion which proved prevailed there was only relating to 2 major school of thoughts of the political nature namely Democratic and Republican. Therefore, it was very important for the United States to understand that the religious aspect of it develops slowly and gradually as and when the country is moving towards the information age[11].

There were various scholars who travelled through the whole country of United States in order to observe what is the important aspect of religion which is keeping together the political power with it. It was no sooner realized that the Catholic and Protestants were the two major religious groups which are present there. However, it is not that the United States was consisting only of these groups. From the state of Baltimore till that of Michigan, religion in America was quite developed in the format of political arena. Scholars were there who observed that there was a strong connection between the church and the person who occupied the central power in the United States. Although there could be separation between them but it was seldom seen. There were people who declared that generally the clergy should be kept in the churches as separated from the state however official support to any particular religious group was not given until and unless they subscribed to a particular school of religious ideology[12]. Therefore, the vote bank division also

[11] , "WORKS USED BY TOCQUEVILLE Tocqueville's Own N. F (2010, 2:666–74), And Nolla's Bibliography" (4:1377–95).

[12] COMPARE CONVERSATIONS With Joel Poinsett (Zunz 2010, 286) And With Wainwright And Smith (Zunz 2010, 330–31).

existed in the United States as far as the question of religious politics was concerned. Therefore, it is very safe to assume the fact that United States has been equally dipped in the waters of religious political system which was only cured over and above with the age of transformation and information technology.

There is one more aspect in the United States as far as the right of religion is concerned. This is the fact that people have always felt that the clergy must be different from that of the state. However, what is happened is as seen in the various derivations or analysis of the situations which have percolated the entire country, it is seen that wherever and whenever the religion is mixed with the state either of them loses its importance over the time. It is in this light that I want to study and research the aspect of religious right as far as the first amendment is concerned[13]. Therefore, what is the right to religion, apart from how much interference in the state 's permit is permitted by such right Is another important aspect of the right to freedom of religion that is the first amendment in the United States Constitution.

## 2.6 INDIAN PERSPECTIVE

When talking about India, we cannot separate the political status of the people residing in India along with or from the religious rights that they enjoy there are various communities which are a disadvantage position tribe another schedule caste which do not have political representation. The future of these groups was not there for the country and the social combinations in which they lived was just pathetic it was in this view and prism that various political leaders such as Mahatma Gandhi, BR Ambedkar[14] and other such leaders reformatted the right to practice and profess the

[13] ZUNZ 2010 pages 21-25 , 220; Also See TOCQUEVILLE 2010, 4:1351–52

[14] B.R. Ambedkar, SPEECH TO THE CONSTITUENT ASSEMBLY, Vii C.A.D. 38-9 (4 November 1948)

religion which was enshrined in article 25 to 28 of the Indian Constitution. It is surprising that their various assessments had come from people such as Mahatma Gandhi who have witnessed the lower strata of the people so nearly and closely however it was attractive on paper but such articles a lot of times collapses in the real life. This is because in real life there are a lot of issues which require practical solutions and they demand judicial wisdom as along with the religious dominance[15]. In the case of Sabarimala, it is very common to note that where is the Supreme Court allows the entry of menstruating women in the temple on the basis of a technical objection like the religious denomination as provided under article 26 of the Constitution is not constituted by the devotees of the Swami Ayyappan. However, it is important to note that this could have very well taken a different way as was done by Justice Indus Malhotra.

The Constitution assembly debates of these very articles provide for great insights into the fact that on what basis and in which background have the instant religious freedom articles been laid down in our country. Dalits, the lower strata of the society have not only been left behind in the social sphere but at the same point of time they have been castigated time and again on the basis of their practice of religion. For something as simple as tribal sacrificing animals are sought to be curtailed by different ways and legislations which could otherwise be imposed on the normal people. Therefore it is important to understand that when the religious denomination as defined under Article 26 of Indian Constitution was to be studied and understood it was meant for these sectors and classes of which this essential practices were sought to be protected from the onslaught of the majority government which prevailed in the day.

[15] See Rudolph & Rudolph: The Modernity Of Tradition: Political Development In India (1967) And The Incisive Review By Derrett In 71 Z. V.R. 89-94 (1968).

therefore, essentially what I am trying to canvas in this research is the point that the background in which the religious rights in both of these countries were formed are totally different. However the way and the manner in which I am seeking to compare and analyses both of these rights are in the format where each of them shall be taken in its origin shall be understood in its context and thereafter be analyzed and be juxtaposed with each other in the manner in method in which they were placed by our constitutional forefathers. Therefore, it is not for me to say that the rights which have been provided in the United States as well as that of in India are on a common pedestal. However, acknowledging the difference which exists in both these countries but at the same point, understanding that religious diversity in both of these countries is also immense, it is important to understand at this point of time that religious rights, in both of these countries have had their own histories and background.

One major thing which I shall be undertaking is to understand that whether or not forming or formatting the religious rights into specific three articles as that of done by the Indian Constitution is valid and reasonable vis-a-vis the fact that the US Constitution has merely included a pity and simple line stating and including all of the possible religious freedoms in itself. Therefore, whether such scope is increased or is it curtailed by the mentioning of the line as it is done in the format of both the Constitution shall be one of the aspects of my research.

It is to be noted that India was a colonized state and was under the British rule for almost 2 centuries. The Britishers have also tried to secular rise and qualify all the all the laws world belonging to the domain of public sphere. However, when they were question of personal laws, they tried not to mess up all those simply because they did not want to enter into any conflict. There for each community was permitted a sense of expression by themselves as long as these expressions did not cause any conflict with the duties of the police of the state. Alongside there

was also development of the law of equity. However, we need to understand that the notion of religious rights in the personal sphere have continued till date and which have been held to be discriminatory time and again such as the triple talaq. This is the basis of the laws which were interpreted by the quotes and a constructed body of Anglo Hindu Anglo Muslim body of religions. These cards in laws therefore do not represent the true essence of the religions nor do they confirmed to the constitutional values enshrined with the people.

We need to understand that the British system was seeking to make and create a policy which would lead to supremacy of themselves over the people of India. They were not concerned about the development of the country nor were they concerned with the modernization that was happening. Therefore, the Britishers sought to divide the Indian society into strategies which were segregated by different personal laws and static images of societies which was not only segregated but also channelized and created into mere compartments for serving the purpose of the bruisers[16].

Therefore, in my submission, the true essence of any religion has not remained in the format in which it was earlier taught or practiced. Though we have tried to reconcile by granting equal and similar rights to all the religions in general, however there is no way in which the practices for example the caste system can be justified in today's day looking into the history of discrimination and atrocity which has been faced by the people of lower strata. Therefore, it was these rights which was the best chance that the forefathers of Indian constitution had in order to reconcile the differences which were created by way of personal laws. It is to be noted that in the earlier times though there were personal laws, the adjudication mechanism for each of them was different and therefore, there was no dispute between or discrimination understood or felt by the people who are

[16] Derrett, Religion, Law And The State, Ch. 14 (1968); Sontheimer, "Religious Endowments In India," 67 Z. V.R. 45 (1965).

made subject to such laws[17]. Therefore in today's time when we see that a single adjudication system is taken to adjudicate the disputes of all the various religious domination, it is understood that a lot of times there is a bias and there is a lack of understanding and part of the judge in order to adjudicate the disputes which have arisen and which have the nitty-gritty is of the religion to be interpreted.

Therefore in light of both of the above situations which have been taken into consideration for this research, I have tried to undertake the said research in the matters within secularism, interference of the state, right to religion, of both these countries are compelled not only in their background but also in the nature of the right they possess; as well as the fact that both of them emerge from different and wearing societal, situational, political and other background. Therefore even assuming that, there can be no direct comparison between these two countries, there is an analysis which is to be undertaken in the format wherein the whole of the right in both of these countries are taken together, and please do alongside in order to make out in which situation or in a given situation could a particular right have been a better option than the other to be applied to the given set of circumstances.

[17] THE ADMINISTRATION OF HINDU LAW BY THE BRITISH "Derrett"," 4 Comp. Stud. Soc. & Hist. 10-52 (1961); Fyzee, "The Impact Of English Law On The Shariat In India," 66 Bom. L. Rev. 107-16 (1964)

# CHAPTER III: INTERFERENCE OF THE STATE IN MATTERS OF RELIGION: INDIA VIS-A-VIS USA.

## 3.1 INTRODUCTION

When the in the 42nd amendment in the Constitution of India, the word "secular "was included, it was shocking to certain sectors of the society. The reason being, that, was the in country otherwise or before anything apart from secular? The answer to this, lies in the fact that the re-freedom of religion articles though presented from article 25 to 28 of the Indian constitution, existed long before, however there was no divorce of the state from the religious rights. This indicated the fact that, the state including the functionaries of the state, the Prime Minister, the President et cetera had their own religions but had to separate them from the state machinery while dealing with their aspect of religion. This in my submission could not be achieved unless and until the Constitution, was specifically and in no unequivocal terms was laid down to be secular.

## 3.2 INDIAN PERSPECTIVE

While we discuss the interplay of state and religion, the historical aspect of it must not be lost sight of. While looking at the earliest times, we see that not only religion was an interplay of the society and the state but also a lot of times religion was the only thing where and which controlled and contained the entire governance system of a particular country. For example the kings in the earlier times had systems such as Raj purohit or in the clergy states, we had the noble man or the priest Who used to be the Bishop and therefore what is important is that we understand the origin of the entire system in which religion and state have combined. Therefore, now scholars such as Fisher[18]

[18] DIE ZUKUNFT EINER PROVOKATION Fischer, Karsten (2009).: Religion Im Liberalen Staat. Berlin: Berlin University Press.

believe that the level of importance of the religion has drastically reduced because now it is now important only in the private sphere unlike the earlier times where religion used to be important for even the ruling and governance of the states therefore when we see that the origin or the source of king is the God was believed or the king can do no wrong even in the Hindu culture, it is believed that any king is the incarnation of Lord Vishnu. There for all of this indicates to a similar point where the Repository of the entire sovereignty of a particular country rested into not only the religious head but the sovereign head had religious connotations to eat same. The scholars argue that it was the Medieval theory and the political process which brought a bit major change in all of this by which wars and all of the characteristics which were important and close to religion had changed.

One very important aspect which needs to be considered especially in the times of this pandemic, is the fact that, the government in one way or the other has its own religion. This is being said because there were a lot of Tablighi Jamaat Who were not only castigated by the people in general but soon show cause notices by the government for action to be taken against them for apparently jumping the norms for social distancing. However, on the other side there was also an equally large congregation of Hindus going on at a later stage two, but at the Kumbh Mela. There for a lot of times apart from the political side of governance which we see, there is an administrative side and a bias in the administration of one religion from the other can a lot of times cause disparity and discrimination which is or might not be advertently done but causes grave blow. This is also in the fact of the public Trust sect which was enacted in the year 2011, however repealed subsequently. This would show that the direction and administration of the waqf board And or the churches would not be that simple and easy but being the majoritarian religion, there wouldn't be people who would castigate or jump into the rights of discussed by the other person. This would clearly

show that, apart from the nature and quality of persons that exist and live, it also depends upon various other factors and characteristics.

Therefore, it was important to understand that, the state does not support any religion and does not have a religion of its own, however being fraught with human factors, it cannot be said that, the state was not secular before introduction of the 42nd amendment. The researcher further submits that, it is very important to note at this juncture that there are various instances which are happening throughout the country at this stage, where in various temples, other religious places the importance of the government of the day is taking place. One of the famous examples of this is the Gujarat Public trust act 2011 wherein the government had tried to take up the administration of various religious trusts which were being administered under the aegis of article. However, after large hue and cry by the people of the country, the act was later repealed in order to upkeep with the expectations of the people. It is my submission that religion cannot be really diverse at any point of time with the state simply because the state machinery in one way or the other continuously employs or takes use of the religious machinery not only for their vote bank, but also for asserting their own political importance in the government as well as for securing the political brownie points to ensure the government that is to be found in the coming elections.

However, before I move on to the aspect of what is the level of and implication of interference of state in the religious structure of the country, there is one rule which is found throughout stating that religion might be consisting of multi diverse opinions and expressions within itself. For example, in the Hindu culture there are so many subjects and further divisions that every ideology might have its own difference. Therefore, it becomes imperative to note that The, State requires some common denomination and denominator in order to rule and control all such denominations.

Thereafter, the religions generally insist on purity of their belief, and in general the doctrines which they have developed. However, this faith which has been institutionalized through various ends need to be somewhere or the other controlled. Here again, there comes a major difference between how the United States covers its freedom and how

The Indian government takes care of it. Therefore, it becomes very difficult at the same time very imperative at times, to interfere in one way or the other in organized religions.

The question which we may ask at this juncture is whether certain amount of religious intervention in the government or governmental intervention in the religion is warranted or not. However, the answer to this is not as simple because in the name of religion a lot of times there could be things which are undertaken and which need to be taken care of in a way better then how it is done in the instant cases[19]. Therefore, in my submission, even in India it was all it was only some parameters which were permitted on which the state could intervene including public order, health, morality and welfare. This was generally possible because religion was generally taken to be matter which was exclusively to the belonging of private sphere. There was no significance to any public related or any external affairs which were to be taken into consideration[20]. Therefore, religion was not only a private matter but an extremely a political matter which was considered. However, being the country that we are, it was not easily possible for us to understand and digest the fact that the rise and growth of communalism in the country was on the basis of the factors of asserting one's religion onto the beliefs of the other. This was one of the major reasons why the state had to be

[19] Asad, Talal (1993). Genealogies Of Religion: Discipline And Reasons Of POWER IN CHRISTIANITY AND ISLAM. BALTIMORE: JOHNS HOPKINS UNIVERSITY , 1993 Pages 25-27

[20] Arnal, William E. (2000). Definition. In W. Braun And R. T. Mccutcheon (Eds.), GUIDE TO THE STUDY OF RELIGION, 21-34. London

more proactive rather than the role which were to be played by the normal government or Amit of other states in the western countries.

Before I enter into the nuances of why and in what manner does the state enter into the questions of religion, needs to be understood in the background of constitutional text and/or the way in which the government and the ruling parties have come to power in respective countries.

It becomes important to note that, the focus of state is quite different in India vis-a-vis the United States. In the United States the religion is given a blanket protection or as they call it, a wall of separation from the government. However, if I may put so, in India the relation between religion and government is that of players and umpires. So, if the United States has given an open field for all the religions to play in themselves, India goes a step ahead in order to bring all the players together and to ensure that, all the players, including the non-religious groups get a fair play. Therefore, as against rupees which is given for total usage without any filters, the place like India shall be bound to have more regulations so that, fair play is ensured for each of the players.

Therefore, it is not possible to place the two constitutions in this respect on an equal field and compare them. However apart from such legal differences that I have discussed, what also exists, is the fact that, the societal structure in India is quite different. As I have mentioned earlier here, the entire system works on such communalism. It is not difficult for one to imagine how Ajodhya Sabarimala Haji Ali Dargah Banaras temples are all issues which have deep integration between the state and that of the religion.

There are various scholars such as Martin[21] who have described that irrespective of how much we try to separate the religion from the public sphere, it at the end somewhere shows up in the form where the common conscience of the society is built up by the religious ideology that they believe in. For example, if there are a lot of people who believe, by way of religion, that non-vegetarian food should not be consumed; it is more likely that in that particular community/society the value which shall be rewarded or the value which shall be looked up at shall be the one in which, People do not consume non-vegetarian food. Therefore, according to those scholars, irrespective of the trial of law to separate religion from the society; it is not practically possible because a lot of time religion builds up the moral/societal/the value system which one particular person possesses.

The researcher submits that, it was in view of these acts and understandings, that the constitutional forefathers understood the importance of religion or the religious acts being sanctioned or being within the control of the major heads and sovereigns of the country. One link it which can be done here is also that our preamble starts basically with the words "We the people ". This would go on a long way to show that, the real sovereign 80 of the Constitution and the country, lies into the hands of the people. Therefore, if there are any chances of Putting the person that is the general public at risk, there are good reasons to protect the same. Scholars such as Kappenberg[22], Lead on the fact that, there is a requirement of religion for and to be sanctioned by the sovereign. Unless and until that is done, a major threat and risk is posed by such a religion in the public sphere as and when they are brought into the same.

[21] A GENEALOGY OF LIBERALISM, RELIGION AND THE PRIVATE SPHERE Martin, Craig (2010). Masking Hegemony: London: Equinox.

[22] DISCOVERING RELIGIOUS HISTORY IN THE MODERN AGE; Kippenberg, Hans G. (2002).. Princeton: Princeton University Press.

When we are discussing the gravity with which the basis of challenge depends upon how the laws have been framed, an interesting view would be the dissenting opinion of Justice Indus Malhotra in the case of Sabarimala Temple. What I derived out of the same is, the fact that, Where the state has been given some right as an Umpire in the games that were to be played by various religions in the pitch of country, it is not comprehendible a situation where the umpire starts investigating into how a particular batsman should have or a bowler should have bowled. In my submission, what has been done his instead of a simple challenge on the legality or the question of whether or not some practice could be sustainable buy the general norms which have been set by the Constitution under article 25 to 28, what is happening is, the government/consecutively the judiciary, is entering into even the minutest details of religious practices and seeking to examine the same on the scales of other laws/normal tangible values. Therefore, by the way of the difference of a scale it amounts to measuring something solid by the measure of liters. The reason I say this is because, there can be no way in which, such interference be warranted by the government or the judiciary in a manner which can destroy and deface the constitutional fabric and along with the secularist tendencies of the country.

Politicized issue of the Ajodhya Ram Janmabhoomi is another example where the government is acting as a trustee and is taking up the temple and its trust in accordance with the land acquisition which word which was done even some years ago. Even though the constitutionality of such act has not been challenged, it is clearly under question that whether or not a particular religion could be promoted indirectly, which could not have been done directly by the governor to check. Therefore, what emerges as a question is political parties and the politicization of groups a lot of times makes this clear distinction has blurred, I am at the last it comes at the personal criteria's and the scope for distinguishing each other. therefore when we compare the intervention of state

into the domain of religion it is quite present and it shall be present in accordance with the permission which has been explicitly granted in article 25; however when we see to compare the same with that of the United States, the intervention there do it is day depending upon the nature and type of government, it cannot in any manner be as different or as similar to what existed in India only because of the wall of separation is has been only thick and over the years and especially tests have developed in order to make them preventive from any further percolation.

## 3.3 UNITED STATES OF AMERICA

The United States, had started out on a somewhat different footing. Originally, they had introduced the amendment after great deliberation in the assembly whether or not to include any particular charter of rights or not. This was because, if they included a particular set of rights as is the question of debate today or school of thought believe that, it would be actually restricting and curbing the right in its true sense and form in which it was understood. Therefore, the task of the people or the constituent assembly there was to format the charter of rights that is the bill of rights in such a way that, neither did it restrict and in the same time it provided for a basic guideline and charter On which the courts would further thereafter develop their own interpretation and conclusions over the same.

This is the reason, why the charter of rights that is the fundamental bill of rights was brought into existence and where the first amendment, had the basic feature of bringing into question the law of separation that is the wall of separation which meant that the state was essentially to remain divorced from religion. This did not mean that the state did not have its own religion or that the state would not support any religion, but what it meant in its pure form and sense was the fact that,

the state would not be legible to form any law whenever it relates to the curbing of a religion. The researcher poses for a moment here in order to understand the difference of focus between the Indian law and the law of United States. In the Indian Constitution, the forefathers have specifically mentioned that, they shall be providing for a playground in which the state shall be an active participant whereas on the other hand, the United States has eliminated the role of state in particularly the matters of religion.

Therefore, wherever we see the fact that, the United States was one of the major countries which had initiated the separation of religion from that of state, scholars such as Russo believe that, there could be no separation of the state in any manner possible in the country.

Scholars such as Martin have put it in the following words:

"However, it is more important to note that the application of the language of "privatization" insofar as it fails to bring into relief the circulation of power from the civil to state institutions what about through private education, socialization and the distribution of ideology, may in fact serve the interest of those "privatized" civil institutions whose ideology is thereby rendered theoretically in consequential, and diagnosed and free Circulate invisibly.[23]"

Therefore we see the fact that he had the primary concern that religion, was not a matter of the public sphere and was essentially a part and parcel of the private sphere however, the way in which the political history in and around the religion had developed was not only changing over the

[23]Steffen Führding, Religion, Privacy And The Rise Of Modern State Method & Theory In The Study Of Religion , 2013, Vol. 25, No. 1 (2013), Pp. 118- 131 Accessed At Https://Www.Jstor.Org/Stable/23555857 Jstor

period of time, but was the major reason as to why there was a relation between political separation from religion and democracy which was seen to be serving the interest of the people in general. He further argued and believed that the rise of the modern state was one of the reasons why the government was expected to function for welfare of each and every citizen irrespective of which class are They belonged to. Year posing for a moment, the researcher would like to introspect into the fact that in our country such as India, there are very less chances that, such a situation could ever arise, for the reason that, not only the casteism and class system is deeply rooted in the country so much so that in every day affairs of the people that are living in this country it is intertwined in such a manner that separation of them from the social sphere is not possible. Another aspect of this can be also looked into by the fact that a lot of times political class and vote banks are divided on the basis of what representation or which class has their own representation even Do indirectly in the Parliament or any legislative making procedure. Till the time that the country keeps relating to such religious differences, and the fact that, people are not able to internalize the only difference which they had as far as religion is concerned, they would not be in any position to contest or keep up with the western world in terms of the wall of separation or the development of the modern state in terms of religious freedom.

However, this is not to say that there has been no state interference in one manner or the other with religion there are various examples where even after enactment of the celebrated religious freedom restoration act., Which was enacted for doing away with various judgements which had impose the effect of curbing the religious freedom and neutralizing the wall of separation in one way or the other. What was done by this act was a sensually introduced the class of the compelling interest test, by which, it was only upon the compelling interest of the state that is the federal law either of the police or criminal actions by which the federal law was allowed to incorporate or to enact any

such law which would impinge upon their religious rights of the people. However, it is not that the United States has had a plane Road on this aspect.

In the well-known case of Burwell versus hobby lobby[24] there was a major shift which was seen because the interpretation in the matters of religion and the religion neutral laws was very twisted and causes various dents in the religious freedom. In this case what had happened was, the Right to religion of a particular Corporation was held to be trumping over the right to religion of the employees are the people who were entitled to contraceptive Health by a federal law. This was seen more by the fact that, wherever and whenever there are chances of friction of such nature between the corporations and a lot of times between people, there are chances and cases of wrong interpretations of the right to religion have been made. This ruling thereafter had a great impact on lakhs of people who were protected or who thought they were protected by the operation of the religious freedom restoration act.

Another aspect of, the religious freedom in its place is, the fact that, protection of the religious liberty of the people who have a loud voices or the people were heard on public stages must not only be there; but also for the last man or the weakest or the poorest who must not be forced in any manner to change his or her religion in order to obtain some employment or under any threat or coercion that. The extension of this right in the United States do has been somewhat achieved by the way of operation of the religious freedom restoration act, the interpretation by the courts in later years as well as how the policy framers and policymakers are going about it also so that the

[24]Donna Barry And Others, "A Blueprint For Reclaiming Religious Liberty Post-Hobby Lobby" (Washington: Center For American Progress, 2014), Available At Https://Cdn.Americanprogress.Org/Wp-Content/Uploads/2014/07/Religiouslibertyreport.Pdf.

Christian population in the United States is declining [25]particularly among the mainline Protestants and Catholics this is for what reason or the demographics are there after that I'm not to be gone into at this or any other level of research. Whatever is there for in our front open to us is the fact that, the strict separation of the church and the state as envisaged is not operating as well as they would have wished to do so.

The administration which has been recent on the United States landscape, that is the Trump administration, has been extremely discriminated and has in all the senses of the term defense treated the religious freedom out of the window. Protecting religious liberty of the people that reside in a democratic nation is what is the main belief and important aspect of religious freedom however when the administration under the presidency of Donald Trump was at the helm of its affairs, there were various guide on "federal law protections for religious liberty" which actually in its true sense had undermined various laws and various subjects which could discriminate between the non-Christians and a lot of people there in the United States could take objection to the same[26]. It was a step-by-step procedure for curbing down the religious freedom restoration act which was also undermined in all the ways by the Trump administration. There has been special task force which have been established in order to ensure that such guidance and guidelines which have been laid down by the Trump administration were not only followed but also enforced as if they were some enactment or some executive order having the legal force behind it. Therefore, there were lots of questions and chances of the erosion of the liberty and freedom which was

[25]Pew Research Center, "America's Changing Religious Landscape," Available At Http://Www.Pewforum.Org/Religious-Landscape-Study/ (Last Accessed June 2021)

[26]Carolyn J. Davis And Others, "Restoring The Balance: A Progressive Vision Of Religious Liberty Preserves The Rights And Freedoms Of All Americans" (Washington: Center For American Progress, 2015), Available At Https://Cdn.Americanprogress.Org/Wp-Content/Uploads/2015/10/20070051/Hobbylobby2-Reportb.Pdf.

granted to the people and ironically, such guidance was released on the National Day of Prayer that is on the map fourth 2017.

This task force that I have mentioned above, was actually meant to ensure that the religious liberty law which was passed in one way or the other in 2017 get it soon support and force from the United States Department of Justice and the attorney general who was also one of the main framers of this law. Therefore, especially after the hobby lobby judgement which had come out by the United States Supreme Court there was quite some movement and asymmetry in the religious liberty task force et cetera which was created by the government of the day. One another important aspect of religious liberty in the United States as it has been exploited, he's used generally and frequently in order to derogate from the health care standards which have been laid down or have been codified by the Health and Human Services[27]. The objective of this act was, that a lot of times the healthcare could be in conflict with the religious belief of the people who are providing such healthcare. Therefore, the healthcare workers were allowed to in one by the other by giving precedence to the religious rights but allow the denial of access to healthcare.

This is precisely why; the wall of separation has worked a lot of times not in favour but in absolute contrast and against the freedom of religious principles In the United States. Another interesting facet of this aspect is, the fact that, Catholic hospitals are in a large number marking their presence throughout the United States. A lot of times not only these numbers are growing but, the way in

[27]U.S. Department Of Health And Human Services, "Hhs Announces New Conscience And Religious Freedom Division," Press Release, January 18, 2018, Available At Https://Www.Hhs.Gov/About/News/2018/01/18/Hhs-Ocr-Announces-New-Conscience-And-Religious-Freedom-Division.Html

the interpretation of which the patients are denied the healthcare access is also startling. In the recent times, a lot of times, the interpretation of "directives "has been done by the local Bishops and such directives are issued by the US conference of Catholic Bishops. Therefore, even though there is nothing which can aid the Catholic hospitals in denying the provision of any emergency healthcare[28], they still may interpret the rules in the way they want to and women limit the definition of the essential health services even including pregnancy and other complicated factors.

One another important aspect of this is that, if the Catholic religion does not permit for any tubal negation, they will not allow or permit the hospital providing any such care which will not only go against the wheel of the patient, but also for the basic health to reach any person is entitled. This will, in essence show that, a lot of times even after the week and wrong interpretations to which all of such religious healthcare is subjected to, they are successful in obtaining in identifying the class they want to treat and in one way or the other negate the treatment to the others.

It was only through this that the fordable care act which was brought out in the Obamas time was somehow or the other not only well except but taken to a premier level as far as the religious liberty is concerned. However, people have and share their reservations about this particular act as far as the analysis of the patients are concerned and various other things are there. There are various civil rights Association which fight for the right that access to healthcare cannot be stopped because of any particular religious belief or because of whatever ideology to which one subscribes therefore in my submission, when we juxtapose the condition and the nature of rights that exist in India vis-a-vis that what exist in the United States, we come to the conclusion that, even though in India

[28]Katie Hafner, "As Catholic Hospitals Expand, So Do Limits On Some Procedures," *The New York Times*, August 10, 2018, Available At Https://Www.Nytimes.Com/2018/08/10/Health/Catholic-Hospitals-Procedures.Html.

there is a more polarized and a communal form of the denial of religion freedom rights a lot of times; in the United States in One way or the other it exists in the way and format in which it has been made[29].

The united states, has taken enough precaution in certain states at least in order to do away with any such proposed discrimination such as the Massachusetts no excuses for cooperation discrimination act which provides an answer to the hobby lobby decision which are in fact cause a lot of problem as far as the question of the antidiscrimination laws for concerned. Therefore, state discrimination in the United states, though occurs in different front and format, it does remain as prevalent and as much as we would want to deny the same, it would not be possible to keep it far from the truth that, Just like India, the United States also has a grave impact on the interference with the religious freedom.

But in my opinion, since it is the federal laws which are causing the holistic problem and the wall of separation actually exists between the Congress that is the federal legislature and the freedom of religion which are to be exercised; then the solution also must lie in the federal legislature and the act of one or some few other states would not be of any use as much as they would have like to do. One more aspect that is interesting to discuss at this point is that, where unlike India, the United States does not ensure free play of all the religions, it also does not promote the weekend section of the religious community.

[29]U.S. Department Of Health And Human Services, "Fact Sheet: Final Rules On Religious And Moral Exemptions And Accommodation For Coverage Of Certain Preventive Services Under The Affordable Care Act," Press Release, November 7, 2018, Available At Https://Www.Hhs.Gov/About/News/2018/11/07/Fact-Sheet-Final-Rules-On-Religious-And-Moral-Exemptions-And-Accommodation-For-Coverage-Of-Certain-Preventive-Services-Under-Affordable-Care-Act.Html

What the research proposes is, the fact that, there is a separate provision for all the minorities and which actually in one way or the other boosts them in order to take up steps which shall be required to not only prosper and grow but also to give away the true and correct rights which are deserved and reside in the people as whole. The United States on the other hand does not have a federal legislature and the local communities of the faith in those communities is not as instill as it should have been in a democratic country especially for and above except for the major Three religions including the Jewish the Roman Catholics and protestants. This is becoming more popular and required because of the steady decline in the association only with Christian faith in the United States and as due to the immigration rate or because of other factors the inclination towards other religions is also rising in the United States.

Therefore, in my opinion the democracy in the United States as far as it is concerned with the aspect of religious freedom is quite selective[30]. At the time when the Constitution was framed, neither they were such a new large immigration rate, nor was there any imminent problem of catering to religions more than a number which could be counted on the fingertips. Hence, what was important is that in the changing face and times where people want to go to the United States in order to prosper develop and for the personal growth, we should be offered and we must have equal and unhindered rights of freedom of religion irrespective of the religion they belong to.

## 3.4 CONCLUSION

[30] *Equality Act*, H.R. 5, 116th Cong., 1st Sess. (March 13, 2019), Available At Https://Www.Congress.Gov/116/Bills/Hr5/Bills-116hr5ih.Pdf.

In conclusion, it would be sufficient to point out that interference of the state in the matters of religion be that in India or in the United States is existent in both the countries. As we have analyzed, in India it is more of an active role and the actions of the government in a communal iced and a polarized manner which actually goes to the roots of interference in the religion when the Constitution provides a specific bar for the state to encourage or promote any particular religion on various aspects. On the other hand, in the light of the provisions of United States and in furtherance with the various acts which have been enacted there including the religious freedom restoration act, it is clear that the interference is prevalent even there. However, the nature and the difference of such interference lies in the fact that, in the United States the state, the Catholic hospitals, interfere with the exercise of free religion under the garb of non-allowance of challenge to any law on that ground. Enforcement of such vague and difficult grounds by the way of a task force in certain governments which have seen the light of the day, is a testament to the fact that, there are equal And great number of chances of the religious freedom being impeded in the United States if the times were to come so.

# CHAPTER IV: RIGHT TO FREEDOM OF RELIGION: INDIA

The religious freedom and the rights which have been granted to the people in India are to be considered in the background in which they have been formed. We have framed the Constitution of India after a lot of other constitutions and specially that of the United States first form. Although, the Constitution of India has taken a great deal of things and provisions in different sense from the United States, the solution which was provided by the American Constitution in its first amendment of having a free exercise of religious freedoms was somehow not only curtailed but also contradictory for a lot of phenomenon is that existed in India.

And before moving into the nuances and interpretations of the articles which have existed for the freedom of religion in India, we must take into consideration the pure and simple notions of the language in which the said provisions are contained.

> ***"25. Freedom of conscience and free profession, practice and propagation of religion. — (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. (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. Explanation I.— The wearing and carrying of kirpans shall be deemed to be included in the profession of***

***the Sikh religion. Explanation II. —In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jayna or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.***

***26. Freedom to manage religious affairs.—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.***

***27. Freedom as to payment of taxes for promotion of any particular religion. —No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.***

***28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions. — (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds. (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. (3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any***

***religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.[31]"***

As it is clearly visible that the freedom of religion though is one of the fundamental rights that have been granted to the people, it has been made subject to various notions of public order common, morality, health, and other provisions of this part. This is an extremely intriguing part as because it brings into question one of the basic and fundamental problems which are faced by the people of the country today. On one hand where people say that judiciary is ill equipped to deal with the questions of religion and customs, on the other the right to freedom of religion has been made subject to the other provisions of this part. It is to be noted that this article does not mention any specific other provision but makes the freedom to religion subject to all the other rights which have been granted under part three of the Indian Constitution.

## 4.1 RELATION WITH OTHER RIGHTS

Hence, it is noteworthy that when there shall emerge a question of freedom of religion vis-a-vis other freedoms or else right to life, right to equality so on and so forth, there shall be a President's order which shall be given to the other rights in comparison to that of right of religion. This essentially in my understanding, has been done in order to include and give the importance to the values of Values of secularism, democracy, and all such other rights which are emerging in this modern world. The reason why this point is being canvassed is for the simple notion that where a person shall allege that he or she is being discriminated against, that right against discrimination shall be given priority over the right to religion which is enjoyed by the same person.

[31] INDIA CONST.- Articles 25- 28.

Therefore, what is the question emergencies or the terms public order, morality, health, other provisions of this part or veg in their nature or do they give away in one way or the other to the right to freedom or religion. Further, it is important to note that the background in which we as a country have emerged into a democracy is also quite noteworthy. A very important speech which was given by our the then Prime Minister[32] had stated that he would rather giveaway every single election in the country rather to give the country to casteism or communalism. Therefore the statement would in itself show that the disturbance, the atrocity, the problems which have been faced were so immense and in magnitude so High, that the country could not have afforded any other wayWay that even if we were to give rights of religion as a secular country, they had to be made subject to all the other rights which existed or which were given as a matter of there being a human.

It is therefore a very clear that, the state started off in a manner in which the constituent assembly did not wish to have any of the excess of so-called intellectualism for liberty where the state did not have any relation with any religion. However, it is very clearly visible that the constituent forefathers were aware of the fact that no matter how we try to divorce the fact of religion from the state they were somewhere or the other entangled. This can also be seen from the very recent examples of how much the state is taking interest in the building of the Ajodhya temple at Ram Janam bhumi. Moreover, the only wish which the forefathers had for the country was that the state in any formal manner should not be supportive of or even be apparently supportive of any particular religion which was of either the majority or the minority. It was in this background that the state was meant to interact or involve and indulge with various groups of religious domination

[32] "So Far As I Am Concerned, I Am Prepared To Lose Every Single Election In India But To Give No Quarter To Communalism Or Casteism". (Selected Speeches: 1953-7 37 (1958)

in an extremely supportive and congenial manner. This is also represented in the various reservations which people had during the constituent assembly debates for the formation of such articles which on one hand were meant to support the state or facilitate the state in interaction or being in uniform manner with every religion but on the other was indirectly promoting one or the other religion[33].

Although I am going to deal with this in the latter chapter where I juxtaposed both of these rights together, it is pertinent to note here that unlike how India had begun its own journey on this right to religion where we did not want complete separation of the government and the religion; the United States on the other hand had the first amendment which in its synonyms term is known as the wall of Separation. The sole aim of this article/amendment was to keep the government and the state in its different spheres and do not allow any corruption in one or the other. Therefore, it is very visible that even though they tried to keep the church away from the state, they have clearly and literally both field in this. It was this lesson that was taken up by India in order to understand that the state can never in reality be separated from the religion. Therefore what we understand as to the intention of our forefathers in the formation of these three particular articles laying down the freedom of religion In our country is for the simple purpose that, even though the state may facilitate various religions coming on a similar platform and participating in the stage of the state, they have to be at an arm's length when the question arises as to what is the religion which the state supports[34].

## 4.2 DEVEOPMENT FACTORS

[33] Vii C.A.D. 822 (3 Dec. 1948), 823-840 (6 Dec. 1948); 859-890 (7 Dec. 1948)
[34] SECULARISM AND THE CONSTITUTION OF INDIA (1971) GajendragadkarPg. 122-23

One of the major concerns and considerations which developed later into the independence of the country was linguistic tendencies. The country started to identify with its linguistic identity was separated on the basis of the minorities or the majorities that spoke one or the other language. For example, Gujarat was done later in the year 1960 however, the people of Andhra Pradesh were separated from that of Tamil Nadu and other such events sought to happen on the basis of the language they spoke. Therefore, this system was basically that of patronage which reinforced their religious and other related identities. Therefore, we can safely assume that in India unlike other countries a lot of decisions which were based on political thoughts and political decisions and deliberations were made on basis of the decisions which were done in order to manipulate and settle up various religions, castes, linguistic another identity. This can also be seen in the vote bank politics which is done and played even in the day.

The constituent assembly debates are very clear to show what was the genesis discussion deliberation and understanding with which the act and provision as it stands today in article 2528 was brought on 6 December 1948 the deliberations the took part where important to be noted

## 4.3 SECULARISM AND CONSTITUENT ASSEMBLY

There was a Great hue and cry especially with regard to the term “secular state”. This is in itself a proof to the fact that, the term secular which was introduced by the way of 42nd amendment to the Indian Constitution was not unheard of or was not in fact ignored or a mayor loss of sight. The words of Shri Lok Nath Mishra which are as follows

Clearly indicate that there was a specific question posed as to what is the nature of state as regards the understanding of the religious rights which are being afford it. The clear question which was asked was, can the religion be divorced from the aspects of life. In the view of the Hindu laws the

Muslim laws and all the personal laws which exist in the country and the debate of uniform civil code, it particularly becomes very enlightening as to when the state is in particular allowing all the personal laws to be practiced what is it important for the state to be called a secular?

She Loath Mishra further argued that it was an extreme and just generosity after being the religion and yet making the religion a particular fundamental right. He posed and stated that if that was the case, religion could very well be removed from the list of fundamental rights which was also at not to be done. To his mind, what was important to us, recognition of the religion or that the country has been majoritarian the following, whereas there would be no opposition or no ignorance to words, the Christian or the Mohammedan religion which had emerged seemingly later than the Hindu culture. He expressed his reservations to the fact that, propagation in the article 19 which was sought to be introduced then would mean paving the way for complete annihilation of the Hindu thought and culture.

His major part was, that the Irish constitution and the Constitution of the USSR has recognised either the religion of the majority or else the anti-religion propaganda. His point therefore was that even when our country does not recognised either what is the point of placing such religious rights into the mound of fundamental rights which are “in alienable“ there for the point which was made was that to put the right to religion in a particular mound would be devastating and dangerous when it has not been done in most of the constitutions of the world.

Another interesting argument which was which was posed by Sri HV Kamath, what is that there should be two introductions and additions to the existing fundamental right under article 19 which would be that the state would be separate from that of the religion but at the same point of time the state could impart the religious values to its subjects for their spiritual upliftment. This argument was based on his assertion that, the separation of state from the religion was as in used in the

western parlance of separation of church from the state which was especially required which he explained by the way of an example of Asoka and Buddhism and how difference between two religion and identification of the state with a particular religion caused a lot of internecine disputes between the country and could lead to a civil war. However at the same point of time he emphasized on the fact that, there could not be any separation of human life from religion and hence there was A need of restoration of moral values to be instilled in the value system of the society for which imparting of the religious education by the state from the combination of our religions what is required so as to the upliftment of the ethos of the society. He further continued that the spiritual self and frame to which a person belongs was very important for their spiritual and moral upliftment this could not be done without having a particular United in uniform education in the schooling system. To him, India had stood by the wisdom and instruction of great sages and great masters including Sri Aurobindo, and a lot of other people practicing yoga in its true sense.

When we were looking at the amended clause of article 25 which actually aimed at reserving any curtailing or regulation of an activity which may be so related with religion but in actuality affecting the economic financial political or other activities, it could be regulated by the state. This was in fact done and sought to be amended by one Mr. KT Shah who was a member of the constituent assembly to which he ventured to add, that the power of the state in a secular country should not be limited to merely regulating or restricting but rather the positive power prohibiting such an act must also be conferred upon them this would be done for the reason that the association of religious freedom must not be done with any act in a secular country like India which could be used to the jeopardy of the non-practitioners. He further added, that the conceive people idea of religious freedom should not be so vague and unregulated that the people exercising the rights

under those provisions should be made or given such an unbridled walk and run so as to impose and impinge upon the rights of the others which could not have been foreseen by the constitutional forefathers.

One other important discussion which took place was to the fact that for the class 26 which throws open “Hindu “associations was considered to be a bit narrow. There were arguments that, there is no reason why there should be right or obligation imposed only upon a specific set a class of persons namely the Hindus to throw their institutions open to the public. It was argued that the intention of the provision would be served much better if it was actually amended to the effect of having inclusion of all the other sects and classes which were functional in India operating through its religious institutions which had their own limitations and restrictions maybe unlike that of the Hindus.

Similar nature of amendment which was moved by Smt. Durga Bai was that to enlarge the scope of the phrase “any class or a section “to that of “all classes and sections “was sought to be made. However, this amendment was itself not moved on the ground that it was directly covered by an allied amendment thereto under the directive principles.

There is an interesting discussion in the constituent assembly between Mr. Mohammad Ismail Sahib Shri K Santhanam and Dr BR Ambedkar. The discussion ensued in the context of whether the ambit of personal laws and uniform civil code affected anything to do with the freedom of religion. Shri BR Ambedkar and Mr. K Santhanam number of the opinion that since the matter of uniform civil code and personal laws is already covered under the topic of directive principles, they do not find a place as far as the question of freedom of religion is concerned and hence the amendment had no significance thereto. However, he continued to introduce the next amendment pointing out that there should be a specification in the articles including the freedom of religion

that, there shall be no effect of these on the personal law which has been devised and in place for the community is to be administered by. The reason which he gave for these amendments, it was the fact that, the declaration of freedom of religion and the nonstate actors especially the state in its non-functional we must not be in any way construed to be an hindrance to the personal laws which have been guiding the communities for age-old traditions.

Therefore, when we look into the aspect of the constituent assembly debates, it is clear that, the only purpose of eating the Constitution in particular manner was that it could have a vision which other countries probably wanted to have. Therefore, it was important to understand the way in which entirety of the Fundamental right to freedom provisions were drafted.

One another debate which had occurred between the members of the constituent assembly was, the word propagates which was used was generally it was assumed stands for the Christiana T. It was understood as quoted by Shri Krishnaswami Bharathi That would be required because all religions are same but this word had to be there because the right to propagate would actually cancel out each other's rights when they were to be understood as right to propagation.

> ***Shri L. Krishnaswami Bharathi****: "Mr. Vice-President, after the eloquent and elaborate speech of my respected Friend Pandit Maitra I thought it was quite unnecessary on my part to participate in the discussion. I fully agree with him that the word `propagate' ought to be there. After all, it should not be understood that it is only for any sectarian religion. It is generally understood that the word 'propagate' is intended only for the Christian community. But I think it is absolutely necessary, in the present context of circumstances, that we must educate our people on religious tenets and doctrines. So far as my experience*

*goes, the Christian community have not transgressed their limits of legitimate propagation of religious view, and on the whole, they have done very well indeed. It is for other communities to emulate them and propagate their own religions as well. This word is generally understood as if it referred to only one particular religion, namely, Christianity alone. As we read this clause, it is a right given to all sectional religions; and it is well known that after all, all religions have one objective and if it is properly understood by the masses, they will come to know that all religions are one and the same. It is all God, though under different names. Therefore, this word ought to be there. This right ought to there. The different communities may well carry on propaganda or propagate their religion and what it stands for. It is not to be understood that when one- propagate his religion he should cry down other religions. It is not the spirit of any religion to cry down another religion. Therefore, this is absolutely necessary and essential*[35]*."*

This was also supported by Mr. K Santhanam who also added that the word propagate was used in consonance with the Freedom of Speech and Expression which was undertaken in the articles already and therefore, everyone had the right to propagate their own religion. However, in my submission, the word turns out to be equally dangerous in view of the fetters which could have been imposed by the government as has been pointed out. Sri TT Krishnamacharya what is one of the leaders who is finding out to the fact that, the existence of the word propagate was in essence the practice of Christianity which was very important to them and it was not only because of this right but also because of the fact of the status which has been given to the lowest rate of people in

[35] Constituent Assemblty Debates, *Monday, The 6th December 1948, Constituent Assembly Of India Debates (Proceedings)- Volume Vii*

India by such questions that the word does justice to eat soon effect. That was also one of the reasons why such a word should be included and must be kept in its intact manner.

Therefore, the Constitutional Assembly Debates provide us with a beacon light to understand the background in which the provisions have been set and why the enforcement of any of such provisions become important and in which way. Hence, the analysis show that, in the submission of the researcher, it is the genesis of the debates which would show that, India has chosen a particular way with open eyes in order to meet the contingencies with respect to the religious freedoms and which has also stood the test of time.

Even Before we understand the correlation between religious and other linguistic tendencies, it is very pertinent to point out at this juncture that the way in which the Constitution or the other enactments provide for reservations, other such emoluments which are given to certain classes belonging to a backward strata, they also have a hidden religious identity and respect.

## 4.4 DETERMINATIVE FACTORS

The major aspect which I am dealing with here is the fact that, backwardness is to be determined as required for various reservations on which factors? The question is to be answered by a recent report or the committee appointed by the government which said that caste is one of the bases of determining backwardness. This in my submission shall also include and involve also encourage various religious based affiliations and religious-based criterion for the determination of the area

of where there should be some preferential treatment awarded and conferred upon the classes which belong to the backward strata of the country[36].

One important aspect which I read above was that when the right of religion is made subject to other rights which are to be exercised in this part, it poses an important question for consideration that whether the right to profess a religion shall also involve or be repudiated into the right to freedom of speech? This is for the simple point that for example if I am a believer who is entitled to his freedom of speech and I am posing certain questions or certain dogmas in the sphere of society stating that this particular religion is in consonance with or against certain decisions/certain enactments which have been brought about by the government. It is in these times that quotes need to intervene interject and find out that whether one right is being subjugated to the violation by the other or in fact are they complimentary to each other trying to proceed with the common interest of the society[37].

The researcher believes that, even if the Indian politics tried to separate religion from the state, I'll beat we have not tried to do so for the simple reason that it is not practically possible. Even though had we tried to do so, it would have resulted in a total disaster not only because of the cultural and social upbringing and the inherent connection which is established between a child and the religion of the family in which he is brought up; it is very unlikely that ever such a differentiation would have been possible for a country like ours. However, the threat which has been posed before the minority groups or the religion belonging to the minority community in the case of continent of India, is somewhere or the other a real challenge which needs to be overcome. It is needed to be

[36] Galanter, "Who Are The Other Backward Classes: An Introduction To A Con- Stitutional Puzzle," 13 E.P. W. 1812-88 (1978); Galanter, Supra N. 2 At 134-87.

[37] ; Akhishewar Singh, "The Concept Of Secularism In Indian Constitution," 12 J. Const. Parl. Stud. 15 (1978)

understood at this juncture that, the ghettoization or the separation of the communities in its residential areas on the basis in which they practice their religion, is one of the very basic but a disastrous indicator of how and With what gravity does the secularism in real sense prevail in the country.

When we move onto the next reading or the subsequent reading of the article 25 the language itself clearly states and as is also clear from the constitutional assembly debates, the basic notion with which the discussion and deliberation at started was one to the doctrine of wall of separation about which I have stated about and secondly being that they wanted to curb or impose factors upon other related factors being economic, financial, political or other activities which may be associated with religious practices[38]. Therefore, what we notice in the above provision is that, in no manner religious practice is or can work with any impunity as far as the questions of restriction of those activities are concerned. Therefore, we see time and again apart from the other factors which I have pointed about, there were also other restrictions on the activities related to religious practice which could go against or which could be curbed by the state.

We also see in this article that it also talks about operation of any existing law therefore, what it means that any personal law which were amended or affected by the Britishers during the colonial era were not ousted by the implementation of the religious freedom rights. Hence, it is to be noted and it is pertinent to see at this juncture that the religious rights are made subject to various other factors which can be imposed by the government at various times.

It is therefore understood that, the Constitution did not give any preferential right to any religious group which even though was contained as format or in the format of protection against violation

[38] THE RISE AND FALL OF FREEDOM OF CONTRACT (1979) Atiyah, Pages 78-83

of the same; the non-religious groups have not been discriminated against, or have not been made subject to any less rights then the religious counterparts. It is also worthy to note that this format or the structure was basically borrowed from the American Doctrine of wall of separation. Hence what we stand today in my submission, is a somewhat hybrid version of the wall of separation doctrine in the format that though the religious rights are specifically protected, they are not given any special rights under the said Constitution.

When we are thereafter, concerned with the rights of enforceability of all these rights of religion and the freedom thereof, it is understood that, it cannot be Enforced like any other fundamental right. The reason being, the right to religion involves a lot of social and other co-related religious questions for which, the courts I am not an equipped to deal with in a proper proper manner. Therefore, what we come to a conclusion is that the domain of personal law and that of religion is still untrammeled by the way of judiciary[39]. However, we see that in the legislative sphere, whatever loopholes have been left, are given to the judiciary to be correct. Hence it becomes imperative that some amount of enforce ability of the rights should have been conferred upon the judiciary in order to lie down the correct principles in relation to the constitutional rights of religion.

## 4.5 RELATED RIGHTS

From a view of the other provisions of the freedom to religion articles, it is clear from the language of the provisions that again article 26 itself has been made subject to public order morality health. It is important to note that here this article has not been specifically made subject to all the other articles of the same part. However, this is because, article 25 in its own ambit contains and consists

[39] JUSTICE, EQUITY AND GOOD CONSCIENCE," Derrett, " In Anderson (Ed.), Changing Law In Developing Countries 114-53 (1963)

of every freedom of religion article and provision which has been provided under the Constitution. It is further worthy to note that, the key part or the keyword in article 26 is "religious denomination "therefore unless and until a particular set of people qualify for being called as religious denomination, they cannot be protected under this article.

It is therefore noteworthy that, until and unless and such denomination has been classified, there can be no protection of the religious rights of that particular sect. For a simple example, the honorable apex court held that the worshippers of the Sabarimala temple do not constitute to be religious denomination in itself. Therefore, we need to see in this aspect that a denomination does not have anything to do with the number of worshippers or the number of people participating in some sect.

## 4.6 JUDICIAL APPROACH

The rights which have been conferred under article 26 by a plane reading, include establishing and maintaining religious institutions, managing their own affairs. Where is the question of managing the own affairs arises, can the said right override or trample upon the rights which have been conferred by other parts of this article is a question which takes up most time before the honorable court. Therefore, when days question of owning and acquiring movable or immovable property, administered in such property and, there is less of confusion and doubt. However, the clause b in the said article in my submission, causes a lot of deliberation and discussion on the issue of whether allowance of managing the affairs of the religion, could include some incidental trampling of the rights on other domain Rights.

Therefore, until we discuss the judicial developments on these classes, and try to understand how these classes have been interpreted by the court, it shall be useful for us to understand the plain

legislative language which had been used by the constitutional forefathers in order to protect the religious groups but at the same point of time insert checks and balances which would not allow the non-religious groups or the secular state to violate the rights of such groups.

Thereafter moving into the plain simple language of the provisions of article 27 and 28. When we look into the constitutional debates which have been entered and had deliberated when insertion of these articles, it is clear that there was quite some misunderstanding as far as article 27. It was understood by some members of the constituent assembly, that the said article was in fact relating to, payment of tax/any charges for the promotion of religion. On this ground it was deliberated discussed and even debated for quite some time. However, after certain parts of the language were changed and the article and its sense were explained to all, it took place and got a place in the Constitution.

Both of these articles that Is, article 27 and article 28 relate to the freedom against exertion of religious rights by certain religious groups. This is in the sense that, nobody can be compelled to pay any tax which goes towards or which is paid towards the promotion or conduction of any particular religion. This is clear from the fact that until unless and until such a provision was brought about, an advantage of article 26 could have been taken in order to take charges and make people pay in the garb of managing the affairs of their own Religion. Hence this was Mandated.

Article 28, relates to in the schools and places of education where, the religious instruction or religious worship is banned. We shall see in the next section, that there have been many cases in the United States relating to this particular right, where the honorable apex court of the United States has laid down in a case that nobody can be compelled to get any religious instruction even in the form of a prayer as a ritual in some school. However, in our Constitution by the language itself, a specific bar has been laid down where, the state is just the administrator in the school,

however the school initially has been Formed or established under some religious endowment trust et cetera. It is noteworthy that, in the third clause of article 28, There is a specific protection afforded to any such person who might be studying in a school relating to the second clause and he has been protected against receiving any formal religious education against his or her own will in such premises.

Therefore, even a non-pedantic reading of these provisions would clearly suggest, that we have clearly warranted the doctrine of wall of separation between the state and the religion. However, the research would further go to suggest that, it is such an hybrid version of that doctrine, that the blend that has been tried to achieve is a perfect balance between resolving the rights as against promotion of any rights; As also, protection of non-religious groups/secular groups From being meet subject to any such right which has been asserted by the religious groups.

As a side note before proceeding on to the juxtaposition of both of these rights, it would be interesting to note that, we are trying to achieve a balance between the wall of separation and assertion of rights. Therefore, what we see is a model where, the rights which are been given and afforded and conferred or not in the formation of allowance of commission of some right; however, it is merely in the form of reservation of the same right. Therefore, it becomes imperative that, we understand the model which has been promulgated by our forefathers as a perfect third-party model.

Therefore, in the view of all these arguments and how the basic language and provision in furtherance of the nature of rights have been recognised in India the next chapter shall contain the similar nature of rights and its scope as relating to the United States. Thereafter, I shall undertake

to juxtapose and place next to one another the scope and nature of rights one after the other and deal with them ad seriatim.

Importance of judiciary in the developmental aspect of a particular right is not unknown to any constitutional jurist. This research has tried to go into the roots of how a particular right has not been only constructed on basis of the language that it possesses, but also on the basis of the fact that the judicial interpretation could give different nuances and colors to the provisions which do not exist in reality. For this, we need to analyses the various jurisdictional and judicial principles which have been enunciated by eloquent and erudite judges. In the country like India whereas pointed above, there are clear clauses relating to the religious freedom, there was a need for development of certain test by the judiciary which in fact, has been done over cases in principle to principal panel.

## 4.7 DEVELOPMENT OF PRINCIPLES

Going by the various landmark cases which have held the field and have become the beacon light for many of the other cases to come and shall even remain till posterity have been dealt with in the instant research. There are various High Court judgements and Supreme Court judgements which have cleared the field and paved the way for development of the essential practice's doctrine. The famous **Shirr Mutt case**[40] is one of the standard examples of how the said test came into existence. Justice BK Mukherjee who was one of the most edited judges on the Hindu was faced with the question of determining whether the agrarian reforms could take into its own ambit the properties of Hindu religious endowment and whether or not the said trust format would have to prove that

[40]Shirur Mutt case 1954 Air 282

it is a religious denomination and that there were certain practices being carried on for which it was entitled to manage its own affairs.

Therefore, in this case a balance has tried to be struck between the parties where the court has expressly denied the assertion test whereby in the United States, by mere assertion, the court would stop at the boundary into investigating whether a particular practice was essential or not. However, at the same point of time, the court has struck a balance and held that the test for determining shall not be free of any objectivity but on the contrary, shall include the well-known principles which have been set up by the privy council in determining such essentiality.

Further in the case of **gram Sabha of village battis shirala versus the union of India**[41] the main mischief of essentiality test was brought to the forefront. There was a sect which claimed, inter alia that non-Naga Panchami the sect had a traditional practice of worshipping alive cobra and offering milk to the same. The plaintiffs in this case had relied on various texts including that known by the name of Srinath Lila Amrut and various other such text however, the court went on to hold that this particular act could not have been nice and shall practice of any particular religion. The researcher would want to pause at this moment and ponder at the situation of how arbitrary and whimsical could a judgement be in the case where a particular judge would feel that practice is not essential to that of a particular religion and that would be the only basis of rejecting the entire claim Of including customs which could have been running before thousands of years.

[41] gram sabha of village battis shirala versus the union of India Writ Petition No. 8645 Of 2013

In the case of **Fasil vs superintendent of police**[42]the question which came before the Kerala High Court was that weather possessing or wearing a beard would be an essential practice in Islam. However, instead of venturing into the text or any other religious practices, the court took into consideration factors such as various stakeholders of Islam and various other leaders did not sport a beard as also alongside the factor that the petitioner himself did not do so a few years back. Hence, A petition for determination of essential practice of a religion was roughed up on the grounds which could not have stood any test much less that of religious freedom.

There have been quiet and varied confusions at various levels when it comes to the question of which sect is to be considered as a denomination and which is to be not further, even if a particular sect was held to be the nomination whether the practice it was following could be said to be essential religious practice. All these questions have been answered differently based on different circumstances in various cases throughout the country. Therefore, there is no single solution or a straitjacket doctrine which could have been applied for the fact of adjudication of the dispute based on some objective evidence.

In one of the other landmark judgements which included the **Durga committee versus Hussain** Ali[43] Justice Gajendragadkar had imposed one more feather upon the essentiality doctrine nearby he himself had imposed one doctrine which meant and which wanted the requirement of rationality in the practises. He asserted that, the practises which have come about from superstitious and Non-

[42] Fasi vs superintendent of police (1985) Illj 463 Ker
[43]the Durga committee versus Hussain Air 1960 2sc1402

essential aggression, the religion cannot be asserted in this manner. Therefore this rationality test which was now imposed had in one be done away with the involvement or the invoking of that test which required to see whether that particular religion followed a particular practice or not. Only what remains to be seen was the reformative test in the so-called modernity Whereby, only the rational part of it was to be seen. To my mind, what is Rational to one person, might not be equally rational to another. Therefore this test essentially is not rational in itself is my humble submission. Therefore the focus in my submission, has moved away from religion and essential religious practises to that of the practises which appeal to the mind of the judges deciding the matter as "rational".

In another judgement of **Yagnapurush Das ji versus Muldas**[44], The Supreme Court held that the basic definition as to who was a Hindu and who was not could be changed in essence, by the court when the petitioners claimed that they were not Hindus. The shift of the entire religious practises test has now gone into the questions of rationality, equity, commonsense and all other such perspectives which are the normal notions for justice. A question which is posed during this research is simply this: can traditional norms of worldly justice which require criteria is to be proved in physical sense of rationality be used to consider or challenge the doctrines and the formation of religion and religious practises which by their nature or not subject to rules of normal proof and evidence. In absence of any such procedure, how can judges or courts be allowed to tinker with The various set of judgements which required a completely different prism than the normal civil matters. Another important judgement includes the judgement in the case **of**

[44]Yagnapurush Das ji versus Muldas 1966 Air 1119

**Commissioner of police versus Avadhoota**[45] where in the Calcutta High Court and held that for the people belonging to the religious sect of Ananda Margi faith, Tandava dance was an essential religious practice. This observation was somehow overturned by the honorable apex court on the consideration of the fact that, the Ananda Marga faith Was created in the year 1955 whereas Tandava dance was adopted by this faith only in the year 1966. Therefore, it could not have been said that this dance was an essential religious practice to the sect. If we were to accept this, the time is not far when religious dogmas Shall we crystallised more and lead to formation of severe and non-percolating Layers of orthodox religions.

In the case of Saifuddin Sahib versus State of Bombay[46] and many others the way in which it happened was that the court has now learnt to either categorise the right under question as a part of the essential practises write and give it on various norms which have been described earlier or else, take it into one of the factors which have been maintained as being secular. The only way out here and was to take the matters which are incidental to those mentioned better. However, not many people Believe in this doctrine or agreed to the same. While talking about various cases which limit and restrict the operation of the rights, the courts have generally gone and will dip into whether or not the right being exercised was against and pitted against such other factors which could not be ignored. For example, where without understanding the ambit of a particular ride if a restriction has been imposed there is no question for the court to further 12 into or ask for the queries or records of that honourable court.

This is for the simple fact that, in a lot of orders Especially for public order it becomes very serious and the court is not generally ready to look into any other such considerations which would be she

[45]Commissioner of police versus Avadhoota 1984 Air 512
[46]Saifuddin Sahib versus State of Bombay Air 1962 Sc 853

had such a trial. In continuation of the public order doctrine as laid down, there are various documents with support the Doctrine of public order with full vigour. One side or the other if, there is an allegation of the laws of conversion or so on and so forth, the mere relation of it to the public order shall make things much better and difficult at the same point of time.

It is further submitted that the right to propagate a religion and the right to profess whichever religion one likes to, has the inherent assumptions that one person cannot be forced to stick on to one religion at any given point of time. However, there have been instances in cases where even without any such fraud or coercion the person out of being in a gullible moment has joined or has seen another view of opposite parties.

In the 1959 judgement of Singh versus State of Punjab[47] the undouble Supreme Court has already cleared it that any religious domination which may I enjoy orders enjoy any sort of monopoly or autonomy in its particular field as to deciding what shall be the right ceremonies et cetera it was only that particular's religious sect or denomination which could be allowed and none further could have any say at all much less a disposal one for the essential Religious practice which has been called into question and no such decision would matter of any other authority except for the courts.

In the case of sand laws it is important that the anti-conversion laws which were in acted I'm not only opposed by the court along with its constitutionality, but also the fact that me a coercion of fraud was not held to be pervasive in the enactment because it prevented forceful conversion into the another religion. The researcher agrees in part with this doctrine for the simple reason that, though most of the people who have to convert their religions into another her gullible people for all such reasons that they may be put into fear and coercion and such things might happen. On the

[47]1959 Air 843

contrary a person has the freedom of choice special Specially that of conscience and therefore it becomes imperative for the person in order to take together various factors combined along with in which circumstances and position was the particular enactment sought to be found as well as the petitioner sought to be convert which needs to be looked into case to case basis.

One of the other main important aspects which has not been touched upon by the courts is the fact that a lot of times any sort of action that is sought to be taken for the maintenance and promotion of a religion is only done by way of the enactment or the schedule castes which all belong to the Hindu religion. In the case of KP Manu versus chairman, scrutiny committee for verification of community certificate[48] The court held that, as long as the Dalit Christian could prove that his family ancestry was that of Indian Hindu, he could avail the promotion and other such benefits which were entitled to other Hindus for the purposes of reservation. Therefore, it became imperative and this stage to understand that there is huge and gross amount of miscarriage of justice being inflicted upon the people in view of such a nice moments and whims of the judges occupying and deciding the matter.

Therefore, the substance of understanding of the fact is that, development of the essential doctrine has given some unencumbered power to the Judiciary, by way of which, active state participation in the matters of religion has taken place. This can be very well understood in the sense that, the religion, which was held to be a private matter, has a lot of interference and interpretation from the Judiciary in the sense that, a lot of times, it amounts to the change in the nature of how one believes in his or her faith. This, in my submission, cannot be permitted to be done and hence, the fabric of religion has a lot of times swindled in the hands of the Judges. This was not thought of

[48] KP Manu versus chairman, scrutiny committee C.A. No. 7065 Of 2008

or envisaged by our constitutional forefathers when they were ensuring a fair play by the state and the people in the matters of religion.

# CHAPTER V: FREEDOM OF RELIGION: SCOPE IN USA CONSTITUTION

## 5.1 THE BASIC UNDERSTANDING OF THE FREEDOM OF RELIGION IN THE STATES:

The very first amendment made in the Constitution of United States of America mentions that each person living in the U.S. not only has the right to practice their own religion but also the freedom of practicing or following no religion at all.

The founders of the constitution of U.S. were themselves of different religious background and hence, knew the value of religious freedom and also had a field of vision that the finest way to protect the liberty of religion in the States was to keep politics and government involvement out of it. For this very purpose, an amendment was made in the constitution of United States for the first time which in a way guaranteed the separation of the Church from the State. It is because of fundamental freedoms like these, that unlike India, U.S. has managed to avoid a lot of religious war of words which could have, in a way divided the states of the States, instead of keeping them united.

### 5.2 THE FIRST AMENDMENT:

The First Amendment which was introduced which restricted the U.S. government from any kind of encouragement and/or promotion of religion which could have in any way felt as an establishment of the same. It certainly made a clear point that no government of the United States may give any kind of financial support to any religion which also in a way violated a lot of school

voucher programs since these programs were meant to give taxpayers' money to the school which promoted religion, leading to violation of the Establishment Clause.

In the year 1971, three tests were created by the Supreme Court to ascertain if a certain Government Act or Government Policy in any way was unconstitutionally promoting religion in the case of Lemon v. Kurtzman[49]:

The Lemon Test as it is called, stated that any law in order to make it to the finish line, had to survive all the elements of the three test which are stated below:

- Have a purpose, which was not religious.
- It should not promote or favour any kind of religious beliefs.
- Not involve the government with religion more than it is felt required.

But these tests and the First Amendment in itself raised a lot of questions which required to be answered in order to have a clear picture of the law and its governing especially after the implementation of the First Amendment[50].

## 5.3 THE CHURCH, THE PRAYER AND THE STATE:

Let us start with the discussion of something as basic as singing or playing a prayer, which in India is a very common practice, usually perceived as a general courtesy and good manners.

But it might surprise you if you are not completely aware about the First Amendment of United States, where no meeting starts with a prayer since Prayers, Loud Devotionals and Scriptural Readings or any likely activity would violate the First Amendment of the Constitution of U.S. as

[49] (Lemon V. Kurtzman, 403 U.S. 602 (1971)) Https://Supreme.Justia.Com/Cases/Federal/Us/403/602/

these kind of activities promote religion. This stands correct even if a prayer is not of any specific religion, making it a "non-denominational". It is said that even if any gathering which is not religious in nature the "Moments of Silence[51]" may be unconstitutional in nature, depending upon whether or not the actual purpose of it is to promote religion or any prayer.[52]

Since Public Schools are run by the Government, can religion be taught there?

The answer is a clear NO. The government has come up with the concept of First Amendment and therefore they must obey it sincerely which states that although the influence of religion in history, philosophy and Literature can be taught for the knowledge of students but the promotion of any such religious practices given in history or observed in philosophy cannot be taught in the syllabus. Moreover, the same rule shall not apply on private schools since they are run by the US Government. But even if otherwise, a student shall be excused from any kind of activity going on in any school if it is of a conflicting nature with the student's religious beliefs in any nature whatsoever[53]

In the 1992, The United States Supreme Court decided in Lee V. Weisman[54] that graduation prayers are considered unconstitutional in public schools. The logic behind it is that these graduation prayers would make the students of other religion or the non-believer kids the feeling of compulsion regarding their involvement in the prayer. It would not be the concern that who

[51] Walter V. West Virginia Board Of Education (1985).
[52] Https://Www.Uscourts.Gov/Sites/Default/Files/Freedom-Religion_0.Pdf
[53] Littell, F. (1989). Religious Freedom In Contemporary America. JOURNAL OF CHURCH AND STATE, 31(2), 219-230. Retrieved July 08, 2021, From Http://Www.Jstor.Org/Stable/23916793
[54](Mawdsley, 2021) Https://Www.Britannica.Com/Topic/Lee-V-Weisman

leads the prayer – be it a priest, a minister, a rabbi, whoever or whether the is a non-denominational since some students might feel excluded.

This concept of differentiating and moreover keeping the State and the church separate from each other was mainly advocated by Colonial founders such as Williams Roger, Clark John, Penn William amongst other Founding Fathers such as Madison James and Jefferson Thomas.[55]

The Freedom of Religion with all its liberty, has also changed a lot over years in the U.S. and also continues to be controversial. It had been dealt with in detail in the Farewell Speech of Mr. Washington. Beginning in the year 1918, a lot of emigrants of Hutterites moved to Canada with the death of Michael Hofer and Joseph following torture regarding sedulous objections against the first draft. While it is said that some of the Hutterites have returned whereas there are still Hutterites immigrants who live in Canada. Jefferson's while giving a reply of 1st January, 1802 while addressing greetings and congratulations from Connecticut's Danbury Baptist Association has a quote which was similar to that of political and judicial circles of the present times; Ä Wall Separation Between Church and State" [56]

## 5.4 CONSTITUTION FOR AMERICAN PUBLIC AND THEIR RELIGION:

The Constitution while being handed over to the Public of United States, "many pois people" has complains regarding the construction of it stating that it had a slight reference of God, since it contained the phrase "no recognition of his mercies to us ..... or even of the existence of it". The Constitution of States was reticent regarding any religion for 2 major reasons; One being that many delegates were dedicated federalists, who'd believe that the power to legislate on any religion, if

[55](Jefferson's Letter To The Danbury Bapists, 1802) Https://Www.Loc.Gov/Loc/Lcib/9806/Danpre.Html
[56] (Library Of Congress, R&F Gov. , Part 2) Https://Loc.Gov/Exhibits/Religion/Rel06-2.Html

it existed at any given point of time, lay within the domain of the US, not the Governments, national;

Second being the delegates believed that it would be a mistake made tactfully for introduction of politically controversial issue as religion into the Constitution, the only so called "Religious Clause" in the First Amendment the proscription of religious tests as qualification of federal office in Article Six as intended to defuse controversary by disarming potential critics who might have calmly religious discrimination in eligibility for public office.

It was observed in the 19th Century by Schaff Philip, a Historian that the separation of the State and the Church in United States, rests upon the respect of church, its separation, on hatred and indifference of the church and religion in itself. The Constitution did not create any institution nor did it create any religion or even a nation, the constitution found these things in existence already and then was framed for the purpose of protecting them under the republican form of government, in a rule of the people, for the people and by the people.[57] On the contrary, the initial thought and opinion of the Congress was to form a more general religion to appease Anti-Federalists as to them and the federals, the word "National" was very alarming by the past experiences they had with the British. It was theorised by Baker John, a legal Scholar that the House ejected the concept of Congress making no law regarding the establishment of something which can be stated as "National Religion"

[57] Wipf And Stock Publishers Church And State In The United States: The American Idea Of Religious Liberty And Its Practical Effects (Schaff, Reprint 2017 Ed.) Isbn 978-1-55635-707-7

Then later came the Fourteenth Amendment, which was said to have expanded the freedom of religion by preventing the states from enacting the laws which would inhibit or advance any particular religion. In the late Nineteenth and Early Twentieth Centuries, the American Government had subsidised boarding schools for educating the native American children. In these Boarding schools, the children were prohibited from dressing up in any kind of ceremonial clothes or from practicing native religions or it beliefs. In this ongoing strike of having religious freedom all over America where every state would be lead by the example of the federal to abolish religious tests for public office, states like Maryland maintained a religious test well into twentieth century, requiring a declaration of belief in the Almighty (God) for all state office holders up till the year 1961.

**5.5 THE VIEW OF SUPREME COURT:**

While we are discussing the scope of Religion and its freedom as in the U.S. Constitution, we simply cannot miss out the landmark judgements made by the Supreme Court on the said matter.

Reynolds v. United States (1871):

In this case the limits of liberty being given in the Religious freedom was being tested by upholding the federal law which banned polygamy. The Court ruled that the First Amendment forbids the government regulating belief but not from its actions on marriage.

Braunfeld v. Brown (1961):

A Pennsylvania Law was being upheld by the Supreme Court which required stores to be kept closed on Sunday, even after the Jews who were orthodox argued regarding the law being unfair to them since their religion required them to close their stores on Saturday too.

Sherbet v. Verner (1963):

In order for a person to receive benefits, the state or its laws should not require for him to abandon their religious rights and/or beliefs. Supreme Court in this case passed this judgement for a worker of a textile mill, a Seventh-Day Adventist Church. When the employer of Adell (the worker) switched from a 5 days a week to 6 days a week for working, Adell was fired for refusing to work on Saturdays, the 7thDay. After which, when she applied for compensation regarding her unemployment, a court of South Carolina denied her claim.

The Lemon Test by Supreme Court:

Lemon v. Kurtzman (1971), In this case the court held down a law in Pennsylvania which was made for bringing back Catholic schools for the salaries of those teachers who taught in those schools, the court brought the "Lemon Test" for deciding about when a federal law or a state law violates the clause of Establishment which was a part of First Amendment which restricts the government from declaring or financially backing any religion.

The Case of Ten Commandments (2005):

The Supreme Court came across two different decisions in two different cases which were contradictory to each other and involved the Ten Commandments on Public Poverty. First being the Van Orden v. Perry where the court decided it was very well constitutional to have displayed a six feet tall Ten Commandment Monument at Texas State Capital. Whereas in McCreary County v. ACLU, the court said that two huge copies in Kentucky Courthouse which had Ten Commandments was violative of the First Amendment.

Travel Bans:

In the year 2017 the federal district courts by the order of the then President of U.S. Donald J. Trump, struck down implementations of a lot of travel ban, these bans cited discrimination against the natives of various Muslim majority nations, which was said to be violative of Establishment Clause of the First Amendment[58].

References of God in Constitution:

The famous Monotheism is also known as Constitutional References to the God and his existence in the Constitutions of numerous nations and very importantly in Preamble. Invocation of the God i.e. NVOCATIO DEI is the term for referring to god in any legal document.

## 5.6 FRANKLIN HAMLIN LITTELL.

The People of America know that when they are recalling their offered religious options which were multitude, they still live in a country which is religious, has a rich culture and without the rapid changes that are apparent in Asia and Africa and even in the dissolving European Christendom. While the researcher came across a survey for the research of American profess, it was observed that 96 percentage was known to believe in God, over ninety percentage of Americans claimed to have religious affiliation, Seventy percentage of people are in fact on the religious roll involved in same way or the other and there are numerous or large establishments brackets as they like to say are 85 percent religiously affiliated.

Nevertheless, the people of U.S. are known to be considerably less homogeneous than they were two hundred years ago. During the Declaration of Independence there were 85 percentage of the American people who came from the British Isles, there were also people who were a part of population of 3.8 million with Protestant state churches in the colonies which were organised by

Https://Billofrightsinstitute.Org/Landmark-Cases , Https://Www.History.Com/Topics/United-States-Constitution/Freedom-Of-Religion

the British Model which was 20,000 Catholic Believers and about 4000 Jews. During the time of Bicentennial of the republic of the American Religious configuration and it was observed to be decidedly different. Their rule was based on three things at large, Religious Pluralism, Culture and Ethnic. Then came the largest denomination in the Church of Roman Catholics[59] with 52.8 million. Whereas the estimate was 5.9 million for the community which was Jewish.

The reliable estimates for that of Black Churches are not available as such. The Convention of National Baptist of America covers about 2.7 million of the population. Perhaps more of the point in terms of religious pluralism in America, a person would need to be reminded that there are in the United States of America, a population, which covers an estimated of 1.8 million Muslim People and eight hundred thousand population of Black Muslims, there are also five hundred thousand of Hindus and one state which also has Buddhist population from Hawaii. With a culture which is predominant, it was quite until a few generations ago which was dominated by the heritage of Protestants which had the so-called cultural lags in some sections to support that legally established predominance. The people of U.S.A. have hardly begun to adjust their mindset with the tri-faith establishment which Will Herberg demonstrated as a implicit in many of the American behaviour patterns[60].

He thought that acceptance of the huge religious Catholics and/or Protestants and/or Jewish had since the early 1950's connected with the deep roots of the public mind along with the interfaith

[59] Littell, F. (1989). Religious Freedom In Contemporary America. Journal Of Church And State, 31(2), 219-230. Retrieved 08 July, 2021

[60]Will Herberg, Protestant-Catholic-Jew (New York: Doubleday & Co., 1955), 258-60; See Also Littell, Franklin H., From State Church To Pluralism (New York: Macmillan Co., 1971), Pb Of 1962 Original, Chapter Vi.

tolerance that was first formally saluted in the founding of the great Congress which operated at a national level through Jews and Christians in 1928.

Furthermore, after the establishment of the tri-faith,[61] the people began to feel comfortable, the people of United States are being challenge to reach out beyond Catholics, Romans and of course the Jews as well as Protestants to include others. The research observes that this being done is a kind of mistreatment and also a kind of treatment to the other people which also constituted a major threat to the liberty of religion in the United States of America. The liberty of Religion of these huge religious blocs is rarely being threatened, an interreligious dialogue among the three major establishments had become a common place.

It has been the activity of the New Religious. Movements of recent times and not that of the past which gave rise to anxiety and also required interpretation in the public forum.

The Situation in USA:

American preachers and tech euphorically about the mesmerizing tradition of liberty of Religion. This euphoria has been expressed by the voices of people outside the organised religious groups. The Bill of Rights is being referred by many Constitutional Lawyers as the foundation of the federal Constitution.

The very First Amendment of the cornerstone of the Bill of Rights and the liberty of Religion as the core of this First Amendment.

[61] Application Of Conversion Center (Pa. 1957) 130 A2d. 110

We all remember that Sir Penn William said that Coerced Religion cannot be said to considered as a religion at all. It has never been understood the importance of Liberty of conscience to the natural law and birth right of all the men and moreover that they had religion without it and that people's religion was none of their own but for what is not the religion of a man 's selection and liking, it is said to be something which is imposed on a person so that the liberty of conscience is said to be the first step to have a religion.[62]

The research while putting forward the American situation where we can recollect the thoughts of Schaff Philip, the great church historian who had made the move from British Christendom and an official theology to the self-volunteering system in the newer world.

The Freedom in United States describes, that the glory of United States is a free Christianity and is free from any of the secular government and further they are also being supported by the voluntary contributions of the people who were free from all this. It is one of the most acknowledging fact in America's modern history.[63]

## 5.7 JUDICIAL APPROACH

Starting with the discussion of the United States and how the freedom of religion is a protected constitutional right of each citizen, which is being provided in the very first amendment of the US constitution - the freedom of choosing their religion is very closely associated with the separation of the State and the Church. This particular concept was particularly allocated by colonial founders and the same has been discussed earlier in this research for which the judiciary has developed a few different kind of methods or tests as we may address it, of which the most important one are;

[62] Cf. Franklin H. Littell, The Free Church (Boston: Starr King Press, 1957),48.
[63] Schaff Philip, Germany: Its Universities, THEOLOGY, AND RELIGION . . . (PHILADELPHIA: LINDSAY & Blackiston/Sheldon, Blakeman & Co., 1857), 105.

The Assertion Test, Compelling Interest Test and The Lemon Test and the researcher has discussed upon the same in this research.

If we compare the practice of the two nations it has a very different approach, the basic example can be taken up by the way of this Assertion Test which is being practiced in the United States as far as religion is concerned  If I as a person believe in something and with some reasonable proof or on some reasonable ground am able to assert the same in the court of law there will be no further questions or investigation done on the same by the US judiciary even if it is said to be a belief or a particular religious practice or even of one particular individual. Whereas on the contrary if a person wants to do the same in India, our judicial system would question and also research upon the same provided by a committee formed for the soul purpose of finding out the truth whether if it is a religious or a general practice or belief which was being done by that particular person or a group of people who believed in the same and if reasonable amount of proof, which also has historical background or is said to have been the practice since the past is not found, even after an individual or a soul individual as I would say believes in the same, it will not be admissible in the court of law as a practice of an individual.

If we go back in history, Genghis Khan was one of the first rulers to have started the practice of giving his people the freedom of choosing their religion.

Talking about Compelling Interest Test, this test in particular takes care about the application of the freedom of religious freedom which is being provided by the first amendment, which also concerns the Federal law, in order to make sure that no Federal Law is being violated in the name of Religious Practice or Individual's  Belief of Practicing . For this, if a person, when asserts his/her particular beliefs, the judiciary shall appreciate it but also protect the national interest by running this compelling test which would make sure that no kind of federal laws are being threatened or

violated by the same. Now, let us discuss a few Cases which would help us get a better understanding of Religious Freedom, particularly as per the American Judiciary.

The Separation of Belief Action:

The court has very beautifully cited the Reynolds case in the matter of Cantwell v. Connecticut[64], stating that the constitution of The United States of America protects the freedom to believe but also protects the freedom to act upon it where is p look at the reality the first is absolute but in the nature of things in reality the latter one cannot be and the so-called belief action of ours correctly differentiate and ontological difference in the inner belief of a person and the freedom which is provided to him by way of giving him freedom to act upon the outer action of his own beliefs. It is said to be very much unsatisfactory on the part of the test of the outer limit of the liberty which is provided to one for his religious freedom by the first amendment on the US constitution. On the contrary if we see the freedom of religion would in itself build the right to hold believes of a person and a right that even totally repressive situations such as the Gulag does in no way violet the federal or any other law for that matter. The subsequent Court has very much realised the same and the meaning of the freedom of religion and have stated that the religion must go beyond the inner limit of the conscience and also protect the manifestations of outer believes of a person which means that a person or a group of people willing to believe something shall not only have a right to have a belief to also to take action upon it i.e. to practice the same in its practicality.

[64]Cantwell V. Connecticut, 310 U.S. 296 (1940).

The Limitation of the Rule of Law:

Talking about the liberty which is being given, with all that has been given to the believers which they can practice as a religion for as their religious Liberty, the court the constitution of the church none of these authorizes these religious practitioners to break the law by the way of practicing their believes. Because while providing this Liberty the state was that worry that if every religious community and possibly every believer if given the Liberty completely which in no way is in sync with the federal law. This situation in particular makes it very important to have some conditions for the regulation of the civil Society. When personal liberty is being conditioned with minimum constraints of the law, the freedom is felt to be in correspondence with the basic rule of law and it's requirements for equality.

At times what would happen is the religion would appear to be above the law and this embodies give rise to the inequality in society which would not be acceptable, historically speaking death could be a burden on some specific religion since it limited the power of sovereigns which would legislate against the non-sovereign groups.

The difficulty which would have been faced while constructing the typical religious liberties in the law at the initial stage would have required something which was way more  than just a mere moral necessity of a society, since a lot of obligations which would have made practical sense in the minds of a lot of Americans, the same would in an innocent way put up burden on the conscience when these same laws would have been implemented on the religious believers.

To come to the conclusion of this particular issue, supreme Court developed a test to determine the limits which would answer to the question of Free exercise and help the judges in making an unbiased decision.

It was "The test of Compelling Interest" which has 4 steps.

Two of these would be applicable on any individual who say that their Religious Liberty has been violated and the other two would be for the State Agencies, which were assumed of violation of the rights of that citizen.

For any person, the court must see the following aspects;[65]

- (a) Whether there is involvement of a sincere and historical religious belief of the claiming individual.

- (b) Whether the agencies of the government put substantial pressure on the ability of the individual to act upon the individual's religious beliefs.

If the above two essentials are being established by the Court, then the State must prove;

- (c) That the action which is assumed to be violative of the individuals' interest is taken in furtherance of the interest of the public at large for the Comparing State Interest

- (d) That the state has tried, that the agency imposing these actions which constraint the religious Liberty of the individual are least burdensome, least restrictive in nature to the religion.

[65]Https://Www.Freedomforuminstitute.Org/About/Faq/What-Does-Free-Exercise-Of-Religion-Mean-Under-The-First-Amendment/

It has been concluded that the basic reason regarding why the U.S. had to constitutionalize the Liberty of Religion was to protect the intentional and that the unfair and cruel use of power by a small group or even an individual to control the whole State in this sensitive domain.

The People. The Religion. The Court:

The United States Supreme Court has consistently been trying to get a hold of the free exercise of the rights of its citizens. The court stated that unemployment rules were violate when an employee had kept in a position to select either one between his work and following his religion which would stop him from doing his work. This is a fact when a particular person strictly follows his beliefs as compared to the faith of other members.[66] The researcher while doing research thought of a perfect example to explain the situation on hand regarding the decision of Supreme Court for exercising Religious Freedom. If a restaurant owner has Chefs working for him who cook both vegetarian as well as non-vegetarian food under their scope of work, but they themselves have never consumed any non-vegetarian food since consuming such food is against their religious belief and is said to be violative of their religion but staying loyal to their duty/work, they do cook non-vegetarian food. The only thing which they were against was consuming the same in order to protect their religion. Now when the Owner of the restaurant makes it a compulsion for these chefs to taste the food before they send it out to customers, it us certain that this act will create great disparity for the Chefs who do not consume non-vegetarian food, which means, now that it is a compulsion for all chefs, these chefs are kept in a position where they have to choose between their work and their religious practice.

[66]Thomas V. Review Bd. Of The Ind. Empl. Sec. Div., 450 U.S. 707 (1981)

Looking at the current situation on hand, the Supreme court is saying that it is a winding down, but in reality, it is being observed that there are a lot of cases which are yet to be decided and a lot of them have a controversy among State – Church matters loom.

The Case of Fulton v. City of Philadelphia[67] is one of the pending case regarding the private agencies giving funding by the State funding is not discriminating of any religion or group of people or the Community of LGBTQ and this act of non-tolerance applies to everyone including the people who do not believe in religion and also the ones who believe in one. The main adoption service involved in the matter is CSS (Catholic Social Service) and they are the ones who are not willing to abide by it and also states that not discriminating against people who are gay or Gay Couples, is a matter of their religious liberty and beliefs.

Initially it would be seen as the state's position being strong, but it provides funding and also has a reasonable interest in making sure that the money does. Not perpetuate discrimination, especially the kind which is based upon sexual orientation of people of America. As a researcher it has strongly made me believed that the claimants of religion are certainly at a dominating winning streak, even against the Supreme Court till a certain extent and a recent portrayal of this is the latest judgement given by the justices of the Court in California where it was ruled that the restrictions from Covid-19 against any public gathering would not apply to the religious gatherings which are held at personal houses which definitely makes us thing that there must be some sort of

[67]Green, Steven K. Https://Theconversation.Com/How-The-Supreme-Court-Found-Its-Faith-And-Put-Religious-Liberty-On-A-Winning-Streak-158509 (Green, 2021) - Steven K. Green, Willamatte University..

influence or dominance of these claimants even on the law of the land and as now the researcher believes on the Pandemic as well since the irony of the judgement makes us question about how will such a deadly virus not affect the religious gathering done on private property but will most certainly affect other public gathering. Is this making us conclude that the people who are non-believers of any religion are more likely to get affected if they participate in a public gathering which is non-religious? Since the law was putting restriction of such other gatherings. Or does this exception violate the religious liberty given in the first amendment which also supports the people who decide to not believe in any religion at all thinking it is their religious liberty?

Case Laws from the past Decade:

Good News Club v. Milford Central School (2001)

There were two main questions which were considered by the court; 1) whether or not the free-speech right of the Good News Club being violated by a school of New York (Milford Central School). A private organization of Christianism, for children was excluded from the meeting during the post school hours. 2) whether the justification given by the Milford Central School that permitting such an organization, would violate the Establishment Clause of the First Amendment valid.

The court with a 6:3 decision, decided that the it was a violation of the free speech right of the Christian Club and the Clause of Establishment would not concern justification of the violation. As Justice Thomas Clarence wrote in the Court's opinion, that during the denial done by Milford, the Good News Club had access to the limited public forum of the school on the very ground that the GNC was a religious Club and it the School discriminated against the club since its religious viewpoint was in violation of the First Amendment which provided free speech. The Court denied

the Establishment Clause cited by Milford School as it justified the execution of this club and nothing of this nature is unlikely which would make the kids in school follow the allowance of the GNC and moreover the kids were not allowed to be a part of the club unless they bring a written confirmation from their parents which would work as a permission and it was unlikely that they would feel coerced to be a part of the religious activity.[68]

Elk Grove Unified School District v. Endow (2004):

"Under God" because of these words being used in an Allegiance pledge of a school, a kid's father Endow Michael challenged it as a violation of Constitution. The Court had to decide whether the words "Under God" were violative of Constitution or not, it was a pledge which the kids in school has to speak daily. It was a unanimous call from all the judges of the California Bench that Michael as a parent who didn't have the right to custody, also didn't have any standing in the case to bring it up to the court of law. Furthermore, the decision of the lower court was being reversed which state that Michael had locus standi and that the policy of school regarding Pledge was Unconstitutional. It was stated by the Justices, as written in their different opinions separately that on merits they had concluded that the words "Under God" wouldn't be considered violative of the Constitutional Right of Religious Freedom, since those words when added to the pledge, were adding historic value to it, the portrayal of the Leaders of our Country. It was concluded that the pledge which represents their country and was sung in patriotic events and celebrations, was while having the phrase "Under God" allegiance to the flag of United States, cannot in any manner

[68]*Citation:* 533 Us 98 , Https://Billofrightsinstitute.Org/E-Lessons/Religious-Liberty

whatsoever be said to violation of the religious right, not it would lead to the general understanding of Establishing a Religion through it or anything which could considered the same.[69]

The above case laws showing different aspects of the governance of Federal Laws and the connection they have with Freedom of Religion, keeping in mind the First Amendment in the Constitution of the United States and how The Courts and The American Judicial System plays a role protecting them is very well portrayed in the case laws discussed by the researcher for discussing the Judicial approach in the United States of America.

[69]*Citation:* 542 Us 1 (Bill_Of_Rights_Institute) Https://Billofrightsinstitute.Org/E-Lessons/Religious-Liberty

## CHAPTER VI: JUXTAPOSITION OF THE RIGHTS AND COMPARISON

### 6.1 NATURE OF RIGHTS

The research has proceeded to see how the rights in their individual forms and basis, Exists in both the Constitution. However when we try and text oppose both next to each other in similar and pithy phases the same as follows:

> *25. Freedom of conscience and free profession, practice and propagation of religion. — (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. (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. Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. Explanation II. —In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jayna or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly*

*26. Freedom to manage religious affairs.—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.*

WHEREAS, THE CONSTITUITION OF USA RUNS AS FOLLOWS:

***Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof***; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

Therefore having a better look at the Constitution of India and the religion rights which are provided in the US constitutions it is clear that the first amendment has chosen to use a simple line stating the government shall make a new law prohibiting the free exercise of religion.

## 6.2 ANALYSIS OF THE RIGHTS

When we try to analyses the judicial interpretations of these rights, there shall be different connotations which shall be taken up in the next chapter. However looking at the mere existence and the language construction of the rights, it is clear that the United States of America has given And raised A simple and a clear wall between the government and the religion. In the context of India, we can clearly see that the state and the government both have to pay an active role in the reservation of the rights of religious groups as well as that of the promotion of the rights of the

non-religious groups[70]. It is rather strange that, in the 42nd amendment of the Constitution of India, the word "secular "was included in the Constitution. Even before that, there had been clear and correct indications of the fact that, the rights which have been conferred upon the people of India are in the nature of secularism and they promote a state which has no religion of its own.

Therefore, in other words, in the case of United States the state and the religion or two separate entities, which have envisaged each other in vacuum and have to work in tandem but without interfering in the spheres of each other. Whereas, in the case of India, The state it needs self will not have any religion, however, the state shall play an active role in preservation of the rights of religion and also preservation of the rights of the non-religious groups[71]. Hence, I may Put it as, in the case of India, the state plays more or less the role of an umpire/mediator between the two groups having the right of religion versus the group having the right against any such promulgation.

In the United States, on the other hand, it is sought that there shall be no right or law which shall connect the state along with the domain of religion. At this level, we must also not lose sight of the fact that, the United States is an example of a coming together federalism where, the states and the people have given the right in favour of the Congress. This is also one of the reasons, where and why the Congress and its rights have been limited in the matters of legislation, especially in the sphere of personal religions, conscience et cetera. Whereas, in the case of India, we are an example of a holding together federalism, which would imply that, The right of the plenary

[70] INSTITUTIONS AND CHANGE 186 (2004) Rajendra K. Sharma, Indian Society, (Quoting Spencer Harcourt Butler, India Insistent (1931)).

[71] FREEDOM OF RELIGION IN INDIA: CONTEMPORARY CHALLENGES See Faizan Mustafa, , Centre For Study Of Society And Secularism (May 14, 2015), Http://Www.Csssisla.Com/4th-Aae-Memorial-Lecture-Full-Text/.

legislation that is of the Parliament especially in the case of constitutional amendments would affect the right of the people residing in India throughout. Even for this reason, there was a requirement of particular rights being granted so as to make it clear, that the following rights as stated within article 25 to 28 are such rights which cannot be compromised with unless and until they are put on test against the factors which are mentioned in the article itself including public order, Morality, health and other provisions of the third part.

Another aspect, which takes importance here at the state and needs to be discussed at some length is that the political sphere has a deep and pervasive impact on the aspect of religion in the case of India. Unlike the United States, where the people are not generally driven by the communalism or Motives which are related to such cattiest etc. phrases and aspects, in India not only the election of the government but even minor and major decisions are taken a lot of times on the basis of such considerations. Though this may not seem to have any deep impact on to the effect of the rights which may be taken up in the nature and scope; however if seen with minute details, It shall be revealed that religion remains extremely important in the case of India not only in the public sphere but also in the domain of right to privacy. There are instances of communalism and various other riots which are generated and based upon the religious incidents which take place every year in the country. However petty it may seem; all of these decisions do not only have an impact on the legislations for example the disturbed areas act of Gujarat has been made on basis of such considerations. Bit by bit and part by part there are huge differences which take place in the whole understanding of how and why the secularism takes form and place in India the way it is[72]. It is not to say that, the United States is not constituted of any minority religion so on and so forth.

[72] Ranbir Singh & Karamvir Singh, Secularism In India: Challenges And Its Future, 69 INDIAN J. POL. SCI. 597, 603 (2008)

Majorly there are three religions which I have mentioned in my chapters ahead including the Jewish the Protestants Roman Catholics. However we do not take into Consideration, the various other minority religions which flourish and existed. The incidence of gun violence, other public sphere and religion related incidents are also not less; therefore even though the place of United States is different from that of India in the case of its culture tradition and various other factors including the bringing of a child, the basic relation between religion and people remain the same even there.

## 6.3 JUXTAPOSITION

When we actually look at juxtaposing both these writes something that flies in our eyes and glares in the face is the simple fact that the clauses which can restrict the religious rights in India, are defined and have relation apart from the judicial interpretation to the social economic political et cetera factors which have been mentioned in the article itself. On the other hand when talking about religious liberty in the case of the United States, there are so many interpretations where the values of equality, the parallel values of speech Association[73], personal liberty and dignity all of them are brought together and mediated one into all. This is for the simple reason that these values do might sound to be overlapping can be interpreted into different needs and all of them can be brought together by one single right where there is no imposition of a federal which can be taken into consideration by the court. Racial discrimination is also one of the rights which have been at times included into the aspect and domain of religious liberty[74]. As pointed out above this clause that is the first amendment, was generally understood and taken to be a constraint or a factor

[73] Marshall, "Solving The Free Exercise Dilemma: Free Exercise As Expression," 67 MINN. L. REV. 545 (1983).
[74] THE FIRST FREEDOMS: CHURCH AND STATE Thomas J. Curry, In America To The Passage Of The First Amendment (1986)

imposed on the Congressional right to enact anything in relation to freedom which is so near and dear to human being where the power and the sovereignty of the United States rested. However the free exercise portion of the United States was incorporated into the 14th amendment of the prohibition of state action, which would in other ways include a lot of other imposition and fetters.

The most important aspect of difference between the religious freedom rights has conferred in the United States vis-a-vis that of India is the fact that where does the Penumbra of right that is the extent to which right can be exercised lies cannot be told as easily in the case of United States. It does not mean in any way that something illegal for example a murder or some homicide could have been allowed in the name of religion. However it becomes quite difficult and especially in view of the bar on the Congress to enact any such law it becomes more so helpless to determine which law or which tool could actually be used to curtail and cut down the illegal activities which are carried out in the name of religion. In one of the very famous cases of Reynolds versus the United States[75], the question came up for the fact that if a particular custom or a particular practice bigamy was included could it be upheld or could it be continued in specific view of the federal law for bigamy which prohibited the same. The court held that Although they could be no law preventing such an act however in case of a conflict in criminal matters that is police affairs of the state, no such practice could be said to have been upheld by the law.

One of the other aspect which can incidentally interject on the right of religion in the case of United States is the fact that when the case of Reynolds as stated above had pointed out that when the police powers/criminal law could not be override it by the religious rights; it remains many answers which have to be answered thereafter. One of them being what nature of for towards magnitude of

[75] Reynolds versus the United States 98 U.S. 145 (1878).

criminal activity could actually neutralize or override a religious freedom right. There are several problems with such a school of thought first of them being that it is possible that a lot of times various legislations could burden minority religious groups which have to be undertaken and which technically could not have been framed as in law by the Congress[76]. Therefore it needs to be seen in other senses that where the societal interest or if in any manner over being the religious rights of the groups then the religious rights must always give the way. However this equally depends on the judge and becomes an extremely subjective definition to be interpreted upon. As opposed to this, in India we have Interpretations coming from various courts; however there are fixed sets of letters and fixed set of conditions which can be imposed to qualify the religious rights which must pass the muster or any such law which could be banned in order to protect the interest of the secular group.

The development of the religious rights in the United States was to such an extent that it affected things and judicial decisions on even on unemployment and drugs related matters of narcotics where certain drugs were considered to be the essential practice of religion in one particular sect. Therefore it was after that the United States of America enacted the religious freedom restoration act which in turn was meant to re-institute all the tests which were included by the judiciary before that including the compelling state interest and the least restrictive alternative test[77]. This was done in order to Restore all the religious freedom and to exclude the ambit of federal legislation in this group. It was also in order to nullify a judgement of the Supreme Court which could have had serious after effects and aftermath. Therefore it becomes interesting to study as to how much deep

[76] Laycock, "Summary And Synthesis: The Crisis In Religious Liberty," 60 Geo. WASH. L. REV. 841, 848-53 (1992).
[77] Carmella, "State Constitutional Protection Of Religious Exercise: An Emerging Post-Smith Jurisprudence," 1993 B.Y.U. L. Rev. 275 (1993).

and pervasive impact could a simple line stating that no Congress shall exercise any right of religion. There for what mattered was in what way out the courts interpret and apply the said doctrine in the case of practical application.

**6.4 NATURE OF TESTS**:

When we analyses and juxtapose the nature of the rights against each other there are two very important aspects which comes into consideration.

First Main, in the case of India, there is what we call the essential test. The essential practises on one hand in my submission, is faltered in its view on the basis that, it substitutes the principles of religion with the jurisprudence and the wisdom of the judicial minds of the Country. Which in my submission, could not have been done for the simple reason that a lot of times interpretation of whether something is an essential practice or not, Does not only depend upon the time through which it has been practiced or the mention of it in certain Scriptures. More often than not, The interpretation of religion is quite a complex matter which like any other discipline requires certain level of expertise and knowledge of its related aspects. It is submitted that, the judges of the country do not have any formal or informal training into the matters of Scriptures, religion, any other related aspect which could enable them in order to make or frame any directives to lay down or to classify certain practice as a sensual or not. To take a simple example, in Hinduism, if menstruating women are not allowed in a temple during the period of menstruation, whether it is an essential practice or not cannot be determined merely on the basis of one or two texts or practice of the temple tracing it down to a few centuries. There are complicated questions such as, went to Scriptures or as they are formally known Shruti and Smriti give conflicting opinions which of them

must prevail et cetera. All of these rules Have already been laid down for interpretation by those people who are formally trained and have knowledge about the interpretation of these dogmas. It is a mere state of pity that, The judges of the country go on to interpret any and every possible problem including that of religion and its related aspects which are posed in front of them under the garb of constitutional questions.

Whereas, in the case of the United States there are two standard tests of determining whether or not a particular enactment can stand in view of the first amendment which has been into place. The first being compelling interest or compelling object[78]. This doctrine would mean that, where the state has absolute compelling objective or interest in order to trample upon the right of religion it is only in such activities that, the state can be allowed to formulate a law or the right to religious freedom has to give way to the enactment which has been found by the state[79]. Where on the other hand if both of them can harmoniously exist and coexist there is no need for the religious right to be curtailed down in any manner. The other test that has been laid down by the courts there is the least restrictive alternative test. This means that whether a particular interest is in any manner least restrictive over the rights of religion of a particular group. Whether or not the group of religion is faced by difference of actions for example 2 in number and if the first one is lesser restrictive than the second one; the first one must always be applied to.

[78] Durham & Dushku, "Traditionalism, Secularism, And The Transformative Dimension Of Religious Institutions," 1993 B.Y. U. L. Rev. 421, 446-455.
[79] Mcconnell, "Free Exercise Revisionism And The Smith Decision," 57 U. CHI. L. REV. 119, 1124 (1990);

Therefore, as we see, the difference not only in the emphasis and the underlining of the religious acts in both the countries, there is a completely different way which has been adopted by each one of them in order to seek their own objectives. In other words, in India, it is to be investigated whether or not A particular practice is to be classified as an essential practice or not; whereas, in the case of United States, there is no question of going into how "Essential" the practice is. Therefore the investigation into the practice is the seeming difference in both the countries. In the United States on the other hand, if a practice exists it must be upheld unless and until for two exceptions which have been laid down. Therefore, in India the right are more intrusive and the judiciary has a wider power to investigate into the nature of the rights and the motive behind them; while in the United States, there is no such power vested in the judiciary to see in any fashion as to what is the nature of the right. At the most, only what is to be seen is to What extent can the federal law coexist along with the religious freedom and nothing more.

One of the major differences which I have pointed out in the above paragraph is for the fact that the assertion test has been rejected in India by looking into practice is deciding whether they are integral or not. Whereas in the United States the assertion test would generally mean that if a particular plaintiff would assert that a particular relief or belief is essential and integral to his or her religion there would be no further probing by the court into the questions of how essential or what to what extent. However this was denied by India "time in again go into checking the essentiality test and the test for arriving at the definition of the religious practices and freedom of religion was arrived into.

While looking into the fact that whether a practice is to be determined as essential practice or not, the court shall majorly look into three conditions whereas the first condition is whether a particular

practice is essential to the religion itself second being, whether or not the practice in question has sprung from any belief which is superstitious in nature or any other practice which can be called into and looked into by the courts of the country[80]. It is, very disturbing fact that in various cases the courts have in fact, not only acted as the chief tens of the religion but also, sermonized and have given opinions into the fact of whether a particular practice could or could not have been the religious or essential practice of that particular denomination. This doctrine, has its inherent defects which cannot be cured for the simple reason that there is no possibility of going into Merits of the dispute again or there is no physical or tangible evidence to test or wean the religious evidences.

Therefore, the question which arises for the consideration at this point of research is that whether at a given point of time where a particular point of law could have been addressed by two statutes one, including the religious aspect of it while the another being the legal part of it[81]. For example if in a particular given point of time whether the government had to decide a land dispute or had to take a stand in a land dispute on basis of the land acquisition act or on the basis of the doctrine of eminent domain, at the same point of time if the government took a stand that the land belonged to a temple or if the court decided that the land belonged to some other religion and their sensual practice of that religion Could not mend it or did not warrant for that particular land. This clearly shows the level of corruption in the principle of not only eminent domain or not only legal principles in general but in particularly it shows the absurdity with which laws and rights relating to freedom of religion or been dealt with in India.

[80] Faizan Mustafa, Haji Ali Verdict: Can We Permit Sati, Polygamy If They Are Essential Practices, Hindustan Times (Aug. 30, 2016, 00:23 Ist), Http://Www.Hindus Tantimes.Com/Analysis/Haji-Ali-Verdict-Can-We-Permit-Sati-Polygamy-If-They-Are-Essential-Practi Ces/Story-Phmqkv18kpx8immoe2hmhm.Html;

[81] Smita Narula, Book Review, 4 INT'L J. CONST. L. 741, 746 (2006) (Reviewing Gary Jeffrey Jacobsohn, The Wheel Of Law: India's Secularism In Comparative Constitutional Context (2003)

Finally, moving on to the aspect of profession of religion there is anti-conversion laws which come into question. In India, there are various anti-conversion laws because a lot of times profession is not allowed to include conversion of other people and most cases the gullible people by misleading them. However, there is one opposite and diametrically possible view which says that restricting the freedom of changing the religion in any manner whatsoever shall have a deep and grave impact on the freedom of conscience[82]. This is a question which has remained unanswered for centuries and still there is no definite answer for the same. The society as for the religion is a dynamic and changing process which requires investigation into whether or not the same has been happening voluntarily or not[83]. A lot of times the conflict which emerges is not between freedom of conscience and coercion but rather it stands between individual choice which has the full right to disown and to reject the view which it permanently and particularly as present holds and denounce the same. While denouncing the same it may embrace a new course or a new religion with it with which it can identify himself. Propagation of religion therefore has been held to be excluded in the causes of such anti-conversion laws and the Supreme Court has upheld the validity of such laws which basically stops the conversion in any manner.

Therefore, the nature of rights in both of the constitutions are different, but more interestingly, the tests which have been developed in the countries take a place of prominence, which probably could have been different in some way. The Indian Judiciary time and again enters into the substantive law in force, whereas the judiciary of the USA does not enter beyond the "assertion test".

[82] U.S. Comm'n On Int'l Religious Freedom, Supra Note 46, At 149-53

[83] Robert D. Baird, Traditional Values, Governmental Values, And Religious Conflict In Contemporary India, 1998 BYU L. REV. 337, 353 (1998

# CHAPTER VII: CONCLUSIONS AND SUGGESTIONS

The freedom of religion in both the countries have been analyzed In juxtaposition with any one another in order to understand how the freedom of religion and started out in different countries after looking at the constituent assembly debates in India and understanding the reason for which the first amendment was brought about in the United States, it is understood well that, the basis and the notions of differences in both of these rights are self-evident. One where as it expands the scope of the right, it has been exposed and exploited a lot of times by the administration such a calm about including that of Trump and other presidents. On the other hand, in India we have the state interference but in manners which are different than that of the United States. Therefore, what needs to be understood at this stage is, unless and until freedom of religion losing the hearts and the liberty lives in the minds of people, it would not be very possible to put it in black and white and assume that the rights and liberties are well protected. It is tried to say that, a right which was given the format of the basic language structure in the 17th and 18th century in the United States Constitution, was given a somewhat more full-fledged and foolproof system in our Constitution. However when we try to analyses the differences between the two, the following emerges:

1. The scope of the rights is in the opinion of the researcher completely different and subject to different analysis and interpretations by the judiciary.

2. The extent of state interference in the freedom to religion in both of these countries have been different but significant.

3. In the United States, the interference occurs by the government directly even though there is a separation of the state from the right to religion. It occurs by the way of administration Catholic hospitals as has been stated above.

4. The hospitals which are in Catholic nature often try to trample with the freedom of religion of corporations in accordance with their hobby lobby decision and generally try to deny their freedom of access to healthcare to various sectors of the people on basis of the religion they belong to

5. In view of the statements which have already been analysed, the nature and scope of the rights by the way of simple construction of language is also different. The Indian counterpart of the freedom of religion gives a difference in the manner in which a fair place ensured between the various religions and the state acts as an umpire. Whereas, in the United States, the state is himself not playing and neither ensuring a fair play but by the way of implication, its time and again joins into the juggernaut of adding to the various discrimination switch occurs on the basis of religious freedom.

6. Whereas when we see look at the state situation of India it is clear that the government tries to enact various laws such as the Gujarat Public trust act and the trust which is also now taking up the Ram Janmabhoomi Trust in order to interfere with various things which have come out in the recent times.

## SUGGESTIONS AND ELABORATION

It is also understood that, the contents of the rights in both the respects are different and they operate in different fields. Therefore, there is no way and manner in which it could be said that the nature of freedom of religion is the same in both the countries. It is further stated that, it is not possible that the system of the rights which have been established in the countries by their forefathers and the deliberations that it could have been done any differently is a mere matter of conjecture. However, as a researcher, while going through the analysis of the rights which have been conferred in both the countries, I feel that the right which have been granted in the Indian Constitution in the format in which the same exists is the better one for the following reasons, which shall also include my such conclusions and suggestions:

1. That, there was no way in which the right in the format of the first freedom could have been made in the Indian Constitution for the reason that, we had the benefit of going through the implementation of the first amendment, only to realise that, it was the Judiciary and the other checks which were associated with the balance of the right and not the right itself.
2. That, the fetters which have been imposed in the Article 25 of the Indian Constitution, namely Public Health, morality and order, are such fetters which are even implied but also the basic ones and require the protection. But apart from these any further fetters have to be read into the provisions and therefore, there could have been no other real or direct ones.

3. That, the Indian example reveals to us that the State interference with the Freedom of religion and the exercise thereto has been done, especially because the government generally has the human factors which have an inherent bias. However, in the Indian

Context, whenever the interference is measured on a scale, it cannot go beyond a certain extent except for blatant disregard of provisions. Whereas, in the United states of America, it is not possible that the Government has some directions and guidelines to work upon and therefore, it is very well possible that, the government can cross their boundaries with the enactments which purportedly do not violate any of the provisions.

4. That, the provisions inherently operate in different spheres and in my view the role of state is also different in both the provisions as they appear to be. Therefore, there are no ways in which the same can be compared. Therefore, essentially, in my submission, the Indian Model is in a way more defined and precise than its USA Counterpart.

5. From the Analysis of the Judicial Precedents and how the development has essentially taken place, it is clear that, the Judiciary has faltered in both the countries in my respectful submission. On one hand in the Indian side it is because of the essential doctrine test where the court enters into the tenets of the religion in order to determine whether or not in actuality something is an essential practice of the religion or not. However, in the USA, the problem falls with the interpretation of the comparative right to freedom as in the hobby lobby case. Therefore, the pitfalls are existent in both the jurisdictions.

6. In my opinion, if we were to imagine a situation where the Indian provision has been placed in the United states constitution, it is clear that there would not be a situation where the laws would be framed in a manner to bypass the legislation so to speak. However, I do not intend to agree to any of such incisions for the reason and purpose that, the background in

which the conditions have been laid down differ so much so that, probably some superimposition cannot lead to any better results.

7. That, the right to religious freedom as they are understood in their sense and provisions are not something which could not have been changed, but the constitutional assembly debates show us in no uncertain terms that, there is no way in which the Indian counterpart of the provisions could have been debated any better.

Therefore, the right to religious freedoms in both the countries have been in a different sphere so that, the comparison of the congruence of any is not possible. Therefore, the fact that, the Indian Counterpart of the freedom to religion rights which have been mentioned in the Articles 25 to 28 of the Indian Constitution are one of the basic pillars which have been in one way or the other been ignored. The analysis and comparison of the nature and the scope of the provisions show us that, probably, the Indian Counterpart was well studied and it could have not worked in any better way in either of the countries.

# BIBLIOGRAPHY

## STATUTES:


1. Constitution of India, 1949
2. Religious Freedom Restoration Act, 1993


## BOOKS:


1. The Power Of Identity, Castells, M 1997. The Information Age: Economy, Society And Culture.. Maiden, Massachusetts: Blackwell Publish
2. Public Religions In The Modern World. Casanova, J. 1994. Chicago; London: The University Of Chicago Press (1994)
3. Un And European Human Rights Law And Practice Paul M. Taylor, Freedom Of Religion, (New York: Cambridge University Press, (2005)
4. "Works Used By Tocqueville Tocqueville's Own N. F (2010, 2:666–74), And Nolla's Bibliography" (4:1377–95).
5. Theory Of Constitutional Rights Alexy, A Oxford ; New York : Oxford University Press, 2002 Pgs. 23-35
6. The Administration Of Hindu Law By The British "Derrett"," 4 Comp. Stud. Soc. & Hist. 10-52 (1961);
7. Genealogy Of Liberalism, Religion And The Private Sphere Martin, Craig (2010). Masking Hegemony: London: Equinox.
8. Discovering Religious History In The Modern Age; Kippenberg, Hans G. (2002).. Princeton: Princeton University Press.
9. Secularism And The Constitution Of India (1971) Gajendragadkarpg. 122-23
10. The Rise And Fall Of Freedom Of Contract (1979) Atiyah, Pages 78-83
11. Die Zukunft Einer Provokation Fischer, Karsten (2009).: Religion Im Liberalen Staat. Berlin: Berlin University Press.
12. Justice, Equity And Good Conscience," Derrett, " In Anderson (Ed.), Changing Law In Developing Countries 114-53 (1963)

13. Institutions And Change 186 (2004) Rajendra K. Sharma, Indian Society, (Quoting Spencer Harcourt Butler, India Insistent (1931)).
14. The First Freedoms: Church And State Thomas J. Curry, In America To The Passage Of The First Amendment (1986

**ARTICLES:**

1. Georg Jellinek, Die Erklärung Der Menschen Und Bürgerrechte, In Zur Geschichte Der Erklärung Der Menschenrechte 1-77 (Roman Schnur Ed. 1974)
2. Manfred Nowak, U.N. Covenant On Civil And Political Rights: Ccpr Commentary 408 (2d Ed. 2005)
3. Filippo Osella And Caroline Osella 'Ayyappan Saranam': Masculinity And The Sabarimala Pilgrimage In Kerala, Dec., 2003, Vol. 9, No. 4 (Dec., 2003), Pp. 729-754.
4. Abdulkader Tayob Religion, Culture And Identity In A Democratic Society, Journal For The Study Of Religion , 2002, Pp. 5-13. Vol. 15, No. 2 (2002),
5. Rafael Domingo Restoring Freedom Of Conscience Journal Of Law And Religion, Vol. 30, No. 2 (June Pp. 176-193 (2015)
6. Gamper 2014; Laycock 1994,2014
7. Compare Conversations With Joel Poinsett (Zunz 2010, 286) And With Wainwright And Smith (Zunz 2010, 330–31).
8. Zunz 2010 Pages 21-25 , 220; Also See Tocqueville 2010, 4:1351–52
9. B.R. Ambedkar, Speech To The Constituent Assembly, Vii C.A.D. 38-9 (4 November 1948)
10. See Rudolph & Rudolph: The Modernity Of Tradition: Political Development In India (1967) And The Incisive Review By Derrett In 71 Z. V.R. 89-94 (1968).
11. Derrett, Religion, Law And The State, Ch. 14 (1968); Sontheimer, "Religious Endowments In India," 67 Z. V.R. 45 (1965).
12. Fyzee, "The Impact Of English Law On The Shariat In India," 66 Bom. L. Rev. 107-16 (1964)

13. Asad, Talal (1993). Genealogies Of Religion: Discipline And Reasons Of Power In Christianity And Islam. Baltimore: Johns Hopkins University , 1993 Pages 25-27
14. Arnal, William E. (2000). Definition. In W. Braun And R. T. Mccutcheon (Eds.), Guide To The Study Of Religion, 21-34. London. Vii C.A.D. 822 (3 Dec. 1948), 823-840 (6 Dec. 1948); 859-890 (7 Dec. 1948)
15. Constituent Assemblty Debates, *Monday, The 6th December 1948, Constituent Assembly Of India Debates (Proceedings)- Volume Vii*
16. Galanter, "Who Are The Other Backward Classes: An Introduction To A Constitutional Puzzle," 13 E.P. W. 1812-88 (1978); Galanter, Supra N. 2 At 134-87.
17. Akhishewar Singh, "The Concept Of Secularism In Indian Constitution," 12 J. Const. Parl. Stud. 15 (1978)
18. Ranbir Singh & Karamvir Singh, Secularism In India: Challenges And Its Future, 69 Indian J. Pol. Sci. 597, 603 (2008)
19. Marshall, "Solving The Free Exercise Dilemma: Free Exercise As Expression," 67 Minn. L. Rev. 545 (1983)
20. Reynolds Versus The United States 98 U.S. 145 (1878).
21. Laycock, "Summary And Synthesis: The Crisis In Religious Liberty," 60 Geo. Wash. L. Rev. 841, 848-53 (1992).
22. Carmella, "State Constitutional Protection Of Religious Exercise: An Emerging Post-Smith Jurisprudence," 1993 B.Y.U. L. Rev. 275 (1993).
23. Durham & Dushku, "Traditionalism, Secularism, And The Transformative Dimension Of Religious Institutions," 1993 B.Y. U. L. Rev. 421, 446-455
24. Mcconnell, "Free Exercise Revisionism And The Smith Decision," 57 U. Chi. L. Rev. 119, 1124 (1990);
25. Smita Narula, Book Review, 4 Int'l J. Const. L. 741, 746 (2006) (Reviewing Gary Jeffrey Jacobsohn, The Wheel Of Law: India's Secularism In Comparative Constitutional Context (2003)
26. U.S. Comm'n On Int'l Religious Freedom, Supra Note 46, At 149-53
27. Robert D. Baird, Traditional Values, Governmental Values, And Religious Conflict In Contemporary India, 1998 Byu L. Rev. 337, 353 (1998

**ONLINE SOURCES :**


1. Steffen Führding, Religion, Privacy And The Rise Of Modern State Method & Theory In The Study Of Religion , 2013, Vol. 25, No. 1 (2013), Pp. 118- 131 Accessed At Https://Www.Jstor.Org/Stable/23555857 JSTOR
2. Donna Barry And Others, "A Blueprint For Reclaiming Religious Liberty Post-Hobby Lobby" (Washington: Center For American Progress, 2014), Available At Https://Cdn.Americanprogress.Org/Wp-Content/Uploads/2014/07/Religiouslibertyreport.Pdf.
3. Pew Research Center, "America's Changing Religious Landscape," Available At Http://Www.Pewforum.Org/Religious-Landscape-Study/ (Last Accessed June 2021)
4. Carolyn J. Davis And Others, "Restoring The Balance: A Progressive Vision Of Religious Liberty Preserves The Rights And Freedoms Of All Americans" (Washington: Center For American Progress, 2015), Available At Https://Cdn.Americanprogress.Org/Wp-Content/Uploads/2015/10/20070051/Hobbylobby2-Reportb.Pdf.
5. U.S. Department Of Health And Human Services, "Hhs Announces New Conscience And Religious Freedom Division," Press Release, January 18, 2018, Available At Https://Www.Hhs.Gov/About/News/2018/01/18/Hhs-Ocr-Announces-New-Conscience-And-Religious-Freedom-Division.Html
6. Katie Hafner, "As Catholic Hospitals Expand, So Do Limits On Some Procedures," *The New York Times*, August 10, 2018, Available At Https://Www.Nytimes.Com/2018/08/10/Health/Catholic-Hospitals-Procedures.Html.
7. U.S. Department Of Health And Human Services, "Fact Sheet: Final Rules On Religious And Moral Exemptions And Accommodation For Coverage Of Certain Preventive Services Under The Affordable Care Act," Press Release, November 7, 2018, Available At Https://Www.Hhs.Gov/About/News/2018/11/07/Fact-Sheet-Final-Rules-On-Religious-And-Moral-Exemptions-And-Accommodation-For-Coverage-Of-Certain-Preventive-Services-Under-Affordable-Care-Act.Html
8. *Equality Act*, H.R. 5, 116th Cong., 1st Sess. (March 13, 2019), Available At Https://Www.Congress.Gov/116/Bills/Hr5/Bills-116hr5ih.Pdf.

9. Https://Www.Uscourts.Gov/Sites/Default/Files/Freedom-Religion_0.Pdf
10. Littell, F. (1989). Religious Freedom In Contemporary America. Journal Of Church And State, 31(2), 219-230. Retrieved July 08, 2021, From Http://Www.Jstor.Org/Stable/23916793
11. (Mawdsley, 2021) Https://Www.Britannica.Com/Topic/Lee-V-Weisman
12. (Jefferson's Letter To The Danbury Bapists, 1802) Https://Www.Loc.Gov/Loc/Lcib/9806/Danpre.Html
13. (Library Of Congress, R&F Gov. , Part 2) Https://Loc.Gov/Exhibits/Religion/Rel06-2.Html
14. Wipf And Stock Publishers Church And State In The United States: The American Idea Of Religious Liberty And Its Practical Effects (Schaff, Reprint 2017 Ed.) Isbn 978-1-55635-707-7
15. Https://Www.Freedomforuminstitute.Org/About/Faq/What-Does-Free-Exercise-Of-Religion-Mean-Under-The-First-Amendment/
16. Thomas V. Review Bd. Of The Ind. Empl. Sec. Div., 450 U.S. 707 (1981)
17. Green, Steven K. Https://Theconversation.Com/How-The-Supreme-Court-Found-Its-Faith-And-Put-Religious-Liberty-On-A-Winning-Streak-158509 (Green, 2021) - Steven K. Green, Willamatte University..
18. *Citation:* 533 Us 98 , Https://Billofrightsinstitute.Org/E-Lessons/Religious-Liberty
19. *Citation:* 542 Us 1 (Bill_Of_Rights_Institute) Https://Billofrightsinstitute.Org/E-Lessons/Religious-Liberty
20. Freedom Of Religion In India: Contemporary Challenges See Faizan Mustafa, , Centre For Study Of Society And Secularism (May 14, 2015), Http://Www.Csssisla.Com/4th-Aae-Memorial-Lecture-Full-Text/.
21. Faizan Mustafa, Haji Ali Verdict: Can We Permit Sati, Polygamy If They Are Essential Practices, Hindustan Times (Aug. 30, 2016, 00:23 Ist), Http://Www.Hindus Tantimes.Com/Analysis/Haji-Ali-Verdict-Can-We-Permit-Sati-Polygamy-If-They-Are-Essential-Practi Ces/Story-Phmqkv18kpx8immoe2hmhm.Html;