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Freedom of Faith and Deceitful Conversions

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In News: The Gujarat High Court had correctly stayed Section 5 of the Gujarat Freedom of Religion Act, 2003 (amended in 2021 to include 'conversion by marriage'), while also staying the operation of other provisions that sought to cover inter-faith marriages as instances of illegal conversion. The High Court had noted that the prior permission requirement would force someone to disclose one's religious belief or any change of faith, contrary to Supreme Court rulings that say marriage and faith involve an individual's choice. In a strange claim, Gujarat argues that the stay on Section 5 is affecting even genuine inter-faith marriages that involve no fraud or coercion, as those who usually solemnise such marriages are unable to do so "Everybody has a right to choose their faith but that does not mean luring somebody by giving something. If you believe that a particular community needs help, you help it. It is charity. But the purpose of charity should not be conversion. Every charity or good work is welcome, but what requires to be considered is the intention... Charity, help, everything is welcome, but within the framework. The intention should be very clear. That is what we will consider," Justice Shah said. "When everybody is India, they have to act as per the culture of India," he noted.

What is the relation between Secularism and Freedom of Religion in India?

In 1976, by the 42nd Constitutional amendment word 'secular' was added to the preamble of the Constitution. India being a secular state, is a no state religion which means that it follows no particular religion.

In Ahmedabad St. Xavier's College v. State of Gujarat, the Supreme Court held that Secularism neither means anti-god nor pro-god. It just ensures that no one is differentiated on the basis of religion eliminating the concept of God in matters of the state.

While dealing with the concept of 'secularism' in detail, the Supreme Court in S.R Bommai v. Union of India explained that under the Constitution, secularism does not mean an atheist society but a heterogeneous society providing equal status to all religions without favoring or discriminating against any one.

What is Secularism?

Secularism even when it was not stated in the Our Constitution was a part of our principles. The reason to it is that Constitution envisages Social justice, Liberty, fraternity ideas of French revolution. Government must take effective measures for Communal harmony, Provide platform for engagement of Different religious leaders. Pseudo Secularism, Hate Speech and other Political interest, caste-based Politics are the things to be detached and should usher era of Mature politics based on development.

A nation performs positive secularism when the constitution of that country has more power than religion. Positive secularism is where the state plays an enabler role in the exercise of fundamental rights and the religious freedoms of all communities. Under 'negative secularism', the state says that nobody can display their religious identity in public and the ban on hijab in public places was upheld by the constitutional courts.

The Indian Constitution offers 'positive secularism' which recognises all religions as true. The Indian interpretation of secularism stems from the Vedic precept of Sarva Dharma Sama Bhava. The SC has observed that 'Indian secularism' is susceptible to a positive meaning, that is developing an understanding and respect towards different religions.

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What is Freedom of Religion in Indian Constitution?

Articles 25 to 28 in the Constitution of India provide the right to freedom of religion.

- Article 25: It imparts freedom of conscience and free profession, practice and propagation of religion. It is available to persons.
- Article 26: It gives freedom to manage religious affairs. It is available to religious denominations.
- Article 27: It sets freedom as to payment of taxes for promotion of any particular religion. It is available to a person against religious denomination(s).
- Article 28: It gives freedom as to attendance at religious instruction or religious worship in certain educational institutions. It is applicable to educational institutions. A person can invoke it.

What does profess, practice and propagate mean?

The court in *Stainislaus Rev v. State of MP* explained that freedom of 'profession' means the right of the believer to state his creed in public whereas freedom of 'practice' means his right to give expression in forms of private and public worship. The court also explained that the right to propagate one's religion means the right to communicate a person's beliefs to another person or to expose the tenets of that faith, but shall not include the right to 'convert' another person to the former's faith. In the *Commissioner Hindu Religious Endowments Madras v. Sri L T Swamiar of Sri Shriur Matt*, the Court held that 'profess' means 'right to freely declare of one's faith'.

Judicial Pronouncement in previous cases:

After the Court's "right to privacy" judgment, and the *Shafin Jahan-Hadiya* case (2018), it would be no more constitutional to use "marriage" as a ground for prohibiting conversion, as it involves the rights of privacy, choice and marital freedom. The right to marry a person of one's choice is guaranteed under Article 21. An inter-faith marriage, by itself, is unlikely to be seen by the courts as an event impinging on public order. Therefore, making marriage per se a ground for rendering conversion illegal would not survive judicial scrutiny. The U.P. ordinance uses the term "allurement by marriage", but this phrase can be misused.

Other Instances:

The Uttar Pradesh government has given its nod to U.P. Unlawful Religious Conversion Prohibition Ordinance, 2020. The ordinance makes religious conversion a non-bailable offence inviting penalties up to 10 years in prison if found to be effected for marriage or through misrepresentation, force, undue influence, coercion, allurement or other allegedly fraudulent means.