

SUBJECT: POLITICAL SCIENCE IV

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MODULE: IV, FUNDAMENTAL RIGHTS

RIGHT TO RELIGION: ARTICLE 25-28

1. Freedom of Conscience and Free Profession, Practice and Propagation of Religion

Article 25 says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. The implications of these are:

- (a) *Freedom of conscience*: Inner freedom of an individual to mould his relation with God or Creatures in whatever way he desires.
- (b) *Right to profess*: Declaration of one's religious beliefs and faith openly and freely.
- (c) *Right to practice*: Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.
- (d) *Right to propagate*: Transmission and dissemination of one's religious beliefs to others or exposition of the tenets of one's religion. But, it does not include a right to convert another person to one's own religion. Forcible conversions impinge on the 'freedom of conscience' guaranteed to all the persons alike.

From the above, it is clear that Article 25 covers not only religious beliefs (doctrines) but also religious practices (rituals). Moreover, these rights are available to all persons—citizens as well as non- citizens.

However, these rights are subject to public order, morality, health and other provisions relating to fundamental rights. Further, the State is permitted to:

- (a) regulate or restrict any economic, financial, political or other secular activity associated with religious practice; and
- (b) provide for social welfare and reform or throw open Hindu religious institutions of a public character to all classes and sections of Hindus.

Article 25 also contains two explanations: one, wearing and carrying of *kirpans* is to be included in the profession of the Sikh religion; and two, the Hindus, in this context, include Sikhs, Jains and Buddhists.

2. Freedom to Manage Religious Affairs

According to Article 26, every religious denomination or any of its section shall have the following rights:

- (a) Right to establish and maintain institutions for religious and charitable purposes;
- (b) Right to manage its own affairs in matters of religion;
- (c) Right to own and acquire movable and immovable property; and
- (d) Right to administer such property in accordance with law.

Article 25 guarantees rights of individuals, while Article 26 guarantees rights of religious denominations or their sections. In other words, Article 26 protects collective freedom of religion. Like the rights under Article 25, the rights under Article 26 are also subject to public order, morality and health but not subject to other provisions relating to the Fundamental Rights.

The Supreme Court held that a religious denomination must satisfy three conditions:

- (a) It should be a collection of individuals who have a system of beliefs (doctrines) which they regard as conducive to their spiritual well-being;
- (b) It should have a common organisation; and
- (c) It should be designated by a distinctive name.

Under the above criteria, the Supreme Court held that the 'Ramakrishna Mission' and 'Ananda Marga' are religious denominations within the Hindu religion. It also held that Aurobindo Society is not a religious denomination.

3. Freedom from Taxation for Promotion of a Religion

Article 27 lays down that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination. In other words, the State should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion. This provision prohibits the State from favouring, patronising and supporting one religion over the other. This means that the taxes can be used for the promotion or maintenance of all religions.

This provision prohibits only levy of a tax and not a fee. This is because the purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion. Thus, a fee can be levied on pilgrims to provide them some special service or safety measures. Similarly, a fee can be levied on religious endowments for meeting the regulation expenditure.

4. Freedom from Attending Religious Instruction

Under Article 28, no religious instruction shall be provided in any educational institution wholly maintained out of State funds. However, this provision shall not apply to an educational institution administered by the State but established under any endowment or trust, requiring imparting of religious instruction in such institution.

Further, no person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to attend any religious instruction or worship in that institution without his consent. In case of a minor, the consent of his guardian is needed.

Thus, Article 28 distinguishes between four types of educational institutions:

- (a) Institutions wholly maintained by the State.
- (b) Institutions administered by the State but established under any endowment or trust.
- (c) Institutions recognised by the State.
- (d) Institutions receiving aid from the State.

In (a), religious instruction is completely prohibited while in (b), religious instruction is permitted. In (c) and (d), religious instruction is permitted on a voluntary basis.

Reference:

M.Laxmikanth (2013), Indian Polity, Mc Grow Hill Education, New Delhi