

## Rights of the atheists in India: A critical analysis

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### ABSTRACT

"Freedom of religion and conscience" are substantial fundamental rights which have been guaranteed by the Indian Constitution. A person should be able to affirm "no religion" or to be an atheist or non - believer freely. As the fundamental right of religion of the religious people is substantial, the rights of atheists and non - believers are equally vital and valuable. Currently available provisions like Section 295A of the IPC (Indian Penal Code) and the Punjab Assembly's recent "The Indian Penal Code (Punjab Amendment) Bill, 2018" by introducing Section 295AA, undermine atheist or agnostic people's constitutional rights. Atheism was always socially pervasive in India, but from a legal standpoint it has always remained largely a gray area. There is no specific legal structure for atheists as they are deemed to actually belong to their birth religion. Since 1950, the Indian Constitution has spoken of "freedom of conscience" pursuant to Article 25, but as far as "unbelievers" or atheists people's constitutional rights are concerned, this has not been substantiated until recently. This research paper focuses on various constitutional aspects when it comes to the rights of the atheists, including different judicial decisions on the same.

### 1. Introduction

Atheism has always been prevalent in India since time immemorial, but from a legal point of view it has always remained a gray area. There is no clear legal framework for atheists, since they are regarded to belong to their birth religion. When it comes to Indian philosophies, there are six "Nastika" or atheistic school of thinking which includes philosophy like "Cārvāka" or "Lokāyata," which is considered as an ancient Indian materialistic school of thinking. Since 1950 the Indian Constitution speaks of "freedom of conscience" in accordance with Article 25, but as regards the constitutional rights of "unbelievers" or atheists, this has never been substantiated until recently.

In India, when it comes to the rights of atheists, it has not been counted as part of the mainstream, although according to WIN-Gallup Report 2012, 13 percent of "Indians are non-religious and 3 percent are convinced-atheists. Though when it actually comes to Constituent Assembly debates (CAD), on 17th October 1949, HV Kamath advocated a substantial amendment to the preamble of the Constitution that the expression "In the name of God" be introduced before "We the people of India," but the Constituent Assembly members vehemently opposed about it which led to the dismissal of the same. There was one member, Pattom A Thanu Pillai, who said that the amendment would inevitably lead to compulsion in matters of faith. He added, "It affects the basic right to freedom of faith. According to the Constitution, a man has a right to believe in God or not. "All these substantive debates in the Constituent Assembly led to the constitutional fervor that the right to not believe is an individual matter of choice, which has been safeguarded by freedom of conscience.

### 2. Atheism and judicial decisions

In the basic understanding of the Constitution, the Indian judiciary often seemed baffled by stating atheism and agnosticism as one of the facets of religion.

#### (a) Religion not necessarily be theistic

The Supreme Court of India in **Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sripur Mutt (1954)**<sup>1</sup> it concluded substantially that, when it comes to individuals or communities, "religion" is ultimately a matter of belief and must not necessarily be theistic. While making reference to well-known and established religions that exist in India that do not believe there is a god, it was examined that "it would not be correct to say that religion is nothing but a doctrine or belief." It was also stated quite clearly that a religion may not only provide for its followers to accept a code of ethical rules.

#### (b) Reticence of the Indian Judiciary

This point of view was reverberated in later cases, such as in **Ratilal Panachand Gandhi v Bombay State (1954)**, where it is being developed that our constitution-makers did not intend to define in a definite manner the exact meaning of "religion" that would apply to people of all classes. In **Atheist Society of India v Govt of Andhra Pradesh (1992)**<sup>2</sup>, Andhra Pradesh's High Court explicitly stated that- "There is no constitutional guarantee to the belief of the Atheists who worship the barren reason there is no God." The stance of the Indian courts seemed quite contrary to the constitutional principles.

#### (c) Freedom of Conscience

A vital shift has been observed with regard to the judgment handed down by the Bombay High Court in **Ranjit**

<sup>1</sup> AIR 1954 282

<sup>2</sup> AIR 1992 AP 310

**Mohite v Union of India (2014)**<sup>3</sup> and the Hon'ble Court, while describing the word conscience as an ethical sense of morals that pertains to one's own judgment and actions, the High Court briefly held that "freedom of conscience" under Article 25 of the Constitution includes an individual's freedom to take the view that he is not a part of any religion. The Court also made it explicitly conspicuous that Article 25 of the Indian Constitution holds the right of a person to become an atheist and also that freedom of conscience also contains the right of an individual not to profess, practice or propagate any religion and, most crucially, that no one can be coerced or compelled to follow any religion.

#### **(d) Individual Autonomy and Choice**

In the recent landmark decision Justice **KS Puttaswamy (Retd) v Union of India**<sup>4</sup>, that came in 2017, the Supreme Court of India in its nine judge ruling, also regarded as the right to privacy case, stated that Indian citizens do have a fundamental or basic right to privacy, that also emphasises the basic principle of a person's ability to choose a belief as well as the freedom to express or not to express. While the Apex Court affirmed that the individual person holds the constitutional guarantee of rights, it held that privacy is at the heart of human personality, it acknowledged the individual's substantial capacity to make choices and to make individual decisions on matters of personal, private and intimate nature, and as such being an atheist is a vital expression of individual autonomy. It was later reaffirmed in **Shafin Jahann v Asokan KM (2018)**<sup>5</sup> that the choice of faith and belief lies in a sphere where individual autonomy should always be considered supreme.

#### **(e) Constitutional Morality Overrides Public or Religious Morality**

According to the opinions concurrently expressed by Justice DY Chandrachud in **the NCT Government of Delhi v Union of India (2018)** and **Navtej Singh Johar v Union of India (2018)**<sup>6</sup>, constitutional ethics and morality which supersedes public or religious moral standards will always protect and promote the fundamental right enshrined in Part III of the Indian Constitution and in this respect what is enshrined in Article 25, which carries the principle the right of an individual person to be an atheist. Although it is clear that the atheist or non-religious people's percentage is less, it will have no effect on their rights guaranteed in the Constitution.

In **KS Puttaswamy Case**, Justice Chandrachud (speaking to the Court) held that a fundamental constitutional right can never be turned down even if it is a "mini fraction of the population" and the same fervor was reiterated in the case of **Navtej Singh Johar**, which ultimately recognized the constitutional rights of the LGBT community. The affirmative evolution in this regard came with these important judgments which place individual freedoms substantially as supreme and can be seen as a fairly significant extension of the vision of BR Ambedkar when he said before the Constituent Assembly (November 4, 1948), "I am glad that the Draft Constitution has.... adopted the individual as its unit."

<sup>3</sup> Public Interest Litigation No. 139 of 2010

<sup>4</sup> WRIT PETITION (CIVIL) NO 494 OF 2012

<sup>5</sup> SC 2018 343

<sup>6</sup> (2018) 1 SCC 791

### **3. The rights of the atheists and article 25 of the Indian constitution**

When it comes to "freedom of conscience," the second portion of Article 25(1) gives for the individual's right to profess, practice and propagate one's religion is another substantial aspect of it. This constitutional right to propagate one's religion can not be violated on the right to freedom of religion of another person.

#### **(a) Atheism Whether Violate Article 25 or not (?)**

In **Lily Thomas v Union of India (2000)**<sup>7</sup>, it was held that the basic or fundamental right of a person to entertain the religious faith as per his own decision or choice and reveal or express his ideas and beliefs would not violate the religious and personal individual freedom of others, but as it was made explicit that atheism is different from the concept of religion when it comes to legal terms, it signifies the absence of religion and in this regard a crucial question can be put forward before ourselves that whether propagation of atheism is the violation of Article 25? The answer might turn out to be negative. When it comes to the constitution's secular character, it preserves the atheist people's rights.

#### **(b) Secularism Neither Anti Nor Pro God**

In **St. Xaviers College v State of Gujarat**<sup>8</sup> which came in the year 1974, the Court held that when it comes to secularism, it is neither against nor in favour of God and it treats all as same whether it is a devout or an agnostic or atheist. India is having a great legacy of leaders who believed in atheism.

#### **(c) Developing Scientific Temper, Humanism and Spirit of Inquiry**

In **PD Sundaresan v The Principal Secretary to Government (2012)**<sup>9</sup> The petitioner questioned the government's order to grant permission to build Periyar's statue in the school campus, a strong major proponent of atheism as well. It was contended by installing the statue of Periyar it will give room in the psyche of the students for atheism. The Madras High Court rejected the plea and at the same time emphasised the necessity of the school children to explore and be aware of the life of Periyar. The High Court further said that by trying to understand the philosophy of him it will help to develop to have scientific temper and also humanism and the fervour of inquiry and making difference among the school children. The fundamental duty clearly states about the same in Section 51A(h) of the Indian Constitution. As such to say that there is no space for atheism in India shall undermine not only the legacy of such leaders but also this very fundamental duty enshrined in the Indian Constitution.

#### **(d) Freedom of Conscience and Freedom of Speech and Expression**

\*In **Sanjay Ananda Salve v The State of Maharashtra (2015)**<sup>10</sup> and which was echoed in **Ranjit Suryakant Mohite v**

<sup>7</sup> SCC 653 2013 (7)

<sup>8</sup> 1974 AIR 1389

<sup>9</sup> W.P.No.14627 of 2012

<sup>10</sup> WP NO.1959 OF 2013

**Union of India**<sup>11</sup> case that when it comes to conscience as a freedom guaranteed as fundamental right and an individual's personal belief it is a matter of freedom of speech and expression which explicitly comes under Article 19(1)(a).

Further in **NALSA judgement(2014)**<sup>12</sup>, **KS Puttaswamy** and the **Navtej Singh Johar** cases, acknowledged self-determination and dismissal of external views is at the heart of one's own identity and in conformance with the value of the Constitution. As such, it is integral to the constitutional sense of identity of the atheist and agnostic people to reject religious and social beliefs based on scientific temperament.

#### 4. Blasphemy law and the rights of the atheists

When it comes to propagate atheism, it can cause a lot of tension among the religious people and those who do not believe in religion and in October 2016, in a private gathering of atheists, attack took place by people of extreme religious ideas and for this the local administration cancelled the meeting based on the reason that it might form law and order difficulties (Hindu, October 14, 2016). Although India is having no precise blasphemy law, Section 295A of the Indian Penal Code provides that the acts which are performed with "deliberate and malicious intention of outraging the religious feelings of any class of citizens of India" are punishable. Therefore a substantial issue arises that to what degree propagating of atheism would be acceptable.

##### (a) Constitutionality to Section 295A IPC

In **Ramji Lal Modi v State of UP**<sup>13</sup>, the constitutionality of Section 295A was upheld on the basis that in Article 19(2) of the Indian Constitution the same is a reasonable restriction upon the freedom of speech when it comes to "in the interests of public order" and the Court providing quite a broader explanation of it upheld that "law may not have been designed to directly maintain public order and yet it may have been enacted in the interests of public order."

##### (b) Proximate Relationship

Later on in **Fathehgarh v Ram Manohar Lohia (1960)**<sup>14</sup>, the Apex Court upheld that a restriction in order to be a reasonable restriction as per Article 19(2) must have a "proximate relationship" and not one that is farfetched, speculative or troublesome or too distant in the nexus chain with public order. The stance taken by the Constitution bench in the case of Ram Manohar Lohia is completely contrary to the opinion set out in the case of Ramji Lal Modi.

##### (c) When within the ambit of Freedom of Speech and Expression

Later on in **Kedar Nath Singh v State of Bihar (1962)**<sup>15</sup> reading the provisions of Section 124A(Sedition) of the Indian Penal Code, the Court held that a comment or speech criticizing measures of public on the government actions, however fervently phrased it may be, would not constitute sedition and shall stay within the purview of the fundamental

right to freedom of speech and expression unless there was an incentive for violence and disturbance.

In **S Rangarajan v P Jagjivan Ram (1989)**<sup>16</sup> in a bench of three judges upheld that a restraint that required to be made imposed on freedom of speech should contain "direct nexus" with that of public order and not simply "remote, conjectural or far-fetched" and when it comes to nexus, it should be equal to a "spark in a powder keg."

The right "not to believe" is connected to a person's choice and Section 295A seems to be overboard, effects negatively on this choice. When it comes to Section 295A, it has the possibility to be misrepresented and misused for suppressing to the opinions of the atheists and for these compelling reasons many critics believe the same should be repealed. The judgment given in the case of Ramji Lal Modi must be considered again and until then, as Section 295A of the IPC will be in the law books, it should not be attached until there is a speech that criticizes religious beliefs and feelings or notions that leads to an imminent lawless action situation.

A current bill passed by the Punjab assembly that amends Section 295A by inserting Section 295AA should be observed judiciously. The Indian Penal Code (Punjab Amendment) Bill, 2018 and the inclusion of Section 295AA provides, "whoever causes injury, damage or sacrilege to Sri Guru Granth Sahib, Srimad Bhagawad Gita, Holy Quran and Holy Bible with the intention to hurt the religious feelings of the people, shall be punished with imprisonment for life" and the Bill also talks about that "In the Indian Penal Code, 1860, in its application to the State of Punjab, in Section 295, for the words 'two years,' the words 'ten years' shall be substituted." It is quite evident that the definition of the provision introduced is completely vague and suffering utter over breadth. The words "sacrilege" is itself unclear and subjective term and the provision give wide power to the state for arresting people in this regard. When it comes to atheists and non-believers, it is their constitutional right not to be in agreement to the religious beliefs and its tradition. So Section 295AA has the high chance of causing "chilling effect" on such differing opinions. The said provision can be utilized for making atheists and non-believers silent when it comes to questioning the notions of religions and religious texts. Furthermore in Punjab, 32% of its population have Dalits whose continuous fight for social equality has consistently challenged the existing religions and religious text and Dr. BR Ambedkar is also known for burning Manusmriti which was a symbolical approach by him for establishing a society which is casteless, by ultimately moving towards a society based on equality. There should be no iota of doubt that Section 295AA and the amendment to Section 295A will create negative ripples on the fight for equality by the Dalit community. In striking down this section considering its over breadth characteristics, it would give a scope to the Supreme Court for reconsidering its judgement given in the Ramji Lal Modi case.

Despite distinct marital laws in the case of Hindus, Muslims and Christians, when it comes to non-religious persons, under the Special Marriage Act they may carry out

<sup>11</sup> Public Interest Litigation No.139/2010; Judgment delivered on 23rd September 2014

<sup>12</sup> WP (Civil) No 604 of 2013

<sup>13</sup> AIR 1957 620

<sup>14</sup> 1960 AIR 633

<sup>15</sup> 1962 AIR 955

<sup>16</sup> 1989 SCC (2) 574

ceremonies totally free from any mention of caste or creed, and a marriage which is solemnized under the same has no compulsory requirement of any religious or ceremonial rites and is considered a kind of civil contract. In matters related to maintenance and succession which are related to the issues of marriage, Section 216 of the same is providing that when it comes to the property and its succession, persons whose marriage is performed under the Special Marriage Act, and the property connected with the issue related to such marriage will be governed by the Indian Succession Act of 1925. Sections 367 and 378 of the Special Marriage Act talks about maintenance and alimony for the wives and apart from this, Section 125 of the Code of Criminal Procedure can be sought for maintenance purpose by the wife being married under this Act.

## 5. Conclusion

India's Constitution ensures equal rights for all its citizens, and freedom of conscience and freedom of religion also gives the freedom to disbelieve to an individual. An individual must

be allowed to say that they do not actually belong to any religion and are either atheist or non-believer. The rights of atheists / non-believers are equally important like the religious people's fundamental right to religion. Persons who do not want to vow by taking the name of god or place their hands on any religious text or scriptures, should be allowed to vow in the name of the Constitution. In addition, existing provisions like Sections 295A and 295AA (passed by the assembly of Punjab), completely undermines the constitutional rights and freedom of the atheists or agnostic individuals. Section 295AA sets for the other states to pursue a bad precedent. If any government decides in the near future to extend such provisions to all of the religious objects and beliefs, it would eventually end any legal challenge to religious dogmas for all practical purposes and also defeat our leaders' glorious legacy like that of Ambedkar, Periyar E. V. Ramasamy, Bhagat Singh, Lohia, etc. As such from today's perspective, it is important to rethink the presence of these penal provisions in the law books.

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