

## Reform of Law in secular lines

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Description of Module

Items	Description of Module
Subject Name	Law
Paper Name	Law and social transformation in India
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Module No.	IX

**Reform of Law in secular lines:**

### **Religious freedom and the Individual**

1. The Indian Constitution lays down the following broad principles concerning secularism:

Art.14 grants equality before the law and equal protection of law and provides that the state shall not discriminate against any person on the ground of religion.

2. **Practice of Bigamy** :One of the cardinal principles of secularism incorporated in the Indian constitution is that the State is not to take sides in matters of religion. The prohibition of the practice of bigamy among the Hindus even though these provisions are not applicable to Muslims.It is not necessary under article 14 of the constitution that any legislation that the State may go on upon. The state may rightly decide to bring about Social reforms by community wise. Therefore bigamous marriage is not uniform.

**Article 15** : Art15 provides that the state shall not discriminate against any citizen on the ground of religion in any public place.

In *Nain Sukh Das v U.P. State*,:The supreme court has held ultra Vires an Act of State Legislature which provided for elections on the basis of separate electorates for members of different religious communities. Any law providing for elections on the basis of separate electorates for members of different religious communities offends against Article 15.

**Powers of the legislature:** Restricting the powers of the legislature to legislate on the matters of religion in a way which deprive a citizen of freedom of religion.

**Secularism and Employment under the State:**

3. Art.16 No citizen shall be ineligible or discriminated in respect of employment on the ground of religion.

**Secularism and Employment under the state:** The general rule is that there shall be equal opportunities for citizens in matters relating to employment or appointment to any office under the State.

B.Venlatramna v State of Madras the government of Madras passed a Communal Government order allotting certain vacant posts in government services in fixed proportions to the Muslims,Christians,Harijans,Backward Hindus,Non-Brahmin Hindus and Brahmins. The petitioner applied for the post as District Munsif and he was not selected on the account of communal Government order. He than filed an application in the supreme Court praying for the advertisement of the civil judicial Service gross violation provisions of Indian Constitution and therefore void. Therefore to cancel the selection, prohibiting filling of posts and examine the case of petitioner on merits without applying the rule of communal rotation.

#### 5. **Freedom of Profession, Practice of Religion:**

Under Article 25 all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

**Protecting Public Order, Morality and Health:** The freedom granted from Article 25 is not of absolute nature the right subject to consideration of public order, health and morality.

Khatji v Abdul Rajak: Article 25 to practice their religion is not an absolute right. If adoption is not recognized by the Mohmodan law if a muslim adopt the son the right of adopted son inheriting a share in the properties of his adoptive father was a valid. Hear the article 44 enacted.

Social welfare and reform:

- 1.Making the law opening the doors of the temple for Harijans in every temple.
- 2.Making the law appointing non-Brahmins as purohits, after giving them the necessary training as purohits.

9. **Temple Entry Legislation:** Some of the laws also aim at removing irrational element in Hindu rituals and religious practices Ex: Prevention of Animal Scarifies act, prevention of devdasi, Harijans entry into temples that right had given to enter into temple for purpose of worship.

10. **Religious and Charitable Trusts and Endowments:** It is well known the religious and charitable trusts have existed in India.The Right and liabilities of Shebaites and Mohunts have been affected great extent by the provisions of the constitution. The supreme court finally decided Mohant had a right to enjoy that property or beneficial interest so long as he was entitled to hold his office. The right of mohant to dispose of the surplus income of the Mutha.He is not permitted to spend income for his own personal use. For the purpose of better administration, protection and preservation of the property of mutha.

11. **Secularism and Liberty not to Pay Taxes for promotion of any Particular religion:**

The Secular trend in India is further strengthened by the provision that no taxes may be levied on any person for the promotion or maintenance of any particular religion. If a tax is levied for the purpose of meeting the expenses of any particular religion it is ultra vires of the constitution.

In *Commissioner of Hindu Religious Endowments v L.T. Swamiar* the Madras Religious and Charitable Endowment Act 1951 was challenged. The Act provided that every religious institution shall pay to the Government a contribution not exceeding 5 % of its income for the services rendered by the Government and their officers. The tax imposition is the mischief of Article 27 of the constitution and was void.

12. **Secularism and Education:** The British Government however preferred to adopt a policy of neutrality in the matter. In 1882 the Education commission of 1882 suggested the introduction of text-books designed to provide education in morals but the Government did not implement the suggestion in order to avoid controversies. The advisory Board recognized the fundamental importance of spiritual and moral instruction in the building of character will be instructed at the home and the community to which pupil belongs.

i. **Prohibit in Education institution:** Article 28 prohibits the imparting of religious instruction in any educational institution wholly maintained out of the state funds. However this provision does not apply to an educational institution which is administered by the state but has been established under any endowment or trust.

ii The Report of the University Education commission headed by Dr.S.Radhakrishnan suggested four basic assume ( a)Principles religion leads to conflict (b) Religious conflict leads to a Secular State(c) A secular State bans only religious instruction in State schools(d)The state should provide for the teaching that must be natural of universal religion.

The commission made the following recommendations in this regards:

- (i) All educational institutions should set apart a few minutes for silent meditation before the teaching
- (ii) Great religious leaders should be studied
- (iii) Universal truths from the scriptures.
- (iv) Central problems of philosophy or religion should be considered.

**Secularism and General Elections:** The system of separate electorates and communal representation has not been recognized in our Constitution. There is one

general electoral roll for every territorial Constituency and elections are on the basis of adult suffrage.