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Senatus

Scriptors

Volume 4

Special Edition

Law Fight

2022

(O)ISSN 2582 6638



SENATUS SCRIPTORS

LAW JOURNAL

SPECIAL EDITION: VOLUME 4
2022

(O)ISSN 2582 6638

RELIGIOUS FREEDOM IN INDIA – A MYTH OR A REALITY

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ABSTRACT

The following article describes the current scenario of religious freedom in India . Whether India needs more laws to have subtle practices of diverse culture or the politics has diversified the culture into the pool of riots . Later the article says about woman’s participation in religion and how our constitution has uplift the dignity of women in the society . Whether religious conversion is legalized, whether the education of religion is against one’s religion and how our country deals with it .

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I. INTRODUCTION

A foetus starts living in a religious womb and at the end of the life, dies by religious customs. Isn't it interesting that how life bounds every one of us in a circle of some faith and belief which we practice diligently with so much of enthusiasm. But do we Indians have really got freedom to practice, propagate and profess the religion we choose or be inherited by birth. Or do we actually perceive the reality as what the projector shows on the screen. Let's spill the beans into the reality of what our nation actually persists. Starting from the famous case law in India, the Babri Majid case verdict 2019¹, which dealt with the controversy over Ram Janmabhoomi is a recent religious faith fight. This case begins from 1992 where the Majid was demolished by some hindu nationalist organization and till 2019, the fight over religious practice began. But before getting into the detail, let's get into the meaning of the term religion.

TRACING OF THE WORD RELIGION

In Sanskrit, the word religion is SANATANA DHARMA², which means "eternal law". One of the oldest and organized religions in the world starting from 5000BC is HINDU DHARMA, Hinduism. The three most fundamental Hindu scriptures are The Vedas, the Upanishads, the Bhagavad Gita and several interpretations have been done on religion and cultural practice. Religion is one's belief, faith, practice and is considered as a science of soul. It involves morals, ethics which paves the way of life of the people. Gandhi ji believed secularism as SARVA DHARMA ABHAV³ meaning equality in all religion. The concept was originated with Ramakrishna and Swami Vivekananda but was popularized by Mahatma Gandhi Religion is a specific set of organised beliefs and practices, usually shared by a community or group. Spirituality is more of an individual practice and has to do with having a sense of peace and purpose. It also relates to the process of developing beliefs around the meaning of life and connection with others. Religions are historic and cultural systems that evolve with time, while faith is an individualistic, personal feeling of one person. Indeed, faith can be shared and others can start accepting and believing in certain things/deities/procedures, but, in general, faith is a much narrower concept if compared to religion. In broad sense, religion is the faith in God which they believe who guides and rule them in a positive sense. Like how before the democrats and government, the king believed to be doing NO WRONG, similarly people believes that religion is a way towards one's God and can do No Wrong. Religious people have different rituals which sometimes unintentionally hurt the sentiments of other religion leading to riots and this is how RELIGION IS TAKEN AS A TOOL to reach to public. A MYTH of just praising and practicing the God gets broken, when the REALITY of religious freedom in modern times goes controversial.

¹ M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors (2019)

² Acharya Dharma Pravartaka (2015) Sanatana Dharma

³ Pandey J.N. (2021) Constitutional Law of India





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II. DESCRIPTION

In India, according to 2011 census, Hindus are 79.8%, Muslims are 14.2%, Christians are 2.3%, Sikhs are 1.7% and the rest 2 % consists of Buddhists, Parsis. The majority of Muslims live in Uttar Pradesh, Bihar, West Bengal, Telangana, Kerala, Karnataka and in union territories majority resides in Jammu and Kashmir and Lakshadweep. The majority of Christians resides in North East, Kerala, goa and Tamil Nadu and the Sikhs are more concentrated in the region of Punjab and Haryana. Though we have freedom to practice but in the dark side we see scams on the name of the religion. Like the 'Sex Tantra' camp snagged on Navratri, which organized to offer a 3 days and 2 nights course under SSS (Satyam Shivam Sundaram) foundation in Pune on 17th September 2022 was seen as an insult to Hindus and their deities. The fight over religious practice is not new to the society but the leaders keep the riots in motion for generations to gain greedy powers for their selfishness.

1. THE CONSTITUTION-

In constitution, article 25 -28 provides freedom of conscience and right to profess, practice and propagate under the surveillance of public policy i.e., it should not harm one's belief while enjoying our freedom. The Indian democracy is the largest democracy in the world due to its diverse race, culture, beliefs residing in it and therefore, there is a principle distance between state and religion. The state is not allowed to be bias over one religion and carry out discrimination. When we talk about discrimination it not only includes inequality between men and women but in a wide scope it includes discrimination on the grounds of sex, place, caste, race, "essentiality" was invented by a seven-judge Bench of the Supreme Court in the 'Shirur Mutt' case⁴ in 1954. The court held that the term "religion" will cover all rituals and practices "integral" to a religion, and includes all the essential and non-essential practices of a religion. The word 'religion' used in the article 25 and 26 deals only with the secular activities connected with religion and not matters which are integral part of religion. The term religion is not defined in the constitution but the Supreme Court has defined it many times, as a matter of faith with individuals or communities. Religion is a doctrine of belief, ethical rules for its followers to accept, prescribe rituals, ceremonies which may even include to food, dresses that people persist. Profess – declare freely one's belief. Practice – to perform the prescribed religious duties, rites, and rituals. Propagate – to spread and publicize religious view. But the Right to Propagate one's religion does not give a right to convert any person to one's own religion. Religious freedom also includes cremation ground and the Supreme Court held that the denial of such rights and dispossessing them from cremation ground

⁴ 1954 Air 282, 1954 Scr 1005, (1954)





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amounted the violation of their fundamental right to freedom of religion as it amounts to essential practice of every religion. One should get a dignified life and death and thus nothing should become a barrier to approach it.

2. RELIGIOUS CONVERSION

Out of 28 states, 10 states have restricted religious conversion and have imposed penalties over conversions. States like Himachal Pradesh, Rajasthan, Uttar Pradesh, Chhattisgarh, Madhya Pradesh, Jharkhand, Gujarat, Uttarakhand, Arunachal Pradesh, Odisha has banned conversion. The Indian Penal Code, 1860, prohibits deliberate and malicious acts intended to outrage religious feeling of any class by insulting one's belief or religion. According to UCF⁵ (United Christian Forum) an NGO, 29 Christians were arrested in 3 states on suspicion of forceful or fraudulent religious conversions in those states where it is forbidden. In India, conversion in rest of the states is allowed provided that :1) it should not be fraud 2) free from coercion 3) conversion under the consent 4) not against the public policy 5) it should not be void and according to procedures prescribed by the law 6) should not be misrepresented. The constitution (42nd amendment) Act, 1976 inserted the word "Secular" in the preamble. It means that in the matter of religion the state is neutral where the state protects all religion but interferes with none. Secularism means developing, understanding and respecting every religion.

3. RELIGIOUS TEACH IN EDUCATION

In the case of Aruna Roy vs Union of India⁶, it was held that the study of religion in school as a part of education is not against the secular philosophy of constitution. Therefore, where there are languages like Sanskrit, Urdu, Punjabi, kannada been taught in the school as a subject is purely protected under article 25. Even the religious institution is allowed to run for the protection of their minorities, provided that no immoral activities to be engaged and it should not be against public policy. The saints, sages and seers continued to practice rituals like yajna for the king's health and humanity as a whole because it does play a significant role in human life as it questions that how can we make human beings of cultured character without teaching them from childhood the fundamental and spiritual values.

⁵ india-jails-30-christians-on-charges-of-forced-conversion-as-persecution
mounts/https://hindutvawatch.org/

⁶ AIR 2002 SC 3176





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4. RELIGIOUS PRACTICE IN EDUCATIONAL INSTITUTIONS

In the latest hijab case, the Karnataka high court on 12th September 2022, held that wearing hijab is not a part of essential religious practice in Islamic faith and thus it is not protected under Article 25 and therefore uniform does not include wearing scarf on head. The Court observed that in order to determine whether or not a particular practice is an essential part of religion, the test must be whether the absence of the practice itself fundamentally alters the religion. But there are some religious practices where the practice contributes the essential part like a turban is an essential religious symbol in Sikhs the Muslim girls have told the court that wearing the 'hijab' was a fundamental right guaranteed under India's Constitution and an essential practice of Islam. They argued that it is no different from turbans worn by Sikhs, bangles and ghonghats worn by Hindu women and the cross worn by Christians. The Karnataka Advocate-General has told the High Court that those challenging the decision had not been able to prove that wearing the 'hijab' was an essential religious practice. In fact, 'hijab' is not an essential religious practice. Therefore, a quarrel between 'hijab' and 'turban' is totally unjustified, for the subject of 'essentials' especially for Sikhs, because turban, their top identity, has become an unintentional target in the 'hijab' controversy. Not even boys but even girls in Sikhs wear turban called 'amritdhari'. The amritdharis follow the Khalsa principles strictly, which is not the case with the most of the Sikhs, who are Sikhs simply because they were born in a Sikh family, like in many other communities. Therefore, asking an 'amritdhari' sikh to take off the turban is highly invasive and extremely embarrassing for him/her. Even the Section 129 of the Central Motor Vehicles Act exempts Sikhs wearing turbans from wearing protective headgear (helmet) The constitution also allows them to have the right to carry kirpans with them. The recent case of sikh student in Canada was told to remove the kirpan from him as it seems dangerous to them but in India it is legal to carry by them. The reason might be ignorance by them but it is outrageous to their religion.

5. WOMAN AND EQUALITY

The new bench of the Supreme Court was been tasked with finding the balance between the Right to Freedom of Religion and other constitutionally-guaranteed rights, especially the Right to Equality defining "essential religious practice" and "constitutional morality". The entry of women into the Sabarimala temple. This been a 'landmark case', the Supreme Court's five-judge constitution bench has decided to refer the Sabarimala temple case⁷, clubbed with other 3 pending cases broadly related to the rights of women in the sphere of religion, to a larger 7-judge Bench. On

⁷ Indian Young Lawyers Association and Ors. vs. The State of Kerala and Ors (2019) 11 SCC 1





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28th September 2018, Supreme Court lifted the ban that prevented women and girls between the age of 10 and 50 mostly the menstruating women from entering the famous Ayyappa shrine in Kerala by a majority verdict of 4:1. It held that the old Hindu religious practice was illegal and unconstitutional to Article 14 and 25. Temple custodians argue that women of menstrual age are prohibited from offering prayers as the deity there, Ayyappa, is a celibate and according to Hindus, the God's ideal will become lifeless by the energy of the cycle but keeping the rights of women in India, the constitution protected the rights of the women by making the landmark judgement for the Hindu women. Muslim women's entry into mosques. In April 2019, the supreme court held the case in favour of Muslim woman to have entry from the main door of the mosques to get access to the 'musalla', the main prayer area.

1) Politics and religion -

Politicians often involve religion with daily affairs, for instance, the congress party after the post-independence have attained the scope of secular India where our first prime minister Shri Jawaharlal Nehru negotiated well with Jinnah for the Hindus and Muslims to avoid the struggles been faced again. But the congress government in present have often invoked religious sentiments to suit their changing political interests. Therefore, the public policy also includes no discrimination in employment, education, and more specifically in public areas due to prejudices on the grounds of sex, race, place of birth, culture etc. India has successfully provided Universal Suffrage to every citizen irrespective of the religion they belong to. In the case of S.R. Bommai vs Union Of India (1994)⁸ the supreme court held that secularism is the basic feature of constitution where it has positive content and state is neutral reflecting, neither its anti-religious nor pro religious.

III. CONCLUSION

In my personal opinion, India has enough laws and sanctions to regulate each religion but the flighty work of politicians does not let it happen. Subtracting the atheists in the society, the remaining society of believers, considers religion the most prioritize step to uphold and anything insulting their sentiments would lead into failure of the constitution Whether it's a Muslims or a Hindu or Christian every religion they follow has some embedded values in it. The only arising problem of today is conversion and politics into religion therefore people should understand every religion and respect them because riots though happen internally but affects the country internationally.

⁸ 1994 AIR 1918, 1994 SCC (3), 1, JT 1994 (2)215, 1994 SCALE (2)37



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Being a Hindu I feel that we are going in minority due to i) many Hindus are becoming ex – secular now, one of the new instances is due to the riots happening in a loop especially after the Nupur Sharma case. It’s a shame to the people who continuously breaks the law and disrespect the drafting committee of the constitution along with long cited landmark judgements. It’s a shame to the lawyers of the country who involves religion into every aspect and if religion would have not been involved in the case the riots between Hindu and Muslim would not have been occurred. ii) Another major problem are the conversions of Hindus where the other religion is succeeding over Hindus. Hindus don’t have any specific custom to convert others into it which creates problem.

A Religion is the vein in the society and bursting of it leads to the death of a myth which has survived so long...





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RELIGIOUS FREEDOM IN INDIA –

A MYTH OR A REALITY

*Naganathan Ramaswamy Iyer**

ABSTRACT:

As per Swami Vivekanada, “Religion is the life of India, religion is the language of this country, the symbol of all its movements.” The history of India, reveals that it is one of the oldest civilisations and has a unique feature of imbibing religious tolerance in its daily practice. Despite the fact that India is a secular country, people question the very nature of this secularism and, to what extent religious freedom is allowed in India. In modern India, the question of religious freedom and equal treatment of all religions is of vital importance so as to determine the status quo of religion and secularism per se in this diverse country. It is equally important to understand the role of the State and the citizens while discussing religious freedom. This article dwells into the intricacies of the position of religion in India and, thereby the position of religious freedom, by analysing the constitutional provisions and other customary practices.

Keywords: Religion, Religious Freedom, Constitution, Secularism

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I. INTRODUCTION TO THE RELIGIOUS HISTORY OF INDIA

India, that is Bharat¹, and religion have a synonymic relationship with one another. They are an inseparable couple having a relationship which stems for various centuries. It is the birthplace and civilisational cradle for Hinduism. The concept of Hinduism is believed to evolve in the Indus Valley civilisation, where the locals were called Indus or Hindus and their practices, traditions and cultures were categorised as Induism or Hinduism. Apart from this common belief, the trace of Hinduism is eminent through history, civilisational sites and the presence of dynamic and historic events like the Ramayana and the Mahabharata. After this came the period of the Janapadas and Mahajanapadas where, the rulers and kings were all Hindu kings and some of them professed Buddhism, Sikhism and Jainism, but all of these religions were sub-sets of the greater, universal religion, which was Hinduism. Through all this it is clear and conclusive that no other religion which was not a part of Hinduism derived its roots from India. Since the discussion is centred on “religion” and not “Hindu religion”, it is pertinent to know about the history of other religions which are presently in existence in India, namely, “Islam” and “Christianity”.

The religion of Islam was brought into India by the ruthless Middle-Easter colonisers (invaders) during the 7th Century.² Even if the initial purpose for entry into Sindh and thereafter into other parts of Hindustan, would have been for economic gains, it is no denial that the Islamic rulers aimed at professing Islam and converting the non-believers into believers or eliminating the

¹ The Constitution of India, art. 1.

² Jha, R. (2018). Islamic Invasion and Occupation of India. In *Facets of India's Economy and Her Society Volume I* (pp. 107-123). Palgrave Macmillan, London.





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infidels. The Islamic rulers imbibed different values as compared to the Hindus and the Hindus owing to their value of respecting everyone's cultural values and beliefs were subject to a great deal of prejudice, economically, socially and politically and were forcibly converted. The colonisation by the Middle-East was also marked by large scale destruction and demolition of Hindu temples.

Just like Islam, Christianity was not an indigenous religion of India and was introduced by the European colonisers. The propagation of Christianity first began with the colonisation of coastal regions of India by the Portuguese in 1498-50 by King Manuel.³ During the time of the Portuguese, the spread of Christianity was limited to the coastal regions. It was with the advent of British colonisation by the entry of the East India Company in the early 19th CE that the evangelisation process took complete effect. Evangelisation is in its basic sense the dominance of Christ and Christianity over other religion and ultimately converting all other non-Christians into Christians and children of Christ. This process ensued in all trading, development, administrative and military aspect during the rule of the British.

In all of the above, it was the natives and indigenous religion and cultural practice which was affected the most. Despite all that the indigenous and locals suffered (mass conversion and demolishment of their religious places), they accepted these foreign religions and believed that co-existence was possible. Even during the freedom struggle against the British, the Hindus wanted a single State, but it was the Muslims who wanted a separate State and this is evident from the Khilafat movement and partition of India and Pakistan (and later on Bangladesh). All the countries surrounding India have their own state religion, and India is the only secular and tolerant amongst these.

³ Sharma, S. K. Revisiting Portuguese Colonization in India.





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II. SECULARISM IN INDIA

Before we discuss the position of religious freedom, it is important to understand how secularism developed in India. It is pertinent to note that during the framing of the Constitution, the term secularism was not imbibed in it. An analysis of the Constituent Assembly debates reveal that it was the intention of a vast majority of the makers of the Constitution, including Shri B.N. Rao and B.R. Ambedkar. They were of the collective opinion that India must be identified within the four walls of the Dharmic fold and cannot be attributed to be a secular state. However, this was introduced by the 42nd Amendment to the Constitution in the year 1976. India is now recognised as a *Sovereign Socialist Secular Democratic Republic*.⁴

Secularism is however, quite an abstract concept and is highly influenced and used by various sections of the society for their personal advantage, either social, political, economic or otherwise. It is because of secularism that freedom to profess one's own religion and faith has been guaranteed by the Constitution. However, this freedom to practice one's own religion has led to various protests and incidents in the past which are a bloodstained part of our Indian history, for example, the mass genocide of Hindus in Kashmir⁵, Gujrat riots⁶, Calcutta riots⁷, Ayodhya riots⁸ and off late the riots due to the Hijab ban⁹. Such incidents raise a very important question: Are all religions treated equally in all aspects in India? Is religious freedom present in the same magnitude and façade of all religions in India?

⁴ The Constitution of India, Preamble to the Constitution.

⁵ Teng, M. K., & Gadoo, C. L. (1996). *White paper on Kashmir*. Joint Human Rights Committee [for Minorities in Kashmir].

⁶ Jaffrelot, C. (2003). Communal Riots in Gujarat: The State at Risk?.

⁷ Das, S. (2000). The 1992 Calcutta Riot in historical continuum: a relapse into 'communal fury'?. *Modern Asian Studies*, 34(2), 281-306.

⁸ Chaturvedi, J., & Chaturvedi, G. (1996). Dharma Yudh: Communal Violence, Riots and Public Space in Ayodhya and Agra City, 1990 and 1992. In *Riots and pogroms* (pp. 177-200). Palgrave Macmillan, London.

⁹ Srivastava, M. (2022). The Hijab Ban in India has nothing to do with Secularism. *Verfassungsblog: On Matters Constitutional*.





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III. CONSTITUTIONAL PROVISIONS

Before analysing the position of religious freedom in India, it is pertinent to understand the various provisions of the Constitution which provide a base for the discussion on religious freedom.

Article 25¹⁰, states the Freedom of conscience and free profession, practice and propagation of religion which is subject to public order, morality and health.

Article 26¹¹ states that every religious denomination shall have the freedom to manage its own affairs.

Article 27¹² talks about the freedom as to payment of taxes for promotion of any particular religion.

Article 28¹³ talks about the freedom as to attendance at religious instruction or religious worship in certain educational institutions.

The analysis of these provisions with respect to the State as well as the citizens of the State are equally important to understand the very essence of the practice of religious freedom in India and to what extent people and institutions are able to exercise their freedom with respect to their religious practices.

¹⁰ The Constitution of India, art. 25.

¹¹ The Constitution of India, art. 26.

¹² The Constitution of India, art. 27.

¹³ The Constitution of India, art. 28.





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IV. RELIGIOUS FREEDOM AND THE STATE

It is important to understand that the term ‘State’, for the purpose of this article, refers to a State as per the Constitution of India and not a politico-religio-socio-entity as it is generally construed. The State plays a major role in maintaining peace and public order in the society and is not affiliated with a religious identity (as is in the case of India). The State is duty bound to follow the tenets of law and is equally important to enforce its duties under the true intent of the Constitution. When it comes to ‘religious freedom’, it is indeed true that the State must allow all its citizens to practice its religious practices and not curtail the same. However, this will be subject to public order, peace and morality.

When it comes to the freedoms of religious institutions and places of worship, the State has taken under its control Hindu temples, whereas it has left outside other places of worships such as Mosques and Churches. This is a high degree of curtailing the freedom of the Hindu temples to manage their own affairs. A plain reading of articles 25 and 26 of the Constitution provides that religious groups can maintain their own places of worship and maintain the affairs of their places of worship. However, the State has gone beyond the scope of this by bringing temples under the control of the State through the Hindu Religious and Charitable Endowments Act, which is different for different states and excluding any such control for other places of worship such as Mosques and Churches.

Another suitable example is the state of Tamil Nadu, where the government has undertaken a sworn duty upon itself to demolish temples which were supposedly present on government land¹⁴. These temples were present from time immemorial and were enjoying free practice until recent times. However, demolitions of other religious structures were not

¹⁴ Tamil Nadu: DMK Govt demolishes Anjaneyar temple citing it was ‘illegally constructed’; 20 protesters detained, OpIndia, <https://www.opindia.com/2022/01/tamil-nadu-dmk-govt-pulls-down-anjaneyar-temple-built-on-encroached-adyar-riverbed/>





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undertaken. This is clear from the fact that the Tamil Nadu government left the Infant Jesus statue which had encroached upon lands, but it demolished the Anjaneya temple¹⁵.

While discussing religious freedom from the perspective of the State, it becomes important to discuss the Hijab issue in brief. This issue started in December 2021 and continued into the earlier parts of 2022, with protests and demonstrations throughout India against the refusal to allow students wearing the Hijab to enter the class rooms. The author has discussed the same in a blog, where he has categorically stated that the issue of Hijab is not one of religion or discrimination, but that of equality and education¹⁶. The court has also taken up the same view and hence it is important to differentiate religious privilege/religious freedom and equality. It is pertinent to note that equality will and should always prevail over religious privilege and nothing should affect the same. The State, when it takes executive decisions relating to the prevalence of equality over religious freedom, should not be blamed of being biased or irresponsible, but must be appreciated for following the rule of law, principle of equality and maintaining public order and peace.

V. RELIGIOUS FREEDOM AND THE CITIZENS

The citizens have been granted the freedom to profess their religion and religious practice under Article 25, but it is however, subject to public order, peace and morality. It is the duty of the citizens to practice their religious practices in such a way that it does not affect or disturb the rights of other people. It is therefore, important that religious institutions do not play high volume

¹⁵ MahaKrishnan, Infant Jesus statue preserved but Anjaneya temple demolished in TN, <https://hindupost.in/dharma-religion/infant-jesus-spared-but-anjaneya-temple-demolished-in-tn/>

¹⁶ Understanding the Hijab Row in Karnataka, <https://thenissues.blogspot.com/2022/02/understanding-hijab-row-in-karnataka.html>





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sounds, which may disturb the peace of others, abstain from the slaughtering of animals in cruel way, which may be obscene and violent to others and refrain from doing any other activity.

On the other hand, religious groups and institutions should not oppose the celebration of religious traditions of other religions by respect groups, if it is under lawful and custom-bound methods. For example, various Islamic groups opposed Hanuman Jayanth, Ram Navami etc.

VI. CONCLUSION

The modern age yearns for modern solutions. However, modern must now completely oblivate tradition and culture. On the same hand, while religious freedom and religious tolerance must be followed in the right spirit, it should not go against the Constitutional principles.

