RELIGIOUS FREEDOM

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Freedom of religion in the Constitution of the United States embraces two principles. One would ensure that the Government be secular; for it is forbidden to pass a law "respecting an establishment of religion." The other is addressed to the individual and to the religious institutions he creates; by its terms the Government is to make no law "prohibiting the free exercise" of religion. Both of these principles are set out in the First Amendment to the Constitution, in a single paragraph, consisting of forty-five words, which includes, also, the fundamental freedoms of speech, press, peaceable assembly and petition of the Government for redress of grievances. The governmental unit to which these words were originally applicable was the federal, or central, Government. But the Supreme Court has firmly established the principle that one purpose of the Fourteenth Amendment was to guarantee the First Amendment freedoms against State invasion; and this doctrine is now beyond controversy.[1]

The concept of freedom of religion, as it is now understood, did not come with the Colonists to America; for though many left Europe to escape the persecution of established religions, the only religious freedom which many sought was freedom for their own beliefs. Most of the colonies of the New World established state churches and some persecuted heretics with all the fervour of their former persecutors in Europe. Indeed, it was the very strength of the various religions which had established themselves in the Colonies—Catholics in Maryland, Anglicans in Virginia, Quakers in Pennsylvania, etc., which argued for the wisdom of a secular national Government and one which could not interfere with individual religious belief.

Although the framers of the Constitution were learned men and not unaware of the world's variety of religions, the faiths with which they had personal experience were almost exclusively those of the Judeo-Christian tradition. The only elements then in the population with fundamentally different religious backgrounds were the indigenous

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1. *Cantwell* v. *Connecticut*, 310 U.S. 296, 84 L. Ed. 1213 (1940).

Indians, with a great variety of beliefs mostly in nature and its phenomena, and slaves from Africa, whose native religions were largely animistic and idolatrous, by Christian standards. Neither of these groups were citizens, and the Negroes were, in any case, normally converted to the Christian religion of their masters. Thus when the early courts sought to define the meaning of the word "religion" in the First Amendment it is not altogether surprising that while striving to make the definition broadly inclusive, the language used related to concepts of religion as understood and appreciated by them and failed to embrace religion in its universality. The Constitution does not, itself, define "religion." In 1889 Justice Field undertook, for the Supreme Court, a definition of the word. He said, "The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will." [2] Of course, this definition is too narrow. Other courts have pointed out that predicating religion on a "Creator," a God, would eliminate Buddhism which many authorities consider to involve no conception of God.[3] The Indian Supreme Court has noted that, "There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause." [4] In fact the term is exceedingly difficult to define. As Chief Justice Latham remarked in *Adelaide Company of Jehovah's Witnesses* v. *The Commonwealth*, "It would be difficult, if not impossible, to devise a definition of religion which would satisfy the adherents of all the many and various religions which exist or have existed, in the world." [5] It has, in fact, developed that in actual practice the courts of the United States, treat as religion whatever the parties to the case call religion.[6] There is not the slightest doubt that courts in the United States today would throw the same constitutional protections around Buddhism or Jainism as they do around Christianity, whatever may have been the court's understanding of "religion" in 1889.[7] In *Fowler* v. *Rhode Island*, Justice Douglas, upholding the right of a member of the Jehovah's Witnesses sect to preach in a public

2. *Davis* v. *Beason*, 133 U.S. 333 at 342 (1889).

3. *Adelaide Company of Jehovah's Witnesses, Inc.* v. *The Commonwealth*, 67 C.L.R. 116 (1943).

4. *The Commissioner, Hindu Religious Endowments, Madras* v. *L. T. Swamiar*, A.I.R. 1954 S.C. 282 at 290.

5. Note 3, *supra*, at 123.

6. *Washington Ethical Society* v. *District of Columbia*, 249 F. 2d 127 (1957).

7. *Fowler* v. *Rhode Island*, 345 U.S. 67, 96 L. Ed. 828 (1953).

park, observed that under the State law in question, "Methodist, Presbyterian, or Episcopal ministers, Catholic priests, Moslem mullahs, Buddhist monks could all preach to their congregations in Pawtucket's parks with impunity." [8] The Justice did not, of course, intend this list to be comprehensive, merely illustrative; but the inclusion of Buddhism testifies to the current universality of the definition of religion in the United States.

The words of the First Amendment prevent Government from passing laws "prohibiting the free exercise" of religion. The important word is "exercise." One might have thought that "exercise" would mean "practice." But the Supreme Court has held that it means "belief." For the Court acknowledges the right to believe anything. It has, however, said that the State may limit the practice of religion. A notable case in point is *Reynolds* v. *United States*.[9] In that case the Territory of Utah had passed a law which made it a criminal offence to enter into a purported ceremony of marriage with another while having a living spouse. The appellant had attempted to take a second wife under the sanction and command of his religion, that of the Church of Latter Day Saints, commonly called the Mormon Church. But the Supreme Court held that his action could be punished under the statute for bigamy. In Court's words, "Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order." [10] It is obvious that social duties and good order are flexible concepts, which might vary from age to age, as well as from country to country. Few cases have been decided in the United States Supreme Court involving acts which might be tested under the rubric of social duties. The Court has said that the free exercise of religion does not include the right to direct profane epithets at persons on the streets.[11] And the Court has held that the State has such a recognizable interest in the welfare of children that a law which prohibits minors under a certain age from selling merchandise on the streets may be applied even though the merchandise is religious literature and both the child and its guardian believe such sales to be a religious act.[12] But the Court continues to reiterate that State interference with the exercise of religion must be minimal. Consequently, it has held that a

8. *Id.* at 69.
9. 98 U.S. 145, 25 L. Ed. 244 (1878).
10. *Id.* at 164.
11. *Chaplinsky* v. *New Hampshire*, 315 U.S. 568,86L.Ed. 1031 (1942).
12. *Prince* v. *Massachusetts*, 321 U.S. 158, 88 L.Ed. 645 (1944).

State may not compel children in its schools to show fealty to the nation by means of a public flag salute, when the children contend that such an act would violate the tenets of their religion, which teaches that flags are forbidden idols and that "the obligation imposed by law of God is superior to that of laws enacted by temporal government." [13]

Under the heading of legislation for good order only limited interference with religion is permitted. Thus, the state may require that those who would conduct a religious parade first secure a license to do so.[14] The rationale for this holding is that parades customarily interfere with other traffic in the streets and may make necessary additional police services. But the state may not impose a license on persons who go about the streets selling religious literature.[15] The state cannot require anyone to get the permission of any officer of government before soliciting on the streets for money or services in support of his religion.[16] The state cannot forbid adults going from door to door ringing the householder's bell to summon him to listen to religious exhortation, although the householder is not obliged to listen and if he has posted a notice forbidding disturbance, he may be entitled to the aid of the criminal law in protecting him in his home from the itinerant evangelist.[17] In sum, while the United States Supreme Court acknowledges the right of the State to interfere with the practice of religion which violates social duties or subverts good order, in fact little interference by the State under either head is permitted.

Both the Indian Supreme Court [18] and Indian commentators [19] have written as though the practice of religion in India is under a more substantial constitutional guaranty than in the United States. It is true that the Indian Constitution makes specific reference to the right "freely to profess, practice and propagate religion." But the right is subject to a constitutionally entrenched proviso arrived at in the United States by judicial interpretation. Article 25(1) of the Indian

13. *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624 at 629, 87 L. Ed. 1628 at 1633 (1943).

14. *Cox* v. *New Hampshire*, 312 U.S. 569, 85 L. Ed. 1049 (1941).

15 *Follett* v. *McCormick*, 321 U.S. 573, 88 L. Ed. 938 (1944).

16. *Cantwell* v. *Connecticut*, note 1, *supra*.

17. *Martin* v. *City of Struthers*, 319 U.S. 141, 87 L. Ed. 1313 (1943).

18. *E.g.*, in *The Commissioner, Hindu Religious, Endowments Madras*, v. *L. T. Swamiar*, A.I.R. 1954 S.C. 282 at 290.

19. *E.g.*, N.A. Subramanian in "Freedom of Religion," 3 *Journal of the Indian Law Institute* 323 at 325 (1961).

Constitution provides: "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion." Of course, in India public order, morality, and the requirements of health may pose different standards than in the United States. But the theory on which the State may interfere is here the same in both countries.

In truth, the practice of religion is subject to considerably less State interference in the United States than in India for two important reasons. First, Article 25(2) provides for state interference which would not be permissible under the Constitution of the United States.[20] Secondly, the Indian courts, like those of Great Britain, but unlike those of the United States, appear to enter with little reluctance into their own determination of what religion is in a given case.

It is obvious that if religion is whatever an individual or an institution professing some doctrine chooses to call religion, then religion is necessarily more free than where an agency of government, including the court, makes the determination of what is religious or a religious practice in a given context or as required by a particular creed. Certainly, in the United States the executive branch is foreclosed from making a determination as to what is religion, contrary to the views of the claimant. In *Cantwell* v. *Connecticut* the Court said, "to condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause, is to lay a forbidden burden upon the exercise of liberty protected by the Constitution."[21] So concerned is the American Court that government should not invade the right of the individual to determine what is religious for him that it will not permit a jury to decide what is fraudulent in a man's religious belief. In the case of *United States* v. *Ballard*[22] the respondent had been convicted of using the federal mails to defraud. As an exponent of something called the I Am movement, and using aliases, such as Jesus, Saint Germain and others, the respondent had,

20. Article 25(2)"Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

21. 310 U.S. 296 at 307, 84 L. Ed. 1213 at 1219 (1940).

22. 322 U.S. 78, 88 L. Ed. 1148 (1944).

through the mails, acquired donations and contributions to his religion. Among other claims made by the respondent were the power to heal diseases classified by the medical profession as incurable. The Court of Appeals held that the jury should have been permitted to decide the question as to the truth of the representations concerning the respondent's religious doctrines or beliefs. The Supreme Court, however, held that the jury could not speculate on the truth of the respondent's religious doctrines, for "Men may believe what they cannot prove. [And] They may not be put to the proof of their religious doctrines or beliefs."[23] The Court said further, "The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom."[24] By way of comparison, in the same year an English court gave continuing validity to the Witchcraft Act, 1735, by upholding the conviction of persons charged with conspiring to pretend to evoke deceased spirits.[25] These two cases are clearly not on all fours; but the English view seems less charitable to the belief of the parties than does the American.

In the field of religious trusts, an area in which the courts in both the United States and Great Britain explore the beliefs of individuals, there is also exhibited less unwillingness in Great Britain than in America for the courts to decide issues of religious belief. However, the difference of approach seems to depend more on varying views as to the law of trusts than on the law of religious freedom. The courts in both countries will examine religious tenets to determine who has the beneficial use of church property held in trust in, for example, suits involving a schism in the church. But under the American rule the trust must be a specific one, for the law does not otherwise impose a trust on property held by a church, either by way of purchase or donation. In the absence of a trust, and if there are no church laws or church constitutional provisions applicable, the law which governs church property is that of voluntary associations, questions being determined by majority vote.[26] Courts of Great Britain treat the church property, however acquired, as trust property[27] to be

23. *Id.*, at 86.
24. *Id.*, at 87.
25. *Rex* v. *Duncan*, [1944] 1 K.B. 713.
26. *Watson* v. *Jones*, 13 Wallace 679, 20 L. Ed. 666 (1871).
27. *Craigie* v. *Marshall*, (1850) 12 Dunlop 523.

appropriated to the use of persons who adhere to the same religious principles as those who originally attended the church.[28] The American rules of trust law manifestly reduce the incidence of the courts' concern with belief, contrary to what would be the case if the English law were applied.[29]

In the provisions of Article 25(2)(a) it is apparent that the Indian Constitution-makers felt that it was appropriate for the State to exercise control over the property coming into the hands of religious institutions. It is not the purpose of this paper to argue the merits of such a policy decision. One can certainly understand that economic planners in a society vitally concerned with raising the living standards of a heavily populated and underdeveloped nation would wish to exercise control over the not inconsiderable portion of the national wealth which makes its way to religious institutions. The comparatively affluent American society has, perhaps, had relatively little need to concern itself with this feature of its national economy.

Article 26 of the Indian Constitution reads: "Subject to public order, morality and health, every religious denomination or any section thereof shall have the right —

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law."

If Article 26 is read together with Article 25(2) (a), which says the State may make any law "regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice," it would appear that, much more clearly than

28. *Craigdallie* v. *Aikman*, (1813) 1 Dow. 1 ; *Craigdallie* v. *Aikman*, (1820) 2 Bligh 529 ; *Free Church of Scotland* v. *Overtoun*, [1904] A.C. 515.

29. Issues involving church property normally arise in state courts, which have created an exception to the *Watson* rule to the effect that, "...the majority of each independent or congregational society, however regular its actions or procedure may be, may not, as against a faithful minority, divert the property of the society to another denomination, or to the support of doctrines radically and fundamentally opposed to the characteristic doctrines of the society, even though the property is subject to no express trust." *Mitchell* v. *Church of Christ at Mt. Olive*, 221 Ala. 315, 128 So. 781 ; 70 A.L.R. 71 (1930). The United States Supreme Court has not yet had occasion to consider this exception to the *Watson* rule.

in the United States, the freedom the Indian Constitution was intended to protect was that of belief, not practice. The double use of the word "any" in 25(2) once in the general portion and once in cl. (a), would seem of great significance. Regarding Article 25, what part of religious practice could not reasonably fall under the control of the heads of public order, morality, health, economic, financial, political or "other secular"? Could not the State forbid religious parades under public order, plural marriages under morality, piercing the body or fire-walking under health, offering food to an idol or supporting priests under economic, building temples under financial, urging members to vote, not vote or ignore the flag under the political rubric? The Indian Supreme Court has answered some of these questions in the negative. In doing so it has evolved the doctrine that those practices which are "essential" in a religion are those to be accorded at least relative freedom. (The cases do not hold that even the most "essential" practice is necessarily immune). It is the Court which will decide what is essential by a reference to the doctrines of the religion itself.[30] This, of course, is utterly different from the courts' approach in the United States. If they forbid a practice as violating "social duties" or "good order", they do so against the current standards of social duty and order held by the society as a whole. If the act is forbidden, it would be forbidden whoever the actor or whatever his claim, independently of the issue of religion.

The Indian Supreme Court has said, "If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed...all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Art. 26(b)."[31] The Court goes on to say, "Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in

30. *The Commissioner, Hindu Religious Endowments, Madras* v. *L. T. Swamiar* A.I.R. 1954 S.C. 282 at 290.

31. *Ibid.*

accordance with any law laid down by a competent Legislature." [32] Some might think if the State decided that only one bowl of food should be offered, whereas the religious doctrine prescribed one hundred, that this would be an interference with religious practice, and that it is simply not accurate to say, as the Court says, that " Under Art. 26 (b), therefore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters." [33] It would seem even more accurate to admit in India, as in the United States, that parties may *believe* whatever they wish as to what rites are essential to their religion, but that the State can control their practices. For every category for control recognized in America is acknowledged in India, with the addition of very extensive control over religious property, not recognized in the United States. Under the property category the Indian Supreme Court has permitted the State to exercise extensive control over a Hindu Math,[34] a Jain temple,[35] Sikh Gurdwaras [36] and a Moslem shrine.[37]

The American judicial practice of refusing to explore matters of religious doctrine, except in the area the courts consider inescapable under conflicting private claims, that of specific trusts, would preclude a finding such as that in *M. H. Quareshi* v. *State of Bihar*.[38] There the petitioners claimed that the sacrifice of cows was required by their religion and that the State law forbidding the slaughter of cows violated their religious rights. Rejecting the allegations in the petition, which an American court would have held conclusive, the Indian Supreme Court said, "we have, however, no material on the record before us which will enable us to say, in the face of the foregoing facts, that the sacrifice of a cow on that day is an obligatory overt act for a Mussalman to exhibit his religious belief and idea. In the premises,

32. *Id.*, at 291.
33. *Id.*, at 291.
34. *The Commissioner, Hindu Religious Endowments, Madras* v. *L. T. Swamiar* A.I.R. 1954 S.C. 282.
35. *Ratilal* v. *State of Bombay*, A.I.R. 1954 S.C. 388.
36. *Sardar Sarup Singh* v. *State of Punjab*, A.I.R. 1959 S.C. 860.
37. *Durgah Committee, Ajmer* v. *Syed Hussain Ali*, A.I.R. 1961 S.C. 1402.
38. A.I.R. 1958 S.C. 731.

it is not possible for us to uphold this claim of the petitioners." [39] As recently as 1961 the Indian Supreme Court has taken the occasion to say, by way of dictum, "...in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Art. 26. Similarly even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religions itself. Unless such practices are found to constitute an essential and integral part of a religion their claim for the protection under Art. 26 may have to be carefully scrutinised; in other words, the protection must be confined to such religious practices as are an essential and an integral part of it and no other." [40] This language appears to go somewhat further than that of the earlier cases which announced that what is essential in a religion was to be determined by reference to that religion itself. The use of the phrase "merely superstitious beliefs" in the above quoted passage would seem to introduce an additional element of hostility to religious freedom; for there are many persons who conceive of all religion as mere superstitious belief and there are far more who apply this classification to all religions but the one they espouse. But the Supreme Court, by interpreting Article 25(2) (a) as if it referred to two types of religious practice, the essential and non-essential, and by holding that the former is relatively free from interference, has infused into the Constitution a principle for the protection of religious practice not apparent on a mere reading of the words of Article 25. Nor is the Indian Supreme Court willing to abdicate to the executive, under the Government's constitutional grant of power over the finances of religious institutions, unsupervised control of the administration of endowed religious property. On this matter the Court has said, "We think that the settlement of a scheme in regard to a religious institution by an executive officer without the intervention of any judicial tribunal

39. *Id*, at 740. The "foregoing facts" referred to included evidence that many Mussalmans do not sacrifice a cow and that Moghul Emperors in India had forbidden the practice. It is not clear why the neglect by some of their religious obligations or the forbidding of those practices by temporal rulers should be relevant as to what is "essential" in the religious practice of the claimant, assuming the appropriateness of a judicial determination of the essential.

40. *Durgah Committee* v. *Hussain Ali*, A.I.R. 1961 S.C. 1402 at 1415.

amounts to an unreasonable restriction upon the right of property of the superior of the religious institution which is blended with his office." [41] The Court has been concerned to see that the religious functionary is not deprived of his personal property rights nor those rights of property which are blended with his office.[42] Also, the powers given to the State over religious property do not include that of modifying traditional English 'cypres' doctrine,[43] a holding which prevents other organs of Government from ousting the judiciary of their traditional control over trust property left for religious or charitable purposes. Finally, it may be pointed out that the Court does not recognize any right in the agents of the State, even in the performance of their fiscal functions, to enter at will the holy places of religious institutions.[44]

While the cases illustrate that there is freedom of religious practice in India, they scarcely support the absolutist language in which the holdings are frequently couched. To one familiar with the American cases, those in India would also seem more logically reconcilable on the " belief-practice " dichotomy. Although the courts have found a measure of religious freedom of practice not easily seen when all relevant provisions of the Constitution are read together, it is, nevertheless, arguable that the very considerable religious freedom which exists in India results more from Government's not having chosen to use all of its great powers of interference ; for it would appear the "freedom to practice " religion could be almost entirely engulfed under the permissible heads of legislative encroachment.

Article 25 (2) (b) of the Indian Constitution is a further grant of Government right to interfere with religious practice, for it permits such interference by any law " providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

Throwing open Hindu religious institutions to all Hindus is one of several constitutional provisions designed to meet the unsolved problems of caste. It is not denied that, where used, it greatly affects religious practice, caste being intimately interwoven with religious

41. *Sri Jagannath* v. *State of Orissa*, A.I.R. 1954 S.C. 400.

42. *The Commissioner, Hindu Religious Endowments, Madras* v. *L. T. Swamiar*, A.I.R. 1954 S.C. 282.

43. *Ratilal* v. *State of Bombay*, A.I.R. 1954 S.C. 388.

44. Note 42, *supra*.

45. *Venkataramana Devaru* v. *State of Mysore*, A.I.R. 1958 S.C. 255.

belief and practice among Hindus.[45] Finally, the "social welfare and reform" language appears quite broad enough to include practically any legislation not permissible under one of the other grants of legislative right of interference.

In spite of the precise language of Article 25(1), it is clear that the Constitution-makers contemplated State control over religion much greater than that conceived of by the Constitution of the United States or permitted to the State by the courts there.

Unlike the Constitutions of the Federation of Malaya or of Burma, but like that of India, the Constitution of the United States purports to create a secular state. The American article guaranteeing freedom of religion has been said to create a wall between church and State.[46] The first clause certainly prevents the State from establishing any relgion.[47] It prevents the State from aiding any religion or all religions in any direct way.[48] But it may help the individual in such a way as to aid religion or religious institutions indirectly, such as transporting all children to schools, even those going to church schools.[49] Moreover, it may fairly be argued that the tax exemption which the State grants church property may be classified as state aid quite as readily as it can be called church freedom from state interference.[50] Freedom from State interference does not mean that the State may not subject the church to certain laws also applicable to secular entities. It has been held, for instance, that a church which operates a printing plant may have to pay the minimum wages required of all employers.[51] In reality, the dilemma of separation in the United States is unresolved; for the nation, though secular, is not irreligious and the recognition and practice of religion are everywhere apparent in the machinery of the State, from the oath of office of the President, to the legend "In God We Trust" on the coins. If one regarded only the words of the American Constitution and not the society in which it operates, one might expect that such practices as the State's paying the salaries of chaplains in the armed forces, for example, would be forbidden. If they were subjected to court test,

46. *E.g., Everson* v. *Board of Education,* 330 U.S. 1 at 16, 91 L. Ed. 711 at 723 (1947).

47. *Id.,* at 15.

48. *Id.,* at 15.

49. *Everson* v. *Board of Education,* note 46, *supra.*

50. Note: "Constitutionality of Tax Benefits Accorded Religion," 49 *Colum. L. Rev.* 968 (1949).

51. *Mitchell* v. *Pilgrim Holiness Church Corp.,* 210 F. 2d 879 (1954).

many actions of State sympathy towards religion might fail. But in the nearly two hundred years of the life of the American Constitution, few cases have challenged the principle of State aid to religion, except in the field of education.[52] It is evident that the American public accepts the principle that the State need not be hostile to religion. Nevertheless, although the courts in the United States do not take a doctrinaire approach to the requirement of separation of church and State, they are careful to preserve the personal rights of the irreligious, for the freedom not to believe is held to be a part of religious freedom of belief. In the case of *Torcaso* v. *Watkins*[53] the State of Maryland had refused to give a commission as Notary Public to a man who would not take an oath, required of all public officials, affirming a belief in God. The United States Supreme Court held that the State was without authority to require such an oath.

The Indian Constitution, also, does not require complete separation between church and State. Article 28(1) reads: "No religious instruction shall be provided in any educational institution *wholly*[54] maintained out of State funds." In the United States, too, the State, particularly the Federal Government, has given grants for specific purposes, such as a research project, to religious as well as to public institutions of higher learning and, as previously indicated, considerable State aid granted directly to individuals has, where they attended religious institutions, benefitted those institutions in a substantial, if indirect, manner.

Religion is a volatile subject, historically providing for much of the world's population not only a philosophy by which to live, but a cause for which to die in its defence. It is not surprising that democracies, whose *raison d'etre* is the accommodation of conflicting views, including the religious, should approach this subject, through the courts, in a spirit of compromise. In the United States the compromise has been achieved by the "belief-practice" dichotomy and by the construction of a "wall of separation" that does not entirely separate. India seems to prefer the fiction that that which interferes does not interfere. The choice is probably immaterial if the goal is achieved of enabling man to live in peace with his neighbour and both in harmony with the State.

52. *E.g.*, *Zorach* v. *Clauson*, 343 U.S. 306, 96 L. Ed. 954 (1952).
53. 29 LW. 4865.
54. Emphasis added.

The Constitution has left every person free in the matter of his relation to his Creator, if he believes in one. It is, thus, clear that a person if left completely free to worship God according to the dictates of his conscience, and that his right to worship as he pleased is unfettered so long as it does not come into conflict with any restraints . . . . imposed by the State in the interest of public order, etc. A person is not liable to answer for the verity of his religious views, and he cannot be questioned as to his religious beliefs, by the State or by any other person. Thus, though his religious belief are entirely his own and his freedom to hold those beliefs is absolute, he has not the absolute right to act in any way he pleased in exercise of his religious beliefs. He has been guaranteed the right to practice and propagate his religion, subject to the limitations aforesaid. His right to practice his religion must also be subject to the criminal laws of the country, validly passed with reference to actions which the Legislature has declared to be of penal character. Laws made by a competent legislature in the interest of public order and the like, restricting religious practices, would come within the regulating power of the State. For example, there may be religious practices of sacrifice of human beings, or sacrifice of animals in a way deleterious to the well-being of the community at large. It is open to the State to intervene, by legislation, to restrict or to regulate to the extent of completely stopping such deleterious practices. It must, therefore, be held that though the freedom of conscience is guaranteed to every individual so that he may hold any beliefs he likes, his actions in pursuance of those beliefs may be liable to restrictions in the interest of the community at large, as may be determined by common consent, that is to say, by a competent legislature. It was on such humanitarian grounds, and for the purpose of social reform, that so-called religious practices like immolating a widow at the pyre of her deceased husband, or of dedicating a virgin girl of tender years to a God to function as a devadasi, or of ostracising a person from all social contacts and religious communion on account of his having eaten forbidden food or taboo, were stopped by legislation.

—Sinha, C. J., in *Saifuddin Saheb* v. *State of Bombay*, A.I.R. 1962 S.C. 853 at 863.