

# A Comparative Study on Rudimentary Prerogative Right to Religion with Indian Script of Various Sovereignties

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## INTRODUCTION

Allah Akbar, Jai Shriram, Aamen these chants were heard in our motherland in diurnal routine. Masjid, church, gurudwara, temples etc are the places of idolization which can be seen inside the womb of Bharat mata. Hijab, saffron and white which shows the hallmarks of their idiomatic religion and traditions where can be seen in India. Ramzan, Christmas and Ganesh Chaturthi are the carnivals of joy where we celebrate in India which shows the symbol of fraternity. Our Motherland is a symbol of secularism where different religious customs are rehearsed. Our country is a secularistic democratic country where we can openly follow our own religious customs and we celebrate different religious carnivals. This is the reason our India is also known as the Key which makes our country unique from other countries. This religious practice isn't new to our land. Since ancient times we have been following these different kinds of religion. Indeed during the Hindu lords ruling they've a great respect towards the Muslims and indeed Muslim kings have a great respect towards Hindus. There were some kings who showed abomination towards Hindus and there were some lords who didn't like Muslims. But this wasn't in further figures. The Bhakti movement was the substantiation of the secularist passage of Indian land. When we look at the conventional status in our land it's systematically distinctive from ancient medieval India. We were filing suits against the faith in apex courts, we're wasting time by arguing about religious customs, certain people were targeting certain nonage religious, overhanging, sexual importunity against the Muslim women, targeting to the persons who were supporting to the Muslims, mootng about the wearing of hijab etc. Why these effects all were passing in our secularistic motherland. Legislation through the 42nd amendment had introduced the word secularism to your preamble of constitution. What's meant by secularism? Is there any link to the rudimentary right to religion? Whether the government is targeting to remove the word secularism from our constitution? Why do we constantly hear the word Hindutva in India? Is it similar to the word Hinduism? These numerous questions may arise when we talk about the secularist right to religion in India. My Aim is to furnish proper understanding about the RIGHT TO RELIGION at current script with other sovereignties in detail.

### Right To Religion And Secularism

As India has been exercising numerous religions since ancient times our constitution framers included freedom of religion under the abecedarian rights of our constitution. Which have the status of Right to Religion guaranteed. We can exercise our own religion under the constitution where the state can make the laws for guarding the religion. The people can exercise their own religious customs like wearing hijab, Hindus wearing sacred threads, sikhs wearing turbans etc. Secularism was guaranteed from the fundamental rights of Articles 25- 28. And latterly this was included in our preamble through 42nd amended (Albert and Roznai, n.d.). When we talk about the Right to religion there will be questions arise whether secularism and Right to religion are same? And the answer will be the yes. Secularism (Chaudhari 1987) is nothing but treating all religions equivalently. India with no state religion is a secular country. Where this notion of secularism is largely admired in the Indian republic. And right to religion is guaranteed under the part 3 of the constitution and so guaranteed under preamble in the form of secularism.

### Definition Of Secularism From Various Countries

#### *Albania*

The Albania understanding of secularism has strong influences from the French "Laïcité". presently (Zucca 2019) Albania is a secular administrative democracy, in which the state guarantees freedom of belief. The constitution recognizes the equivalency of religious communities and the state is neutral in the questions of faith.

### ***Russia***

(Zucca 2019; Stoeckl 2020) No religion may be demonstrated as mandatory or as the state religion where Religious alliances are divorced from the state and are equal before the law.

### ***Turkey***

Individualities are equal (Hakan Yavuz 2009) without any demarcation before the law, irrespective of philosophical belief, religion and coalition, or any correspondent deliberations and so everyone has the right to freedom of heartstrings, religious faith and certitude.

### ***United Kingdom***

There's freedom of reflection and articulation, and no executions on religious hallmarks in academes, or public veiling. All academies are necessitated to educate respective liberty and collective respect and forbearance for those of distinct persuasions and faiths'.

### ***China***

Incuriosity to or contradiction or rejection of persuasion and spiritual deliberations

### ***United States***

The partition of church and state irrespective of one's own persuasion or absence thereof. The contemporary generalization of denomination owes a lot to the movement of dissolution of Church and State in the United States.

### ***Germany***

State and persuasion are respective, and the state doesn't intrude in the indigenous motives of the persuasions. At the same time, it's appreciatively inclined towards the religious communities and cooperates with them in numerous areas, similar as welfare work or religious schooling in state academies.

## **INDIAN SECULARISM VS WESTERN SECULARISM**

### ***Indian Secularism***

As we know that secularism isn't new to our India. It has existed successfully since long-lived times. ("What Is Indian Secularism?" 2022) Throughout the world we've this conception but our Indian secularism is distinct from the different sovereignties which is said to be western secularism. Generally Indian secularism will be followed by 2 principles ie

#### **The Principled Distance Model**

This entails the state to permit the religious to exist peacefully with each other. It should also involve collective respect towards all the persuasions. Indian secularism treats every religion uniformly and it does not permit the political, social and cultural factors to the constant religion practices of the people. According to this model, the state can interfere if any dislocation arises similar to demarcation among the exercising the religion by the people.

#### **The Communal Harmony Model**

This is a philosophy of mahatma gandhi who dynamically believes that there is exactly one God in different forms. This model was not set at any idiomatic religion or any group of the society which have collective respect towards religion in different communities.

#### **Western Secularism ("Secularism" 2022)**

This type of secularism is substantially followed by the western sovereignties. This will be substantially concerned about the intra religion of a particular sovereignty. Then the state should not intrude in the matters of religion and the same will be applicable to the religion as well. They've their own jurisdiction. And they're self-dependent on charting each other.

## ***DIFFERENCE***

### **Drawing The Line**

When we look into the western secularism they're largely concentrated on the church. Where the church shouldn't intrude in the matters of the state and state shouldn't intrude in the matters of the church. But if any issues or problems arise between the intra religions and nonage religion group it'll come trouble to break the issues in the western countries.



Where in India we've collective respect towards every religion and their practice. If any religious disturbance takes place between the religious group also the state will intrude and act like a middleman for regulating the issues.

### **Protecting The Minority Religious**

Western secularism is just an agreement between a state and the church whereas Indian secularism tends to secure the nonage persuasions and their practices from exploitation.

## **RIGHT TO SPEECH VS HATE SPEECH**

### ***Freedom Of Speech And Expression***

This is the fundamental right which is guaranteed under the Indian constitution. In part 3 of our constitution through Article 19(1) it states that every citizen of India has freedom of speech and expression. ("Freedom of Expression and the Regulation of Hate Speech," n.d.) And through the judicial elucidations the apex court ruled that the freedom of speech and expression act like a pillar for the popular country. As this isn't the accurate right furnished by the constitution in order to safeguard this right from the perverting constitution architecture included certain reasonable restrictions under the Article 19(2). And the reasonable restrictions are security of the state, friendly relation with foreign states, public order, decency and morality, contempt of court, defamation, incitement to offence and integrity and sovereignty of India.

### ***Hate Speech***

This is an contemptuous or threatening speech or jotting that expresses prejudice against a particular group especially on the base of race, religion or sexual orientation. This constitutes a felonious (Ananth 2014) charge under the Indian penal law section 153A which is said to be the offence for promoting collaborative discord or abomination between different religious, ethnical, language or indigenous groups or communities. 153B of the Indian Penal Code categorises the offence of promoting religious, racist, verbal, community or caste abomination or incites any religious, caste or any other discord or hostility within India, through any speech either in written form or spoken. Section 298 of the IPC, also, classifies the offence of uttering words with the deliberate intent to wound the religious passions of any person. Likewise, Section 505 of the IPC, criminalises the act of delivering speeches that incite violence. Sections 295A and 509A also have analogous provisions

## **DIFFERENCE BETWEEN HINDUTVA AND HINDUISM**

### ***Hindutva***

This is a compound of two words hindu and the Sanskrit term *tatva* which means nature. Which is also a reverse of Hindu-ness. That means Hindutva is the idea and the practice of living a life according (Louis 2005) to Hindu training. In a ruling the apex court concluded that this Hindutva is understood as a drive of life or state of mind and isn't to be compared with or concluded as religious Hindu fundamentalism. This didn't live from ancient times but was innovated in 1923 by Savarkar. This is said to be monolithic. The interpreters of this oppose the traditional temporal Hindu way of life.

### ***Hinduism***

(The 2016) This is said to be a great union of chromatic civilizations and customs with distant roots and no creators. This has been rehearsed as ethereal and religious since ancient times. This contains colorful textbooks like vedas, puranas, upanishads etc which show an avenue for rehearsing the traditions.

These two expressions aren't synonymous because the meaning of these words contain distinct denotations. Where the Hindutva is said to be an ideology created by the individual person which can be used in the political system and it's followed in only India where Hinduism is an ancient religion which has been in existence from 1000 times ago and can be rehearsed throughout the world as the solitary religion.

### **Legislations In India**

Indian people used to exercise different religions. Each religion has their own customs and practices. For eg Hindu law won't be permitted bigamy where the Muslim law permitted polygamy. For securing the religious customs and traditions the state used to form legislation in order to avoid firestorms between the religions. Now approaching to the point when we talk about the legislations there are certain legislations where the state used to cover the religious faith, religious practices and places of worship for their respective religion. The illustration is (*The Places of Worship (Special Provisions) Act, 1991*, n.d.) PLACES OF WORSHIP ACT 1991. There were some legislations which laterally targeted some nonage religious groups forbidding their religious practices. Example THE COW SLAUGHTER ACTS.

(Chigateri 2011)Some legislations forbid the people from choosing their own religions.g. THE ANTI CONVERSION LAWS. (Sangari 1999).

Guarding our religious customs, rituals, and faith won't be said to be wrong. According to the Hindu religion Lord Ganesha will be having the face of an elephant. Lord varahi, one of the avatars of Dashavatar by lord vishnu will be having the face of a pig. Goddess Durga matha will be Seated on the tiger and goddess Saraswati will be seated on the swan. Hindu epics are witnessed of various animals where our gods used them as their vehicles. That means we've to protect each and every animal. But when we come to the Indian script we people show further concern about cows rather than tigers,elephants.However, the cows which live in our motherland are imported from the foreign countries, If we talk openly. Our Indian cattles were used to kill and manufacture the pesticides by their bones. When we talk about the tigers being our national animal it's truly bad to say that tigers have a threat from our own Indian citizens. Big shots used to hunt them for their skin and judiciary may not be interpreted that important. Elephants were killed due to their largely precious tasks. And numerous spiritual places were built in the habitat of elephants which is said to be elephant corridors. And then again the bar remains silent. In Hindu mythology cows aren't only animals which were said to be horrified, there are numerous animals like pigs, tigers, lions, elephants etc. That means we've to legislate Elephant slaughter laws as well. But legislation isn't interested in doing that because beef is eaten by the Muslims. And these groups should be targeted by stopping them from following their own culture. Anti conversion laws. As India is a secularist country which is the landmark for following different religions, what's the need of this ANTI CONVERSION LAWS? As our constitution permits, citizens can follow their own religion which means they can convert to other religion they want. By interpreting all these we can fluently understand what kind of secularism we're following in India at present.

### **Legislations Of Various Countries**

(“Russian Federation Federal Law: ‘On Freedom of Conscience and on Religious Associations’” 1997)

#### ***Russia***

##### ***The law on freedom of conscience and religious Associations, 1997***

The Soviet Union didn't legally honor colorful religions in Russia till the 1990s. chromatic disturbances arose during this period discerning the religious practices. There were certain restrictions on exercising religion. The chairman of Russia during the time of 1997 allowed these restrictions to breach the constitution of Russia and legislated The law on freedom of conscience and religious Associations in 1997. According to this law the people can exercise any religion by their choice. The persuasions which have been exercising since 15 years in Russia will get support from the government by furnishing backing. Where the religions which haven't rehearsed for 15 years had the right to exercise in Russia but that religion won't be served from the state.

#### ***United States***

##### ***First Amendment Act of United States***

The First (Anastaplo 1964)Amendment provides that Congress make no enactment esteeming an establishment of religion or forbidding it's free exercise. It protects freedom of speech, the press, assembly, and the right to petition the Government for a requital of grievances.

### **Constitutional Provisions**

Our Indian constitution had guaranteed RIGHT TO FREEDOM OF RELIGION under part 3 of the constitution(Hemachand et al. 2011).

#### ***Article 25 (Freedom of conscience and free profession, practice, and propagation of religion)***

- The above-mentioned freedoms are subject to public order, health, and morality.
- This article also gives a provision that the State can make laws:
- That regulates and restricts any financial, economic, political, or other secular activity associated with any religious practice.
- That provides for the social welfare and reform or opening up of Hindu religious institutions of a public character to all sections and classes of Hindus. Under this
- provision, Hindus are construed as including the people professing the Sikh, Jain, or Buddhist religions, and Hindu institutions shall also be construed accordingly.
- People of the Sikh faith wearing & carrying the kirpan shall be considered as included in the profession of the Sikh religion.

*Article 26 (Freedom to manage religious affairs)*

This Article provides that every religious denomination has the following rights, subject to morality, health, and public order.

- The right to form and maintain institutions for religious and charitable intents.
- The right to manage its own affairs in the matter of religion.
- The right to acquire the immovable and movable property.
- The right to administer such property according to the law

*Article 27 (Freedom as to payment of taxes for promotion of any particular religion)*

According to Article 27 of the Constitution, there can be no taxes, the proceeds of which are directly used for the promotion and/or maintenance of any particular religion/religious denomination.

*Article 28 (Freedom as to attendance at religious instruction or religious worship in certain educational institutions)*

This article permits educational institutions that are maintained by religious groups to disseminate religious instruction. This provides that no religious instruction shall be provided in State-run educational institutions. Educational institutions administered by the State but that were established under any endowment or trust which requires that religious instruction shall be imparted in such institutions are exempt from the above clause (that no religious instruction shall be provided). Any person who attends any educational institution recognized by the State or receiving State aid shall not be required to participate in any religious instruction that may be imparted in such institution, or also attend any religious worship in such institutions unless he/she has given consent for the same. In the case of minors, the guardians should have given consent for the same.

## **CONSTITUTIONAL PROVISIONS OF VARIOUS COUNTRIES**

### ***The Albanian Constitution, 1946***

#### **Article 10** (“[No Title]” n.d.)

- In the Republic of Albania there is no official religion.
- The state is neutral in questions of belief and conscience, and also, it guarantees the freedom of their expression in public life.
- The state recognizes the equality of religious communities.
- The state and the religious communities mutually respect the independence of one another and work together for the good of each of them and for all.
- Relations between the state and religious communities are regulated on the basis of agreements achieved between their representatives and the Council of Ministers. These agreements are ratified by the Assembly.
- Religious communities are legal entities. They have independence in the administration of their properties according to their principles, rules and canons, to the extent that interests of third parties are not infringed.

### ***The Constitution Of Russia, 1993***

#### **Article 28** (“Website,” n.d.)

Everyone shall be guaranteed the freedom of conscience, the freedom of religion, including the right to profess individually or together with others of any religion or to profess no religion at all, to freely choose, possess and disseminate religious and other views and act according to them.

### ***The Constitution Of United States, 1789***

Under the *BILL OF RIGHTS (Legislature n.d.)*

#### **Under the Third Article**

- Congress shall make no law establishing religion or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed.
- Congress shall make no law establishing articles of faith, or a mode of worship, or prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition to the government for a redress of grievances.
- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## RECENT JUDICIAL ACTIVISM IN INDIA

*HIJAB ROW (LIVELAW NEWS NETWORK 2022a)*



As I said in the introductory part India is the land of various religious practices. We have our own way of dressing tradition related to religious views. Wearing the Hijab is an undeniable part of their religion. Muslim women used to wear bhurqa and hijab as their traditional dress code. It is their secular right to wear. This is our constitutional right. Every citizen has the right to practice and promote their religion peacefully. When talk about this concept we have to look into perspective of the Muslim women outside India (foreign countries). In 2017-2018 Italian Muslim women used to protest for making compulsory wearing of hijab and bhurqa. Such things did not happen in India, instead the state prohibited wearing these in public places. When we deeply look into it we will get two scenarios. In western countries the women used to wear the dress codes forcefully either by the state or their family members. It's about **freedom of choice vs women empowerment**. Whereas in India this is not the issue. What happens if women wear their hijab in educational institutions? Our law itself permits it. Why is the state not doing so? Here comes the question again **whether India is following the rule of law**? If the state thinks in educational institutions everyone should be equal by not allowing their religious dress code then the Hindus would also not be allowed for wearing the sacred threads to the hands and girls were not supposed to put kungumam on their face. The judiciary stood beside the state in this issue. Is it necessary to argue about these kinds of issues?

*GYANVAPI MASJID (Pandey and Gautam n.d.)*



According to the place of worship Act **mosque, temple, church or any place of public worship in existence on August 15 1947, will retain the same religious character that it had on that day irrespective of its history and cannot be changed by the courts or the government.**

This is the recent issue when 5 Hindu women filed a petition stating that the Gyanvapi masjid was built after the demolition of lord Shiva temple. This demolition happened during the medieval period. In recent times this exact thing happened during the 1990s where the Hindus were demolished Muslims worship place for protesting to build a ram mandir in Ayodhya. So now the state is constructing the Ram Mandir in the place where the masjid was demolished. And which have clear cut evidence. According to the Hindutva's the Gyanvapi masjid construction was illegal as it was built after the demolition of Hindu temple by Aurangzeb. Similarly, according to my view, construction of Ram Mandir at the place of demolished masjid by the hindutvas is also illegal.

**PROPHET ROW** (LIVELAW NEWS NETWORK 2022b)



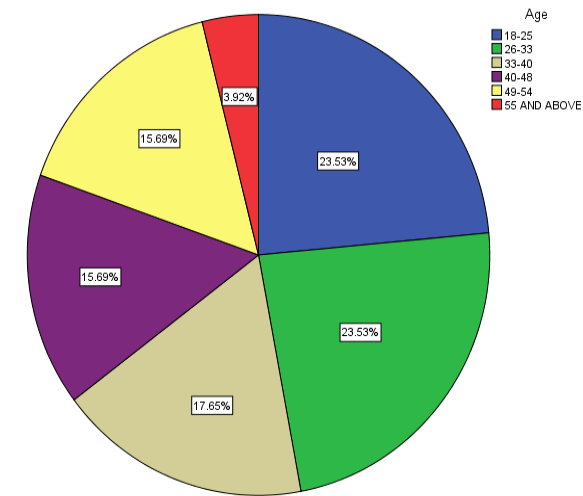
As I mentioned the difference between hate speech and freedom of speech. India isn't even familiar with Nupur Sharma's name.

On 24th May she appeared in the news debate and passed comttavirorsl commentary on the prophet. also the news anchor prevents her by saying further. As she left the meeting in the middle she tweeted about this Channel as a terrible channel. Again she appeared in another news channel for the debate and again she delivered the same commentary on the prophet. The anchor advised her against the particular commentary against hurting religious sentiments. And the commentary of Nupur sharma's where did I mock their flying horse. Did I make fun of the Quran that the Qur' an says what is written in our Quran and some other words. She used these commentary in three news channels. Do you suppose that she inaply spoke these words? She raised her voice when some people used to tweet about Gynavapi masjid. They tweeted as It wasn't 'Shivling' but a fountain. According to her this is hurting religion. So she also hurts other persuasions. At current script The Supreme Court has granted interim protection from arrest. The Supreme Court was hearing the plea filed by Nupur Sharma, seeking to stay on her possible arrest and club nine cases filed against her across India. On July 1, the same bench had oppressively criticised Nupur Sharma for her controversial commentary against Prophet Muhammad. The bench of the top court had said Nupur Sharma's " loose lingo" had " set the entire country on fire". It also said that Nupur Sharma was " single- handedly responsible for what's passing in the country." While pertaining to the Udaipur incident where two men boggled a knitter and later posted the killing video on social media, the bench slammed Nupur Sharma and said her eruption was accountable for the unfortunate incident.

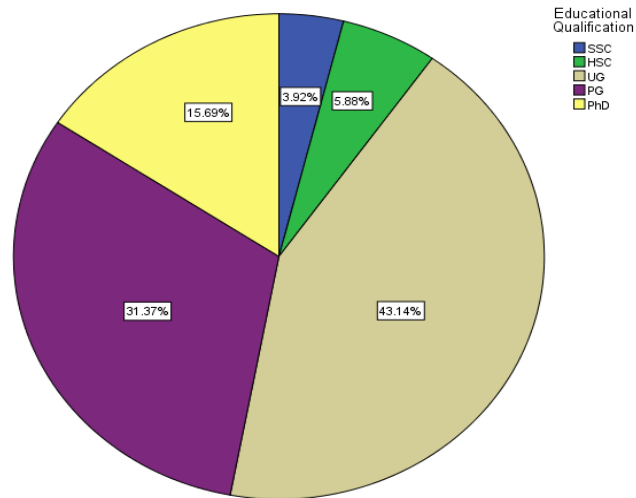
## **METHODOLOGY**

Empirical approach is embraced for the study. Empirical research is grounded on adhered and measured splendors and hence provides the scientific framework for research. Descriptive research studies are those studies which are concerned with describing the characteristics of a particular individual, or of a group. Specific research objects were defined and suppositions were formulated. Data collection included both primary and secondary resources. Sampling technique used was a convenience sampling methodology which is part of the non-probability slice. The data collected was encrypted and tabulated and was analysed using statistical calculations. The sample size is 60. Primary data was collected using questionnaires and published information from journals, reports and newsletters were the secondary sources.

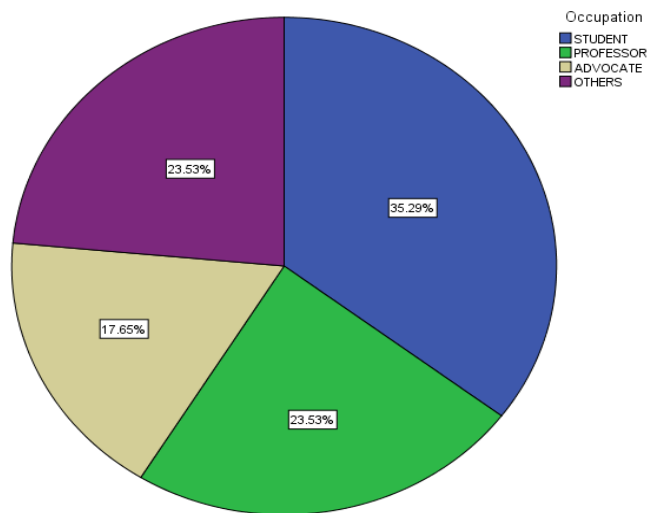
**ANALYSIS**



**Fig.01**



**Fig.02**



**Fig.03**



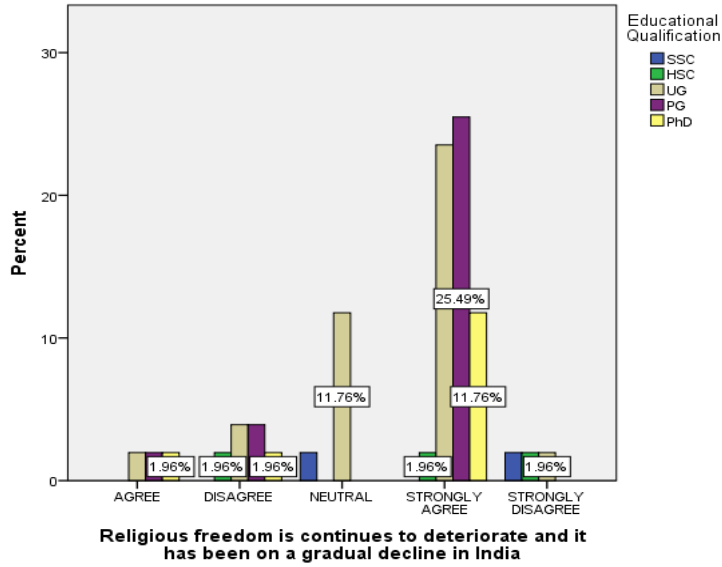


Fig .04

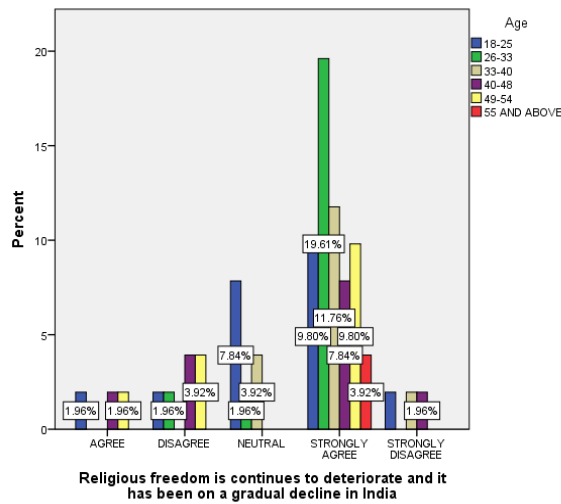
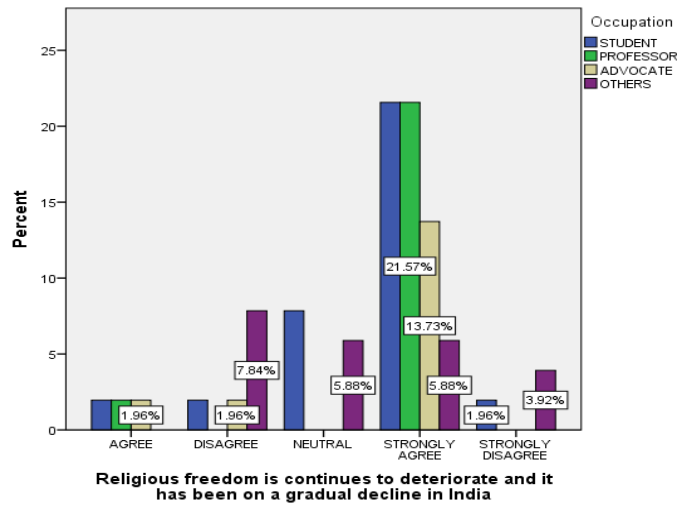


Fig.06

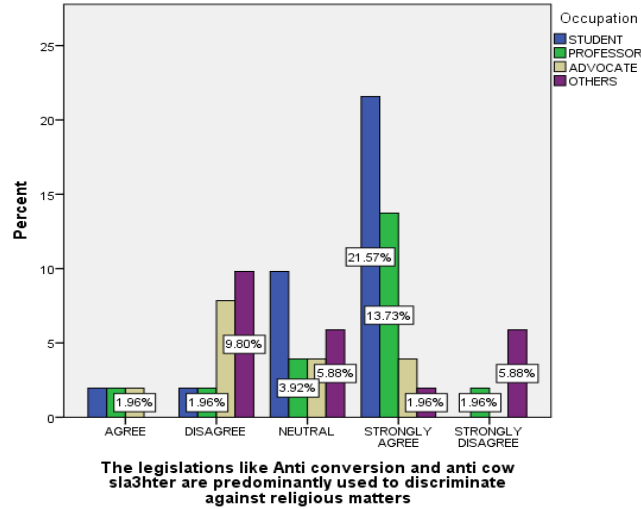


Fig. 07

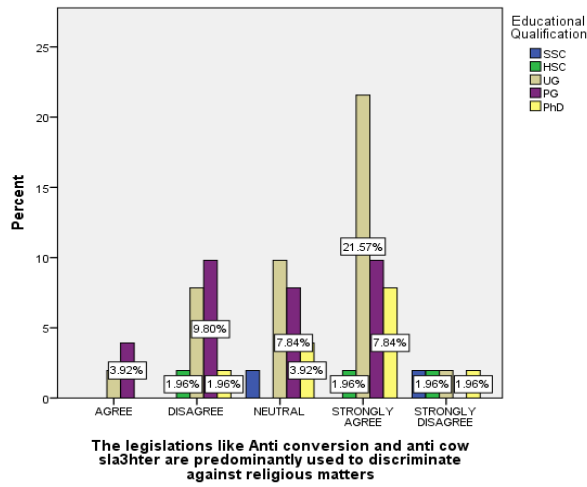


Fig.08

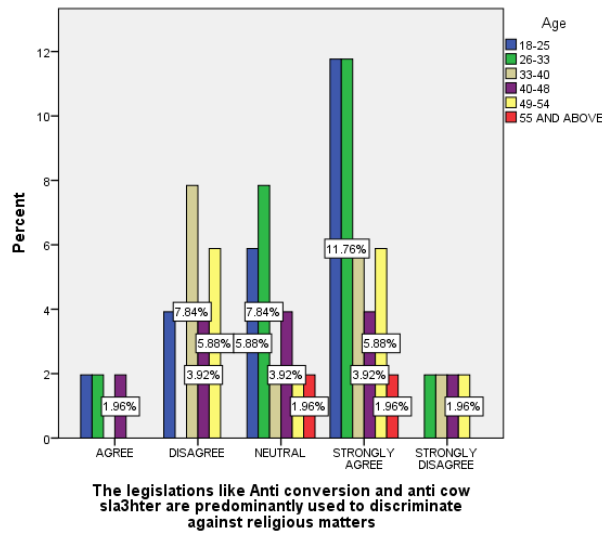


Fig.09

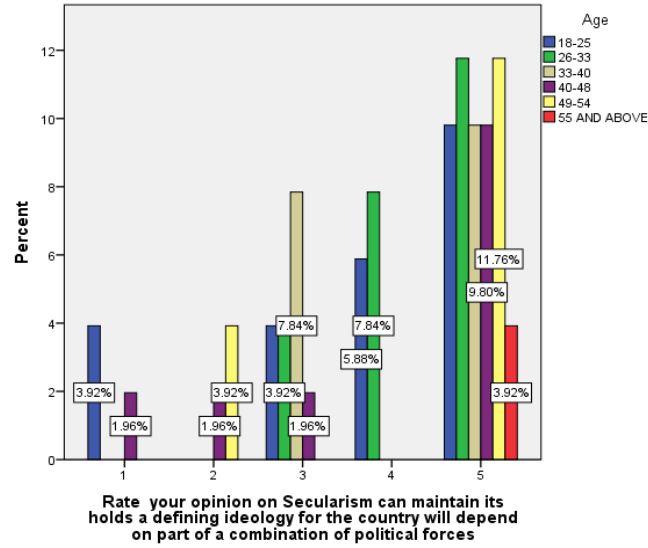


Fig.10

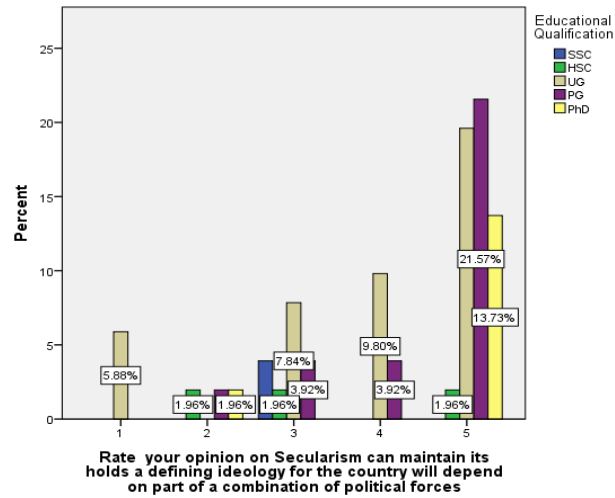


Fig. 11

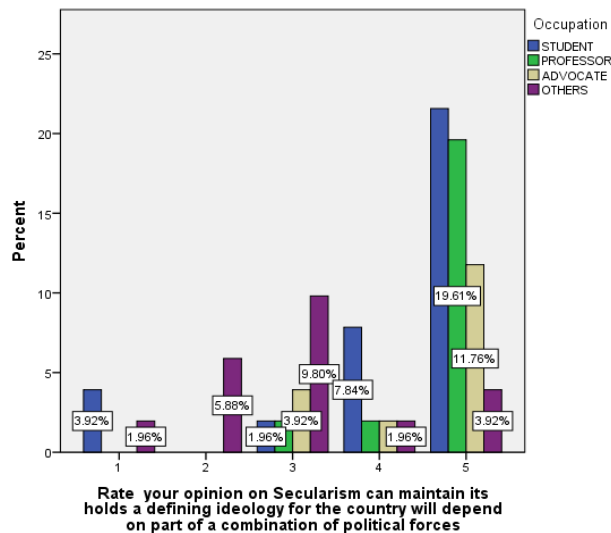


Fig. 12

## DISCUSSION

I choose independent variables Age, Educational Qualification and Occupation and three dependent variables are questionnaires. Mostly here while collecting my responses mostly I concentrated on law background persons and some from other qualifications.

For the dependent variable *RELIGIOUS FREEDOM IS CONTINUES TO DETERIORATE AND IT HAS BEEN GRADUAL DECLINE IN INDIA*. Most of the respondents of all age groups opted to strongly agree with the above statement. Which means that in their point of view religious freedom is declining day to day in India. UG and PG graduates opted for Strongly agreed. The students, professors and the Advocates accepted this statement and they opted for Strongly agreed. Which means in the present scenario the public are concluding that the freedom of religion is declining right in India. The dependent variable *THE RELIGIOUS LEGISLATIONS ARE PREDOMINANTLY USED TO DISCRIMINATE AGAINST RELIGIOUS MATTERS*. The most of all age groups accepted this statement, where the UG respondents were highly satisfied and Strongly agreed where few of the PG respondents were not much agreed opted to Disagree. But most of the students and professors opted for Strongly agreed. As I mentioned earlier some laws indirectly targeted the minority religious in India. It affects one's religious right and the religious beliefs of minority religions. And the last *RATING OPINION ON SECULARISM CAN MAINTAIN ITS HOLDS A DEFINING IDEOLOGY FOR THE COUNTRY WILL DEPEND ON PART OF A COMBINATION OF POLITICAL FORCES*. Right to Religion is freedom of religion which is guaranteed by the Indian constitution. But this is only for certain religious groups at the present times. It is declining to most of the minority religious groups.

## SUGGESTIONS

- India should have separate tribunals for dealing the religious cases.
- If India is not favourable to every religion better remove secularism word from the constitution
- India should have strict laws for protecting the Religions especially Minor religious groups.

## CONCLUSION

Bharath is the land of chromatic persuasions. Because we the people of India rigorously follow nationalism, illiberalism and secularism. The Government should act as a peacemaker for winding up religious issues. Rather the Government supports bigger religious groups for targeting nonages. India's description of denomination won't relate to the western denomination description. Our India follows a unique culture when it comes to the temporal path. That's the reason we're furnishing shelter for different spiritual persons. proscribing the hijab in public places is showing that our India is moving towards the western temporal path. However, putting kunkuma by women and the person who's governing the state shouldn't wear saffron dress, If hijab is banned in the public place further we've to enjoin the people from wearing sacred thread. I did n't mention any transnational frame on Right to Religion because this is the internal matter which is so sensitive. Our India isn't at the state of comparison with other countries as well because as I mentioned before our country is having a unique secularism which differs from other countries. But due to the present issues I am supposed to compare with many countries to better understand how our motherland is declining the Religion Rights. I 'm concluding that ***BEING A HINDU YOU SHOULD RESPECT YOUR RELIGION BUT BEING AN INDIAN YOU SHOULD RESPECT, TREAT AND SECURE OTHER RELIGIONS.***

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