

Seminario interreligioso 2025

Laicità dello Stato e libertà religiosa: quale rapporto?

2 aprile 2025

La Costituzione indiana

Preamble of the Indian Constitution

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST **SECULAR** DEMOCRATIC REPUBLIC and to secure to all its citizens:
JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity;
and to promote among them all
FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;
IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

- In Bommai v. Union of India 1994 la Corte Suprema ha dichiarato che la laicità è una delle caratteristiche fondamentali, “a basic feature of our constitution”, quindi non può essere oggetto di emendamento.

Gli articoli della Costituzione relativi alla libertà religiosa

Right to Freedom of Religion

25. Freedom of conscience and free profession, practice and propagation of religion

(1) 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 and propagate** religion.

(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 activity** 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.

- Explanation I.—The wearing and carrying of **kirpans** shall be deemed to be included in the profession of the Sikh religion.
- Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs

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.

27. Freedom as to payment of taxes for promotion of any particular religion

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions

- (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
- (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Matrimonio e divorzio: testi di legge – statuti personali

- Hindu Marriage Act, 1955
- Hindu Disposition of Property Act, 1916
- Indian Divorce Act, 1869
- Foreign Marriage Act, 1969
- Indian Christian Marriage Act, 1872
- Muslim Women (Protection of Rights on Divorce) Act, 1986
- Muslim Personal Law (Shariat) Application Act, 1937
- Parsi Marriage and Divorce Act, 1936
- Special Marriage Act del 1954
- Indian Divorce Amendment Act del 2001 (che ha modificato la legislazione applicabile ai Cristiani, ai Parsi)

Il dibattito

- L'uniformazione del diritto di famiglia comprometterebbe la **libertà di praticare la propria religione?**
- Il pluralismo giuridico in materia di diritto di famiglia è l'unica risposta adeguata al **multiculturalismo?**

Il tempio di Sabarimala

[2018] 9 S.C.R. 561

INDIAN YOUNG LAWYERS ASSOCIATION & ORS.

v.

THE STATE OF KERALA & ORS.

(Writ Petition (Civil) No. 373 of 2006)

SEPTEMBER 28, 2018

[DIPAK MISRA, CJI, R. F. NARIMAN,
A. M. KHANWILKAR, DR. D. Y. CHANDRACHUD AND
INDU MALHOTRA, JJ.]

4. It is a universal truth that faith and religion do not countenance discrimination but religious practices are sometimes seen as perpetuating patriarchy thereby negating the basic tenets of faith and of gender equality and rights. The societal attitudes too centre and revolve around the patriarchal mindset thereby derogating the status of women in the social and religious milieu. All religions are simply different paths to reach the Universal One. Religion is basically a way of life to realize one's identity with the Divinity. However, certain dogmas and exclusionary practices and rituals have resulted in incongruities between the true essence of religion or faith and its practice that has come to be permeated with patriarchal prejudices. Sometimes, in the name of essential and integral facet of the faith, such practices are zealously propagated.



Nel 2022 la High Court del Karnataka ha sostenuto la legittimità del provvedimento statale che bandisce l'**hijab** all'università perché ritenuto non essenziale per la pratica religiosa.

Nel 2024 la Corte Suprema si è pronunciata nel senso di dichiarare illegittima la regolamentazione di un college di Mumbai che proibiva l'uso dell'hijab.



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