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CONCEPT OF SECULARISM UNDER INDIAN CONSTITUTION

AUTHORED BY - AYUSHI AGRAWAL

INTRODUCTION

The Constitution stands for a Secular state of India. The word 'secular' was not present originally in the Preamble. The concept of secularism was implicit in the Preamble of the Constitution which declares the resolve of the people to secure to all its citizens "liberty of thought, belief, faith and worship". The Constitution (42nd Amendment) Act, 1976, has inserted the word 'Secular' in the Preamble. The object of insertion was to spell out expressly the high ideas of secularism and the compulsive need to maintain the integrity of the nation.¹

The essential basis of the Indian Constitution is that all citizens are equal, and that the religion of a citizen is irrelevant in the matter of his enjoyment of Fundamental Rights. The Constitution ensures equal freedom for all religions and provides that the religion of the citizen has nothing to do in socio-economic matters. Though the Indian Constitution is secular and does not interfere with religious freedom, it does not allow religion to impinge adversely on the secular rights of a citizen or the power of the state to regulate socio-economic relations.²

The Supreme Court has declared Secularism as the basic feature of the Indian Constitution.³ The Court has further declared that secularism is the part of fundamental law and an unalienable segment of the basic structure of the country's political system.⁴ The Indian Constitution through its Preamble, fundamental rights & directive principles has created a Secular State based on the principle of equality and non-discrimination. With the advancement of Indian Constitutional philosophy of social and economic democracy, secularism has been held to be 'Basic Structure' of the Indian Constitution. Thus, the nature of polity promised in the Preamble

¹ M.P. Jain, INDIAN CONSTITUTIONAL LAW (2014) at p.15

² Id

³ Kesavananda Bharti v. State of Kerala, AIR 1973 SC 1461; S.R. Bommai v. Union of India, AIR 1994 SC 1918;(1994) 3 SCC 1.

⁴ State of Karnataka v. Praveen Bhai Thogadia, AIR 2004 SC 2081

is incapable of alteration even in the exercise of the power to amend the Constitution under Art. 368.⁵

India is a pluralistic society and multi-religious country; that is why the framers of the Constitution adopted the concept of religious neutrality and conferred religious freedom to various religious groups. The religious tolerance and equal treatment to all religious groups is in the spirit of our secularism. It sought to achieve the peaceful coexistence of different religions.

It has explained that secularism is not to be confused with communal or religious concepts of an individual or a group of persons. It means that the State should have no religion of its own and no one could proclaim to make the State have one such or endeavour to create a theocratic State.⁶ Each person shall get an assurance from the State that he has the protection of law to freely profess, practice and propagate his religion and freedom of conscience.

DESCRIPTION

A Secular State has no religion of its own as recognised religion of State. It treats all religions equally. Secularism is akin to the vedic concept of 'Dharma Nirapikshata' i.e., the indifference of the state to the religion. It is not atheism but has the same faith in all religions and there will be no particular religion of the state. Also, the political system will not be governed by religion. Citizens of different faiths may be living in the states. Every citizen can live life freely according to his or her religion.

According to Donald Eugene Smith,⁷ The secular state is a state which guarantees individual and corporate freedom of religion, individual as a citizen irrespective of his religion, is not constitutionally connected to a particular religion not as it seeks either to promote or interfere with religion.

With the 42nd Amendment Act of the Constitution of India,⁸ the Preamble to the Constitution asserted that India is a 'secular' nation. Various provisions of the Indian Constitution clearly

⁵ Indian Constitution art.368

⁶ M.P. Jain, INDIAN CONSTITUTIONAL LAW, (2014) at p.16

⁷ Donald Eugene Smith, INDIA AS A SECULAR STATE, (Princeton University Press, New Jersey)

⁸ The Constitution (Forty-second Amendment) Act, 1976

incorporate the basic principles of secularism.

Secularism as contemplated by the constitution of India has the following distinguishing features:

1. The state will not identify itself with religion nor be controlled by any religion.
2. While the state guarantees to everyone the right to profess whatever religion one chooses to follow, it will not accord any preferential treatment to any of them.
3. No discrimination will be shown by the state against any person on account of his religion or faith.
4. The right of every citizen, subject to any general condition to enter any offices under the state and religious tolerance form the heart and soul of secularism as envisaged by the constitution. It secures the conditions of creating a fraternity of the Indian people which assures both the dignity of the individual and the unity of the nation.

Secularism in the Indian context means an equal status for all religions. According to Dr. Radha Krishanana, no religion should be given preferential status or unique distinction, then no one religion should be accorded special privileges in national life or international relations, for that would be a violation of the basic principles of democracy and contrary to the best interest of religion and Government.

DISCUSSION

To understand the concept of secularism in respect of constitutional philosophy first we have to understand the term 'religion'. The term 'religion' is not defined in the Constitution and indeed it is a term which is hardly susceptible to any rigid definition. Supreme Court in **Commissioner H.R.E. v. L.T. Swammiar**⁹ held that religion is a matter of faith with individuals or communities and it is not necessarily theistic. A religion has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being.

India has no preferred or state religion, as such; all religions are treated alike and enjoy equal constitutional protection without any favour or discrimination.

⁹ Commissioner H.R.E. v. L.T. Swammiar, AIR 1954 SC 282 at p.290

Meaning and Concept of Secularism

Secularism has not been clearly defined in any document. However, it is a system of doctrine and practice that disregards or rejects any form of religious faith and worship. The basic principle of a secular state is that there should not be any interference by religion in the affairs of the State and vice versa, i.e., the State also should not interfere in the affairs of religion. The concept of secularism is not merely a passive attitude of religious tolerance; it is also a positive concept of equal treatment of all religions.¹⁰

There are two main concepts of secularism, (a) Western concept & (b) Indian concept. The Western concept is the concept of 'erecting a wall of separation between Religion and State'. It means there ought to be a separation between religious institutions from the institutions of States.

As far as the Indian scenario of secularism is concerned, the Constituent Assembly declared that secularism as adopted in the Indian Constitution was not an anti-religious concept; instead, it prevented discrimination against the citizens based on religion. After the Constituent Assembly debate, mainly two views of secularism emerged- one is Gandhi's view, & the other is Nehru's view. Gandhi's opinion was based on '*Sarva Dharma Sambhav*' i.e., equality for all religions. According to him, religion cannot be separated from public life. Nehru followed the principle '*Dharma Nirpeksha*'. According to him, relationships are a private matter and should not guide public life.

India adopted the following ideas of secularism which was closer to the views of both Gandhi and Nehru;

1. The State shall permit freedom of practicing any religion.
2. The State shall not associate with any religion.
3. State shall own all faiths of equality.

Indian Constitution and Secularism

It is mentioned in the Preamble of the Indian Constitution, "*We the people of India...*". The key feature of secularism is found in this sentence. No particular religion has a place in the sentence. However, in 1976, the amendment to the Constitution included the term *secular*. This does not

¹⁰ M.P. Jain, INDIAN CONSTITUTIONAL LAW (2014) at p.1245

mean that India was not a secular state before 1976. Although the term secularism was not mentioned, India was a secular state under the Constitution. This is evident from the different provisions of the Constitution and the decisions of the Court. In **St. Xavier's College v. State of Gujarat**,¹¹ The Supreme Court held that secularism neither means anti-God nor pro-God. It ensures that nobody shall be discriminated against on grounds of religion. Secularism, therefore, eliminates the concept of God in matters of the state.

The principle of secularism is incorporated in the promotion of democracy by maintaining national unity and integrity. Further provisions are found in the Constitution for the formation of secular societies. Secular attitude or attitude of impartiality towards all religion is secured by the Constitution under several provisions. Art.14¹² grants equality before the law and equal protection of the laws to all. Art.15¹³ enlarges the concept of secularism to the widest possible extent by prohibiting discrimination on ground of religion, race, caste, gender, place of birth. Art.16¹⁴ lays down that there shall be equal opportunity for all citizens relating to employment in the office of State and no citizen shall be discriminated on ground of religion, race, caste, sex, descent, place of birth, residence. Articles 25 to 28 of the Indian Constitution confer certain rights relating to freedom of religion not only on citizens but also on all persons in India. These constitutional provisions guarantee religious freedom not only to individuals but also to religious groups. It seeks to protect religion and religious practices from state interference. Art.25¹⁵ a reservoir of religious and secularism in India, makes explicit provision, when and how religious freedom is available. It guarantees every person the right to freely profess, practice and propagate his religion. According to Art.30¹⁶ all the minorities are given the right to establish educational institutions of their choice according to the criteria of religion and language. Art.44¹⁷ aims at administering people with the same set of secular civil laws irrespective of their religion.

Above mentioned provision of the Constitution does not allow any religion to interfere with the rule of the people even when people of different religions live in India. From time to time, the Supreme Court has interpreted & stated that secularism is the fundamental part of Indian

¹¹ St. Xavier's College v. State of Gujarat, AIR 1974 SC 1389 at 1414

¹² India Constitution art.14

¹³ India Constitution art.15 cl.1

¹⁴ India Constitution art.16 cls.1,2

¹⁵ India Constitution art.25 cl.1

¹⁶ India Constitution art.30 cl.1

¹⁷ India Constitution Art 44

society and cannot be changed in any manner. In **Indira Nehru Gandhi v. Raj Narain**,¹⁸ The Supreme Court has held that secularism means that the State shall have no religion of its own and all persons of the country shall be equally entitled to the freedom of conscience and have the right freely to profess, practice and propagate any religion.

In **Kesavananda Bharti v. State of Kerala**,¹⁹ the Constitutional bench of Hon. Supreme Court reiterated that secularism was a part of the basic structure of the Constitution. This view was crystallized in the landmark case of **S.R. Bommai v. UOI**.²⁰ In **Bommai**²¹, a nine-Judge bench of the Supreme Court referred to the concept of secularism in the Indian context as a positive concept of equal treatment of all religions and not mainly a passive attitude of religious tolerance.

The State will not interfere in religious affairs, State cannot regulate religious activity. However, a secular activity that is associated with religious matters may be regulated by the State.²² An activity will be treated as religious if it is regarded as an essential and integral part of the religion and will be secular if it is not considered a necessary part of religion. In **Shayra Bano v. UOI**²³ the Supreme Court declared the practice of Triple Talaq or Talaq-e-biddat, illegal, holding that it is not protected under Art.25 of the Constitution as it is not an essential religious practice.

Although a secular state does not interfere in religious matters, it does not mean that the State has no say in all matters of religion. The State cannot interfere in essential religious practices but it can interfere in secular practices associated with religion. The State can make a law to regulate secular affairs of religious places. The Supreme Court in **Ismael Faruqui v. UOI**²⁴ followed this view and held that any property belonging to a religious community could be acquired by the State under the eminent domain. Again in the case of **Aruna Roy v. UOI**²⁵ the Court observed that the essence of secularism is non-discrimination of the people by the State on the basis of religious differences.

¹⁸ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299

¹⁹ *Kesavananda Bharati*, supra note 1, at 7

²⁰ *S.R. Bommai*, supra note 1, at 7

²¹ *Id*

²² *India Consti.art.25 cl.2*

²³ *Shayra Bano v. UOI*, AIR 2017 SC 4609

²⁴ *Ismael Faruqui v. UOI*, (1994) 6 SCC 360

²⁵ *Aruna Roy v. UOI*, AIR 2002 SC 3176

In the case of **Abhiram Singh v. C D Commachen**²⁶, there was a question before the Court whether secularism means complete separation of religion from politics? The Court held that secularism does not say that the State should stay aloof from religion; instead, should give equal treatment to every religion. Religion and caste are vital aspects of our society, and it is not possible to separate them completely from politics. The Court held that secularism is the basic structure of the Constitution and therefore cannot be amended. Secularism is derived from the cultural principle of tolerance and ensures the equality of all religions. The Court also said that there is an essential connection between secularism and democracy and if we need that democracy should work properly and the marginalized group can avail the benefit, then there must be a secular state.

The Relevance of Secularism in India

Secularism has no alternative option in a multicultural nation like India; therefore, the Indian Constitution adopted it. Secularism as an ideology tries to keep the nation united on non-religious fronts. People of different languages and religions live in the Indian Union. They needed secularism to keep them together. Therefore with the right to freedom it was necessary to accept secularism. The State, remaining free from religious obligations, can take a tolerant attitude towards every religion and can pursue the ideal of achieving the well being of the people irrespective of caste, creed, religion.

The concept of secularism evolved in India as equal treatment of all religions. It enables people of different religions to live in civility with respect for all faiths. It is a part of democracy, which grants equal rights. Secularism is not merely desirable but essential for the healthy existence of a plural society like India. Otherwise people will be subjected to oppression and denial of the right to freedom of belief.

The Challenges before Secularism in India

The Constitution has established a secular state, but it has failed to set up a secular society. Increasing interference of religion in politics is a major challenge facing the secular state. Communal politics have put Indian secularism in danger. The growing communalism has greatly hampered the growth of secularism in India. The political parties tend to use religion

²⁶ Abhiram Singh v. C.D. Commachen (2017) 10 SCC 1

and caste factors for the promotion of the political interest & thus greatly undermined the secular values.

Some of the important factors which have impeded growth of normal secularism in India as follows:

- 1. Problem of Uniform Civil Code** - till now no progress has been made in the evolution of a UCC and its adoption appears to be more problematic than it was at the time the Constitution was framed. Community compelled the Government to enact legislation closer to its Personal law and, therefore, religiously more acceptable.
- 2. Politics and Religion** - The Supreme Court had observed in the Bommai case, that if religion is not separated from politics, the religion of the ruling party tends to become the state religion.
- 3. Cultural Symbols and Secularism** - many public rituals and ceremonies like bhumi puja, breaking of coconuts on inaugural occasions, performing of 'aarti' and applying 'tilak' are perceived by Hindus as cultural or nationalistic expressions, but to non-Hindu these are manifestation of Hindu culture. Such rituals are performed even on state functions and therefore, create unnecessary misgivings about the neutrality of the State.
- 4. Serious doubts about how secular India is** - demolition of Babri Masjid, banning of cow slaughter leading to curtailment of freedom of people to what to eat and restricting their freedom to carry on any profession and trade.
- 5. Failure of the Government in evolving a just economic order** - the failure of the government to evolve a just economic order and eliminate poverty also gave a serious setback to secularism. The common masses suffering from deprivation and poverty could not develop any faith in the quality and consequently did not attach much importance to the secular values.

CONCLUSION AND RECOMMENDATIONS

India is known as a secular nation across the world. Secularism per se means a mode of governance in which the State remains neutral in religious matters and is not supposed to tilt in favor of a particular religion. The Western concept of secularism connotes a complete separation between the religion (the church) and the state (the politics). This negative concept of secularism is inapplicable in the Indian situation where the society is multi religious. Hence, the Constitution of India embodies the positive concept of secularism, i.e., giving equal respect to all religions or protecting all religions equally. There is no one religion that dominates Indian

society as a citizen is free to practice, profess and propagate any religion. However, this right is subject to public order, morality and health.

However, there are instances when it is necessary to intervene and implement beneficial reforms for the betterment of the society. Following are some recommendations:

1. In a pluralistic society, the best approach to nurture secularism is to expand religious freedom rather than strictly practicing state neutrality.
2. It is incumbent to ensure value-education that makes the younger generation understand and appreciate not only its own religious traditions but also those of the other religions in the country.
3. There is also a need to identify a common framework or a shared set of values which allows the diverse groups to live together.
4. Since secularism has been declared as a part of the basic structure of the Constitution, the Government must be made accountable for implementing it.

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LIST OF ABBREVIATIONS

S.No.	Abbreviations	Full Form
1.	AIR	All India Reporter
2.	&	And
3.	UOI	Union of India
4.	SC	Supreme Court
5.	SCC	Supreme Court Cases
6.	UCC	Uniform Civil Code
7.	Art.	Article
8.	Hon.	Honorable
9.	i.e.,	That is
10.	v.	Versus
11.	Consti.	Constitution
12.	cl., cls.	Clause, clauses