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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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SECULARISM AND COMPARATIVE PUBLIC LAW- **THE INDIAN MODEL OF SECULARISM**

AUTHORED BY - PARVATI KABBUR

Secularism for the most part and especially in the Twenty-First Century have been shaped and influenced by Western Paradigms. The western framework of secularism which is quite dominant in nature have always been known to challenge and essentially define the idea of secularism through neutrality or a mode of stringent separation whereas its Indian Counterpart likes to view the idea of secularism through the principle of 'Principled Distance', which is known to be as an Indian Model of Secularism with its key essential features being that the state treats all the individuals belonging to all the religions in the country in an equal manner, there is no existence of an unequal partial treatment towards any specific religion regardless of it constituting as a religion being a minority or a majority religion in the state. This model of secularism ensures that there is freedom for the individual to profess and practice any religion that they wish to and at the same time there is also intervention of the state in affairs relating to religious matters if it feels that it's necessary to do so in order to uphold the principles of equality and the constitution.

One can say that the Indian model of secularism provides an alternative to imagine the constitution in a rather different light in the sense that it plays a wonderful role in partaking in the process of balancing not only the rights of the individuals but also in ensuring that there is protection in group identities, in the concepts of equality and liberty, particularism and universalism where the latter refers this perspective where when some societies are facing some specific problems, they usually approach these problems through means that are diverse or different but ensuring that the outcomes are similar. Universalism can be said an approach that tends to lay prominence on the process of identifying various legal principles and practices across various legal systems with the sole ultimate goal in trying to understand whether certain legal phenomena take place regardless of it possessing a particular time or place. And the former particularism can be referred to as principle where there exists in numerous legal systems and all these systems encompass their own rules and practices which need not necessarily be universal in nature or could be applied in various jurisdictions.

In the latter half of the Twenty-First Century, in the recent decades, the realm of comparative public law has expanded its analytical gaze western frontiers of the United States and the Europe to investigate constitutionalism in societies that are not western and pluralistic that is those states where you can find its citizens practicing various religions, in that regard India can be considered as a prime example, particularly in its constitutional approach to secularism. It is often dismissed and regarded as not being consistent enough especially when compared against to western models that are more dominant forces, Indian secularism has, in fact, evolved as a deeply contextual and morally pluralist constitutional doctrine. This notion of “principled distance” has demonstrated this distinctiveness and has provided a framework that becomes increasingly relevant to comparative public law.¹ This essay argues that the Indian model of secularism is far from being a deviation from constitutional forms that are more liberal, and it represents an innovative normative response in order to ensure there is deep religious diversity in democratic societies. This is done by examining its constitutional logic and contrasting it with Western secularisms, we get to a point to appreciate how Indian secularism both challenges and enriches any discussions or conversations revolving comparative public law.

Even Bhargava² is of the opinion that secularism that is contextual in nature could perhaps lead to conversations and discussions that are usually quite scholarly partaking in addressing issues that are relevant on a global scale relating to international relations and the comparative public law. He believes that these scholarly discussions on constitutionalism can probably lead to its enrichment especially amongst societies that are multi-cultural in its attributes. We know that the subject-matter of comparative public law demands us to investigate further into examining how different legal systems around the world explore various sorts of legal questions of a similar nature. One can say that the main concern of Comparative Public Law is to focus on the matter of the role of the state. The extent and scope of the rights of individuals who are considered as citizens of the state, and the manner in which diversity is managed. And with respect to inquiries relating to this the legal principle or doctrine, secularism has played quite a pivotal role in that regard. Bhargava’s idea of a ‘contextual secularism’ as here refers to in his work is in contrast to the western model of secularism that is based on a model of strict separation.

The Indian Model of secularism has helped in offering an alternative and a framework that is not only rich but is also highly flexible to a context that is socio-cultural in nature and ultimately

¹ Bhargava, Rajeev. "What is Indian secularism and what is it for?" *India Review* 1.1 (2002): 1-32.

² Bhargava, Rajeev, and T. N. Srinivasan. "The distinctiveness of Indian secularism." 2007,

in which the law operates. The dichotomy or dual nature of secularism is being as either Indian-traditional or Western-modern. Indian secularism can be seen as a multi-value theory which means that the study of comparative public law usually embodies numerous legal principles that have in conflict with each other, based on the idea of "principled distance," which states that the state may or may not interfere with religious activities in accordance with the normative objectives of justice, equality, and liberty. In contrast to the model that United States has employed which tends to build a "wall of separation". India on the other hand allows for the state to interfere in religious rituals in order to fight against various forms of casteism and prejudice. Indian secularism has taken departure from individualist liberal perspective by recognizing religious communities and granting certain religious groups some specific rights and liberties as mentioned in section 30 of the Constitution.

Indian secularism can be said to be adaptable and be based normatively where it does not stop itself in just describing the various legal rules but goes over and beyond in analysing how the laws need to be applied as well with the application of various secular principles that differ depending on the socio-historical settings. Usually, three general models have historically been preferred by public law frameworks which are the Liberal-Individualist which is employed in the United States which places a strong importance on not interfering with individual liberties. And then there is the Republican-Universalist which France is known to use, demands absorption into a secular public realm and enforces a strict public-private split which they refer to as (laïcité).³ Canada is an example of a multicultural-accommodationist country that recognizes group rights, though frequently in a liberal sense. Indian secularism is unique as it provides a normative mix that strikes a balance between providing and protecting individual liberties and freedoms, government action.

It is notable to observe that the Indian model of secularism offers three significant perspectives, firstly being, having a reimagining on neutrality, Multiple overlapping normative systems (individual and communal) can coexist in a single polity without going against liberal-democratic ideals, according to plural constitutional beliefs. Secondly being Normative experimentation where it says that Contextual secularism promotes a balanced, as opposed to absolutist, jurisprudence, which is beneficial for courts that are juggling conflicting rights., gender equality vs. religious freedom. And thirdly the conventional Western liberal

³ Troper, Michel. "French secularism, or laïcité." *Cardozo L. Rev.* 21 (1999): 1267.

perspective, which tends to define secularism as the rigorous separation of religion from public affairs. The foundation of Indian secularism is the idea of "principled distance," which permits the state to interact with or disengage from religion in accordance with the normative objectives of equality, justice, and liberty. The Indian model has taken a stance which is context sensitive of sorts in contrast to the French concept of 'Laïcité' and the American "Wall of separation" models, which either has led to the privatizing of religion or has completely led to subjugation to the state.⁴ While the Indian Constitution has permitted religious freedom (Articles 25–28), it also has led to the permission of the state to interfere in discriminatory or repressive religious practices, such as untouchability (Article 17).

Therefore, Indian secularism is based on a multi-value normative framework which strives to strike a harmonious balance between various conflicting interests, such as the autonomy of religious communities, individual rights, and the state's role in ensuring of justice, instead of just a set of doctrinal rules. Because of its adaptable nature, it is especially useful for handling India's complicated religious and cultural diversity. The issue of how states ought to handle pluralism is one that comparative public law has frequently tried to address. The majority of constitutional models can be divided into three groups being as a multicultural-accommodationist, republican-universalist, and liberal-individualist. None of these categories have come to explain the Indian approach.

Indian secularism also recognizes that achieving substantive equality may lead to there being a need for a differentiated treatment. And that state neutrality does not always imply equal treatment in formal terms. It provides three crucial public law insights, one being Normative Pluralism Over Doctrinal Purity where the Indian secularism adopts a more contextual and pluralistic stance, which is in contrast to the Western model of secularism, which frequently demands doctrinal purity, with either there being a complete separation or a rigorous neutrality and depending on the moral stakes, the "principled distance" principle allows for selective religious engagement and diversified citizenship which are supported by Indian constitutional laws, which acknowledges that equal rights do not always equate to the same treatment. This stands in stark contrast to American or French models, where citizenship is viewed as contingent upon consistent legal rules. In India, social realities like personal laws and

⁴ Jahanbegloo, Ramin. "Two concepts of secularism." *Comparative Studies of South Asia, Africa and the Middle East* 31.1 (2011): 13-22.

affirmative action programs frequently influence constitutional rights⁵

Indian secularism usually allows for the state to change religious practices when they go against certain constitutional principles, which is in contrast to the liberal beliefs that usually view such interference as a violation of religious freedom. For example, the state's commitment towards ensuring substantive equality over formal non-interference is demonstrated by its role in enforcing religious personal rules that prohibit untouchability or promote gender justice. India's secularism is the result of a complicated cultural and historical background. With a population that is so plural in nature with people from many different religious backgrounds, including Hindus, Muslims, Christians, Sikhs, Jains, Buddhists, and others, India could not afford a secularism model that either ensured that the religions got privatized or underplayed its significance to the public at large.

Indian secularism was considered to be "differently modern" in response to the problem of religious pluralism rather than a transfer of the Western paradigm. This uniqueness is reflected in the Indian Constitution. Although the word "secular" was only added recently and specifically in the Preamble in 1976, its spirit has always been present in a number of fundamental rights and guiding principles. The freedom to freely profess, practice, and spread religion is guaranteed by Article 25 in the Indian Constitution.

Religious denominations are allowed to handle their own affairs on matters of faith under Article 26. These rights are not constrained by morality, public order, health, and most importantly social transformation. The state may interfere in religious practices which go against the principles of equality and human dignity, such as untouchability, under Articles 17 and 25(2). In addition, minority rights are acknowledged under Articles 29 and 30, which allow for religious and cultural groups to build educational facilities and maintain their institutions. The protection of religious minority' autonomy in running their internal affairs has been greatly provided for by Article 30, specifically, which resulted in a negotiated partnership that blends adherence to social justice and equality with respect for religious autonomy rather than having a rigid wall of separation.

The Indian approach has helped in recognising the various asymmetries among religious

⁵Cannell, Fenella. "The anthropology of secularism." *Annual review of Anthropology* 39.2010 (2010): 85-100.

communities, in contrast to Western secularisms⁶, which frequently treat all religions equally under the presumption of equal authority and privilege. Existing hierarchies may be strengthened by a uniform application of the law. Therefore, the principle of principled distance has led to the promotion of more general egalitarian objectives which has led to unequal treatment. Indian secularism is a doctrine of multiple legal principles. It is dedicated to equality, fraternity, and social reform in addition to liberty and neutrality. By doing this, it deliberately breaks with the Western models' single-value orientations, which place more emphasis on either civic unity that is observed in France individual autonomy as seen in the United States.

Comparative public law can learn from a number of insights from the secularism of India. The secularism of India shows that constitutional secularism does not have to adhere to a strict framework. It can take into account power disparities between communities, historical injustices, and overlapping identities. It is necessary for comparative public law to stop treating the French and American models as universal norms. The model demonstrates that values of a democratic or liberal nature do not conflict with rights relating to differentiated groups. They can strengthen democracy and improve citizenship when presented correctly. For multicultural nations that are battling calls for legal pluralism, this is particularly pertinent. The significance of governmental involvement in religious reform is highlighted by the Indian experience. Oppressive practices may be sustained by passive neutrality. Comparative public law ought to acknowledge the state's capacity to promote equality while avoiding a descent into religious authoritarianism. Lastly, the value of contextual reasoning over abstract theorizing is demonstrated in the Indian secularism where constitutional principles like equality and liberty frequently clash overcoming these conflicts calls for case-by-case consideration rather than just adhering to making use of strict formulas.

One drawback that can be said for Indian secularism is that it is criticized for being illogical and more susceptible or has the chances of being influenced to political exploitation. For example, it has long been argued that gender equality is usually undermined by the coexistence of religion personal rules. But these conflicts can be blamed on negligence rather than a problem in the notion. In order to maintain the normative aspect of secularism, one needs to highlight the necessity of having a continuous public reasoning, constitutional interpretation, and civic engagement. It is cautioned that unless values are continuously reinterpreted in fresh situations,

⁶Bhargava, Rajeev, and T. N. Srinivasan. "The distinctiveness of Indian secularism." 2007,

they frequently become ossified.

In this regard the Indian secularism can be observed as a constitutional ethos that needs to be actively upheld in conversations regarding political and judicial decisions rather than only as a legal concept. Indian secularism has provided for a useful constitutional innovation in a time that is growing of heterogeneity in the cultural and religious spheres. Particularly for societies that are facing extreme diversity, its importance on contextual reasoning, moral engagement, and value pluralism offers a new lexicon for public law. Comparative public law needs to consider the Indian model as an alternative paradigm that broadens the normative potential of secularism outside of the Western sphere, rather than dismissing it as an abnormality or as an outlier. Therefore, one must rethink constitutional secularism as a dynamic and inclusive practice based on democratic discussion and public reasoning, rather than as a set pattern.

Bibliography

- Bhargava, Rajeev. "What is Indian secularism and what is it for?" *India Review* 1.1 (2002): 1-32.
- Bhargava, Rajeev, and T. N. Srinivasan. "The distinctiveness of Indian secularism." 2007
- Bhargava, Rajeev, and T. N. Srinivasan. "The distinctiveness of Indian secularism." 2007
- Cannell, Fenella. "The anthropology of secularism." *Annual review of Anthropology* 39.2010 (2010): 85-100.
- Jahanbegloo, Ramin. "Two concepts of secularism." *Comparative Studies of South Asia, Africa and the Middle East* 31.1 (2011): 13-22.
- Troper, Michel. "French secularism, or laicite." *Cardozo L. Rev.* 21 (1999): 1267.