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STUDY OF PRACTISING RELIGION AND SECULARISM IN INDIA:A CRITICAL ANALYSIS

**Authored by –
Kedar Pradeep Pimputkar**

ABSTARACT:

The purpose of this research paper is to study and analyse the concept of religion and secularism in India. India has different religions, cultures and traditions. There are various religions namely Hinduism, Islam, Christianity, Jainism, Sikhism and Buddhism. India is termed as a religious country, but to avoid any problem among the religious community, the concept of secularism has been adopted. The concept of secularism plays a key role in the fight against various religious supremacy in the state. Since the British rule, there have been a number of communal riots and violent outbursts between Hindus and Muslims, so the Indian government is taking various steps to harmonize this serious issue in the state. The word secular was added in the preamble in 1976 in the Constitution of India. Secularism in its elements in India as a state does not have its own official religion but treats all religions equally. The concept of secularism in India is derived from the Western concept of secularism, but with the difference that it can interfere in religious matters when necessary to protect the rights of the citizens of the state. In the Western concept, there is a total policy of state non- interference in religious matters. This article sheds light on the concept of studying the practice of religion and secularism in India.

INTRODUCTION:

The word secular derives from Latin word “saeculam”, which means a generation, or the spirit of an age that could signify the span of century. The term ‘secularism’ is akin to the Vedic concept of ‘Dharma nirapekshata’ i.e. the indifference of state to religion. This model of secularism is adopted by western societies where the government is totally separate from religion (i.e. separation of church and state). Indian philosophy of secularism is related to “Sarva Dharma Sambhava” (literally it means that destination of the paths followed by all religions is the same, though the paths themselves may be different) which mean equal respect

to all religions. This concept, embraced and promoted by personalities like Vivekananda and Mahatma Gandhi is called 'Positive secularism' that reflects the dominant ethos of Indian culture. India does not have an official state religion. However, different personal laws - on matters such as marriage, divorce, inheritance, alimony varies with an individual's religion. Indian secularism is not an end in itself but a means to address religious plurality and sought to achieve peaceful coexistence of different religions. When we look back to the history we all knew that Secular traditions are very deep rooted in the history of India. Indian culture is based on the blending of various spiritual traditions and social movements. In ancient India, the Santam Dharma (Hinduism) was basically allowed to develop as a holistic religion by welcoming different spiritual traditions and trying to integrate them into a common mainstream. The development of four Vedas and the various interpretations of the Upanishads and the Puranas clearly highlight the religious plurality of Hinduism. King Ashoka was the first great emperor to announce, as early as third century B.C. that, the state would not prosecute any religious sect¹. However, Indian freedom movement was characterized by secular tradition and ethos right from the start. In the initial part of the Indian freedom movement, the liberals like Sir Feroz Shah Mehta, Govind Ranade, and Gopal Krishna Gokhale by and large pursued a secular approach to politics. The constitution drafted by Pandit Moti Lal Nehru as the chairman of the historic Nehru Committee in 1928, had many provision on secularism as: 'There shall be no state religion for the commonwealth of India or for any province in the commonwealth, nor shall the state, either directly or indirectly, endow any religion any preference or impose any disability on account of religious beliefs or religious status'. And after 42nd amendment it was proclaimed in the amended Preamble to the Constitution of our country. It reads as follow: "We, the people of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic", etc. Right to freedom of religion is well described in the Articles 25, 26, 27 and 28 of Indian constitution. This Research paper studies concept of practising religion and secularism in India.

Key words: Secularism, constitution, religion.

FREEDOM OF RELIGION IN INDIA

CONSTITUTIONAL PROSPECTIVE

India is a vast country and developing country where people of various religions, castes, creeds, and socio-cultural backgrounds live together. This country is diverse also concerning its diverse population. Although, the word secularism was not mentioned in the Constitution since the beginning, it was embedded in our polity as its philosophical phenomenon. Though secularism is the basic structure of the Indian Constitution, its practicability in contemporary Indian conditions is questionable because there is increasing use of religion in the social construction of ethnic and communal identity, consequently forming political mobilization. The caste, religion, and regional divisions are still prevalent in India and play a significant role in shaping the ideologies of individuals and groups.

Article 25 of Indian Constitution provides protection that it guarantees to every person, and not merely to the citizens, the freedom of conscience and right to profess, practice and propagate religion.² Uniform Civil Code resonates with one country one rule, to be applied to all religious communities. The term, 'Uniform Civil Code' is explicitly mentioned in Part 4, Article 44 of the Indian Constitution. **Article 44 says, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."**³ It Promotes Real Secularism- A uniform civil code doesn't mean that it will limit the freedom of people to follow their religion, it just means that every person will be treated the same and all citizens of India have to follow the same laws regardless of any religion.

¹ <https://www.drishtias.com/to-the-points/paper1/secularism-1>

² Text book on constitution of India by V.N.shukla

HINDUISM

Hinduism is an ancient religion with the largest religious group in India, with around 966 million adherents as of 2011, composing 79.8% of the population. Hinduism is diverse, with monotheism, henotheism, polytheism, pantheism, monism, atheism, animism, agnosticism, and Gnosticism being represented. The term Hindu, originally a geographical description, derives from the Sanskrit, Sindhu, and refers to a person from the land of the river Sindhu. Hindus following the traditional religion call it Sanatana Dharma. The adherents of Sanatana Dharma call themselves as "Sanatani", the original word for the adherents of Sanatana Dharma. Hindu reformist Sects such as the Arya samaj do not use the term Sanatani.

ISLAM

Islam is a monotheistic religion centred on the belief in one God and following the example of Muhammad; it is the largest minority group religion in India. The Islamic Invasion during Medieval Era has obtained the religion a significant population of adherents. The religion is regarded as "Minority religion" and the adherents are given "Special privileges" It makes India the country with the largest Muslim population outside Muslim-majority countries. Muslims are a majority in states Jammu and Kashmir and Lakshadweep, and live in high concentrations in Uttar Pradesh, Bihar, West Bengal, Assam, and Kerala.

Large-scale religious violence and riots have regularly occurred in India since independence from British colonial rule. The aftermath of the partition of India in 1947 to create a separate Islamic state of Pakistan for Muslims led to major sectarian strife and bloodshed throughout the nation. Since then, India has witnessed sporadic large-scale violence fuelled by underlying tensions between sections of the Hindu and Muslim communities. These conflicts also stem from the ideologies of hard-right groups versus Islamic fundamentalists and are prevalent among certain segments of the population. Since independence, India has always maintained a constitutional commitment to secularism. Major cases include 1969 Gujarat riots, 1984 anti-Sikh riots, 1989 Bhagalpur riots, 1989 Kashmir violence, Godhra train burning, 2002 Gujarat riots, 2013 Muzaffarnagarriots and Delhi in in 2020.

³ <https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/>

GUJRAT COMMUNAL RIOTS CASE 1969

Religious violence broke out between Hindus and Muslims during September– October 1969, in Gujarat. It was the most deadly Hindu-Muslim violence since the 1947 partition of India.⁴The violence included attacks on Muslim chawls by their Dalit neighbours. The violence continued over a week, then the rioting restarted a month later. Some 660 people were killed (430 Muslims, 230 Hindus), 1074 people were injured and over 48,000 lost their property.

FREEDOM OF RELIGION

The phrase “religion” is not defined in the constitution. It is not susceptible of any rigid definition. In *Commissioner, H.R.E. v. L.T. Swaminar*⁵ the Supreme Court explained that, Religion is matter of faith with individuals or communities and it is not necessarily theistic. There are well-known religions in India like Buddhism and Jainism, which do not believe in God or any Intelligent First cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual wellbeing.

It includes worships, belief, faith, devotion etc. and expand religion by rituals⁶

SECULARISM IN INDIA

As a philosophy, secularism seeks to interpret life based on principles derived solely from the material world, without recourse to religion. It shifts the focus from religion towards "temporal" and material concerns. There should not be honour of one's own (religious) sect and condemnation of others without any grounds.⁷ When we say India is a secular nation, we mean that India does not have its own official religion but it treats all the religions equally.

Secularism means treatment of all religions equally by the state. The word secular was enacted by the Indian constitution in the year 1976. “the state is not connected with spiritual and religious matter”.⁸ The concept of secularism was adopted from Western countries but with its marked differences.

⁴ https://en.wikipedia.org/wiki/1969_Gujarat_riots

⁵ AIR 1954 SC 282 (Shirur math case)

⁶ P.M.A Metropolitan v. Moran mar Morthoma, AIR 1995 SC 2001.

⁷ https://en.wikipedia.org/wiki/Secularism_in_India

⁸ The definition of Oxford dictionary <http://Oxforddictionaries.com>

Urbanization: due to urbanization people of different cultures and religions reside together in same localities when has led to secularization among citizens of India. Growth and development in transport and communication sector: with the growth and development in these sectors people of different religions are inter-mixed with each other. They get connected to each other through social media platforms and access the public transport.

Education imparted to students in institutions: education plays an important role in harmonizing people of different religious groups. Institutions welcome all religious groups. Institutions welcome all religious groups equally.

Legislation: various laws has been passed to protect the rights of religious groups. Special marriage Act, 1872 was passed with intent to solemnize the marriage between people of different religious community a valid marriage in the eyes of law. Hindu marriage Act, 1955, Hindu succession Act, 1956 has been passed to secularize people belonging to Hindu community.

Constitution also provides protection under article 27-30 which says the citizens of India has right to freedom of religion.

Western culture: it is also one of the factors in secularizing citizens of India. The principles of Indian secularism has been derived from the concept of western secularism. In order to modernize the state has to practice secularism and it is also the duty of citizens to comply with the provisions made by the state.

Objective of Secularism:

According to the Constitution of India, only a secular State can realise its objectives to ensure the following: that one religious community does not dominate another. That the some members do not dominate other members of the same religious community.

Secularism aims at keep all the religion in peace and fighting the conflicts to make society peaceful. There had been various conflicts between the various communities in India. These conflicts related to religious status in society. Secularism played an important role in defending all inter-religious conflicts. Citizens of India must be secular so that they can continue their beliefs and practices throughout their lives without any hindrance from the law.⁹

ARTICLE 25 OF INDIAN CONSTITUTION PROVIDES:

(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, practise 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 Hindus¹⁰.

The right to freedom of religion its scope and significance it is to be studied in view of the Secular Democracy established under the constitution.

LEGAL PROVISIONS REGARDING PRACTISING RELIGION AND SECULARISM

Article 14 talks about 'equality before law and equal protection of law' everyone are treated equal by law and all are to be treated equally before law.

Article 15 and 16 prohibits any discrimination on the basis of religion, caste, creed, sex, etc.

Article 19 to 21 guarantees fundamental freedoms to all citizens of state. Article 25 to 28 provides rights to profess and propagate any religion.

Article 44 of constitution of India provides for fundamental duty of the state to enact uniform civil laws treating all citizens equally¹¹.

SECULARISM IN INDIA AND USA OVERVIEW

In India, secularism means that the state supports and participates in the religious affairs of all groups in a neutral manner. It also means that religion is separated from the political, social, economic and cultural spheres of life. In the Constitution of India, the word "secular" finds a place in the preamble itself. In addition, the concept of secularism is reflected in Articles 25-28 of the Fundamental Rights Chapter. Article 25 gives individuals the following rights:

The right to practice any religion. The right to practice any religion. The right to promote any religion. Freedom of conscience.

⁹ www.legalservicesindia.com by bhartiialka

¹⁰ https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2025

These religious freedoms are available to citizens and non-citizens, however, these freedoms are not absolute and reasonable restrictions may be imposed, and as such the central or state governments may interfere in religious matters when necessary.

The secular character of India is a fundamental feature of the Indian Constitution and the same was held by the Supreme Court in the case of S.R. Bommai. This basically means that the secular feature of the Constitution cannot be removed even by the Parliament, and if the law is enacted in this sense, it will be unconstitutional. The Indian constitution reflects what is known as positive secularism, i.e. it assumes equal respect for all religions. Moreover, if the state government promotes anti-secular policies, it will face prosecution under Article 356.

SECULARISM IN UNITED STATE

The modern concept of secularism owes much to the separation of church and state movement in the United States. The United States is also considered the first explicitly secular nation, not just in the West, but in the entire world. In the United States, the Establishment Clause of the First Amendment is the foundation of many cases involving sponsorship of religion in the public sphere. In the United States, the secular attitude is one of passive neutrality rather than an active effort to get rid of religion for the public indefinitely. Despite being neutral, there have been court cases that have been clearly pro-secular, blurring the lines between the separation of church and state and promoting the restoration of religious influence in the governmental arena.

The Establishment Clause is not a perfect defense, but it is one of the most significant walls blocking established religion in the United States.

However, there were contradictions between the Establishment Clause and the Free Exercise Clause. Indeed, the founding fathers of the United States created a secular state. The historical forces that led them to enshrine in the constitution absolute freedom of conscience in matters of religion and cast a wary eye on religion also supported the process of dissolution of state churches.

The intent, as Madison (one of the founding fathers and the fourth US president) explained, was "the idea of religious liberty protected by the separation of church and state."

¹¹ Text book on constitutional law of india by prof. narendra kumar

RESTRICTIONS ON THE FREEDOM OF RELIGION

The freedom of conscience and the right to profess, practise and propagate religion, guaranteed by Article 25(1) is subjected to

- (a) Public order, morality, health and other provisions of part III.
- (b) Any law regulating or restricting any economic, financial, political, or other secular activity associated with religious practice¹².
- (c) Any law providing for social welfare and reforms or the throwing open to all persons the religious institutions, belonging to their religion, of a public character.¹³

Article 25, thus obligates the state to ensure that communal atmosphere be kept clean and unpolluted.¹⁴

THE NEED OF SECULARISM IN INDIA

Secularism has no alternative option in a multicultural nation like India, therefore, the Indian Constitution adopted secularism¹⁵. People of different languages and religions live in Indian Union. They needed secularism to keep them together. Therefore, with the right to freedom, it was necessary to accept secularism.

Though there is an attempt to bring unites in diversity in India, the minority communities suffer injustice, oppression of minorities. Of course, even after the formation of a secular state, the spirit of nationalism could not be created. Awareness of social intolerance among minorities is a threat to national integration. There is a need for secularism to in still a sense of nationalism among the minority groups in the country. Although India has adopted the concept of secular state, in fact religion has been politicized. Religious institutions are used for voting politics. Therefore, the principle of secularism is falling behind by increasing communalism. Communalism is anti-democratic, so the concept of secularism needs to be rooted in the promotion of democratic values. In a pluralistic society like India, politics based on religion is detrimental to national integrity. Therefore, in order to build a strong democracy, the values of secularism must be respected in the society while respecting religious values.

PROTECTION TO RELIGION “LEGISLATIVE PERSPECTIVE WITH JUDICIAL PERSPECTIVE”

Bijoe Emmanuel and Ors. v. State of Kerala¹⁶

In this case, three children of Jehovah’s Witnesses sect were suspended from the school as they refused to sing the national anthem claiming that it is against the tenets of their faith. The court held that expulsion is violative of fundamental rights and the right to freedom of religion.

Acharya Jagdishwaranand v. Commissioner of Police, Calcutta¹⁷

The Court held that Ananda Marga is not a separate religion but a religious denomination. And, the performance of Tandava on public streets is not an essential practice of Ananda Marga.

M. Ismail Faruqui v. Union of India¹⁸

The apex court held that the mosque is not an essential practice of Islam and a Muslim can offer namaz (prayer) anywhere even in the open.

Ramji Lal Modi v. State of UP¹⁹

Petitioner challenged the validity of Section 295 of IPC which penalized the act or attempt of insult of a religion or religious beliefs of a class of citizens. The Court held that Section 295 is consistent with Article 25 and held it to be constitutional.

Raja Birakishore v. State of Orissa²⁰

The validity of the Jagannath Temple Act, 1954 was challenged as it enacted provisions to manage the affairs of Puri temple on the grounds that it is being violative of Article 26. The court held that the Act only regulated the secular aspect of seva puja, therefore, it is not being violative of Article 26.

The Durgah Committee Ajmer v. Syed Hussain Ali and Others²¹

¹² Clause (2) (a) of Article 25.

¹³ Clause (2) (b) of Article 25.

¹⁴ Ramesh chotalal dalal v. Union of India AIR 1988 SC 775.

¹⁵ <https://www.legalserviceindia.com/legal/article-8742-concept-of-secularism.html>

The petitioners contended that Durgah Khwaja Saheb Act, 1955 violated Article 25 and 26 which provided for the appointment of Hanafi Muslims as members of Committee none of them belonging to the Chishti sect. The Court held that the Chishti sect is a religious denomination but the act does not violate the right to freedom of religion as Chishti Sufis never had the right to manage the Durgah endowment.

Sabarimala Verdict and Freedom of Religion

In 2017, a PIL was filed under Article 32 by the petitioners challenging the practice followed in Sabarimala temple which did not allow the entry of women from the age group of 10-50 years. A constitutional bench was set up in 2018 which held that the practice was unconstitutional and uplifted the ban on entry of women stating that followers of Ayyappa do not form a separate religious denomination but are Hindus only and, such a ban is not an essential practice of the religion²².

Court held that Section 295 is consistent with Article 25 and held it to be constitutional.

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Sabarimala Verdict and Freedom of Religion

¹⁶ 1987 AIR 748

¹⁷ 1983 4 SCC 815

¹⁸ AIR 1995 SC 605

¹⁹ AIR 1957 SC 620

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CURRENT CONTEMPARY ISSUES AND CHALLENGES

A newspaper report on the latest issue of Gyanvapi Masjid expressed as follows. "Almost every day we hear about Hindu groups claiming mosques on the site that built them the razing of temples to the ground by Muslim rulers. Today it is Gyanvapi Masjid, tomorrow it will be Shahi Idgah Mosque in Mathura and the next day it will be Jama Masjid in Bhopal. All such cases will not differ from Gyanvapi Masjid. They would be just as complex and sensitive. No one knows when this madness, which threatens to tear apart the social fabric of our country, will end." Recently, after the settlement of the Ayodhya case in favor of the Hindu community, a similar case has now emerged in Varnasi regarding the Gyanvapi mosque. The matter reached the SC on a petition filed by the Mosque Management Committee challenging the civil orders of the judge. The order authorized the inspection, survey and videotaping of the mosque complex to gather evidence of the alleged existence of idols of Hindu deities inside the mosque, which is adjacent to the Kashi Viswanath Temple. After the survey, the lawyers representing the Hindu party claimed that a shivling was found in the mosque premises.

Recently, another incident caught the attention of the media. The Kerala police have registered a case over allegedly provocative slogans raised by a minor boy during a march in coastal Alappuzha. A case was registered on the grounds that the chanted slogans were against some religious devotee's commonwealth. There are now more and more such common slogans and comments popular on social networks and in the public sphere. Religious leaders and politicians spread such messages of communalism through online platforms. Sometimes these things happen even without her knowledge of a person spreading communalism. It can happen because of their ignorance. However, nothing qualifies as a sufficient reason to justify the act of spreading communalism.

²⁰ AIR 1964 SC 1501

²¹ AIR 1961 SC 1402

²² <https://blog.ipleaders.in/freedom-of-religion-under-the-indian-constitution-2/>

SECULARISM AND ITS REALITY IN INDIA

Secularism is meaningful in a democratic country only when there is equality. If there is no commitment towards equality, then there will be no commitment towards democracy. India is a secular Nation, and a secular State will not any religion; A question may arise as that why is here special provisions in Articles 29 (Articles 29(1) & 29(2)) and 30 (Article 30(1)) of the Constitution to protect the language script and culture of minorities. And also, it is said that India has been a secular State even before 1976, as prescribed by Articles 25 to 28, then why the necessity was felt to bring 42nd Constitutional (Amendment) Act, 1976 and insert the word 'secular' in Preamble. This and the way the 42nd Amendment of the Constitution took place is a matter of debate because, at that very time, many opposition leaders were either in jail or underground, and the strength of opposition members in the Parliament was very few because of national emergency.

The Constitution of India prohibits using taxes for religious purposes, (Article 27) but for looking after the welfare of minorities, the Ministry of Minority Affairs has been created, which brings various schemes to provide financial assistance for minority religions. Haj subsidy was provided to Muslims, but no such subsidy was available for other religions. In a secular state, there should not have been the question of majority and minority because all are the citizens of the same country. So, secularism in India is not like in many European countries. Undoubtedly in India, there is no theocracy, but there is hypocrisy. As far as Secularism and Citizenship (Amendment) Act, 2019 (CAA) is concerned, it is a matter of debate; one group argues that this Act violates the Constitution as it is against the concept of secularism, whereas the Indian Government is saying that the Act is Constitutional. The argument of the group who is against the CAA is that it violates the concept of secularism because the Act grants citizenship to migrants belonging to Hindu, Sikh, Buddhist, Christian, Jain, and Parsi communities who came to the country from Pakistan, Bangladesh, and Afghanistan on or before December 31, 2014 but does not include Muslim in its purview. And also, it is discriminatory in nature as it violates Article 14 as well as Article 15(1) of the Constitution of India. Article 14 of the Indian Constitution clearly states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It has been said that in this Article, the word person has been used, so it protects both citizens and non-citizens.

SUGGESTIONS

1. There is need to balance practice to religion and enforcement of secularism in India.
2. Due to unavoidable barriers of secularism the fundamental rights to practicing religion should not be suppressed.
3. There is need to have special provision for balancing the interest between secularism and practising religion.

CONCLUSION

India is one of the 96 secular nations that provides equal protection to all religions. It encourages and assists its citizens in adhering to a religion and its practices. However, there are instances when it is necessary to intervene and implement beneficial reforms for the betterment of society. In regards to the recent judgments, a very important question has been raised: Is it important for the court to decide the constitutionality of religious practice to establish a right even when it does not harm the majority section of the society?

A new trend of questioning customs has emerged as by product of modernization. This defines and highlights the right to equality that we have as a fundamental right. Though fighting for your rights is not unethical, intervening in religious matters to establish a right and endangering the religious sentiments of particular followers is not something a secular state should do. Unless there is grave harm that affects a section, the faith and beliefs of the followers should not be hurt.

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