



Secularism-Under Constitution of India

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Introduction:

India is a multi-religious country. It has embraced different religions and was known for its tolerance and mutual respect. As written by Pandit Jawaharlal Nehru in his most inspiring book. The Discovery of India, that "it was fascinating to find how the Bengalis, the Canarese, the Malayalis, the Sindhis, the Punjabis, the Pathans, the Kashmiris, the Rajputs, and the great central block comprising of Hindustan-speaking people, had retained their particular characteristics for hundreds of years, with more or less the same virtues and failings, and yet they had been throughout these ages distinctively Indian, with the same national heritage and the same set of moral and mental qualities".¹

It is this diversity of culture, religion, language, lifestyle etc. that unite as well as divide the country. This unity amidst diversity in the country is strengthened by its Constitution which declares. India as a 'secular' nation. Secularism in India does not mean irreligion. It means respect for all faiths and religions. The State does not identify itself with any religion.² In this context, the climate of rising intolerance as exists in the country today, poses a great question; whether secularism is a reality in India? As the world is increasingly becoming more and more tolerable towards differences among people with globalization, India seems to lag behind or at least not move forward as far as tolerance and secularism are concerned. With a huge and diverse population, it is indeed crucial for India to be a harmonious nation for people of all faiths.³ Thus the situation necessitates the need for a proper understanding of secularism as a Constitutional right and mandate.

Meaning of Secularism and Secular State:

The word 'secular' means temporal or worldly or thing of the world and secular State means non-religion and not irreligious State.⁴ According to Black's Law Dictionary, 'secular' means not

spiritual or not ecclesiastical. It relates to the affairs of the present world. The separation of religion and State is the foundation of secularism. It ensures that religious groups don't interfere in affairs of State, and makes sure the State doesn't interfere in religious affairs.⁵

It means, the State is not run on a religious basis and that there is no State-recognized church or religion. No one is disabled to hold any office on the ground of religion. There is only one electoral roll on which are borne the names of all qualified voters. ⁶The 'Sanskrit' word that is commonly used for "Secularism" in India is dharma nirapekshata and means "indifference towards religion."⁷ It is also understood as sarva dharma samabhaav meaning favouring all religions equally. It means that the State will not allow discrimination between individuals and communities on religious grounds. The State does not extend patronage to any particular religion, State is neither pro-particular religion nor anti-particular religion. It stands aloof, in other words maintains neutrality in matters of religion and provide equal protection to all religion subject to regulation and actively acts on secular part.⁸

Further, the word 'secular' may mean that as far as the State is concerned, it does not support any religion out of public funds, nor does it penalise the profession and practice of any religion or the right to manage religious institutions as provided in Article 25 and 26. In free democracies it is a matter of free choice for an adult person whether to belong to a religion or not. He may not believe in any religion, or he may change his religion.⁹

Secularism Under the Constitution of India:

Constitution of India declares India to be a secular nation. Though the concept of 'Secularism' was not expressly grafted while making the Constitution, its sweep, operation and visibility are apparent from Fundamental Right and Directive Principles and their related provisions.¹⁰ This was not an inadvertent omission but a well calculated decision meant to avoid any misgiving that India was to adopt any of the western notions of a secular state.¹¹ The concept of secularism as envisaged by the founding fathers and mothers of the Constitution are very much reflected in the words of Sri.M.Ananthasayanam Ayyangar in the Constitution Assembly Debates; we are pledged to make the State a secular one. I do not, by the word 'secular' mean that we do not believe in any religion and that we have nothing to do with it in our day to day life. It only means



that the State cannot aid one religion or give preference to one religion against another. Significantly, what was implicit in the Constitution was made explicit by the Constitution (Forty Second Amendment) Act, 1976. The words 'socialist and secular' were added to the Preamble of the Constitution by the Constitutional Amendment to declare India to be a 'Sovereign, Socialist, Secular, and Democratic Republic'. The Statement of Objects and Reasons appended to the said Amendment states;

"It is, therefore proposed to amend the Constitution to spell out expressly the high ideals of Socialism and Secularism and the integrity of the nation."

The secular fabric of the Indian Constitution is so strongly woven with liberty of thought, expression, belief, faith and worship and fraternity among citizens as is evident in the Preamble to the Constitution. And thus the concept of 'socialism' and 'secularism' has been made explicit and India's commitment to these ideals has been further, underlined and strengthened.¹² Further, secularism was upheld as a basic structure of the Constitution in **Kesavananda Bharati vs. State of Kerala**¹³ and the same view was reiterated by the Supreme Court in **S.R Bommai vs. Union of India**.¹⁴

Constitutional Provisions Relating to Secularism:

The secular nature of the Constitution can be gathered from various Articles under Part III of the Constitution in particular. State is enjoined to accord equal treatment to all religions under Articles 14-16 of the Constitution.

Article 14 states that the State shall not deny to any person equality before law or equal protection of the laws within the territory of India. It means that State can't make a law favouring any particular religion. Article 15 prohibits discrimination on ground of religion, race, caste, sex or place of birth. Article 16 prohibits the State from discrimination between citizens in matters of public employment on the ground of religion. It provides that there shall be equality of opportunity for all citizens in the matter of employment or appointments under the State and no citizen shall on ground only of religion be ineligible for or discriminate against in respect of any employment or office under the State.¹⁵



The freedom of religion is specifically guaranteed as a fundamental right under Articles 25 to 28 of the Constitution. Article 25 talks about the right of every person to profess, practice and propagate his or her religion. ¹⁶The same however, is not an absolute right and is subject to public order, morality and health etc. It makes it clear that religion is a matter of faith. A religion, undoubtedly, has its basis in a system of beliefs and doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being, but it is also something more than merely doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, but may also prescribe rituals and observances, ceremonies and modes of worship which are regarded as an integral part of that religion. These forms and observances might extend even to matters of food and dress. Therefore, the Constitution guarantee regarding freedom of religion contained in Article 25(1) extends even to rites and ceremonies associated with a religion. Freedom to manage religious affairs is guaranteed under Article 26 of the Constitution. It provides for the following rights;

- a) To establish and maintain institution for religious and charitable purpose;
- b) To manage its own affairs in matter of religion;
- c) To own and acquire movable and immovable property and;
- d) To administer such property in accordance with law.

"Articles 25 and 26 embody the principle of religious toleration that has been the characteristic feature of Indian civilization from start of history. The instance and periods when this feature was absent, being merely temporary aberrations. Besides they serve to emphasize the secular nature of the Indian democracy which the founding fathers considered to be the very basis of the Constitution."¹⁷

The Constitution goes further to prohibit under Article 27, the payment of any taxes, the proceeds of which are specifically appropriated in payment of expenses for promotion or maintenance of any particular religion or religious denomination. It also provides for freedom from attendance at religious instruction or religious worship in certain educational institution. It is obvious that religion has both a personal and institution side. No doubt men can pray in their



homes, and hit heaven with their prayer", but throughout the ages men have worshipped in temple, churches, mosques and the like. In practice, personal right is inseparable from the institutional; and a person would justly complain that he had been denied the freedom of religion if the right of private worship was conceded, but the right of public worship was denied to him. Articles 25 to 28 recognize this two-fold aspect of religion.¹⁸

The Constitutional schemes of secularism is further embodied under Article 44 of the Constitution in the Directive Principles of State Policy. As viewed by the Supreme Court in **Stanislaus vs. State of Madhya Pradesh**¹⁹ the existence of Article 44 which imposes an obligation on the State to secure for the citizen a uniform civil code throughout the territory of India speaks in volumes of the secular character of the Constitution. That the State had not initiated any positive measures for the realization of Article 44 of the Constitution does not make the Constitution anti-secular".

The above analysis of the Constitutional provisions relating to religion makes it clear that the Constitution guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasizing that there is no religion of the State itself. The Preamble of the Constitution read in particular with Articles 25 to 28 emphasizes this aspect and indicates that it is in this manner the concept of secularism embodied in the Constitutional schemes as a creed adopted by the people has to be understood while examining the Constitutional validity of any Legislation on the touchstone of the Constitution.²⁰

Judicial Interpretations on Secularism:

The principles established by the Indian Judiciary clearly hold religion as a matter of faith. The Indian Constitution as well as subsequent intervention of the Supreme Court have tried to ensure that religious organisations and groups are not discriminated against in the public domain.²¹ As held by **Justice K. Ramaswamy** in **S.R. Bommai's case**, "the concept of secular state is, therefore essential, for the successful working of the democratic form of Government."²² The following case laws further strengthen secularism as a Constitutional right;

S.R. Bommai vs. Union of India:



The Court held that Secularism is one of the basic features of the constitution. Secularism is a positive concept of equal treatment of all religions. This attitude is described by some as one of neutrality towards religion or as one of benevolent neutrality. While freedom of religion is guaranteed to all persons in India, from the point of view of the State, the religion, faith or belief of a person is immaterial. To the State, all are equal and are entitled to be treated equally. In matters of State, religion has no place. And if the Constitution requires the State to be secular in thought and action, the same requirement attaches to political parties as well. The Constitution does not recognize, it does not permit, mixing religion and State power. Both must be kept apart. That is the Constitutional injunction. None can say otherwise so long as this Constitution governs this country. Politics and religion cannot be mixed²³.

Ahmedabad St. Xaviers College Society vs. State of Gujarat :²⁴

"The Constitution has not erected a rigid wall of separation between the Church and the State. It is only in a qualified sense that India can be said to be a secular State. There are provisions in the constitutions which make one hesitate to characterise our State as secular. Secularism in the context of our Constitution means only an attitude of live and let live developing into the attitude of live and let live."

Ismail Faruqi vs. Union of India :²⁵

The right to profess, practise and propagate religion does not extend to the right of worship at any or every place of worship so that any hindrance to worship at a particular place per se will infringe religious freedom.

Bijoe Emmanuel vs. State of Kerala :²⁶

The expulsion of the three children from the school for the reason that because of their conscientiously held religious faith, they do not join the singing of the National Anthem in the morning assembly though they do not stand respectfully when the National Anthem is sung, is a violation of the fundamental right to freedom of conscience and freely to profess, practice and propagate religion. The Court further held that whenever the Fundamental Right to freedom of



conscience and to profess, practice and propagate religion is invoked, the act complained of as offending the Fundamental Right must be examined to discover whether such act is to protect public order, morality and health, whether it is to give effect to the other provision of part III of the Constitution or whether it is authorized by a law made to regulate or restrict any economic, financial political or secular activity which may be associated with religious practice or to provide for social welfare and reform.

T.M.A Pai Foundation & Ors vs. State of Karnataka & Ors :²⁷

The essence of secularism in India was best depicted by the court in this case in the following words;

"The essence of secularism in India can best be depicted if a relief map of India is made in mosaic, where the aforesaid one billion people are the small pieces of marble that go into the making of a map. Each person, whatever his /her language, caste, religion has his/her individual identity, which has to be preserved, so that when pieced together it goes to form a depiction with the different geographical features of India. These small pieces of marble, in the form of human beings, which may individually be dissimilar to each other, when placed together in a systematic manner, produce the beautiful map of India. Each piece, like a citizen of India, play an important part in making of the whole."

There are few important themes that emerge from the Court's description of secularism: first the idea that the religion can be neatly separated from the secular and that religion must be kept apart from the affairs of the State; second the notion of religion as it 'ought to be' in contrast to the actual practice of religion; and third secularism as an essential component of democracy as well as of national unity and integration.²⁸

Conclusion:

Secularism is a Constitution goal and basic feature of the Constitution. It stands for religious tolerance and equal treatment of all religions by the State. It is this spirit of tolerance and mutual respect, assured by the Constitution, which is hallmark of Indian culture. It must be protected and



safeguarded at any cost amidst the growing fundamentalism and scary mood of tolerance rising up in the country."It may be said that 'fundamentalism and pluralism pose the two challenge that people of all religious traditions face; and "to the fundamentalists,the borders of religious certainty are tightly guarded; to the pluralist, the borders are good fences where one meets the neighbor; To many fundamentalists, secularism,seen as the denial of religious claims,is the enemy; to pluralists, secularism , seen as the separation of government from the domination of a single religion, is the essential concomitant of religious diversity and the protection of religious freedom.²⁹

END NOTES:

- 1) <http://www.sacw.net/article9565.html>.
- 2) M.P Jain,Indian Constitutional Law, 4th edn,Wadhaw &Company.
- 3)<http://shubharathi.blogspot.in/2011/10/secularism-in-india.html>.
- 4)Concise Law Dictionary,3rd edn, 2011.
- 5)<http://www.secularism.org.uk/what-is-secularism.html>.
- 6)Supra note 2.
- 7)Supra note 3.
- 8)Ismail Faruqi vs Unoin of India(1994) 6 SCC 360
- 9)H.M Seervai Constitutional Law of India,4th edn, Vol.2,Universal Book Traders.
- 10)Supra note 8.
- 11)<http://shodhganga.inflibnet.ac.in/bitstream/10603/1936/8/08/chapter%203.pdf>.
- 12)Supra note 2.
- 13)AIR 1973 SC 1461.



14)(1994) 2 SCR 644.

15)Supra note 11.

16)Supra note 2.

17)SardarSyedna Taher Saifuddin vs The State Of Bombay,1962AIR853referred in [http://www.ebc-india.com/lawyer/articles/9807 a 1 .html](http://www.ebc-india.com/lawyer/articles/9807_a1.html).

18)Supra note 9.

19)AIR 1977 SC 908.

20)Supra note 8.

21)<http://www.eastwestcenter.org/fileadmin/stored/pdfs/PSO30.pdf>.

22)Supra note 21.

23)[http://www.legalserviceindia.com/article/1324-S-R-Bomma-v- Union of- India.html](http://www.legalserviceindia.com/article/1324-S-R-Bomma-v-Union-of-India.html).

24)1974 AIR1389.

25) (1986) 3 SCC481.

26) (2002) 8 SCC 481.

27)Supra note 21.

28)Supra note 8.