

SECULARISM AND CONSTITUTION OF INDIA: AN ANALYSIS

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ABSTRACT

The core ethos of India has been a fundamental unity, tolerance and even synthesis of religion. It is an indubitable fact that hundreds of millions of Indians belonging to diverse religions lived in comity through the ages, marred through at times by religion revolts, economic exploitation and social suppression being often at the bottom of it all. India is the place of major world religions: Hindu, Muslim, Jain, Buddhist, Sikh etc. India is one of the most diverse nations in terms of religion. Many scholars and intellectuals believe that India's predominant religion, Hinduism has long been a most tolerant religion. India is a country built on the foundations of a civilization that is fundamentally non-religious. From Constitutional perspective we can say that India is really a secular country.

INTRODUCTION

The word 'secular' was inserted into the Preamble of the Constitution by 42nd Constitutional Amendment Act, 1976, but concept of secularism was already implicit in the Constitution in granting "liberty of belief, faith and worship through the Preamble".

The Supreme Court has observed that although the words 'secular state' are not expressly mentioned in the Constitution, but there can be no doubt that Constitution makers wanted to establish such a State and accordingly Arts. 25-28 have been included in the Constitution.¹ Secularism has a positive meaning that is developing, and understanding respect towards different religions.²

The unity and fraternity of the people of India, professing numerous Faiths, has been sought to be achieved by enshrining the ideal of a 'Secular State' which means that the State protects all religions equally and does not itself uphold any religion as the State religion.

According to Justice H. R. Khanna secularism is neither anti-God nor pro-God. It treats alike the devout, the agnostic and the atheist. According to him, secularism is not antithesis of religious devoutness. He would like to dispel the impression that if a person is devout Hindu or devout Muslim he ceases to be secular. This is illustrated by saying that Vivekananda and Gandhiji were the greatest Hindus yet their entire life and teachings embodied the essence of secularism.³

RELIGION IN INDIA

To understand the concept of secularism in respect of constitutional philosophy first we have to understand the term "RELIGION".⁴ In general sense, Religion is a system of faith and worship of supernatural force which ordains regulates and control the destiny of human kinds.

¹ St. Xavier College v. State of Gujarat, AIR 1974 SC 1389

² Aruna Roy v. Union of India AIR 2002 SC 3176

³ Article "The Spirit of Secularism" printed in Secularism and Indian Dilemmas and challenges, edited by M. M. Sankhdhar, cited by Justice M. B. Shah in Aruna Roy v. Union of India, AIR 2002 SC 3176, 3192.

⁴ <http://www.legalservicesindia.com/article/1964/Secularism-and-Constitution-of-India.html>

According to Merriam Webster dictionary, "Religion as an organized system of faith and worship, a personal set of religious belief and practice, a cause, principle or belief held to with faith and order".

According to Swami Vivekananda, "It is based on faith and belief and in most cases consist only of different sect of theories..."

Dr. Radha Krishan, "The main aim of the Hindu faith is to permit image worship as the means to the development of the religious spirit to the development of the supreme who has his temples in all beings".

From these definitions we can conclude that no universally acceptable definition as to what exactly religion is. There appears to be near unanimity that religion, generally, is a belief or faith in the existence of a supernatural being and the precepts which people follow for attaining salvation.

The term religion has not been defined in the constitution but the meaning given by the Supreme Court of India to the religion can be referred here, the Supreme Court in Commissioner H.R.E v. L.T. Swamiar⁵ held, 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 prefers that religion as conducive to their lay down a code ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship, which are regarded as integral parts of religion and these forms and observance might extend even to matters of food and dress.

The freedom of religion guaranteed under Indian Constitution is not confined to its citizen but extends to all persons including alien. This point, was underlined by the Supreme Court in Ratilal Panchand v. State of Bombay⁶, as it is very important because substantial number of foreign Christian missionaries in India were engaged at that time in propagating their faith among the adherents of other religious.

⁵ 1954 SCR 1005

⁶1954 SCR 1035

SECULARISM

Secularism – does not mean atheist society. – It is now well settled:-

- i. The Constitution prohibits the establishment of a theocratic state;
- ii. The Constitution is not only prohibited to establish any religion of its own but is also prohibited to identify itself with or favoring any particular religion;
- iii. The secularism under the Indian Constitution does not mean Constitution of an atheist society but it merely means equal status of all religion without reference in favour of discrimination against any of them. (*Gopala Krishnan Nair v. State of Kerala*, AIR 2005 SC 2053.)

In *Aruna Roy v. Union of India*,⁷ the Supreme Court has held that the word “Religion” has different shades and an important shade is duty towards the society.⁸ The word “Secularism” means developing understanding and respect for different religions.⁹ Secularism is thus susceptible to this positive meaning and is basic feature of the Constitution.¹⁰

Dr. Radhakrishnan, former President of India, has in his book *Recovery of Faith*, page 184, explained secularism in this country, as follows:- “When India is said to be a Secular State, it does not mean that we reject the reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or that the State assumes divine prerogatives... We hold that not one religion should be given preferential status... This view of religious impartiality, or comprehension and forbearance, has a prophetic role to play within the National and International life”.

Donald E. Smith, Professor of Political Science in Pennsylvania University provided what he regarded as a working definition of a secular state.¹¹ This was in his book *India as a Secular State*. "The secular State is a State which guarantees individual and corporate freedom of religion, deals with the individual as a citizen irrespective of his religion, is not constitutionally connected to a particular religion, nor does it seek to promote or interfere with religion".

⁷ AIR 2002 SC 3176.

⁸ *Ibid.*, p. 3191.

⁹ *Ibid.*, p. 3200 (*Dharmadhikari J.*).

¹⁰ *Ibid.*, p. 3195

¹¹ <http://www.legalserviceindia.com/articles/ct.htm>

The definition given by Smith reflects three aspects of secularism in the form of inter-related relations as:

- Religion and Individual
- Individual and State
- State and Religion

These relations can be comprehensively elaborate by this triangle. These three associates are the three sides of a tri-angle, touching each other necessarily at three points and creating their mutually related angles. These three sets of angular relationship contain the total of religious freedom available in a society.

First of all these three angles, reflects the relationship between the religion and individuals. This relation contains 'positive freedom of religion' which implies 'reasonable unrestrained liberty of believing & practicing one's religion.' In other words, every person should be free to follow any religion, and to act upon its teachings and reject all other without any interference from the state. Religious freedom is the soul of principle of liberty enshrined in the Preamble to the Constitution of India.

The second angular relation reflects the relationship between the state and individual. It contains 'negative freedom of religion.' By 'negative freedom of religion' mean 'absence of restrains, discriminations, liabilities and disabilities which a citizen might have been otherwise subject to.'

The third angular relation which emanates from the relationship between the state and its religion. It contains 'neutral freedom of religion.' It implies that state has no religion of its own and attitude of indifference towards all the religions by the state.

Secularism as contemplated by the Constitution of India has the following distinguishing features:¹²

- (1) The state will not identify itself with or be controlled by any religion;

¹² <http://www.legalservicesindia.com/article/1964/Secularism-and-Constitution-of-India.html>

(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.

Most important components of secularism are as under:-

- i. Samanata (equality) is incorporated in Article 14;
- ii. Prohibition against discrimination on the ground of religion, caste, etc., is incorporated in articles 15 and 16;
- iii. Freedom of speech and expression and all other important freedoms of all the citizens are conferred under articles 19 and 21;
- iv. Right to practice religion is conferred under Articles 25 to 28;
- v. Fundamental duty of the State to enact uniform civil laws treating all the citizens as equal, is imposed by Article 44;

The term “religion” has not been defined in the Constitution of India. Actually it is hardly susceptible to any rigid definition. In a case the Supreme Court has observed that religion is a matter of faith with individuals or communities. Religion is not necessarily theistic. The religion, may lay down a code of ethical rules for its followers to accept and also prescribe rituals. Ceremonies and modes of worship which are regarded as integral parts of religion.¹³

India is a country of religions. There exist multifarious religious groups in the country but, in spite of this, the Constitution stands for a secular state of India. The object of insertion of the concept of “secularism” in the Preamble was to spell out expressly the high ideas of secularism and the compulsive need to maintain the integrity of the nation which are subjected to

¹³ Commr. H. E. R. v. L. T. Swamiar, AIR 1954 SC 282.

considerable stresses and strains, and vested interests have been trying to promote their selfish ends to the great detriment of the public good.¹⁴

Art. 14 of the Constitution prohibits the State from discriminating on the ground of religion.

Art. 15 prohibits the State from making any laws, any discrimination on the ground of religion in the public places.

Similarly, Art. 16 prohibits discrimination of any opportunity of employment or promotion.

Art. 17 states that “Untouchability” is abolished and its practice in any form is forbidden.

According to Art. 23 (2), State may impose compulsory service for public purpose, but cannot discriminate on the ground of religion.

Art. 25 tells regarding the freedom of conscience and free profession, practice and propagation of religion. Article 25 (1) guarantees to every person the freedom of conscience and right to profess, practice and propagate religion. The right guaranteed under Art. 25 (1) like other constitutional rights, is not absolute. This right is, subject to public order, morality and health to the other provisions of Part III of the Constitution. Also, under sub-clauses (a) and (b) of clause (2) of Article 25 the State is empowered by law-

- a) To regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice;
- b) To provide for (i) social welfare and reform, and (ii) to throw open Hindu religious institutions of a public character to all classes and sections of Hindus.

Art. 26 tells regarding the freedom to manage religious affairs. According to Art. 26, subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

- i. To establish and maintain institutions for religious and charitable purposes;
- ii. To manage its own affairs in matters of religion;
- iii. To own and acquire movable and immovable property; and
- iv. To administer such property in accordance with law.

¹⁴ M. P. Gopalakrishnan Nair v. State of Kerala, (2005) 11 SCC 45: AIR 2005 SC 3053.

‘Religious denomination’ must satisfy three requirements:

The Hon’ble Supreme Court while considering the freedom to manage religious affairs under Art.26 held that, expression ‘religious denomination’ must satisfy three requirements, i.e.,

- i. That it must be a collection of individuals, who have a system of belief or doctrine which they regard as conducive to their spiritual well-being, i.e., a common faith;
- ii. A common organization; and
- iii. Designation of a distinctive name.

It necessarily follows that the common faith of the community should be based on religion and in that they should have common religious tenets and the basic cord which connects them, should be religion and not merely considerations of caste or community or societal status.¹⁵

Art. 27 tells regarding the freedom as to payment of taxes for promotion of any particular religion. According to Art. 27, 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.

Art. 28 tells regarding the Prohibition of Religious Instruction in State-aided Institution. Article 28 mentions four types of educational

Institutions:

- a. Institutions wholly maintained by the State.
- b. Institutions recognized by the State.
- c. Institutions that are receiving aid out of the State fund.
- d. Institutions that are administered by the State but are established under any trust or endowment.

In the Institutions of (a) type no religious instructions can be imparted. In (b) and (c) type institutions religious instructions may be imparted only with the consent of the individuals. In the (d) type institution, there is no restriction on religious instructions.

¹⁵ *Nellor Marthandam Vellalar v. Commissioner, Hindu Religions and Charitable Endowments* (2003) 9 ILD 667 (SC).

Art. 29 (2) states that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Art. 30 tells regarding the right of minorities to establish and administer educational institutions.

Article 44 requires the State to secure for the citizens a Uniform Civil Code throughout the territory of India.

In a historic judgment in *Sarla Mudgal v. Union of India*,¹⁶ the Supreme Court has directed the Prime Minister Narsimha Rao to take fresh look at Art. 44 of the Constitution which enjoins the State to secure a uniform civil code which, accordingly to the court is imperative for both protection of the oppressed and promotion of national unity and integrity. The Court directed the Union Government through the Secretary to Ministry of law and Justice, to file an affidavit by August 1995 indicating the steps taken and efforts made, by the Government, towards securing a uniform civil code for the citizens of India.

But, unfortunately, the Government has not taken any step and it was declared by the Hon'ble Supreme Court in *Lilley's case*¹⁷ that the direction issued by Supreme Court in *Sarla Muudgal*, was only an *obiter dicta* and not legally binding on the Government.

According to Art. 324, the election of House of People (Lok Sabha) & Legislative Assemblies of State are done by voting by citizens of India, who have attained 18 years age irrespective of religion, race, caste, or sex, unless he is disqualified under the Constitution or any law on the grounds of non-residence, unsoundness of mind, crime, or corrupt or illegal practice.

According to Art. 325, there shall be one general electoral roll for every territorial constituency for election to either House of Parliament or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them. No person shall be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.

¹⁶ (1995) 3 SCC 635.

¹⁷ *Lilley Thomas v. Union of India*, AIR 2000 SC 1650.

INDIAN MODEL OF SECULARISM

(1) It has a place not only for the right of individuals to profess their religious beliefs but also for the right of religious communities to establish and maintain educational institution.¹⁸

(2) The acceptance of community specific rights brings us to the third feature of Indian secularism because it was born in a deeply multi-religious society, it is concerned as much with inter-religious domination as it is with intra-religious domination.

(3) It does not erect a wall of separation between the state and religion. This allows the state to intervene in religions, to help or hinder them without the impulse to control or destroy them.

(4) It is not entirely averse to the public character of religion. Although the state is not identified with a particular religion, there is official and therefore public recognition granted to religious communities.

(5) Multiple values and principled distance means that the state tries to balance different, ambiguous but equally important values.

This type of model makes its secular ideal more like a contextual, ethically sensitive, politically negotiated arrangement, rather than a scientific doctrine as conjured up by ideologies and merely implemented by political agents.

Secularism undoubtedly helps and aspires to enable every citizen to enjoy fully the blessing of life, liberty and happiness, but in the pursuit of this ideal, those who believe in secularism must be inspired by a sense of ethical purpose in dealing with their fellow citizens.

CONCLUSION AND SUGGESTION

Looking at the various constitutional provisions, we can say that India is a Secular State. The ideals of secular state have clearly been embodied under the Indian Constitution and the provisions are being implemented in substantial measure.¹⁹ But the circumstances after independence have posed a challenge before secularism of India for a number of times.

¹⁸ <http://www.legalservicesindia.com/article/1964/Secularism-and-Constitution-of-India.html>

¹⁹ <http://www.legalserviceindia.com/articles/ct.htm>

Sometimes it is also alleged that by Uniform Civil Code, the existence of minorities in India is in danger or it is an assault on the identity of minorities. India being still a traditional society that contains not one, but many traditions owing their origin in part to the different religions that exist here. While India carries with it many traditions it has managed to retain the secular character of its polity, while in many countries especially from the third world, a secular authority has crumbled in face of conflicting traditions. In sum up, it may be submitted that India is keeping its notions of secularism properly. Clearly the judiciary in India is a significant site where contests under the banner of secularism have been taking place over the last fifty and odd year. Though the judiciary is trying to strike the balance in a harmonious way but the people of India should not forget the dream of framers of the constitution and the ancient philosophy of 'Sarva Dharma Sama Bhava'.