

THE IDEA OF SECULARISM IN 21ST CENTURY, NEXUS BETWEEN INTERNATIONAL SCENARIO, NATIONAL LAWS, JUDICIARY AND CITIZEN LIABILITY

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1. Introduction

Secularism has become an accepted notion universally, but time and again due to religious institutional framework of mala-fide intention the world 'peace' is threatened over the years. Consequently people sometime miss-conflict with their religious methodology and traditions, but we need to create a global secure harmonious state as a whole. Secularism word could be equated to 'Mercury' which could adapt to the shape of container; thus people and government interpret the term at their wimps and fancies. However the notion of one Religion is must for the 1.2 Billion people to survive for the future sustainability.

21st Century based on democracy of a nation which would run on the wheels of people, if two or more religious community being the wheel of democracy conflict with each other then Nation would clash with injuries, which would ultimately reduce the strength of democracy.

In 1946 Constituent Assembly Debate, KT Shah Member of constituent assembly proposed an amendment which sought to declare India as socialist, secular and federal.⁹ But, Ambedkar replied, "*The constitution of India is merely a mechanism for the purpose of regulating the work of the various organs of the state. It is not a mechanism whereby particular members or particular parties are installed in office. What should be the policy of the state; how society should be organised in its social and economic side are matters which must be decided by the people themselves according to time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether*".¹⁰

Constituent Assembly Debate concludes with 'Equal respect' theory and Jawaharlal Nehru formulation of secularism was followed. *Sarvadharmā Sambhava* (Goodwill towards all religion) and *Dharma Nirpekshata* (religious neutrality).¹¹ The preamble of the Indian constitution provides for paramount consideration of Secularism notion. Religion has been a very volatile subject in India both before and after independence. The Constitution therefore seeks to ensure state neutrality in this area.¹²

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⁹ Members advocating this kind of secularism included K T Shah, who as late as December 1948, demanded the insertion of an Article separating the state from any religious activities; '*Secularism in the Constituent Assembly Debates, 1946-1950*' Economic and Political Weekly July 27, 2002.

¹⁰ Zain Zahoor, '*Why Ambedkar did not use the word secularism in Indian Constitution*' 05-December-2015 <http://kashmirreader.com/News/fullNews?NewsID=228&callto=Column> (accessed on 29th December 2015).

¹¹ Ronojoy Sen, '*Legalizing Religion: The Indian Supreme Court and Secularism*', Policy Studies 30, East-west Center Washington pg.5.

¹² M P Jain Indian Constitutional Law/Volume 2/Part V Political And Civil Rights/Chapter XXIX Fundamental Rights (10) Freedom of

Thus as per my understanding **Secularism** means Security, Equality, Culture, Unity, Language, Atheism, Religion, Identity, Secularization and **Minority-Rights**. Firstly the Government shall provide proper security to all religion to follow their rituals, Equality between religion is must to appraise belief of religious conviction, Indian being demographically asymmetrical in consequence culture ideas change which need to be valued. Until unity between religious institutions is attained secularism would not have meaning as one religion differs by language and traditions. Government shall be Atheism as non-belief entity and not indulge in any provocation incidents. Each religion needs to be given equal identity to attain secularism by respecting minority rights of citizen or community.

2. International Sphere

'Secularism in western philosophy means strict separation of church and state'. Canadian philosopher **Charles Taylor** identified three different forms of secularism.¹³ First, secularism can mean the complete removal of God and religion from the public sphere. Second form of secularism concerns the level of religiosity of the population.¹⁴ Taylor's third version of secularism, religious belief is just one option for both the state and its people. Religion is not removed from the public sphere; Rather it is just once voice among many, include those with no religion.

In India we need to follow this principle to our nativity, though removal of God from public sphere may be difficult, but secularism notion means to attain respect to all religion and no religion is attached to government entity.

In 1912 **Albania** became an independent State in 1913 it appears from the same observations that only in 1929 was a law concerning communities drafted under which *secular education was separated from religious teaching*.¹⁵ The term secular, religious and educational privileges which the Greek nation had enjoyed in all the territories form **Turkish Empire** by Albanian. The Albanian National Assembly modified Articles 206 and 207 of the Constitution of 1928, and those Articles now run as follows: "The instruction and education of Albanian subjects are reserved to the State and will be given in State schools. Primary education is compulsory for all Albanian nationals and will be given free of charge. Private schools of all categories at present in operation will be closed".¹⁶

Religion & Conscience.

¹³Taylor, *'A Secular Age'*, Belknap Press of Harvard University Press, Massachusetts, 2007; <http://theconversation.com/isaustraliaasecularcountryitdependswhatyoumean38222> (accessed on 22nd January 2016).

¹⁴ In this version, there is a measurable reduction in religious belief and practice. This may occur even where the state still supports religion.

¹⁵ XXXIV Session Advisory Opinion Of April 6th, 1935 Permanent Court Of International Justice Series A. /B. Judgments, Orders And Advisory Opinions Fascicule No. 64 Minority Schools In Albania.

¹⁶ This translation is taken from the Council Resolution of January 18th, 1935. The following translation appears in the report adopted by the Council on January 14th, 1935. "The teaching and education of Albanian subjects are reserved to the State, which shall be responsible for giving such teaching and education in its schools. Elementary education is compulsory for all Albanian nationals and

In **France** have reopened the debate on secularism by '*Stasi Commission*',¹⁷ in December 2003, Wherein three inextricably linked values are determined, (i) freedom of conscience, (ii) equality in law of spiritual and (iii) religious persuasions, neutrality of the political authorities. It first of all presents secularism as a 'universal principle' constructed by history and then as a 'legal principle' based on various texts. Thus in France firstly, we recognise secularism by philosophical, state neutrality and lastly by juridical makes interpretation being an essential component of secularism.

We could derive four '*cardinal principles*' from French jurisprudential aspects of secularism

1. The independence of the political authorities and of the different spiritual or religious persuasions,
2. a guarantee of freedom of conscience and worship, which represents the 'positive content' of secularism,
3. a duty on the part of religions and their congregations to adapt, and conduct themselves in moderate fashion, so as to make coexistence possible, in exchange for the guarantees and protections afforded them by the state, and
4. The need to live together and construct a common future – which leads to identifying secularism with the 'republican pact' in practice.

In themselves, these four principles are correct and acceptable. But only the first truly forms part of secularism, even though it refers exclusively to the political authorities and test state neutrality. The other three principles point towards a new conception of secularism, which is significantly modified and considerably enlarged.

The stress falls especially on freedom of conscience and religion, spiritual diversity, and coexistence. As a result, secularism is now nothing but a means in the service of those ends, which are obviously essential. It even tends to be identified with them and to disappear into them. Henceforth these ends take priority over secularism and the latter can be erased if that is required in order to attain them. The second part of the report is scarcely more satisfactory than the first. It states that the legal principle of secularism contains two elements: state neutrality and the protection of freedom of conscience and worship.¹⁸

As the question is posed in the context of **France** and French law, this can only be the relevant legal texts: the 1958 Constitution and the relevant laws notably those of 1882 and 1886 on the secular character of schools and that of 1905 on the separation of church and state (1) in the law of 1886, which stipulates 'lay staff' in state schools, excluding priests and members of religious congregations; (2) in the preamble to the 1946 Constitution, which prescribes the organization of 'free and secular state education' at all levels, which implies the exclusion of religious instruction; and (3) in the 1958 Constitution, which, like that of 1946, asserts that France is a 'secular

shall be given free of charge. Private schools of all categories at present in existence shall be closed.

¹⁷ Maurice Barbier, '*Towards a Definition of French Secularism*' Article 1. France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralised basis. Constitution of October 4, 1958.

¹⁸ Moreover, as has been said, freedom of conscience and worship is not an integral part of secularism.

republic’, excluding religion from the state.

Freedom of conscience was already recognized by the 1789 Declaration (Article 10) and freedom of worship had been consistently accepted since the 1791 Constitution. Thus ‘French is a secular republic’,¹⁹ it states that the clauses of this Article ‘prohibit anyone from taking advantage of their religious beliefs to exempt themselves from the common rules governing the relations between public authorities and private individuals’. Certainly, this does not involve a formal, full definition of secularism. But it is the first official interpretation of it given by the highest court of law.²⁰

German Communists to take the Nazi threat seriously while concentrating their fire on the Social Democrats in the early 1930’s.²¹ But, the central constitutional norm is the right of individual religious freedom laid down in Article 4 paragraphs 1 and 2 Grundgesetz. It obliges the state to respect the religious activities of its citizens and to secure their free development. Freedom of religion in this sense includes not only freedom of confession, but also freedom of worshipping. Furthermore, it guarantees to the individual religious person the right to lead a life according to the rules of his or her personal belief. Thus constitution promotes ‘open neutrality of the state’.²²

Bangladesh adopted by the Bangladesh Parliament on 4 November 1972, in its preamble paragraph 2 accepted “nationalism,” “socialism,” “democracy” and “secularism” as state principles. Secularism does not mean the absence of religion. Hindus will observe their religion; Muslims will observe their own; Christians and Buddhists will observe their religions. No one will be allowed to interfere in others’ religions. The people of Bengal do not want any interference in religious matters. Religion cannot be used for political ends.²³ To implement the above, Article 12 of the constitution stated that the principle of secularism shall be realized by the elimination of:

- Communalism in all forms;
- The granting by the state of political status in favour of any religion;
- The abuse of religion for political purposes and
- Any discrimination against, or persecution of persons practicing a particular religion.²⁴

¹⁹ The Conseil constitutionnel has just pronounced on the principle of secularism for the first time and indicated its conception of it. It did so in the recent decision of 19 November 2004 (no. 505 DC).

²⁰ Public schools are secular. The law prohibits public school employees and students from wearing conspicuous religious symbols, including the Islamic headscarf, Jewish skullcap, Sikh turban, and large Christian crosses. Religious instruction is not given in public schools, but facts about religious groups are taught as part of the history curriculum. Parents may home school children for religious reasons, but all schooling must conform to the standards established for public schools. Public schools make an effort to supply special meals for students with religious dietary restrictions. The government subsidizes private schools, including those affiliated with religious organizations.

²¹ Rohini Hensman, ‘2014 Elections, a Secular United Front and the Aam Aadmi Party’ Economic and Political Weekly. Vol XLIX No. 8, February 22, 2014.

²² Stefan Koriath Ino Augsberg, ‘Religion and the Secular State in Germany’.

²³ Government of Bangladesh, Parliament Debates, October 12, 1972 (Dhaka: Government of Bangladesh, 1972), pg. 20.

²⁴ The Constitution of the People’s Republic of Bangladesh, Ministry of Law (Dhaka: Government of Bangladesh, 1972), 5.; Amena A.

Argentina government generally respected religious freedom in law and in practice. The constitution grants all residents the right 'to profess their faith freely'. States that foreigners enjoy all the civil rights of citizens. The law provides the legal framework for religious freedom. Section III. Status of Societal Actions Affecting Enjoyment of Religious Freedom Public education is secular; however, students may request instruction in the religion of their choice, which may be conducted in school or at a religious institution. Free exercise of religion is a right for 'every inhabitant' (Article 14), 1994 the Argentine State could be qualified as 'confessional'; the above-noted amendments reinforced its character as a secular State.²⁵

Britain retains a strong Christian basis in our public life and in education. Within this context our present freedoms, democracy have developed and flourished. Christians should want to influence public life for good and we should therefore recognise the benefits we currently have and the dangers of losing them or giving them away.

Australia became a federated nation in 1901 with the coming into effect of the Australian Constitution. Australia has been a broadly secular State with Christian influences on law and politics. Section 116 of the Constitution²⁶ prohibits the Commonwealth level of government from establishing a religion and,²⁷ despite no equivalent existing in most State constitutions.²⁸ No State government has an established religion or allowed to set up.²⁹ The Territories in Australia religious freedom is explicitly protected by law. Since 1934, Section 46 of the Tasmanian Constitution Act 1934 (TAS), has protected "freedom of conscience and the free profession and practice of religion" and prohibits any requirement to take an oath or pass a religious test in order to hold public office. It has never been the subject of litigation.

United States which is clearly asserted secularism in the Constitution, Article 6 and first amendment of U.S.A, As a consequence lays down a separation between state and religion. On the one hand, the state requires no special religious declaration for public office, demonstrating its independence of religion; on the other, it cannot intervene in religious matters, because Congress cannot legislate to establish a religion or prohibit its free exercise. The negative formulation should be noted in both instances, confirming that secularism is indeed a

Mohsin Religion, Politics and Security.

²⁵ Norberto Padilla, 'Religion and the Secular State in Argentina' pg.68.

²⁶ Church of the New Faith v. Commissioner of PayRoll Tax ('Scientology case') [1983] HCA 40; (1983) 154 CLR 120 (27 October 1983).

²⁷ Carolyn Evans, 'Religion and the Secular State in Australia'.

²⁸ "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth."; Section 116 was based on the religion clauses of the United States Constitution; The most comprehensive account of why and how s 116 was included is in Richard Ely, Unto God and Caesar: Religious Issues in the Emerging Commonwealth 1891–1906 (1976); Stephen McLeish, "Making Sense of Religion and the Constitution: A Fresh Start for Section 116" (1992) 18 Monash University Law Review 207, 213–21.

²⁹ Professor Gary Bouma, Professor Desmond Cahill, Dr Hass Dellal, and Athalia Zwartz, 'A research report prepared for the Australian Human Rights Commission' 2011 Freedom of religion and belief in 21st century Australia.

negative notion.³⁰

In *Abington School District v. Schempp*,³¹ was a United States Supreme Court case in which the Court decided 8–1 in favour of the respondent, Edward Schempp, and declared school sponsored Bible reading in public schools in the United States to be unconstitutional.³² Supreme Court has decisively settled that the First Amendment's mandate has been made wholly applicable to the States by the Fourteenth Amendment. In *Watson v. Jones* had been decided on unconstitutional grounds, the Court thought nonetheless that the opinion '*radiates . . . a spirit of freedom for religious organizations, and independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine*'.³³

In **Pakistan** Secularism is to be followed in the interest of security and integrity to be achieved by 25th Amendment³⁴ by separating terrorism and religious issues.³⁵

In **Canada** religion is conspicuously absent from public life and politics, but considerations of religion are permissible and even dictated by pluralism.³⁶

In **Norway**, where notwithstanding the constitutional recognition of a state church, secular arrangements prevail in law.

In **Kosovo** to be a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law.³⁷

In **Turkish** establishment of a secular regime was crucial to the development of the country and primarily pursued policies designed to effectuate a separation between religion and state, which culminated in the insertion of the word '*secular*' into the Turkish Constitution in 1937, Tunisia, like Turkey, decided to follow a secular approach based upon what their founder proposed.³⁸

Thus internationally Secularism has nexus with constitutional mandate which intern emphasizes only the separation of church and state, for example in **Estonia** and **Hungary**, or more ambiguously, in the United States. Elsewhere the matter is left undecided. Secularism by silence prevails in **South Africa**, where it is argued that

³⁰ http://www.hks.harvard.edu/fs/pnorris/ Acrobat/Sacred_and_Secular/Chapter%201.pdf (accessed on 22nd January 2016).

³¹ 374 U.S. 203 (1963).

³² 374 U.S. 203 <https://supreme.justia.com/us/374/203/case.html>

³³ 80 U.S. (13 Wall.) 679 (1872).

³⁴ Constitution (Twenty First Amendment) Act, 2015 Passed by the National Assembly: January 6, 2015, Passed by the Senate: January 6, 2015, Presidential Assent Received: January 7, 2015.

³⁵ WHEREAS extraordinary situation and circumstances exist which demand special measures for speedy trial of certain offences relative to terrorism, waging of war or insurrection against Pakistan and prevention of acts threatening the security of Pakistan by the terrorist groups using the name of religion or a sect and also by the members of armed groups, wings and militias.

³⁶ Andrés Sajó, '*Constitutionalism And Secularism: The Need For Public Reason*' *Cardozo Law Review*, Vol. 30:6 pg .09.

³⁷ International Court of Justice Year 2010 22 July General List No. 141 22 July 2010 Accordance With International Law of The Unilateral Declaration Of Independence In Respect Of Kosovo.

³⁸ Listening to the Views of Islamic Dictators, N.Y.SUN.COM.

separation can be considered as implied. But such implied considerations are often disregarded when it comes to claims based on free exercise of religion; the judiciary imposed ban on the publication of the Mohammed cartoons in South Africa.³⁹

International Mandates

The International Bill of Human Rights consists of the Universal Declaration of Human Rights (UDHR)⁴⁰ expressly incorporates the right to change one's religion "*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief*",⁴¹ the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Right⁴² and its two Optional Protocols.⁴³ Even International Labour Organisation⁴⁴ and International Conference on Human Rights follow secularism.⁴⁵

Article 2(1) of the ICCPR obliges a state party to secure the rights contained within it "*to all individuals within its territory and subject to its jurisdiction without distinction of any kind, such as ... religion*". In the context of the freedom of religion, the United Nations General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981 also creates positive duties that national states must perform in order to eliminate the scourge of religious intolerance and discrimination. For this purpose, religion-based intolerance and discrimination is defined in Article 2(2) of the declaration as "*any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis*".⁴⁶ While lacking the status of a treaty, commentators have noted that the comprehensiveness

³⁹ Jamiat-UI-Ulama of Transvaal v. Johncom Media Investment Ltd. & Ors., [2006] Case No. 1127/06 (S. Afr.).

⁴⁰ Article 2, which sets out the basic principle of equality and non discrimination as regards the enjoyment of human rights and fundamental freedoms, forbids "distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"; Art.3 freedom of thought, conscience and religion.

⁴¹ Article 18, Universal Declaration of Human Rights 1948. The Right to Freedom of Religion is guaranteed by Article 25 of the Constitution of India which broadly parallels Article 18 of the Universal Declaration of Human Rights 1948 (UDHR). Its relevant provisions read as follows:

Article 25. Freedom of conscience and free profession, practice and propagation of religion. (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.

⁴² The Covenant provides for protection of the rights to freedom of thought, conscience and religion (Art. 18).

⁴³ Fact Sheet No.2 (Rev.1), The International Bill of Human Rights All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Universal Declaration Of Human Rights (art. 1), adopted by General Assembly resolution 217 A (III) of 10 December 1948.

⁴⁴ Speaks of "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" (Art. 1, para. 3).

⁴⁵ Which met at Teheran from 22 April to 13 May 1968; It is imperative that the members of the international community fulfil their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all without distinctions of any kind such as race, colour, sex, language, religion, political or other opinions.

⁴⁶ Interim Report of the special rapporteur on '*Freedom of Religion or Belief*', United Nations General Assembly (UN doc A/60/399), September 30, 2005, paragraph 61.

of the document and the regard it is paid by the international community illustrates that it is a most crucial instrument in determining religious rights.⁴⁷

There is further alarm that, in practice all anti-conversion laws might be used to target the conversion efforts of religion minorities only. It will be recalled that Article 2(2) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981 refers to both “purpose” and “effect”. As commentators argue, prohibitions against will be discriminatory if they are used primarily against religious minorities rather than being equally applied to majority communities.⁴⁸

The MDGs represent a quantified and time bound set of ambitious goals linked to fighting poverty and enhancing social justice, on topics ranging from social development to gender and environment. The objective and specific numbers originated in the extraordinary series of United Nations global meetings in the 1990s, on gender, social issues, family planning, etc. and the group of specific goals received an endorsement from the September 2000 Millennium Summit of World Leaders. Then, and in subsequent meetings, world leaders have vowed to keep these goals under continuous review as a mechanism for accountability. Thus, for example, the MDGs featured on the agenda of the G-8 meeting in July 2001 in Genoa.⁴⁹

Article 20 of the ICCPR and the UNHRC Resolution 16/18,⁵⁰ clearly defines the nature and scope of the principles of non discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief contained in the Universal Declaration and the International Covenants. a) Serve as a platform for intra-religious and inter-religious initiatives in education & advocacy; b) enable rapid reaction/ solidarity visits/ early warning/ conflict prevention in the event of conflict; c) develop and provide tools and materials for constructive engagement and strategic common action, and; d) develop the effective use of media for positive messaging, particularly via social & alternative media.⁵¹

- Religious Diversity and Peaceful Co-Existence ; Universal Mercy and Compassion
- Universal Justice; Human Dignity and Non-Violence; Living in Harmony with the Environment; Pluralism, Tolerance, and Religious Freedom

⁴⁷ Derek Davis, ‘*The Evolution of Religious Freedom as a Universal Right: Examining the Role of Religious Freedom as a Universal Human Right; Examining the Role of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*’, Brigham Young University Law Review 217, 2002.

⁴⁸ Thomas Giegerich, ‘*Freedom of Religion as a Source of Claims to Equality and Problems for Equality*’, 34 Israel Law Review 211, 222, 2002.

⁴⁹ Millennium Development Goals (MDGs); also referred to as International Development Targets (IDTs); or International Development Goals (IDGs); various formulations of a set of poverty fighting and development related global targets (for example, to halve world poverty by 2015), agreed in the context of UN global meetings and affirmed at the Millennium UN Summit of World Leaders in New York, September 2000.

⁵⁰ A High-Level Summit of Buddhist And Muslim Leaders ‘*Overcoming Extremism and Advancing Peace with Justice*’ Yogyakarta and Borobudur Temple Indonesia, March 3-4, 2015.

⁵¹ *id.*

- Rejection of Hate, Hate Speech, Retaliation, and the Importance of Self-Introspection.

Indian Scenario

Goa Uniform Civil Code upholds India Secularism.⁵² The Constitution (42 Amend) Act, 1976,⁵³ added the term Secular to the Preamble. Accordingly now India is a *Sovereign, Socialist, Secular and democratic Republic*."The Indian State does not establish, recognize or endow any religion. Article 15(1) and 15(2) prohibit discrimination on grounds of religion. Article 25(1) guarantees freedom of conscience and the right to profess, practice and propagate religion, Article 27 bars compelling anybody to pay taxes, the proceeds of which are specifically appropriated in payment of expense for the promotion or maintenance of any particular religion or religious denomination. Prohibition of religious instruction is provided in any educational institution wholly maintained out of state funds.⁵⁴

Secular means that the state cannot aid one religion or give preference to one religion against another.⁵⁵ Thus equal respect for all faith and equal opportunities for those profess any faith. In *Stainslans v. State of Madhya Pradesh*.⁵⁶ S.C ruled that there is no fundamental right to forcible conversion.

In *S.R Bommai v. Union of India*,⁵⁷ The Preamble of the Constitution was amended by the 42nd Amendment 1976 to include secularism. The secularism is not a mere ideal in the legal order enshrined under the Constitution but the very fundamental principle governing Indian polity. B.P. Jeevan Reddy, J., observed: "...while the citizens of this country are free to profess, practise and propagate such religion, faith or belief as they choose, so far as the state is concerned, i.e., from the point of view of the state, the religion, faith or belief of a person is immaterial. To it, all are equal and all are entitled to be treated equally".⁵⁸

In *Sardar Taheruddin Syedna Saheb v. State of Bombay*⁵⁹ wherein Ayyangar, J., explained: "Articles 25 and 26 embody the principle of religious toleration that has been the characteristic feature of Indian civilisation

⁵² <http://mmascgoa.tripod.com/id12.html> (accessed on 24th January 2016).

⁵³ <http://indiacode.nic.in/coiweb/amend/amend42.htm> (accessed on 22nd January 2016).

⁵⁴ Umar Farooq, '*The Indian Constitution: A Case Study of Secularism*' Tue, 09/03/2013 04: 32.

⁵⁵ C.A.D. Vol. VII (New Delhi: Lok Sabha Secretariat) 881-2; Constitution and Secularism: A Rejoinder Prof. Vijay Kumar NLSIU. MANU Student Advocate Vol. 6 pg. 84.

⁵⁶ AIR 1977 SC 908.

⁵⁷ AIR 1994 SC 1918.

⁵⁸ Explaining the scope of secularism on the basis of the Bommai case, it was held:

(i) The Constitution prohibits the establishment of a theocratic State.

(ii) The State is not only prohibited to establish any religion of its own but is also prohibited to identify itself with or favouring 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 religions without any preference in favour of or discrimination against any one of them.; *Gopalakrishnan Nair M.P. v. State of Kerala*, (2005) 11 SCC 45, 57.

⁵⁹ AIR 1962 SC 853, 871 ; Vikramjit Banerjee and Sumeet Malik, '*Constitutional Law Changing Perceptions of Secularism*' Cite as : (1998) 7 SCC (Jour) 3; 12/7/2015 Eastern Book Company Practical Lawyer.

from the start of history. The instances and periods when this feature was absent being merely temporary aberrations. Besides, they serve to emphasise the secular nature of the Indian democracy which the founding fathers considered to be the very basis of the Constitution."

In *Aruna Roy v. Union of India*⁶⁰ the Supreme Court has ruled that the concept of secularism is not endangered if the basic tenets of all religions all over the world are studied and learnt. Value-based education will help the nation to fight against fanaticism; ill-will, violence, dishonesty and corruption. These values can be inculcated if the basic tenets of all religions are learnt. Thus Supreme Court upheld the constitutional validity of the It was contended that the NCERT curriculum which included the course study of Sanskrit and Vedic Mathematics.

In *Kesavananda Bharati v. State of Kerala*⁶¹ Sikri, C.J. named '*secular character of the Constitution*' since independent India was to be a democracy, secularism was a fait accompli: "it is essential for the proper functioning of democracy that communalism should be eliminated from Indian life".⁶²

The principles of federalism, secularism, reasonableness and socialism are beyond the words of a particular provision. They are systematic, structural principles underlined and connecting various provisions of the Constitution. They give coherence to the Constitution and make it an organic whole. They are a part of constitutional law even if they are not expressly stated in the form of a rule.⁶³

Thus fundamental rights would remain in substance as they are and they would not be amended out of existence. It seems also to have been a common understanding that the fundamental features of the Constitution, namely, secularism, democracy and the freedom of the individual would always subsist in the welfare state.⁶⁴ In separate decision rendered by Ruma Pal, J., in *T.M.A. Pai Foundation case*,⁶⁵ learned Judge artistically distinguished Indian secularism from American secularism by calling Indian secularism "a salad bowl" and not a "melting pot".⁶⁶ Recently Court ruled that although Muslim personal law permits a man to marry four women, this does not offer protection against service rules that prohibit more than one spouse.⁶⁷

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⁶⁰ (2002) 6 SCALE 408.

⁶¹ (1973) 4 SCC 292.

⁶² B Shiva Rao, '*The Framing of India's Constitution: Select Documents*' – Vol IV, Government of India Press, Nasik, 1968, p 593, hereafter cited as SD-IV.

⁶³ *Nagaraj M. v Union of India*, WP(C) Nos. 61, 62, etc. of 2002, Order dated 19.10.06 : 2006 (9) JT 191 : 2006 (10) Scale 301 : (2006) 8 SCC 212.

⁶⁴ *Supreme Court of India/2014/August/Manoj Narula versus Union of India - LNIND 2014 SC 764.*

⁶⁵ 2002 (8) SCC 481.

⁶⁶ *Christian Medical College Vellore & Ors V. Union of India And Ors. - LNIND 2013 SC 662.*

⁶⁷ *Khusheer Ahmed Khan v. State of UP & Ors*, delivered on 9 February 2015, viewed on 12 February 2015, <http://judis.nic.in/supremecourt/imgs1.aspx?filename=42361>

Observation, Recommendation and Conclusion

Indian Constitution entails international human rights norms. However, the language adopted by the anti-conversion legislations goes far beyond the protection of this right and indeed, in no way appears to be motivated by the desire to protect the freedom of conscience.⁶⁸ Instead, the danger of “discriminatory abuse in their application” is very real.⁶⁹ The terminology used by these legislations transforms them from their purported role as protectors of constitutional rights into violators of these very guarantees.

An examination of these legislations becomes imperative as India continues to struggle with its constitutional mandate of secularism in an environment of inter-religious tension.⁷⁰ Secular means not connected with religious or spiritual matters.⁷¹ Secularism also deals with political and legal practices in many countries. Thus democratic countries governed by the rule of Law, ‘*secular*’ term involve a human material welfare or an ethical or spiritual context, are precisely those of common concern.⁷² Hence Liberal and secular democracy in which all citizens will be ensured of “justice, liberty and equality.”⁷³ Secularism is not simply about removing religion from national life, but about removing it from public life.⁷⁴ India after independence which we are struggling to create in the eyes of the world, secularism and democracy are the two aspects which are being quite rightly emphasized.⁷⁵ Thus as per U.S constitution to determine the secular purpose effect tests need to be followed.⁷⁶ India being a traditional society that contains not one, but many traditions followed in India. Thus we need to move forward from secularism to secure linguistic secularism with Humanism.

⁶⁸ The acts together with the Rajasthan Bill described above will be collectively referred to as “anti-conversion legislations”.

⁶⁹ Tad Stahnke, ‘*Proselytism and the Freedom to Change Religion in International Law*’, Brigham Young University Law Review 251, 1999, p 256.

⁷⁰ *Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights South Asia Human Rights Documentation Centre*, Economic & Political Weekly January 12, 2008.

⁷¹ Rafael Palomino, ‘*Legal dimensions of secularism: challenges and problems*’.

⁷² World Faiths Development Dialogue and the World Bank 2001.

⁷³ Rama Kant Agnihotri, ‘*Constituent Assembly Debates on Language*’, Economic & Political Weekly, February 21, 2015 vol 1 no 8.

⁷⁴ David Phillips, ‘*Is Britain A Secular State?*’ Cross-Way Issue Summer 2006 No. 101.

⁷⁵ Weekly Notes ‘*Not a Secular Act*’ Economic & Political Weekly Vol XVII, No 43, October 23, 1965 ; October 24, 2015 vol 1 no 43.

⁷⁶ Justice White has argued that the primary effect test requires the Court to make an “ultimate judgment” whether the primary effect of a program advances religion. If the primary effect is secular, i.e., keeping the parochial school system alive and providing adequate secular education to substantial numbers of students, then the incidental benefit to religion was only secondary and permissible. *Committee for Public Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 822–24 (1973) (dissenting). The Court rejected this view: “our cases simply do not support the notion that a law found to have a ‘primary’ effect to promote some legitimate end under the State’s police power is immune from further examination to ascertain whether it also has the direct and immediate effect of advancing religion”.