

## COMPARATIVE STUDY ON NOTION OF CLASSICAL SECULARISM AND INDIAN SECULARISM

Written by *Parvathy Pradeep*

*Assistant Professor of Law, CSI College for Legal Studies, Kottayam, India & Advocate,  
High Court of Kerala, India*

---

### ABSTRACT

The Constitution of every Nation contains ideals and aspiration to be pursued by the society. Most of the democratic nations have embraced the notion of separation of power, equality, judicial review, liberty and secularism in their Constitutions. Though an eagle's eye view make it appear that these notions have same meaning across jurisdictions, a close view would make it clear that the notions have adapted a particular way to meet the needs of the society. Here we are making a comparative study on notion of classical secularism & Indian Secularism.

**Keywords:** Classical Secularism, Indian Secularism, Constitution

## INTRODUCTION

The Constitution in Articles 29 and 30 bestows religious minorities with community specific social rights. While community specific social – more particularly cultural and educational – rights are acceptable, community specific political rights are not. Article 325 pointedly rejects the idea of separate electorates.

Given India is avowedly secular, which secularism is also perhaps part of ‘basic structure’, how does one argue that acceptance of the former and rejection of the latter are consistent with the principles of classical liberal secularism. Furthermore how, if at all, is the aforementioned acceptance and rejection inter se consistent. Perhaps the Indian version of secularism is itself inconsistent with the classical liberal one. If that is so, India, like so much else about it, has also a specifically unique secular character. The question before us whether or not the grant of community specific social rights takes away from secular principles.

## WHETHER SECULARISM IN INDIA IS IN THE NATURE OF CLASSICAL LIBERAL SECULARISM?

### *Notion of classical liberal secularism*

The concept of secularism has two facets, the Liberal notion of secularism and Fundamental notion of secularism. The European Court of Human Rights in the matter of *Dahlab v. Switzerland*<sup>i</sup>, elaborated on the forms of Secularism. ‘Both liberal and fundamentalist notions of secularism take as a point of departure a basic distinction between the competence of religion and the competence of the political powers and institutions, so that neither is unduly dominated or controlled by the other<sup>ii</sup>. Both the liberal and the fundamentalist notions of secularism imply that “religion is a private issue”, but in two very different ways.”<sup>iii</sup>In the present matter only the notion of liberal secularism will be detailed.

"The **liberal notion** of secularism defines religion as a private issue in the sense that it is neither a public responsibility nor right to enforce a religious doctrine or practice on its citizens,

because religion and belief is a matter of personal conscience and identity. It also implies that the State should not take a stand on the truth claims of various doctrines, nor discriminate persons or groups on the basis of their religion or belief. Further, liberal secularism implies that religious groups could not as such have power over political institutions or decision-making in a way that restricts the rights of others to freedom of religion or belief and to participation in public life.<sup>iv</sup>

The European Court of Human Rights held that the notion of Liberal secularism is enshrined in Article 9 and 14 of the **Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.**

**Article 9** of the Convention reads as follows:

*(1)-"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."*

*(2)-"Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

**Article 14** of the Convention reads as follows:

*"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."*

The right guaranteed under Article 9(1) can be restricted only if the manifestations are prohibited by law or if such manifestations affect public order, safety, health or morals or fundamental rights of others. In short, every manifestation will be subjected to Article 9(2).

“Religion is a private issue” so Secularism also calls for separation of religion from State for the sake of extensive religious liberty and equality of citizenship. "For Donald Smith<sup>v</sup>, the secular State involves three distinct but interrelated relations concerning the State, religion and the individual. The first relation concerns individuals and their religion, from which the State is excluded. Individuals are thereby free to decide the merits of the respective claims of different religions without any coercive interference by the State - the libertarian ingredient in secularism. The second concerns the relation between individuals and the State, from which religion is excluded. Thus, the rights and duties of citizens are not affected by the religious beliefs held by individuals - the egalitarian component in secularism. Finally, for Smith, the integrity of both these relations is dependent on the third relation, between the State and different religions."<sup>vi</sup> Which means secularism entails the mutual exclusion of Religion and State. This interpretation is in line with the dominant American interpretation of secularism as erecting 'a wall of separation' between religion and State. On the classical American view of disestablishment, there can be no support for religion even on a non-preferential basis. Even partial aid to educational institution run by religious institutions will constitute some form of establishment.

Moreover, a State that disestablishes all religions is one that has no power to interfere in the affairs of religious institutions. For better or for worse, the State is powerless to bring about changes in religion. So, for Smith, secularism means the strict exclusion of religion from the State- or disconnection at all three levels (ends, institutions, policy) for the sake of the religious liberty and equal citizenship of individuals."<sup>vii</sup> The second sub-issue will analyze the nature of Indian secularism and check whether it is in line with liberal notion of secularism.

### ***The nature of Indian secularism***

The term 'Secular' was not initially included in the Preamble of the Constitution. But the framers of the Constitution had a definite view in their mind as to what they meant by secularism. Dr.BR Ambedkar, the Chairman of the Drafting Committee explained the Secular concept as follows. "*Secular State does not mean that we shall not take into consideration the religious sentiments of people. All that a Secular State means that this Parliament shall not be competent to impose any particular religion upon the rest of the people*".

Further MV Pylee Stated, *“the concept of secular State envisaged by the Constitution is that the State shall not make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith.”*<sup>viii</sup> By secular it means that the no particular religion will be identified as State religion and the State will not discriminate anyone on the basis of religion<sup>ix</sup>. The fact that a person professes a particular religion will not be taken into consideration in his relationship with State or its agencies.<sup>x</sup>

The glorified term 'Secular' was included in the Preamble of the Constitution, after taking into considerations the above-mentioned objects and was inserted through 42<sup>nd</sup> Amendment of the Constitution in 1976. This is one of the glorifying achievements of the Indian Democracy because our constitution does not build a wall of separation between State and religion. “It may be briefly stated that the essence of secularism is that the State is non-partisan in its relation to citizens, no matter what religion they belong to. The State does not have a particular religion to profess, practice and propagate in India but it guarantees to every citizen the freedom to profess practice, propagate”<sup>xi</sup> This fundamental right is enshrined in Article 25 to 28 of the Constitution according to which-

"(a) the State will not compel any citizen to pay any taxes for promotion or maintenance of any particular religion or religious institutions (Art. 27)

(b) no religious instruction shall be provided in any educational institution wholly provided by State funds.

(c) even though religious instructions be imparted in educational institutions recognized by or receiving aid from the State no person attending such institution shall be compelled to receive that religious instruction without the consent of himself or of his guardian, (in case the pupil be a minor).

In short, while religious instruction is totally banned in State owned educational institution, in other denominational institutions it is not totally prohibited but it must not be imposed upon people of other religious without their consent (Art. 28).

Secondly, every person is guaranteed the freedom of conscience and the freedom to profess, practice and propagate his own religion subject to only –

- (a) to restrictions imposed by the State in the interest of public order, morality and health.
- (b) to regulations or restrictions made by the State relating to any economic, financial, political or other secular activity which may be associated with religious practice but do not really appertain to the freedom of conscience,
- (c) to means for social reform and for throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Thirdly not only there is the freedom of individual to profess, practice and propagate his religion, there is also right guaranteed to every religious group or denomination-

- (a) to establish and maintain institution for religious and charitable purposes.
- (b) to manage its own affairs in matters of religions
- (c) to own and acquire movable and immovable property.
- (d) to administer such property in accordance with law (Art. 26)<sup>xii</sup>

The Constitution guarantees equal freedom for all religion but at the same time it provided that the religion of the citizen has nothing to do with the socio-economic matters. It means the State shall not allow religion to impinge adversely on the secular rights of citizens or the power of the State to regulate socio-economic relations. The Constitution itself restricts the right to freedom of religion for the protection of freedom itself.

***Whether Indian secularism is consistent with classical secularism?***

The essence of both Article 14 and 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 is contained in Article 25 and 26 of the Constitution of India, 1950. Both the legislation guarantees all the persons the right to practice, profess and propagate their respective religion. But the State ensures that such enjoyment of right is subjected to reasonable restrictions which are in accordance with Classical liberal notion of secularism. The Honorable European Court of Human Rights held<sup>xiii</sup> that the Article 14 and 9 of the Convention is nothing but a reflection of the notion of liberal secularism. Hence it can be deduced that the nature of secularism enshrined in the Constitution of India is in consonance

with the notion of liberal secularism. But only Article 25 and 26 are in agreement with the principle of liberal secularism.

Now we need to check whether Article 29 and 30 of the Constitution are in accordance with the Secular Principles. This will be dealt in Issue 2.

## **WHETHER INDIAN SECULARISM IS DEVIATING FROM CLASSICAL LIBERAL SECULARISM OR WESTERN IDEOLOGY OF SECULARISM?**

In the words of Donald Smith, Does Indian secularism erect a 'wall of separation' between Religion and State? According to Smith, secularism entails the mutual exclusion of Religion and State. But Indian secularism is breaking this wall of separation. For instance 'Article 17 is an uninhibited, robust attack on the caste system, arguably the central feature of Hinduism, by abolishing untouchability and by making the enforcement of any disability arising out of it an offence punishable by law.'<sup>xiv</sup> Another instance, Article 30(1) recognizes the rights of religious minorities and therefore, unlike other Articles applicable to citizens qua individuals, it is a community-based right. Again Article 30(2) allows the State to give aid to educational institutions established and administered by religious communities. Also it permits religious instruction in educational institutions that are partly funded by the State also Maintenance of Hindu Temple (Article 290(A)) is instances for departures from the 'wall of separation' view of the secular State. Thus the Indian secularism is deviating from the Classical Liberal Secularism in two ways. 'First, unlike the strict separation view that renders the State powerless in religious matters, they enjoin the State to interfere in religion. Second, more importantly, by giving powers to the State in the affairs of one religion, they necessitate a departure from strict neutrality or equidistance.'<sup>xv</sup>

## **WHETHER THE ACCEPTANCE OF COMMUNITY SPECIFIC SOCIAL RIGHTS AND REJECTION OF COMMUNITY SPECIFIC POLITICAL RIGHTS, INTER SE CONSISTENT?**

The issue at hand is of great relevance as it explains the reason of acceptance of community specific social rights and denial of community specific political rights with reference to secular principles.

### ***Whether the denial of Community specific political rights is justified?***

Adult suffrage or equal right to vote is the fundamental principle of free and fair elections. In India there is only one general electoral roll for every territorial constituency. The Constitution of India through Article 325 abolished separate electorates which were once introduced by the Britishers through Government of India Act, 1909. The rationale behind such an abolition is explained in Constitutional Debates. According to the framers "inherit in the logic of distributing political rights on a purely religious basis was the installation of a theocratic State, which in Indian context would be Hindu State. The second contention was that, under separate electorates, religion was mixed freely with the desire for profit, for office, and for the encroachment on others properties and this lead directly to communal crimes and massacres. Thirdly it was pointed out that the exclusion of religion from politics was necessary in India because religion-based divisions is too dangerous. Fourthly it was argued that the separate electorates will retard the growth of nationalism, fraternity, unity and integrity of India.<sup>xvi</sup>

'The purpose Article 325 is to integrate the minorities into one mainstream of national life and thus keep in check the diverse forces which may otherwise be released by the existence of several minority groups. The Constitution while extending safe guards to minorities also seeks to weld and integrate the diverse elements into one political and national life. That is why the system of separate electorates was not adopted and elections to all legislatures are held on the basis of joint electorates.'<sup>xvii</sup> Considering the true spirit of constitutional provision Honorable Supreme Court in the matter of Nainsukh v. State of Uttar Pradesh<sup>xviii</sup> held that a law providing



for elections to municipalities on the basis of separate electorates for members of different religious communities would offend Article 15(1) of the Constitution.

***Whether grant of community specific social rights is consistent with secular principles?***

**Article 27 of International Covenant on Civil and Political Rights,1976** reads as follows:

*“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”*

**Article 5 of the International Covenant on the Elimination of All Forms of Racial Discrimination** guarantees the right of education to everyone without distinction as to the race, color and national or ethnic origin.

The above two doctrines are incorporated in Article 29 and 30 of the Constitution of India which reads as follows:

**Article 29-Protection of interests of minorities**

*“(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same*  
*(2) 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”*

**Article30-Right of minorities to establish and administer educational institutions**

*“(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice*  
*(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language”.*

The question is whether Article 29 and 30 is consistent with Secular principles? Whether the rejection of community specific political rights and acceptance of community specific social rights, inter se consistent?

'The rejection of the community specific political right was entirely consistent with the acceptance of Community specific social rights. The rights guaranteed under Article 30 were necessary for a democratic State as the rejection of separate electorate under Article 325<sup>xix</sup> The rationale behind the decision is there in Constitutional Debates. It was debated in the Assembly that the inclusion of community specific social right to minorities to establish their own educational institutions would block the way to National unity, also it promotes communalism and a narrow anti-national outlook. It was further contented by P.S Deshmukh that 'in a secular State, minorities based on religion or communities should not be recognized' as it amounts to negation of secularism. But the arguments against the Community specific social rights were negated. As pointed out by Hridaya Nath Kunzru, 'if the elementary justice is not given to minorities, we may open up the dangerous path of fanatical nationalism. The principle of elementary justice and the principles of equality and liberty that ruled community differentiated political rights out, necessitated community differentiated social rights. As pointed out by Dr. Ambedkar, every minor is entitled to the right to use of their language, script and culture and the right not to precluded from establishing institution that they wish to establish.'<sup>xx</sup>

## CONCLUSION

It may be concluded that the absence of complete separation between the state and the religion is because of the character of Indian society which is basically religious in nature. It is also because of the fact that the Concept of Secularism in India is different from that of Western Countries. Thus, the relationship between the state and religion in India, is the product of India's own political, social and religious conditions. It is also consistent with India's tradition of religious toleration.<sup>xxi</sup>

The rejection of the community specific political right was entirely consistent with the acceptance of Community specific social rights. The rights guaranteed under Article 30 were necessary for a democratic State as the rejection of separate electorate under Article 325<sup>xxii</sup>. "Democracy and secularism are tightly held together by logic. If India abandons one, the other will go". The purpose of Article 325 is to integrate the diverse elements into one political and national life where as the purpose of Article 29 and 30 is to provide the minority with elementary justice and to uplift their social status.

## BIBLIOGRAPHY

- Smith Donald, "*India as a Secular State*", Oxford University Press, 1963, pp.241-243
- Hasan Zoya, Sridharan E & Sudharshan R, "*India's Living Constitution-Ideas, Practices, Controversies*", New Delhi, Permanent Black, 2002, pp 117-128
- Jain MP, "*Indian Constitutional Law*", Nagpur, Lexis Nexis Butterworths, 2010, pp 1526
- Ingwill Thorson Plesner, "*The Islamic head scarf Controversy and the Future of Freedom of Religion or Belief*", Strasbourg, France, 30 July 2005, pp 1-16
- Prasad Ganesh & Kumar Anand, "*The Concept of Constraints and Prospect of Secularism in India*", The Indian Journal of Political Science, Vol. 67, No. 4 (OCT. - DEC., 2006), pp. 793-808
- H.V. Kamath, in "7 C.A.D. (1948) 837", quoted by M.V. Pylee, Constitutional Government of India (1960) pp.253
- Bhargava Rajeev, "*The Distinctiveness of Indian Secularism*", retrieved on October 12, 2014 from [http://www.chereum.umontreal.ca/activites\\_pdf/session%202/Barghava\\_Distinctiveness%20of%20Indian.pdf](http://www.chereum.umontreal.ca/activites_pdf/session%202/Barghava_Distinctiveness%20of%20Indian.pdf)

## ENDNOTES

---

<sup>i</sup> (2001) V Eur Court HR 449

<sup>ii</sup> Norwegian Centre for Human Rights, The European Court on Human Rights between fundamentalist and liberal secularism, available at

<https://www.jus.uio.no/smr/om/aktuelt/arrangementer/historikk/forum/plesnerpaper.pdf>

<sup>iii</sup> Ingwill Thorson Plesner, "*The Islamic head scarf Controversy and the Future of Freedom of Religion or Belief*", Strasbourg, France, 30 July 2005, pp 1-5

<sup>iv</sup> Ingwill Thorson Plesner, "*The Islamic head scarf Controversy and the Future of Freedom of Religion or Belief*", Strasbourg, France, 30 July 2005, pp 6-16

<sup>v</sup> Smith Donald, "*India as a Secular State*", Oxford University Press, 1963, pp.241-243

<sup>vi</sup> Hasan Zoya, Sridharan E & Sudharshan R, "*India's Living Constitution-Ideas ,Practices, Controversies*", New Delhi, Permanent Black ,2002, pp 118

<sup>vii</sup> Hasan Zoya, Sridharan E & Sudharshan R, "*India's Living Constitution-Ideas ,Practices, Controversies*", New Delhi, Permanent Black ,2002, pp 117

<sup>viii</sup> Prasad Ganesh & Kumar Anand, "*The Concept of Constraints and Prospect of Secularism in India*", The Indian Journal of Political Science, Vol. 67, No. 4 (OCT. - DEC., 2006), pp. 793-808

<sup>ix</sup> Article 15 of the Constitution of India, 1950

<sup>x</sup> H.V. Kamath, in 7 C.A.D. (1948) 837, quoted by M.V. Pylee, Constitutional Government of India (1960) pp.253

<sup>xi</sup> Smith Donald, "*India as a Secular State*", Oxford University Press, 1963, pp.241-243

<sup>xii</sup> Prasad Ganesh & Kumar Anand, "*The Concept of Constraints and Prospect of Secularism in India*", The Indian Journal of Political Science, Vol. 67, No. 4 (OCT. - DEC., 2006), pp. 797

<sup>xiii</sup> Paragraph 2 of Arguments Advanced

<sup>xiv</sup> .Hasan Zoya, Sridharan E & Sudharshan R, "*India's Living Constitution-Ideas ,Practices, Controversies*", New Delhi, Permanent Black ,2002, pp 118

<sup>xv</sup> Bhargava Rajeev, "*The Distinctiveness of Indian Secularism*", retrieved on October 12, 2014 from [http://www.chereum.umontreal.ca/activites\\_pdf/session%202/Barghava\\_Distinctiveness%20of%20Indian.pdf](http://www.chereum.umontreal.ca/activites_pdf/session%202/Barghava_Distinctiveness%20of%20Indian.pdf)

<sup>xvi</sup> Hasan Zoya, Sridharan E & Sudharshan R, "*India's Living Constitution-Ideas ,Practices, Controversies*", New Delhi, Permanent Black ,2002, pp 121

<sup>xvii</sup> Jain MP, "*Indian Constitutional Law*", Haryana, Lexis Nexis Butterworths Wadhwa 2010, pp 1526

<sup>xviii</sup> AIR 1953 SC 384

<sup>xix</sup> Hasan Zoya, Sridharan E & Sudharshan R, "*India's Living Constitution-Ideas ,Practices, Controversies*", New Delhi, Permanent Black ,2002, pp 123

<sup>xx</sup> Hasan Zoya, Sridharan E & Sudharshan R, "*India's Living Constitution-Ideas ,Practices, Controversies*", New Delhi, Permanent Black ,2002, pp 128

<sup>xxi</sup> Prasad Ganesh & Kumar Anand, "*The Concept of Constraints and Prospect of Secularism in India*", The Indian Journal of Political Science, Vol. 67, No. 4 (OCT. - DEC., 2006), pp. 793-808

<sup>xxii</sup> Hasan Zoya, Sridharan E & Sudharshan R, "*India's Living Constitution-Ideas ,Practices, Controversies*", New Delhi, Permanent Black ,2002, pp 123