

SECULARISM SUBSTANTIATION OF ARTICLE 25(2)(b) OF CONSTITUTION OF INDIA

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INTERPOLATION INCIDENTAL

The sole pursuit of religious freedom or truth is the private belief of each individual and thus augmenting the importance of strength and conscience of the individual believer's faith on above everything. A person's deepest convictions and beliefs should be held candidly and clandestinely. The 'Feel Free' Doctrine of Locke can be equated to justify freedom of religion with minimal interference only on the basis of morality, public order and public health.ⁱ On analysing different faces of Secularism landscape, so many diverse adaptations can be developed, freedom from the rules and teachings of the religious sect and another is the freedom from the trickery of religious beliefs upon people by the government. Another face depicts the neutrality panorama on matters of belief within a State and deters State privileges to religion. The next picture implies the political decisions must be pure from religious influences; it must be based on pragmatic realities. 'Neutrality' and 'Separation', these two words are the key points which differentiates Indian Secularism with that of the Western Secularism. But the common thread that connects these two versions of Secularism is that, it is a set of tell tales and traits whose aim is to ensure that the State is neither engaged in promoting specific religious beliefs and mindsets, nor uses its powers and office to tyrannize religion. The neutrality approach means paving way to consider every religion on equal parlance and it is not like taking one religion in a specific strata, may be in negative or positive way, the religious freedom embedded in Constitution of India from Article 25 to 28,ⁱⁱ not fully satisfies this 'neutrality test', the test result will show an error when it comes under Article 25(2) (b), which specifically stating the name of one particular religion in the name of social welfare.

JURIDICAL CONSTRUCT OF SECULARISM FACING CONSTITUTIONAL CONCEPTION OF SECULARISM

Secularism is always a conflicting word in concern with Indian polity, because of its pluralism doctrine structure. The felicitous formalization of the term is a crucial task to solve like the Rubik's cube, in the occasions of a dilemma on religious practices the apex court laid down a specific test known as the 'Essential religious practice doctrine' in Shirur Mutt case.ⁱⁱⁱ This is the process of narrowing down the constitutional concept of secularism by the judicial painting. The Judiciary always trying to clear the pathway of state intervention in the 'intimate terrain' of religion. The obstacle has been firstly cleared by the judiciary in State of Bombay v. Narasu Appa Mali^{iv}, here the judges opined that there is a need for the clear distinction between religious faith and belief and religious practices, and the protection or preservation umbrella of the state is only available to religious beliefs and faiths and not for the religious practices, for the same certain yardsticks needed to be satisfied like public order, morality and public health (hereinafter referred as 'PPM'). Here the important thing to be noted that, in this case it's a matter of 'polygamy', which was one of the recognised practice of Hindus at a time, but here legislation can be made for the purpose of achieving social reform under Article 25(2)(b).^v

In this same case Justice Gajendragadkar proposed a doctrine for the justification of state intervention in religious matters, that is to be known as 'legitimate belief and practice' doctrine, which says that if the practices or beliefs by reading the intrinsic and intimate values of religious texts felt as a legitimate one, the court can be permit the same, and state is prohibited to interfere with the same. The next version of secularism can be perceived from a series of case laws,^{vi} the distinction between individual right under Article 25 and denominational right or group right under Article 26 are the main baking cakes in these cases. The opinion propounded were, the religious freedom basket is not an unlimited one in Constitutional perspective, the same can be restricted, but while doing so the court or the legislature need to keep in mind that, the concept of 'religious freedom' implies beyond beliefs, several practices are there, rituals, observances, ceremonies and various types of worship, hence the religious freedom under Constitution testaments, the deeds in fruition of religious belief. Article 26(b) provides a complete autonomy for religious denomination, in the matter of deciding what all ceremonies or a ritual to be followed by them, the only testing criteria is PPM. Ongoing into a deep analysis, it can be found that there exists some conflicts or complications between Article

26 (b) and Article 25(2)(b), that is the former article suggests a complete autonomy for religious denominations and the limit for the same is PPM and the latter article suggests opening of Hindu religious institutions for social welfare to all sects of Hindus, the conflict here is that if the Hindu sect is a 'religious denomination', how will this article intrude into Article 26, it will definitely create a vicious circle for the legislature as well as for the judiciary. So the three breeds of Indian Secularism by Indian Judiciary can be epitomized as 'Social reform prototype', 'Legitimate belief and practice', and 'Denominational or Group Right Pattern'.

PRACTICAL PREREQUISITE PROBATION

In Ratilal's case,^{vii} the court said that neither the religion nor the concept of secularism has been defined under Constitution of India, so what all matters will come under the purview of secular matters so as to interfere by the state is a matter of practical applicability, in these situations the court must take a common sense attitude mechanism. In Devaru case, here the conflict is based on the matter of restricting entry of lower caste people into the temple and the issue here is the conflict between Article 26 (b) and Article 25(2)(b) and the court specifically here mentioned that, the latter article is particularly included to restrict the autonomy of religious denominations under the former article. So here also comes the dilemma that on what basis the court stated this proposition, in some other religions also there exists restriction to enter into their sanctum sanctorium to some group of persons, hence if in the place of instant case instead of a temple, if it comes any mosque or church, on what basis the court will restrict the autonomy of religious denominations to exclude certain others from their holy place.^{viii} The constitution strayed to define the terminology of religion, but it not meant that everything as the religious sects will get the protection religious canopy. If some practices of a particular religion needed to be considered as its part, the religious community must state that certain kind of practices are essential or integral for the existence of that religion.

In S R Bommai case,^{ix} the court emphasized that religion is not greeted by politics, the Constitution permits for social welfare and reform and the state is warranted to interfere only on those considerations, seeing the constitution as a social manuscript and a socio-economic revolution strategy, gives lawfulness to this intercession. This intervention creates a connecting link between State and religion that can be called as a '*passable sheath panorama*'

between them. To be noted that article 25(2)(b), is certainly an important tool to achieve this social reform grand design, but it's on ups and grabs that the inclusion of 'Hindu' only under this particular article creates a differentiation or partiality to the whole concept of reformation and also to other religion, as in the instant case 'secularism' is regarded as one of the basic features of Constitution of India, the test of secularism is not satisfied by this article, it's also against equality and hence the narrowing down of this particular religion as 'Hindus' in this article caused a scratch on secularism and thereby in the basic structure doctrine also.

PARALLEL PROVING GROUND

On examining the approach of state towards religion in an international scenic view, several models can be seen like atheism or strict separation, weak or strong installation, homologue governance of constitutionalism and religion. In 1949, the Peoples' Republic of China sprouted a campaign to eradicate religion from Chinese culture, then in 1974, Ethiopia the Ethiopian Orthodox Church was abrogated. The French policy of '*laicite*' proposes to restrict clerical and religious influence over the State and can be named as 'assertive secularism'^x. The 'Impartial-neutral stand' category can be perceived from the American Constitution, the 'free-exercise clause' and 'establishment clause' can be screwed from First Amendment to the US Constitution.^{xi} The latter prohibits the state from adopting, advancing or elevating a religion as well as from prohibiting State patronized churches and the former states that excluding the limitations of public morals and compelling state interest, a citizen has the right to practice his religions as per his longings. In *Prince v. Massachusetts*^{xii}, it was stated that upon the doctrine of protecting public health, the State can force the inoculation of children whose parents would not allow such action for religious sour grapes. Secularism never ever promotes one belief or one religion and the Indian secularism is always a blending of Indian democracy. If a State preaches or adopts naturalistic secular view, it needed to be followed in its each and every action, being to say that, the hands of the State must be pure from touching non-secular activities. One sided religious approach is threat to the existing secularist view. Article 14 of Constitution of India, which says about equality and also one of the tenets of Rule of Law, says about equality in all matters, means treating every person and every religion in an equal parlance, exceptions may be there, but they must rests in an authentic explanations. In U.S.,

the limitations to exercise right to religion is only on the basis of public morals and general state interest with reasons, in India also there exists the tape measures as PPM, so the judicial creation of 'essential practice' doctrine and the clubbing of the same with Article 25(2)(b), all are supererogatory mannerisms, which is the deep intrusion of external elements into the somewhat private affairs of particular religion or religious sects. If the term Secularism is incorporating in the manuscript of law of the land, it must not be a brandish or swagger one, the manifestations must be clear, and not be an ambiguous one, the quality of the word used in the preamble must reflect in its internal beeps also.

END OF THE LINE

Religion is somewhat connected to the personality of a person, it's a majority opinion and atheists or antagonists may be there, but theology is essential for the existence of life. India, the multi diverse religious purlieu in the Earth is a country that guarantees 'secularism' under its law of the land that is the Constitution of India. The Constitution is a document which supports religious like-mindedness and the word 'secularism' has been imparted to the Preamble by way of 42nd Constitutional Amendment Act, 1976, in order to support this religious amity in India. There are so many religions in India like Hindu, Muslim, Parsis and Christians, but the catch-22 here is that, the inclusion of one particular word 'the Hindu religious institutions' under Article 25(2)(b) is not at all match to the word secularism. Here Secularism says treating of every religion in equal parlance and this particular Article is saying opening of all Hindu religious institutions of public nature to all sects of Hindus. Here the trickle element is that whether or why this particular element is applicable to only Hindus, there is Muslim, Parsi and even some Christian religious institutions still restricts women in entering inside the sanctum sanctorum. Hence this Article 25(2)(b) won't ever pass the test of secularism.

ENDNOTES

ⁱ As per Locke, the sincere or genuine religious practice, the apparent expression of love and respect for God, could not thwart civil society, an institution willed by God to protect mankind, thus freedom of religious choice with a minimal or limited toleration without hampering the peace balance of the civil society is the doctrine. See LOCKE, THE FIRST TRACT, p. 179

ⁱⁱ See Constitution of India, Article 25 states about freedom of conscience and free profession, practice and propagation of religion, Article 26 states freedom to manage religious affairs and the denomination aspect, Article 27 states about freedom as to payment of taxes for promotion of any particular religion, and lastly the Article 28 states on freedom as to attendance at religious instruction or religious worship in certain educational institutions.

ⁱⁱⁱ The Commissioner Hindu Religious Endowments, Madras v. Shri Lakshmindar Tirtha Swamyar of Shri Shirur Mutt., AIR 1954 SC 282, the Court here stated that, though every religious will come under the religious freedom concept of Constitution of India, there must draw a distinction between essential or integral religious practices and the other superstitious beliefs, provided if the practice is essential it can avail the protection of Article 25 and 26 of the Constitution.

^{iv} AIR 1952 BOM 84, this case is an authoritative one which restricts unnecessary intervention of either by the state or by the judiciary which says that the personal law, religious customs, usages and beliefs are outside the purview of fundamental rights of equality, life and dignity, this era ended by the Sabarimala case, 2018 SCC OnLine SC 1690, decision, by stating that if the same is entertained it will outlaw the primacy of Constitution, here in the instant case Justice Chandrachud opined that, those animations that are inherently related to the civil status of individuals cannot be granted constitutional amnesty merely because they may have some rat packs which have a religious nature. In Sabarimala case the apex court adopted 'transformative social vision principle of Constitution' and the main point or pillar is Article 25(2)(b), so only Hindus needed this transformative social reform vision, in India there are so many other religions Muslims, Christians and Parsis, whether they don't need this transformation, that is the problem of the present article, For more details, See, The Hindu, Krishnadas Rajagopal, 'Ghost of Narasu' is finally exorcised', September 29, 2018, <https://www.thehindu.com> (accessed on July 15, 2021)

^v The point here to be noted is that, not only in Hindu religion, these types of religious practices exist, in all other religions also some other kind of these religious practices may exist, hence confining Article 25(2)(b) only for Hindus is like somewhat against equality and neutrality notion of secularism.

^{vi} See Shirur Mutt case, Ratilal Pannachand Gandhi v State of Bombay, AIR 1954 SC 388 and Sri Venkataramana Devaru v. State of Mysore, AIR 1958 SC 255

^{vii} Ibid

^{viii} See, Dhavan, Rajeev 'Religious Freedom in India', AMERICAN JOURNAL OF COMPARATIVE LAW, 35, 209, 1987

^{ix} AIR 1994 SC 1918. See DERRETT, J AND DUNCAN M, RELIGION, LAW AND THE STATE IN INDIA. 56, 1999

^x Turkey also following the same path, in their Constitution the words 'republican, popular, atheist, secular and reformist' were inserted in 1937.

^{xi} Charles, Bogle, "Secularism and the American Constitution", World Socialist Website, July 18, 2005 (<http://www.wsws.org/articles/2005/jul2005/secu-j18.shtml>), (last accessed on July 21st, 2021)

^{xii} 321 U.S. 158 (1944)