

Secularism in India: A Myth or Reality

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I. INTRODUCTION

According to Jawahar Lal Nehru,

“India is a mixed pot of races”

India, the land of bewildering diversity, is a conglomeration of people, cultures, languages and religions. India's diversity is reflected in the coexistence of sensuality and asceticism, carelessness and efficiency, gentleness and violence. In short, India is a kaleidoscope, you touch it and there is a new combination of shapes and colours. The American society is looked at in the terms of a 'melting pot', India, on the other hand, is not a 'melting pot' it is a 'mosaic'. India is a country which is a host to all conceivable religions and ways of life. India has followed a principle of "unity in diversity". This unity is based on democracy, federalism, tolerance and secular character of the state. The key to India's success as a federal democracy is the recognition of its diversities. Acceptance of all religions and different ways of life is the cornerstone of the Indian culture, heritage and polity.

Secularism means indifference towards religion. A pluralist country like India needs secularism like life-blood. India is multi-religious country. A multi-religious society cannot function democratically without secularism. It is a great need for democratic pluralism. Secularism, in philosophy, is the belief that one's own life can be best lived, and the universe best understood, with little or no reference to a god or gods or other supernatural concepts. For building a vibrant civil society there is the need of secularism. The political parties should help build a new political culture, which is based on tolerance and respect for human values. Today, our political culture is thoroughly infected with casteism and communalism. Religion plays a great role in Indian society. Religion has mixed in the blood of people.

II. ORIGIN OF SECULARISM

The term "secularism"¹ was first used by the British writer **George Jacob Holyoake** in 1851. Holyoake invented the term "**secularism**" and defined in the following words, "*Secularism is that which seeks the development of the physical, moral, and intellectual nature of man to the highest possible point, as the immediate duty of life — which inculcates the practical sufficiency of natural morality apart from Atheism, Theism or the Bible — which selects as its methods of procedure the promotion of human improvement by material means, and proposes these positive agreements as the common bond of union, to all who would regulate life by reason and ennoble it by service*" And again, "*Secularism is a code of duty pertaining to this life founded on considerations purely human, and intended mainly for those who find theology indefinite or inadequate, unreliable or unbelievable.*"²

Initially there were two views on secularism. First was Holyoake and the other was Bradlaugh. Holyoake claimed that Secularism is based simply on the study of nature and has nothing to do with religion, while Bradlaugh claimed that Secularism should start with the disproof of religion. Later on, **Barry Kosmin** of the Institute for the Study of Secularism in Society and Culture breaks modern secularism into two types: **hard and soft secularism**. According to Kosmin, "*The hard secularist considers religious propositions to be epistemologically illegitimate, warranted by neither reason nor experience.*" However, in the view of soft secularism, "*the attainment of absolute truth was impossible and therefore skepticism and tolerance should be the principle and overriding values in the discussion of science and religion.*"³

¹<http://www.newadvent.org/cathen/13676a.htm> 09/03/2017

² Holyoake, 'The Principles of Secularism' (London, 1860)

³ Kosmin, Barry A. "Hard and soft secularists and hard and soft secularism: An intellectual and research challenge."

III. MEANING OF SECULARISM AND ITS JURISPRUDENTIAL VIEW

The word secularism is derived from the Latin *saeculum*, meaning a generation of this age and corresponds to the Greek *aeon*. Its meaning extends to connote also this worldly, thus its lower Latin form *saecularis* means worldly. The Law, State and Religion are three vast concepts of law. Secularism is the word which shows the relationship between these three concept of law. It is generally understood that secularism implies religious tolerance. But it is so difficult to explain the real meaning of secularism. Even though, it is defined by the different scholars, who gave the different definitions of the concept of the "Secularism". Some of them are as;

P.K. Tripathi said that the constitution of India provides freedom of religion, and it also guarantees freedom from religion.

Karl Marx was also not in favour of religion.

Gandhi Ji, said "the real meaning of secularism is "*Sarva Dharama Sambhav*" it means "equal treatment for all religion."

Dr. Henry Austin in the context of Indian society, he says, Secularism means tolerance, generosity and understanding of the majority community.

K.N. Panikkar argues that there are three characteristics of the kind of secular state that India claims to be:

Firstly, the secular state postulates that political institutions must be based on the economic and social interests of the entire community, without reference to religion, race or seat; that all must enjoy equal rights and no privileges, prescriptive rights or special claims should be allowed for any group on the basis of religion.

Secondly, it eliminates from the body politic ideas of division between individuals and groups on the basis of their faith and racial origin.

In the *third* place, It is obvious that a composite secular state must accept as the basis of its policy what Aristotle termed as 'distributive justice', the idea that all communities must have power, as they must share the duties and responsibilities of being citizens.

IV. THE CHARACTERISTIC OF A SECULAR STATE

First is the principle of *liberty*, which requires that state permit the practice of any religion, within the limit set by certain other basic rights. Second is the principle of *equality*, which requires that the state do not give preference to one religion over other.

The third principle is *neutrality* which is best described as the requirement that the state not give preference to the religions over non religions and which leads in continuation with liberty and equality principles, to what is known in US constitutional law as the Wall of Separation doctrine namely, that the state do not involve itself with religious affairs or organizations.

V. SECULARISM IN INDIA AND UNDER THE INDIAN CONSTITUTION

The concept of secularism is not new to India. The vision of secularism - 'sarwa dhama sambhava', i.e., tolerance for all religions - has always been there in our country and has its roots in the Yajur Veda, Atharva Veda and Rig Veda and Akbar's Din-e-Ilahi. However, the word 'secularism' was not used in the Indian Constitution until the 42nd Amendment in 1976, which incorporated the word explicitly in the Preamble. This does not mean that the concept of secularism was not evident in the 'Constitution or Indian laws. The whole philosophy of Indian Constitution is based on the three tenets of Equality, Fraternity and Justice. The concept of secularism is encapsulated in the broader concept of right to equality i.e. no citizen shall be discriminated by the state on the grounds of caste, sex, religion, race or colour. The right to freedom of religion is a natural corollary to this concept, which lays down the basic principles of secularism in India. Indian laws, which include union and state laws, have been enacted in this broader definition of secularism. Since secularism in India does not completely separate religion and state. Ideal scope of religion and nature of secularism is rightly defined in our constitution. There are three angles to it – positive, negative and neutral. The positive religious freedom includes Articles viz. Art. 25, 26 and 30 which deals with the "freedom of conscience and free profession, practice and propagation of religion", "freedom to manage religious affairs" and "the rights of minorities to establish and administer educational institutions". These freedoms are not absolute but subjected to certain reasonable restriction. The Negative freedom of religion includes Art. 15(1) and 15(4) which prohibits discrimination on the grounds of religion, Art. 16 assure equality of opportunity for people belonging to all religions in matters of public employment, Art. 17 abolish untouchability, Art. 29(2) caters to "protection of the interests of minorities", and Art. 325, 330(1) and 332(1) order no communal electorates. The Neutral provisions include Art. 27, 290(A) and 28(1) (2) (3) which emphasize that "no religious instructions be imparted through the institutions ran or aided by the state." Provision of Art. 44 direct State to bring Common Civil Code which strengthens the secular foundations of society, Ban on cow slaughter under Art. 47 recognize sentiments of majority Indians. Thus we have a balanced basic framework of secularism in our Constitution. It was only on December 18, 1976 the word "SECULAR" was added in the Preamble of The Constitution of India. The 42nd

amendment Act 1976 reads – “In the Preamble to the Constitution, for the words “SOVEREIGN DEMOCRATIC REPUBLIC” the words “SOVERIGN, SOCIALIST, SECULAR, DEMOCRATIC, and REPUBLIC” shall be substituted”. So the word secular entered our Constitution only almost 25 years after it had come into effect. After the 42nd Amendment, India came to be characterized as a 'Sovereign, Socialist, Secular and Democratic Republic'. The Preamble secure to all the citizens of India- Liberty of thoughts, expression, belief, faith and worship. The precise sense in which the word secular is used is clarified by the corresponding term 'Pantha Nirpeksha' (denominationally neutral) in the Hindi version of the document. Besides Preamble, the Constitution contains many provisions to establish the secular character of the Indian polity. By the 42nd Amendment, Part IV-A entitled 'Fundamental Duties' was introduced which inter alia casts a duty on every citizen to cherish and follow the noble ideals which inspired our national struggle for freedom, to uphold and protect the sovereignty, unity and integrity of India, to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, and to value and preserve the rich heritage of our composite culture. With respect to the obligation of the state for the protection of the rights conferred by the Constitution, the framers said that there are some rights which require the State to provide institutions and conditions, under which alone these rights can be enjoyed. All the rights about the liberty of individual would need the setting up and maintenance of proper tribunals as well as suitable Codes of Civil and Criminal Procedures. This obligation was fulfilled by the legislature by providing provisions in the Indian Penal Code and the Code of Criminal Procedure. Regarding this the Supreme Court said that in order to give special protection to places of worship and to prevent hurting the religious sentiments of followers of different religions in British India, Chapter XV of the Indian Penal Code, 1860 was enacted. This Chapter exclusively deals with the offences relating to religion in Sections 295, 295-A, 296, 297 and 298 of the Indian Penal Code. Lord Macaulay in drafting the Indian Penal Code, had indicated the principle on which it was desirable for all Governments to act and the British Government in India could not depart from it without risking the disintegration of society. The danger of ignoring the religious sentiments of the people of India which could lead to spread of dissatisfaction throughout the country was also indicated.⁴ So it can be said that Indian Constitution and other law provide many provisions to protect the Concept of Secularism.

VI. RESPONSE OF JUDICIARY

The triangle of law, state and religion is such it has become a source of benefits for political parties which in democracy, in the name of religion do all the things which they ought not to do for the healthy development of society. The present scenario of 'Secularism' in India is indeed a cause of concern. Today, the secular character of the Indian democracy is considered to be under threat. The razing of the Babri Mosque in Ayodhya (Uttar Pradesh) led to riots and killings by Muslims and by Hindus. The massacres of innocent Hindus in Godhra (Gujarat), presumably ignited by smoldering Muslim resentments against the Hindutva proponents over Ayodhya, touched off a larger massacre of equally innocent Muslims in tit-for-tat killings that undermined yet further the amity under which these religious communities had lived earlier in Gujarat State in an atmosphere of secularism. Apart from these, the unspeakable atrocities of 1984 against the Sikhs in Delhi after the assassination of Prime Minister Indira Gandhi; and an occasional slaying of proselytizing Christian missionaries clearly presents a grim picture of “Indian Secularism”, moreover, the intrusion of religious passions and caste loyalties into Indian politics casts serious doubts over the claim of India to be a secular and theocratic state. In this situation only our Supreme Court keeps all in order. The Supreme Court of India is the custodian of the Constitution. By its dynamic interpretation, court keeps it lively. This is also highlighted from the changing trends of the decisions given by the Hon'ble Supreme Court of India, which is regarded as the guardian of constitutionalism in India. The Hon'ble Supreme Court of India in *Sardar Taheruddin Syedna Saheb v. State of Bombay*, AIR 1962 SC 853, 871 for the first time explained the concept of secularism wherein Ayyangar, J., explained:

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

In *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225, the Constitutional Bench of the Hon'ble Supreme Court reiterated that secularism was a part of the basic structure of the Constitution. This view crystallized in the landmark case of *S.R. Bommai v. Union of India* (1994) 3 SCC 1. In fact, the Judges in *S.R. Bommai's* case went on to say that the concept of secularism in the Indian Constitution is in broad agreement with the U.S. Constitution's First Amendment. However, within a year the Hon'ble Supreme Court in *Ismail Faruqui v. Union of India* (1994) 6 SCC 360 started diluting the active, positive concept of secularism based on scientific thinking it had advocated in the *S.R Bommai's case*. Subsequently, in the infamous *Ram*

⁴Ismail Faruqui v. Union of India, 1995 AIR 605, 1994 SCC (6) 360.

Janambhoomi case, the Hon'ble Supreme Court justified its concept of secularism by quoting extensively from Indian scriptures. *Verma, J.* (as he then was) (speaking for *Venkatachaliah, C.J.* and *Ray, J.*) quoted from the *Yajur Veda, Atharva Veda* and *Rig Veda* to justify its concept of secularism: 'Sarwa Dharma Sambhava', i.e., tolerance of all religions. This reasoning seemed to be odd wherein the Hon'ble Supreme Court was justifying secularism by religious scriptures. The Supreme Court seemed to have rejected the western concept of secularism based on separation of the Church and the State as explained in the earlier verdict of *S.R. Bommai* and went back to equating secularism with tolerance. The Court also noted that the State has the power to take over any religious place including a mosque. Though dissenting, *Bharucha, J.*, supported the concept of absolute, positive and active secularism, more in tune with that spelt out in *S.R. Bommai*. The secular character of India has in fact received a setback and the issue of Secularism in India today is not simple especially in light of the growing religious fundamentalism which owes its revival to the failure of the government in controlling societal attacks. The Supreme Court expressed its views on the Secular nature of the Constitution for the first time in *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*⁵ where it was held that: "Article 25, and 26 embody the principle of religious feature of Indian civilization from the start of history. In *M.H. Quareshi v. State of Bihar*⁶ this case known as Quareshi Cow-Slaughter case, the Supreme Court held that the State shall banning the cow slaughter did not violate the religious rights of Muslims. In *Kesavananda Bharati v. State of Kerala*⁷, the Constitutional Bench of the Hon'ble Supreme Court reiterated that 'liberty of thought, expression, belief, faith, and worship as a part of the basic structure of the Constitution. Now secularism is a part of basic structure. This view crystallized in the landmark case of *S.R. Bommai v. Union of India*⁸. However, within a year the Hon'ble Supreme Court in *Ismael Faruqui v. Union of India* (also known as *Ayodhya Acquisition Case*)⁹ started diluting the active, positive concept of secularism based on scientific thinking. It was held that the Preamble of the Constitution read in particular with Article 25 to 30, emphasizes the guarantee of equality in the matter of religion to all individuals and groups irrespective of their faith emphasizing that there is no religion of State itself. Subsequently, in the infamous *Ram Janambhoomi case, A.S. Narayana Deekshitulu v. State of Andhra Pradesh*¹⁰ the Hon'ble Supreme Court justified its concept of secularism by quoting extensively from Indian scriptures to justify its concept of secularism: 'Sarwa Dharma Sambhava', i.e., tolerance of all religions. The Supreme Court seemed to have rejected the western concept of secularism based on separation of the Church and the State as explained in the earlier verdict of *S.R. Bommai* and went back to equating secularism with tolerance. In *Arunaroy v. Union of India*¹¹ the court observed that the essence of secularism is non-discrimination of the people by the state on the basis of religious differences. Another probable cause for the threat to "Secularism" can be attributed to the large scale religious turmoil at the international level. The after impact of the 9/11 has, as a matter of fact, led to the rise of religious fundamentalism across the world which has grown itself into religious fanaticism probably because of the singling out of one particular religion, despite the fact that the act was done by a handful of people. This indifferent approach of singling out a religion has led to large scale resentment amongst people of various walks of life. India as a part of the globalised world has been adversely effected by this turmoil. However, still there is hope, as if we trace bits and pieces of Indian history it can be safely said that India, despite numerous adversaries has always been able to find a via media for survival by maintaining the same diverse socio-religious culture. India still maintains its secular character, however, what is probably required is that India as a democratic and secular State must not allow itself to be identified with any religion, and also must ensure that while guaranteeing the freedom of religion for all, it should not legislate on the basis of any religion.

VII. IS INDIA TRULY SECULAR STATE?

Well, if we go through the basic feature of secularism as understood in the west, it can be seen that state has nothing to do with religion and there will be no discrimination between citizens on the basis of their religion or form of worship and that everybody will be equal before law. If this is true secularism, India ceases to be secular for it has different sets of laws for different communities. For instance, in the case of Muslims, a separate civil code exists, though Article 44 requires the state to frame a Uniform Civil Code. Moreover, concessions given to certain communities on the basis of religion undermine the theory of secularism and create perhaps, grounds for a rapid increase of majority communalism. If we analyse the various legislations, which are in vogue in our country, we would find that some of them are not in consonance with the concept of secularism.

⁵ AIR 1962 SC 853

⁶ AIR 1958 S.C. 731

⁷ (1973) 4 SCC 225

⁸ (1994) 3 SCC 1

⁹ (1994) 6 SCC 360

¹⁰ AIR 1996 SC 1765

¹¹ AIR 2002 SC 3176

For instance, under section 494 of the Indian Penal Code, bigamy is an offence and a person, who contracts a second marriage while the first marriage is subsisting, is guilty of the offence. But this provision is inapplicable to those people who can have more than one wife as per their religion. The very fact that operation of a penal provision is not alike among all people and that it is dependent on one's religious faith tantamount to making a mockery of the very concept of secularism. Similarly, the enactment of the Muslim women (Protection of Rights on Divorce) Act, 1986 with a view to circumvent the apex court's decision in the 'Shah Bano case'¹² and to treat the divorced Muslim women differently from their counterparts in other religious faiths cannot be termed as secular. To deny rights to Muslim women which are available to the women of other faiths is a violation of the provisions of the constitution that the state shall not discriminate against any citizens as grounds of religion. Although Article 15 of the constitution prohibits discrimination on the basis of religion, even today the rights and liabilities of people relating to maintenance, inheritance etc. differ according to their religion. This casts a shadow on our claim of being a truly secular state. Some major events which changed the way world viewed India were based on communal frenzy viz. Babri Masjid demolition, the Gujarat riots (2002), Delhi (Sikh) riots (1984), Muzaffar Nagar riot (Akhlaque lynching incident). A truly secular state is not concerned with religion and should not, therefore, specially encourage or promote any religion. The validity of the Haj Subsidy could well be challenged that it aids people of a specific religion and thereby interferes in the matters of the state's allocation of its financial resources. Kailash Mansarovar Yatra Subsidy, Amarnath Yatra, and Kumbh Ka Mela, etc. are also co-ordinated by the Ministry of External Affairs and conducted with the assistance of various Central and State Government agencies. Thus it is clearly a violation of the concept of secularism, because a secular state means State is neither anti-religion nor pro-religion.

VIII. CONCLUSION & RECOMMENDATION

Secularism ensures that the Secular State has no religion of its own as recognised religion of state. It treats all religions equally. The essence of secularism is non-discrimination of people by the state on the basis of religious differences. State being secular does not mean anti-religions, secular is not to tolerate other religions but to respect other religions. A Secular State does not interfere with any religious matters of any community. Secularism is a tool to avoid and store the disputes which have been arisen or which may arise on the religious lines. The basic aim of the Secularism is to allow the people to develop uniformity. The way Indian secularism is structured is a mockery of many secular and democratic principles. These issues are reflected in the Indian constitution, where the drafters of the constitution wittingly or unwittingly adopted policies that continue to divide the country to the present day. The lack of a uniform civil code, as well as rights granted on the basis of a caste-based social system, continue to heighten tensions in India. To add to this, existing personal and penal laws create a larger divide, on one hand distinguishing the citizenry and on the other giving them right to create a communal issue over slightest of omission. Therefore India can never play a role model for multi-cultured societies aiming at secularism. To eliminate the double-standards, the following are the sorts of things that should be done.

1. The individual should be the unit of the states dealing with citizens, not the caste or religion or sex or linguistic group to which he belongs. On this principle separate personal laws, caste-based reservations must be done away with.
2. All secular laws must be enforced uniformly

As it is rightly said that, ***"The increasing communalization of Indian politics is a juggernaut that annihilates the myth of secularism in India"***.

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¹² Mohd. Ahmad Khan v. Shah Bano Begum, AIR 1985 SC 945