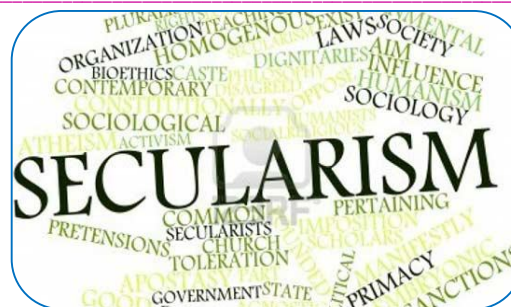




## SECULARISM IN INDIA: AN OVERVIEW

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### ABSTRACT:

India is a land of diversified Religions, Culture, Languages and Customs. Many religions have their roots in India from the time of its known history. India was never a mono religious or mono cultural country but rather it has always been a multi religious and multi cultural country from ancient times. India is a Secular State and it can only be the way for development in plural society like India. However, the Word Secular has not been defined under any law of the Country. Therefore, it creates a sense of confusion among the people. The Indian courts have come to the rescue of this problem. The Present Paper deals with concept, history and its place in the Constitution of India. The Present Paper also analyses the different judgments given by the Indian Courts over the Secularism. This Paper gives the overview of secularism with respect to Indian Constitution.

**KEYWORDS:** Secularism, Religion, India, Preamble.

### 1) INTRODUCTION

The concept of Secularism in India does not the originally belong to the Indian People. The concept of Secularism in India was brought by the British as a part of their Divide and Rule Policy. The main idea of British rulers behind this was to suppress the demand of Independence by the Congress which was predominantly Hindu by asking them to address the demands and interests of the Minorities in India<sup>1</sup>.

When India got Independence from the British Rule, the Constituent Assembly which was responsible for drafting the Constitution of India did not include the concept of Secularism in Constitution expressly but deemed appropriate to use concept of Secularism without spelling out its meaning anywhere in the Constitution<sup>2</sup>. The founders of the Constitution inserted Article 25 in the constitution where they gave freedom of conscience and free profession, practice and propagation of religion to the people living in India which impliedly introduced the concept of Secularism in India. This Article gave freedom to the people of India to profess and practice religion according to their own choice and own belief.

The word 'Secular' was something upon which debate happened every now and then and finally in the year 1976, the Congress Government at the time of emergency inducted the word 'Secular' in the Preamble of Indian Constitution through Forty-Second Amendment Act, 1976. However, the word secular was left undefined. The congress government was followed by the Government of Janta Dal.

<sup>1</sup> 'Why Secularism is not a Indian concept' available at : <https://www.rediff.com/news/report/slide-show-1-why-secularism-is-not-an-indian-concept/20130802.htm> (Visited on 2nd March 2019)

<sup>2</sup> Ibid.

They tried to define 'Secular Republic' as a Republic in which there is equal respect for all religions. Janta Dal had majority in Lok Sabha where this definition got passed but since they were not in majority in Rajya Sabha, this definition was voted down by the congress and therefore this attempt to define Secularism also got failed<sup>3</sup>.

India is known for its diversified culture since people from every religion resides in this country. The Constitution of India through Article 25 gives freedom to all people to profess any religion of their choice. Though people have this freedom under constitution but still there have been reported as well as unreported cases where people have been forced by group of people belonging to one religion to change their religion. Even though India does not have religion of its own but still there have been religious riots, religious unrest and religious disagreements in the country. Religion since the Independence of India has been used as a tool to play with minds of people for a selfish benefit. A classic example of this is the issue of Ram Mandir in Ayodhya where a mosque was demolished by some people with the belief that it is the birth place of Lord Rama even when the dispute was in the Court. This demolition was followed with Godhra riots in Gujarat which is still considered as the biggest religious unrest in the country. Different people in India interpret ate Secularism according to their own benefit and convenience and sometimes misguide other people over Secularism. This research seeks to find out whether India is a Secular State strict sense or there shall be some steps taken to make sure India does not lose its essence of Secularism.

## 2) HISTORICAL BACKGROUND

Secularism started with the fights and intense debates among Protestants and Roman Catholics in Europe with regards to what constituted religiosity, religious freedom, state interference, role of Church or Pope and degree of religiosity in public sphere.

- The Protestants believed that religion was something private between man and a Creator God
- Protestants did not want the interference of Roman Catholic church in state machinery
- Roman Catholics on the other hand opposed the interference of State in clamping down on public religious practices because of fear of "eternal damnation."<sup>4</sup>

Jakob de Roover summarizes this Protestant-Catholic schism in Europe, the nature of the debates they had and the origins of secularism very well:

"When something becomes a religious act or a religious practice, which should be free from state interference and those debates, if you look at them, they do go back to Protestant and Catholic Christianity and very often the conflicts between Protestantism and Catholicism." So the question what is religious what is secular was a very important question to them because to them it meant when a practice was religious it is one of the duties or the obligations we have towards God and God is not just any God to them. It is the creator of the universe who has created humanity to obey Him and only if we live up to his expectations and we follow his Commandments and worship Him in the proper way, only then can we even hope of finding salvation in the next life. So to them it is not a joke because when something is religious and the state prevents you from participating in that practice, it means the state is condemning you to eternal damnation. You'll go to hell because of state interference. So their religious freedom becomes incredibly important."<sup>5</sup>

So the origin of secularism as a concept is the result of fights between Protestants and Roman Catholics, attitude towards Papal supremacy and fear of "eternal damnation." In other words secularism is Christian in origin, what Jakob de Roover calls the "hard core of Christianity".<sup>6</sup>

The other factor which shaped secularism was the fight among Christians and Jews in Europe. Christians felt that the Jews were wholly dissimilar to them even in the public sphere, which was not

<sup>3</sup> Ibid.

<sup>4</sup> 'Secularism in India: History Implication and Alternatives' Available at : <http://indiafacts.org/secularism-india-history-implications-alternatives/> (Visited on 4<sup>th</sup> March 2019)

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

acceptable. There were debates and fights, and as we all know one specific strain of it culminated in the Nazi pogrom of the Jewish community<sup>7</sup>.

Thus in a European context, intra-Christian conflicts, Judaism-Christianity fights, and Christian-Muslim interactions, all these contributed to shaping the notion of secularism. Such debates and fights happened for centuries, developing an idea that was European in origin and shaped by European experiences that were completely unknown to India.<sup>8</sup>

Secularism as a concept is very deep rooted in the history of India. It has been existed since Ancient times. The people of India have been practising different religions and the ruler by and large abstained from imposing any particular religion on the people. Following by Mughal and colonial era, Ashok about 2200years ago and Harsh vardhan about 1400 years ago accepted and patronised different religions. Ellora cave temple built next to each other between 5th and 10th centuries show a co-existence of religions and a spirit of acceptance of different faith . There was also tradition of tolerance between religions due to state policies of various kings since time immemorial from Gupta kings to Ashok and Akbar. Many religious sect and practices kept away rigid intolerant forms. But instances of forced conversion to Islam during tyrant rule of Aurangzeb and other rulers and imposition of religious tax jizya are also known. India is a country where Religion is very central to the life of people. India's age old philosophy as expounded in Hindu scripture called Upanishad is Sarva Dharma Samabhava which means respect to all belief system. The basic trait of Sanatan dharma is what keeps India together despite the fact that India has not been a mono religious country for over two million of Hindu Nationalist school of thought; also proclaim that with Sanatan dharma being the spirit of India, The very concept of western secularism is reluctant and badly imposed. The history of the Indian secularism begins with the protest movement in the 5th century B.C. The three main protest movements were by Charvakas a secularist and materialistic philosophical movement, Buddhism and Jainism. All three of them rejected the authority of Vedas and any importance of belief in a deity. However it was in the 18th century when the British East India Company began to gain total control over India that the idea of secularism began to have impact on Indian mind and until than religion was considered to be inseparable from political and social life. On the other hand, the British codified laws pertaining to practices within religions on the sub continents. To this effect they institute separate law for Hindus, Muslim, Christians, Sikhs, Paresis and others as part of their divide and rule policy<sup>9</sup>.

It is true that the word 'secular' did not first occurs either in Article 25 or 26 or in any other article of Preamble of the Constitution. By the forty-second Constitution Amendment Act of 1976, the Preamble was amended. Since then India becomes a sovereign, socialist, secular and democratic republic. The constitution says that, there shall be no 'state religion' in India. The State will neither establish a religion of its own nor confer any special patronage upon any particular religion. It follows from this that; Subject to above limitations, Article 25 provides that a person in India shall have the right not only to entertain any religious belief but also to practice the observances dictated by such belief<sup>10</sup>.

### 3) SECULARISM AND INDIAN CONSTITUTION

India is the birth place of four major world religions: Hinduism, Jainism, Buddhism and Sikhism. Yet, India is one of the most diverse nations in terms of religion. Many scholars and intellectuals believe that India's predominant religion, Hinduism has long been a most tolerant religion. India is a country built on the foundations of a civilization that is fundamentally non-religious<sup>11</sup>.

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<sup>7</sup> ibid.

<sup>8</sup> ibid.

<sup>9</sup> Dr. Suprita Dash, "Origin and Evaluation of Secularism in India", 22 IOSR-JHSS 05 (2017)

<sup>10</sup> Md Musa Ali, "Secularism In India: Concepts, Historical Perspective and Challenges", 1 APJR 122 (2015)

<sup>11</sup> Secularism and Constitution of India, Available at: <http://www.legalservicesindia.com/article/1964/Secularism-and-Constitution-of-India.html> (Visited on 11th March 2019)

The terms Socialist and Secular were added to it by the 42nd amendment. The whole constitution is summarized in the preamble. It is the mirror to the spirit of the constitution. The arrangement of the words in the preamble is also very significant. Indian society is a multi – religious society, it is having different caste, religion along with several religion diversification. So, all these are the divisive factor in some way or the other and if not handled carefully then can cause a threat to the unity and integrity of the nation.<sup>12</sup>

The constituent assembly has visualized the peculiar situations of the country and a very deliberate sequence has been followed while arranging the preamble. It aims to secure to citizens justice, equality and liberty. So, it is a cause and effect relationship. Justice is also a subjective and circumstantial concept. It implies the balancing of rights. These concepts of justice, liberty and equality revolves around fraternity which is the prime goal of the country has to achieve through these constitutional provisions. Regarding the concept of justice social justice is given prime importance because without social justice economic justice cannot be achieved and without economic political would be futile. So all these terms given in the Preamble are having their own Significance and all efforts have been made to ensure that the real spirit of the constitution shall be expressed in the Preamble. It contains the essential principles and goals of the Constitution.<sup>13</sup>

Constitution of India has adopted a system of political philosophy that all forms of religious faith and worship are of equal status and has accepted the view that public education and other matters of public policy should be conducted without the introduction of religious sentiments. Indian constitution has elaborated the principle of secularism in great detail. It specifies that the state should refrain from either penalizing or favouring any of its people on religious considerations. In fact, India adopted secularism to facilitate the promotion of religious tolerance and cultural co-existence.

Religious harmony is a must to promote fraternity particularly in Indian context. So, it's a constitutional mandate upon the state to combat the factors which curtails religious fraternity. It is also incumbent upon the state to take positive as well as negative actions to promote fraternity. Article 25(1) guarantee to every person the freedom of conscience and the right to profess, practice and propagate religion.<sup>14</sup>

It is the manifestation of state neutrality in the matter of religion as it implies equal conservations of all religion and equal religious right to all the citizens. Along with that it prohibits discrimination on the ground of the religion race, caste, sex or place of the birth. article 29(2) provide that no citizen shall be denied admission into any educational institution maintained by the state, receiving aid out of the state funds on grounds only of religion , race , caste , languages or any of them .<sup>15</sup>

India is a secular country but what is secularism? According to Donald Eugene Smith,' The secular state is a state which guarantees individual and corporate freedom of religion deals with the individual as a citizen irrespective of his religion is not constitutionally connected to a particular, nor does it seek either to promote or interfere with religion upon closer examination it will be seen that the conception of a secular state involves three distinct but inter-related sets of relationships concerning the state, religion and the individual.<sup>16</sup>

#### 4) JUDICIAL APPROACH TOWARDS SECULARISM

The Indian Courts have time and again through its judgements have tried to define Secularism. In the case of *Indra Gandhi v. Rajnarayan*<sup>17</sup>, the Hon'ble Supreme Court held that state shall have no religion of its own and all persons of the country shall be equally entitled to the freedom of their

<sup>12</sup> The Concept of Secularism: An Indian Perspective, Available at: <http://www.legalservicesindia.com/article/1589/The-Concept-of-Secularism-in-India.html> (Visited on 11th March 2019)

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.*

<sup>16</sup> *Supra* 11

<sup>17</sup> AIR 1975 SC 2299

conscience and have the right freely to profess, practice and have the right freely to profess, practice and propagate any religion.

In the case of *SR Bommai v. Union of India*<sup>18</sup>, The Hon'ble Supreme court while upholding the dismissal of four state governments ruled by BJP, on the ground of religious conduct, held that secular not only meant that the state should have no religion of its own and should be neutral as between different religions, but that political party which sought to capture the power, the religious would come to capture the power, the religions would come to acquire a secondary or less favourable position.

In the case of *Bal Patil and Anr v. Union of India*<sup>19</sup> the Hon'ble Supreme Court held that the State has no religion and State has to treat all religions and religious people equally and with equal respect without in any manner interfering with their Individual rights of religion, faith and worship.

The concept of secularism was not expressly incorporated in the constitution at the stage of its making. However its operation was visible in the fundamental rights and directive principles. The concept of secularism, though not expressly stated in the constitution, was, nevertheless deeply embedded in the constitutional philosophy. The concepts of secularism are not static; it is elastic in connotation. In this area, flexibility is most desirable as there cannot be any fixed views in this concept for all time to come. The courts decide from time to time the contours of the concepts of secularism and enforce it in practice.<sup>20</sup>

In *Aruna Roy vs. Union of India*<sup>21</sup>, The court held that concept of secularism is not endangered if the basic tenets of all religions all over the world are studied and learned. 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 learned.

In *Lata Singh vs. State of Uttar Pradesh*<sup>22</sup>, The Hon'ble Supreme Court held that caste barriers in societal interactions are anti – secular. Inter caste marriage shall be promoted, protected and conserved by the state to promote greater secular values. This is also a part of secularization process. The concept of secularism is not merely a positive attitude of religion tolerance. It is also a positive concept of equal treatment of all religions.

In *M Ismail faruqi vs. Union of India*<sup>23</sup>, It was held that it is clear from the constitutional scheme that it guarantees equality in the matters of religion to all individuals and groups irrespective of their faith emphasizing that there is no religion of the state itself. The preamble of the constitution read in particular with articles 25 to 28 emphasis this aspect and indicates that it is in this manner this concept of secularism embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional validity of any legislation on the touch stone of the constitution. The concept of Secularism is one facet of the Right to Equality Woven as the Central golden thread in the fabric depicting the pattern of the scheme in our Constitution. Any steps inconsistent with these mandates are Unconstitutional. The Court further Held that any state Government which pursues un secular policies or un secular course of action acts contrary to the Constitutional mandate and renders itself amenable to action under article 356.

Article 25, 15(3), 29 reflect the state neutrality in the matters of religion. These are the restrictive dimensions of secularism. Now the question for consideration is that whether this state neutrality or such restricted role is sufficient to fulfil the constitutional goal which is incumbent upon the state. To answer this question the nature of Indian secularism has to be keenly observed. The western secularism implies the state neutrality in the matters of religion because they are having a uni

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<sup>18</sup> AIR 1994 SC 1981

<sup>19</sup> AIR 2005 SC 3172

<sup>20</sup> Supra 12

<sup>21</sup> (2002) 7 SCC 368

<sup>22</sup> (2006) 5 SCC 475

<sup>23</sup> (1994) 6 SCC 360

religious society. So state neutrality is sufficient and no further action is required on the part of the state to create religious harmony.<sup>24</sup>

In Indian context the state as a neutral entity in a matter of religion was never an issue because all elements enshrined in the constitution are interwoven and we have adopted our society with all its peculiar features thereby automatic adoption of the multi religiosity also . It's a constitutional mandate upon the state to bring a harmonization between various religions. So, Indian secularism has to be seen in its own light as compared to the western secularism. in Indian context mere state neutrality in the matters of religion is not sufficient as Article 25 , 15(1) ,29(2) manifests non declaration of any state religion or it talks about a mere guarantee of fundamental right to religion to the citizens. These are the restrictive or narrow aspects of secularism in Indian context. Indian secularism requires something more than the above mentioned things. It's a way of life in India as it is deep rooted in Indian society. So to promote the constitutional goal of fraternity, for promotion and assurance of individual dignity and unity and integrity the pro active role of the state is required for religious harmony and tolerance.<sup>25</sup>

## 5) PRESENT SCENARIO OF SECULARISM IN INDIA

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.<sup>26</sup>

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 in applicable 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 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.<sup>27</sup>

Some major events which changed the way world viewed India were based on communal frenzy i.e. Babri Masjid Demolition (1992), the Gujarat riots (2002), Delhi riots (1984), Muzaffar Nagar riot (2013). 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 challenge 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 Mela, etc. are also coordinated by the Ministry of External Affairs and conducted with the assistance of various Central and

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<sup>24</sup> Supra 12

<sup>25</sup> ibid

<sup>26</sup> Sumbul Fatima, "Secularism In India: A Myth or Reality" 22 IOSR-JHSS 52 (2017)

<sup>27</sup> ibid.

State Government agencies. Thus it is clearly violation of concept of secularism, because secular state means State is neither anti-religion nor pro-religion.<sup>28</sup>

## 6) CONCLUSION

The Concept of Secularism in India has always been there whether impliedly or expressly. After India was declared Secular State in the year 1976 by 42<sup>nd</sup> Amendment Act, 1976, there was still confusion as the word 'Secular' was still left undefined. The Indian Courts, thus, took this responsibility and defined the Concept of Secularism time and again through its various judgments. Though, Secularism is not purely an Indian concept and is being imported from the west, but still Secularism has a huge place in the democracy of India. India was declared Secular State to ensure that state commits no biasness on the basis of religion among its people and to bring religious harmony in the State. The Constitution of India protects Secularism through its various provisions and state is bound to follow these provisions. State shall take steps to promote religious harmony and inculcate religious tolerance among its citizens by educating them regarding Secular Values. The citizens of the State shall also ensure that they are inspired by a sense of ethical purpose in dealing over Secularism with their fellow citizens as Secularism no doubt helps them to enjoy the blessing of life, liberty and happiness. India, though have been declared a Secular State, is still not Secular in strict sense because time and again there are religious conflicts which hampers the religious harmony in the country. Secularism is the part of basic structure of Indian Constitution but still there is a lot of scope in strict application of this Concept.



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<sup>28</sup> *ibid.*