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“SECULARISM VIS-À-VIS FREEDOM OF RELIGION UNDER INDIAN CONSTITUTION-A CRITICAL ANALYSIS”

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Abstract

India is a pluralistic society and a country of religions. It is inhabited by people of many religion. The term ‘Secular’ was added by 42nd Constitutional Amendment Act 1976 in Preamble of Indian Constitution. However, as the Supreme Court said in 1947, although the word ‘Secular state’ were not expressly mentioned in the Constitution, there can no doubt that constitution makers wanted to establish such a state and accordingly Article 25 to 28 guaranteeing the Fundamental right to freedom of religion have been included in the constitution. The term ‘Secular’ mean state have no any particular religion. that is to say, as a state has no any religion but comes out as neutral towards the concept of religion. The Constitution furthering the idea of values enshrined in the Preamble, equally preserves and protects all religions. In case of S.R. Bomai Supreme Court held that Secularism is a part of basic structure. In case of Shah Bano, Supreme court held that Section 125 of Code of Criminal Procedure was applicable to Muslim person also irrespective of their religion. In Shayra Bano case Supreme Court struck down ‘Triple Talaq’. The Indian Constitution embodies the positive concept of secularism i.e. all religions in our country irrespective of their strength have the same status and support from the state. To what extent Indian constitution guarantees secularism and provides protection of freedom of religion. How do societal trends such as majoritarianism and Hindu nationalism, influence the implementation of secularism and freedom of religion in India. The Indian Constitution guarantees secularism effectively protects freedom of religion for all citizens. This research critically analyze the provisions of Indian Constitution regarding secularism and freedom of religion. This research is helpful for law students, legal fraternity, lawyers.

Key-words– Secularism, Freedom, Religion, Secular State, Constitution.

1. Introduction-

India has historically been a land of diverse religions and sects, where pluralism and coexistence form the foundation of its social fabric. This diversity is widely regarded as a strength, reinforcing India’s commitment to accommodating multiple faiths and ensuring their peaceful coexistence. Despite differences in beliefs, India has adopted a pluralistic approach rather than an exclusivist one, allowing all religions to flourish.

The Constitution of India (COI) establishes India as a democratic republic committed to justice, liberty, equality, and dignity.⁶ It guarantees freedom of religion as a fundamental right under Articles 25 to 28 and promotes secularism, understood as equal treatment of all religions. The framework of Fundamental Rights and Directive Principles of State Policy ensures both the protection of individual liberties and the obligation of the State to uphold these values.

⁶ The Constitution of India, 1950, Preamble.

The Supreme Court has consistently affirmed secularism as part of the basic structure of the Constitution, as laid down in *Kesavananda Bharati v. State of Kerala* and elaborated in *S.R. Bommai v. Union of India*. However, recent societal and political developments raise important questions about the practical realization of secularism in India.

In light of increasing religious tensions and shifting societal trends, it becomes necessary to critically examine whether the State is fulfilling its constitutional obligation to uphold secularism. This paper, therefore, analyses the constitutional framework, judicial interpretation, and contemporary challenges to assess the status of secularism and freedom of religion in India.

2. Concept of Secularism in India

Idea of "Secularism" was obtruded on Indians by the colonial masters and upon independence the Indians rejected it, and a customised version of it was introduced, suitable to the peculiar socio-cultural and political situations of India, but this "desi" version is also open multiple interpretations.⁷ India, has always been the land which welcomed all faiths and religions from all corners of the world, and the people having diverse faiths also found India to be a conducive place to live freely and remain undisturbed. Gradually, these faiths started influencing each other and also the polity of the country, and rightly so, because when one is surrounded by superior philosophies continuously it is somewhat strenuous to not be theist, and slowly the philosophical characteristic of India developed into a theist State and not otherwise. The Constituent Assembly was divided over the amendment, whether to begin the Constitution with "In the name of God", many arguments were made for and against pertaining to the relation of the State with religion, but finally the amendment was declined but the assembly did

not agree over the term secular either.⁸ The assembly was unanimous on the point that independent India should be secular as secularism is essential for democracy to prosper in India, but what kind of secularism India should adopt was a conundrum.⁹ The word "Secular" was added to the Constitution vide the 42nd Constitution Amendment after the historic virtues of tolerance and harmony were rejuvenated by the efforts of various laws and judicial interpretations.¹⁰ This concept of Secularism is not similar to the Doctrine of Secularism in America, which tries to establish a rigid distinction between the State and the religion. India adopts an affirmative side of secularism, wherein it is neutral in terms of religion, and is in consonance with its ancient legacy of accommodating all faiths and abandoning none.¹¹ According to Donald E. Smith, the Indian way of secularism refers to the non-religious functioning of the State, it has a non-communal and non-sectarian connotation and not a strict schism between state and religion.¹² India may not be a completely theist state but it is definitely not an atheist state. India has its own way of dealing with multiculturalism and relies more on customisation and adjustment with all beliefs than stubbornly rejecting them.

3. Concept of Religion -

If we consider God, an eternal question before mankind, then religion is its answer. Religion, is trying to answer the timeless speculation of mankind regarding the functioning of the universe and the origins of the divine. Kant was of the opinion that the basic aim of the creation of nature by God was to turn

⁷ Katrak, Malcolm & Kulkarni, Shardool. (2021). Unravelling the Indian Conception of Secularism: Tremors of the Pandemic and Beyond. *Secularism and Nonreligion*. 10. 10.5334/snr.145. (Last visited, 24 Aug. 2021)

⁸ Shefali Jha, *Secularism in the Constituent Assembly Debates, 1946-1950*, *Economic and Political Weekly*, Vol. 37, No. 30 (Jul. 27 - Aug. 2, 2002), pp. 3175- 3180, <http://dsc.du.ac.in/wp-content/uploads/2020/04/4412419.pdf> (last visited, 24 Aug. 2021)

⁹ Id.

¹⁰ Dr. Umesh Aswar, *supra* note, 4

¹¹ J.N. Pandey, *Constitutional Law of India*, Central Law Agency, 57th edition, (2020)

¹² Neha Chauhan, *RELIGIOUS CONVERSION AND FREEDOM OF RELIGION IN INDIA: DEBATES AND DILEMMAS*, *IJI Law Review*, Vol.1, Summer Issue. 2017, <https://www.iji.ac.in/pdf/paper817.pdf> (last visited, Aug. 30, 2021)

man into a moral being, and so teleology progresses to theology stating that a rational proof of God is not significant per se but society can only be morally superior with the presence of the divine.¹³Hinduism views religion very differently, it may appear polytheistic from the surface and some may describe it as henotheistic which means without denying the existence of other gods worship a particular God, it believes divinity exists in everything and everyone, its all-pervasive and omnipresent. Therefore, it is obvious that if God is the great question and religion is answering it, there has to be a mechanism for this answer to be conveyed to those seeking answers to this question.

The Britannica encyclopedia describes religion as, that which the human beings consider "holy, sacred, absolute, spiritual, divine, or worthy of especial reverence", it is understood as a relation between man and the divine and the believers of respective religions join together "to perform devotional or contemplative practices" known as rituals. Religion essentially consists of two aspects, its philosophy which is the moral, ethical or universal and metaphysical teaching of it and the other is rituals or practices which prescribe the social structure and the ways of realising the true nature of the philosophy. But when philosophy and rituals contradict, it is philosophy that will take precedence and not otherwise, rituals can be put to test of the philosophy of the religion but the contrary would not make sense.

4. Constitution and the Secular India

The Black's Law Dictionary defines the term secular as "Worldly, as distinguished from spiritual". If we go by

the definition of the Chambers dictionary, it defines it as "the belief that the state, morals, education, etc. should be independent of religion". These definitions signify a complete separation from the contours of religion; however, the Indian idea of secularism is different from what these dictionaries suggest. What is pertinent to note is that, originally, the COI did not use the word "secularism" and it was only by the 42nd Amendment, 1976 to the COI, the word "secular" was introduced in the preamble to the COI. Therefore, the post-independent India did not have the formal idea of secularism in the form of constitution. A slight look at the Constituent Assembly debate also shows the omission in using the term "secular" by Nehru and Ambedkar. Some have even held it as a deliberate omission on the part of the drafters. But it can also be witnessed that the members in the assembly had the vision of India to be a secular state. It was then, through 42nd Amendment, the term "secular" was added; the explanation assigned for its insertion was the previous omissions for its addition. It may, however, be appreciated that from the very beginning of the COI, Part III has provided for the fundamental right to freedom of religion (Articles 25-28) to all the persons; what was absent was the explicit neutrality of the state-religion that was expressly bestowed by 42nd Amendment, 1976. The Amendment emphasizes upon the state's neutrality in the matter of religion or that the state itself demonstrates no religion; neither does it profess any particular religion nor does it provide any kind of preferential treatment whatsoever. One conclusion which may be arrived at is that the drafters of the constitution intended India to be a democracy that respects every religion and protects the respective interests thereof.

¹³ The western Alexandru Petrescu, The Idea of God in Kantian Philosophy, ScienceDirect, Procedia - Social and Behavioral Sciences 163 (2014) 199 - 203, <https://www.sciencedirect.com/science/article/pii/S1877042814064088> (last visited, Aug. 2021)

The Supreme Court of India, being the guardian of the COI, has also discussed the concept to a great extent including the landmark decision in S.R. Bommai v. Union of India, confirming the basic structure doctrine with respect to secularism in India. The court went on to say that the idea of secularism itself differentiates religious from political. The case was clear in its indication against the use of religion in matters of politics and also for personal gains. Furthermore, it is also to be taken into consideration that the secularism in India is not as it is in the western part of the world. The Indian connotation of secularism denotes the state's participation in the formation of certain religious practices of each religion that is required for the welfare of the people; it certainly drives one to the appreciation of the fact of 'reforms (such as sati and untouchability) to be made by the instrumentality of the state' (wherever needed). What can be extracted is that India as a nation-state is a secular democracy which constitutionally equally respects every religion, belief and faith. Therefore, it is of utmost relevance and importance to note that Indian secularism is not based on Nehru's idea of dharma nirapekshata (strict separation of religion from politics) rather it reflects the idea of saarva dharma sambhava. What is, at this juncture, also compelling to note is that India carried forward its colonial legacy and retained the principle of equidistance from the institutions of religious significance rather than complete separation from them. Therefore, it can be said that the Constitution has empowered the state as an interventionist in matters concerning religion. It is, beyond doubt, clear that the state and the religion as not strictly separated can, within the constitutionally permitted parameters, interact and intervene into each other's spheres; what

is essential on the side of state is the flow of a non-discriminatory attitude towards all the religious bodies and denominations whether under its direct or indirect control. The reason behind such scheme is also that in India, the concept of secularism does not target at the complete separation of state from the church. It is rather to assure protection to the minorities of their cultural, religious and relevant identity against the majoritarian view. In this manner, it goes much forward than merely being a neutral state and therefore the minority rights become one of the essential features of secularism in India. Therefore, in a nutshell, the idea of Indian secularism implies the rejection of a theocratic including semi-theocratic state, equality of all citizens without any discrimination, the right of state's interference in the religious practices of various communities for the purpose of their peaceful co-existence and cultural development.

However, it is equally important to note that the RSS, Bhartiya Janta Party (BJP) and their supporters of Hindu state criticize and oppose this concept of secularism as it inculcates the statutory safeguards for the minority rights and allows Muslims to maintain their separate identity which according to them is the biggest hurdle in making India a strong nation and that is possible only with the idea of a Hindu nation-state. The Role of Instrumentality of State and Secularism.¹⁴

5. Legal Framework

Articles 25–28: Fundamental Rights under the Indian Constitution

- **Article 25:** Guarantees the right to freely profess, practice, and propagate religion.

¹⁴ Divyanshu Chaudhary, Indian Constitution Vis-À-Vis The Idea of Secularism: The Role of State in The Ongoing Trends, 7KSLR100,102,(2019)

- **Article 26:** Provides every religious denomination the right to manage its own affairs.
- **Article 27:** Prevents the state from compelling any individual to pay taxes for the promotion of any particular religion.
- **Article 28:** Restricts religious instruction in state-funded educational institutions.

These articles are subject to public order, morality, and health, ensuring that religious freedom is not absolute.

6. Judicial Interpretation -

The judiciary has been at the forefront of balancing secularism and religious freedom. Several landmark cases have shaped the present legal framework.

1. S.R. Bommai v. Union of India (1994):

This case emphasized that secularism is a basic feature of the Constitution. The court ruled that the state must maintain a principled distance from all religions.

2. The Shayara Bano Case (2017):

The Supreme Court's ruling against instant triple talaq showcased the court's role in upholding individual rights over religious practices that infringe on constitutional values.

7. Critical Analysis

Though Indian Constitution has not opted for the strict separation of state from religion, it has also not agreed to give preferential treatment to any specific religion. The idea behind adopting such an approach was to equally protect and further strengthen the basic values of all religions. As Bhargava rightly says that though the Indian Constitution has allowed the state to intervene in matters of religion, it has at the same time laid down certain measures which strengthens the democratic nature and does not negate the authenticity of secularism. Therefore,

the state has to always cherish the values of democracy and egalitarianism that are very fundamental to the principle of secularism. On the part of the state, there is an urgent need to revisit the idea of secularism as enshrined within the organic text of Indian Constitution.

The current scenario even challenges the very existence of the state as an institution as it does not seem to be working within the parameters of the COI. What is required is the renunciation of personal biases or beliefs and to follow what the morality of Constitution says. As, in the present time, the tyranny of the state is evident in the whole analysis wherein the minorities are being suppressed in the name of religion and personal beliefs; it not only tramples upon the individuals' rights but also collectively on the very spirit of the preamble, fundamental rights, and the Constitutional morality of the COI. Therefore, what is also necessary is the other institutions such as the judiciary to take proper measures or provide certain guidelines to curb the arbitrary exercise of power and also lay down the limitations within which the state has to function as far as the matters related to religion are concerned.

It can, therefore, be well concluded that the present condition of the constitutional secularism in India is underperforming on the scale of measurement (certainly as per constitutional norms) wherein the state has failed to keep the idea of secularism intact. It is, at the same time, also high time for us as citizens that we must revisit our right to question the state in a democratic set-up so that the state does not forget its accountability.

7. Conclusion -

The Indian model of secularism, which allows the state to engage with



religion in a limited and regulated way, has been largely successful in maintaining religious harmony. However, it has also led to inherent tensions. The constant challenge is balancing the protection of individual freedoms with the need for social reform, maintaining religious pluralism without allowing one community to dominate others, and ensuring that secularism remains a guiding principle in public policy without reducing it to a political tool.

