

RELIGIOUS TOLERANCE AND SECULARISM: AN ANALYSIS

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Abstract: Secularism under the Constitution is assuming great significance in India due to the rise of political parties based on religion. Constitution of India has built up the philosophy of Secularism on freedom, equality and tolerance in the field of religion. The essence of secularism is that the State is non-partisan in its relation to citizens. Freedom of Religion under the Constitution is absolute except the few restrictions provided under the Constitution itself. Religious tolerance and equal treatment of all religious groups and protection of their life and property and of the places of their worship are an essential part of secularism enshrined in our Constitution. Constitution guarantees to every individual the freedom to adopt a way of life in which liberty, dignity and autonomy forms the core. It prohibits discrimination on grounds of religion and guarantees legal and social equality to all by providing for equality before law and equal protection of laws.

Key Words: Secularism, Religious Tolerance, Atheism, Tradition, Political Justice

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Secularism in Indian Constitution is an attitude and a way of life partly commanded and partly commended by the Constitution. It embodies a system of values in which the relations between fellow human beings and between the state and the citizens are free from the bondage of the prejudices and the loyalties of religion, race, caste, creed, language and religion. Constitution envisages a transformation in the order of relations not just between the state and the individual, but also between the individuals. 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.

Secularism under the constitution is assuming great significance in India in view of the rise of political parties based on religious freedom to practice, preach and propagate any religion is a constitutional right in modern India. Although India is an 80% Hindu Country, India is a secular state without any state religion. Secularism merely means that no religion has the monopoly of religious wisdom. Our secularism is based on the principles laid down by "Bhagavad Gita"¹.

The encyclopedia of Religion and Ethics describes secularism as a movement intentionally ethical, negatively religious, with political and philosophical antecedents. Secularism is not opposed to religion as such it is opposed rather to the use of the religious institutions and religious motivations in the legal, political and educative processes. So long as religion keeps to its own sphere, secularism is religiously natural, it neither endorses nor disapproves of religiousness. Though the word secular did not occur in the original Constitution but was added by the forty second amendment, it does not mean that India was not a secular state earlier. Secularism had been declared to be a basic feature of the constitution even before the forty second amendment.² The distinguishing features of a secular democracy as contemplated by the constitution of India are that

- (1) The state will not identify itself with or be controlled by any religion.

¹ Justice P.B. Gajinchagalkar former C.J. in his book "To the best of my Memory".

² Kesavanantha Bharathi V State of State AIR 1973 SC 1461.1

(2) While the state guarantees to every-one the right to profess whatever religion one chooses to follow which includes also the right to be an agnostic or an atheist, it will not accord any preferential treatment to any of them.

(3) No discrimination will be shown by the state against any person on account of his religion or faith and

(4) The right of every citizen, subject to any general condition to enter any office under the state will be equal to that of his fellow - citizen. Political equality which entitles any Indian citizens to seek the highest office under the state is the heart and soul of secularism, as envisaged by the Constitution.³ Constitution of India has build up the philosophy of secularism on freedom, equality and tolerance in the field of religion. One can understand that the Constitution does not create a wall of separation between the state and religion. The essence of secularism is that the state is non-partisan in its relations to citizens, no matter to whatever religion they belong.

Freedom to religion under the Constitution of India is absolute except in two circumstances i.e. under Art. 25 (2) of the Constitution of India, the state is granted power to make law in two contingencies notwithstanding the freedom granted under Art. 25 (1) which are

(1) Regulating or restricting any economic, financial, political or other similar activity which may be associated with religious practice and

(2) Providing for social welfare and reform or the throwing open of Hindu religious institution of a public character to all classes and sections of Hindus.

Religion has been given the widest possible meaning by the Supreme Court⁴. The Hon'ble Court has held that atheism would also form part of religion⁵. No person should suffer from any form of disability or discrimination because of his religion but all alike should be free to share to the fullest degree in the common life. The religious impartiality of the Indian state is not to be confused with secularism or atheism⁶. It is clear from a plain reading of Art. 25, that similar

³ Suresh Chandra V Union of India AIR 1975 Del. 1681.

⁴ Sant Ram V Labh Singh AIR 1965 SC 314

⁵ Shayara Bano V Union of India (2017 9 SCC 1

⁶ M.V.Pylee "Our constitution, Government and politics" (2002) at P.54

activity associated with religious practices is excluded from the purview of the fundamental rights and in particular the state is at liberty to provide for social welfare and reform without reference to religion. Everyone has a religion, or at least a view, a view or a window on religion, be he a bigot or simple believer, philosopher or pedestrian, atheist or agnostic. Religion and equality are elusive expressions which everyone understands according to their pre conceptions. What is religion to some is pure dogma to others and which is religion to others is pure superstition to some others.⁷

The Indian Constitutional goal on secularism is much more comprehensive than a mere negative secularism which means not being against religion or any particular religion. It is a secularism which is not supportive of any religion but supportive of all religion. Development of scientific temper, humanism and spirit of enquiry and promotion of harmony and spirit of brotherhood among all people transcending religion or sectional diversities emphasize the positive and the dynamic nature and character of Indian Constitutional secularism. Religious tolerance and equal treatment of all religious groups and protection of their life and property and of the places of their worship are an essential part of secularism enshrined in our constitution.⁸ Secularism is part of the fundamental law and basic structure of the Indian political system to secure to all its people socio-economic need essential for man's existence and of moral well being, fulfillment of material prosperity and political justice⁹. In *Bal Patil V Union of India*,¹⁰ the word secularism was defined as "our concept of secularism, to put in a nutshell, is that the state will have no religion. The state will treat all religions and religious group equally and with equal respect without, in any manner, interfering with their individual rights of religion. It is not merely the state but every citizen or group of citizens that are required to act in a manner not likely to cause injury to or create the hostility of another person or group of persons consequent on religious difference.

To enact a uniform civil code is a major problem linked with that of secularism. This issue is an issue capable of generating complex and sensitive issues and it is for that reason that Art. 44 is

⁷ S.P. Mittal V Union of India AIR 1983 SC 1(Auroville case)

⁸ S.R. Bommai V Union of India AIR 1994 SC 1918

⁹ Justice Ramaswamy in S.R. Bommai V Union of India AIR 1994 SC 1918

¹⁰ AIR 1985 SC.945

one of the Directive principles of state policy. In a country like India where the people profess different religious faiths having different personal laws, it may not be possible or desirable to have a uniform civil code. But uniformity need to be sought where uniformity is possible. There can be a uniform law making judicial sanction on recognition necessary to validate any divorce. So also there can be a uniform law for the maintenance of wives, widows, children and parents who are unable to maintain themselves, whatever religion they may profess. The Constituent Assembly Debates with reference to Article 25 reveal that the members of the Constituent Assembly understood a clear distinction between personal law and the civil code. Personal law was understood as based on the practices of members of communities. It was to be limited to the community itself and would not affect members of other communities. The civil code on the other hand, had an unlimited reach. The Civil Code was understood to apply to every citizen of the land, to whatever community he may belong. So far as personal law is concerned, it was recognized as arising out of practices followed by members of particular communities, over the ages¹¹. The Constitution preserves personal law through which religious communities and denominations have governed themselves as an exception.

The constitution guarantees to every individual the freedom to adopt a way of life in which liberty, dignity and autonomy form the core¹². It is clear from a plain reading of Article 25 that secular activity associated with religious practices is excluded from the purview of the fundamental rights and in particular the state is at liberty to provide for social welfare and reform without reference to religion. The right to profess practice and propagate religion freely is also subject expressly to public order, morality, health and the other provisions of part-III of the Constitution, in other words they should not come into conflict with other Fundamental Rights guaranteed by the Constitution. Recently in *Young Lawyer's Association V State of Kerala*,¹³ the Apex Court held that the rules disallowing the girls and women in the age group of 10 to 50 from entering Sabarimala Ayyappa temple violated their right to equality and right to worship prejudice against women based on notions of impurity and pollution associated with menstruation is a symbol of exclusion. The social exclusion of women based on menstrual status

¹¹ *Shyara Bano V Union of India* (2017) 9 SCC 1

¹² *NCT Of Delhi V Union of India* (2018) 8 SCC501.

¹³ *Young Lawyers Association V State of Kerala* (2018) SC

is a form of untouchability which is an anathema to constitutional values¹⁴. Hon'ble Court held that the practice of excluding women from the temple at Sabarimala is not an essential religious practice. In the dissenting judgement Hon'ble Justice Indu Malhotra held that a secular polity must allow heterogenic in religion, allow diverse forms of worship, even if irrational, insisting that Court must not enter into areas of faith. The Constitutional guarantees freedom of conscience, freedom to profess, practice and propagate religion and also freedom to establish religious institutions and manage or administer their faiths. It prohibits discrimination on grounds of religion and guarantees legal and social equality to all by providing for equality before the law and equal protection of laws, prohibiting discrimination with regard to places of public importance. This provision indicate that, the Constitution endeavours to build up in India the philosophy of Secularism on freedom, equality and tolerance in the field of religion. In other words it is clear that the constitution does not build a wall or separation between the state and religion. The religious impartiality guaranteed by the Constitution should not be confused with secularism or atheism. Secularism enshrined in the Constitution is in accordance with the ancient religious traditions of India. In a secular polity issues which are matters of deep religious faith and sentiment, must not ordinarily be interfered with by the Courts. The right to equality under Article 14 in matters of religion and religious beliefs has to be viewed differently. Constitutional morality in a secular polity would imply harmonization of fundamental right to practice their faith and belief in accordance with the tenets of their religion, irrespective of whether the practice is rational or logical.¹⁵ Religion does not merely lay down a code of ethical rules for its followers to accept, but also includes rituals, and observances, ceremonies and modes of worship which are regarded as integral part of the religion.¹⁶ Religious customs and practices can not be solely listed on the touchstone of Article 14 and the principles of rationality embedded therein. It is a difficult task to apply the tests provided under Article 14 to religious practices, which are also protected as fundamental rights. It has to be considered whether the right to equality guaranteed under Art. 14 is in conflict with the religious freedom guaranteed under Art. 25 and 26 of the constitution. The issue of what constitutes an essential religious practice is for the religious community to decide. It is not for the courts to decide which of the practices of a faith

¹⁴ Justice Chandrachand in young lawyers Associate Vs State of Kerala 2018 SC

¹⁵ Justice Indu Malhotra. Young lawyers Association V State of Kerala 2018 SC.

¹⁶ Ibid.

are to be struck down, except if they are pernicious, oppressive, or a social evil like Sati.¹⁷ Judicial review of religious practice ought not be undertaken, as the Court cannot impose its morality or rationality with respect to the form of worship. If it is done certainly it would negate the freedom to practice one's religion according to one's faith and beliefs. It is submitted that constitutional morality requires harmonization or balancing of all such rights, i.e. equality and discrimination in matters of religion, to ensure that the religious beliefs of none are obliterated or undermined.

¹⁷ Justice Indu Malhotra in *Young Lawyers Association V State of Kerala* (2018) SC