

Secularism in India

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Abstract: Secularism is where everyone enjoys the entire religious freedom. The government also can't put a pressure on anyone to just follow a particular religion/faith. We got to know about the Article 25 and Article 26 given under Indian Constitution. In a secular state we should ensure that no community tries to dominate over the other community. We should also ensure that the basic freedom of religion should not be taken away from anyone or force a religion on them. The term secularism comes under the 42nd Amendment of the constitution and it's also known as mini constitution. This study questioned whether there is an Action of Affirmation or Reverse Discrimination. There are many instances where India is sometimes a secular state, and sometimes it is not secular. I conclude that sometimes in the name of secularism the reverse discrimination happens with the majority community.

Keywords: Secularism, religious freedom, majority community.

1. INTRODUCTION

In Secularism everyone enjoys the entire religious freedom because of this the government will not put a pressure on all people to adopt any unique or different belief Religious independence of religion is our right which is provided by the Constitution of India. It is necessary in countries like India, as people from different religions and faiths call it their home. Article 25 states freedom of moral sense and freedom to proclaim, do an act by itself, and promote any faith.

The freedom to 'do an act by itself' means the right to communicate in forms of private and public worship. A person cannot convert 'convert' any others person's faith, but still it is the right of that person to promote one's religion, as it is a mode to communicate a person's beliefs with others. Article 26 states the freedom to govern religious affairs.

We can handle the religious affairs by-

1. Setting up institutions for philanthropic and religious purposes.
2. Managing events that are in relation with religions.
3. Acquiring, administering and owning both the immovable and movable properties according to the laws.

People of many religion call India their home; freedom of religion is offered here to everyone. India changed into a Secular country for equality of faith. Secularism of *India* doesn't isolate religion and state. It was sanctioned by Indian National Congress, at that time Indira Gandhi was the Prime Minister of India. On account of massive number of amendments this act has brought to the Indian Constitution, it's also referred to as 'Mini-Constitution. (Constitution 42nd Amendment Act, 1976., 2016)' ¹

2. RESEARCH METHODOLOGY

The researcher has taken up the doctrinal method of research. The researcher has made large use of the sources available to her.

SOURCES

- Articles and Journals
- Websites

¹ 42nd Amendment is called 'Mini Constitution'. , <https://www.gktoday.in/gk/constitution-42nd-amendment-act-1976/>

AIMS

The aims of the present study are:-

- To study the concepts of secularism
- To study the function of judiciary in secularism
- To know that India is truly a secular state

HYPOTHESIS

Action of affirmation or Reverse Discrimination?

There is very solid evidence of reverse-discrimination in India against the majority. It is to be kept in mind that India once was ruled by Mughals (Islamic) from 1526 to 1857 and after that by the British Empire (Christianity) from 1747 to 1947. Therefore, it is difficult to say that the majority has ill-treated minorities at any point of time to affirm the action.

Why was the 42nd Amendment is called the ‘Mini Constitution’?

The reasons why 42nd Amendment is called the Mini Constitution are as follows:-

Table 1

Changes in Provisions by 42nd Amendment Act	About the Amendment
Preamble	The words ‘Socialist’, ‘Secular’ and ‘Integrity’ were included.
Seventh Schedule	There was a shift of 5 subjects ‘from the State list to the Concurrent list i.e. <i>Forest, Education, Protection of untamed Animals & Birds, Administration of Justice, Weights, and Measures</i> ’.
Article 51A	There were 10 Fundamental Duties included for the citizens. (On the advice of <i>Swaran Singh Committee 1976</i>)
Parliament	<ul style="list-style-type: none"> • Allowed Centre to establish the central forces in State to affect the conflicting situations of law and order (Article 257A). • Offered special exceptional powers to the speaker of Prime Minister and Lok Sabha (Article 329A). • Directive Principles is an example over Fundamental Rights and any law made to the current effect by the Parliament was kept beyond the scope of judicial review by the Court. • Made President bound to the guidance of the cabinet.
Judicial Powers of High Court	Curtailed the facility of Judicial Review of High Courts.
Articles 323A & 323B, Part XIV-A	Part XIV-A added entitled as ‘Administrative Tribunals’ and ‘Tribunals for other matters’
Directive Principles of State Policies	There were Four new DPSPs added to the list of existing ones. i.e. <ol style="list-style-type: none"> 1. Fixing of the opportunities for wholesome development of children (Article 39). 2. Promotion of equality in treatment and providing free legal help to the poor (Article 39 A). 3. A proper course of action to be made to involve the workers in the industrial administration (Article 43 A). 4. To make environment a better place to live and protect the forests and wildlife (Article 48 A).

3. GROWTH OF SECULARISM

The word 'secular' originates from a word in Latin which is 'saeculum'², it meant a period of stability, for almost around a century. To differentiate the divine realm of God and the secular age of the world the Christian Latin term Saeculum was useful. After a period of time the word 'secular' was coined and it contained an additional meaning which according to the thinkers and philosophers meant independent and unrelated of religious groupings and control. Two of the greatest example of this are 'democratic politics of religion during the 17th and 18th century and the and the staggered disentanglement of capitalist economies. Thus, when viewed as a procedure, secular came to be understood as something which comes in phases and gradually develops over time. In the 19th century more and more liberal thinkers of the time came forward with a model of perfect society which is obviously very much secular. There are three broad concepts in law namely, law, religion and the states. . After a period of time the word 'secular' was coined and it contained an additional meaning which according to the thinkers and philosophers meant independent and unrelated of religious groupings and control. The word which connects all three of the concepts is Secularism. Generally Secularism is understood as religious tolerance. But, in practice it is very difficult to tell the actual meaning of secularism. It is defined by various scholars from time to time, and it differs from scholar to scholar. Few of these are given below:

1. **P.K. Tripathi:** according to him the constitution of India offers freedom of religion and also gives assurance to freely practice the religion of person's own choice.
2. **Karl Marx:** he outright rejected the concept of religion.
3. **Mahatma Gandhi:** He attributed the meaning of secularism to "Sarva Dharma Sambhav" which essentially meant equal treatment for all.
4. **K.N. Panikkar:** he gave a really complex idea of religion. According to him there are three different types of secular nation that India claims to be:

First, a secular state is should essentially be made up of the political institutions in accordance with its economic and social interests of the community as a whole, without any consideration given to religion at all. According to him equal rights should be given to all and no form of privileges or special rights should be given to any particular religion.

Second, on the basis of religion and race the political ideas should not divide the population of the country.

Third, as termed by Aristotle 'distributive justice', the coming together of a secular state must be must be accepted on the basis of policies. The main underlying thought behind this was to share the same duties and responsibilities of being citizens of a nation.

"From the *Institute of study of Secularism in Society and Culture*, **Barry Kosmin** tells us that secularism can be divided into two parts: The Hard Secularism and The Soft Secularism. According to him, "The hard secularist considers religious propositions to be epistemologically illegitimate, warranted by neither reason nor experience". Instead in the view of a soft secularist, "it was impossible to attain the absolute truth, and thus, skepticism and patience should be the principle and overruling values within the discussion of science and religion". (Fatima, 2017)

India is well known by the concept of secularism. *Sarwa Dharma Sambhava*, i.e. Forbearance for all religions, has always been a part of our country and this visions comes from the ancient texts such as *Akbar's Din-e-Ilahi*, *Atharva-Veda*, *Rig-Veda*, and *Yajur-Veda*. Until the 42nd Amendment of the Constitution in 1976, the term secularism was not used in the Constitution and after that the word explicitly became a part of Preamble. But, that does not mean in any sense that secularism did not have presence in Constitution or Indian Laws. *Equality, Fraternity and Justice*, on these three principles the Constitution is based.

The meaning of the word secularism is to being unrelated to faith or spiritual biases. A person who is secular does not owe his morals to the faith he/she follows; rational thinking and the scientific reasoning are the basis for his/her values. Secularism demands a separation of faith and religion from cultural, economic, political and social aspect of life because of the fact that a person's faith is purely a personal matter. Secularism gives full liberty to all religions and also the tolerance to all religions and apart from this it is also emphasized that state and religion should be mutually exclusive of each other. No discrimination and equal opportunities for followers of each and every faith is warranted by a secular state or institution.

² https://centerforinquiry.org/blog/secularity_and_secularism_explained/ by John Shook, Secularity and Secularism Explained. (last visited on April 28 th , 2020)

4. SECULARISM UNDER INDIAN CONSTITUTION

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The meaning of the word secularism is to being unrelated to faith or spiritual biases. A person who is secular does not owe his morals to the faith he/she follows; rational thinking and the scientific reasoning are the basis for his/her values. Secularism demands a separation of faith and religion from cultural, economic, political and social aspect of life because of the fact that a person's faith is purely a personal matter. Secularism gives full liberty to all religions and also the tolerance to all religions and apart from this it is also emphasized that state and religion should be mutually exclusive of each other. No discrimination and equal opportunities for followers of each and every faith is warranted by a secular state or institution. Our national leaders wished a modern India of higher synthesis; Secular & Social democracy providing the framework for this transformation from an old society. The partition of India in 1947 made a political necessity to consider the creation of Pakistan based on of religion. The Constitution makers took a lesson that religious and communal spheres should be kept away from the domains of the state and the political affairs.

Adoption of the principles of Secularism in India owes to the following factors:

1. During the national movement for freedom, communal politics developed which resulted in the division of India.
2. The model of secularism in respect of minorities in India is the greatest protector of their interests. Even after the partition, 9.8% Muslims, 2.3% Christians, 1.89 Sikhs, 0.74% Buddhists, and 0.46% Jains were present in India. That is why Secular state was found in India.
3. Under the new Constitution, the democratic system has been established and in a democratic state all the citizens have the right to equality. If a country is inhabited by citizens of different religions, and the state government gives more importance or protection to a particular religion or shows discrimination against another religion, it means that the state does not follow the principles of equality among its citizens.
4. Human Rights are the basis of democracy. Among these rights the freedom of an individual is very important. Religious freedom is an integral part of individual freedom. It amounts to interfere in the freedom of an individual freedom, if he/she is forced to follow a particular religion or he/she is discriminated against on the grounds the religion of his choice. If the state interferes in the choice of the religion of an individual, the State ceases to be democratic set-up.

5. ROLE OF JUDICIARY

In *Keshwananda Bharti v. The State of Kerala*³, This case tells us that Secularism is a basic part of the structure of our Constitution. J Shelat & Grover, said that 'secularism and federalism' are essentially the basic ingredients of the structure in the Indian Constitution. J. Jaganmohan Reddy, said with clarity that Liberty of belief, Liberty of expression, Liberty of faith, Liberty of thought, and Liberty of worship' couldn't be changed at any cost whatsoever as they are the basic part of the structure of The Indian Constitution.

In *S.R. Bommai v. Union of India*⁴ It was said clearly by the court that "secularism is an element of the basic structure." But inspite of this there is a bit of complexity in giving the definition of Secularism. J.Ahmedi said that secularism relies on the "principles of forbearance and arrangement". Therefore the Court gave a judgment that "the concept of religion and secular activities do not mix." The court also said that "the encroachment/intrusion of religion into secular activities is strictly forbidden". In this matter the court also said that the state had the authority to form laws on religion including personal laws and also the laws governing mosques, temples and other places of worship.

In *Sardar Taheruddin Syedna Saheb v. State of Bombay*⁵ Ld. J Ayyangar, stated that "the Articles 25 and 26 contain the principles of religious toleration. The religious toleration has been the characteristic feature of Indian culture."

³ (1973) 4 SCC 225

⁴ (1994) 3 SSC 1.

⁵ AIR 1962 SC 853,851

6. IS INDIA TRULY A SECULAR STATE?

Some theorists define secularism as “That the faith shouldn’t play a part in government, education, or other public parts of society”, the definition which is mainly accepted of secularism is "separation of religion and state". If we are to go by this definition I’d like submit that as of today India is not a secular country.

India is sometimes a secular state, and at times the policies of the Indian state aren’t a secular but it’s an obvious religious reverse-discrimination against the majority community. The reasons are:-

1. There are different laws for Christians, Hindus and Muslims.

In a country which is truly secular, each and every person would be covered and governed under the same laws regardless of their religion of practice. But in India, citizen following different religions are governed by different laws. The Hindu Marriage Act and The Hindu Succession Act applies on the Buddhists, Hindus and Sikhs whereas the Christians in India follows their own personal laws and Muslims also follow their own personal laws. Therefore, Christians, Hindus, Muslims, Parsi etc. people of different religions have different rules for adoption, divorce, marriage and succession of ancestral property. If India were a truly secular state then all the citizen of any faith would not have been governed by different set of laws.

2. Temples are controlled by the government but the Churches, Gurudwaras and Mosques are privately controlled.

Not much people in India know that the Hindu Temples in India are controlled by the Government but the Churches and Mosques are fully privately owned and governed. The Government is allowed to take the charge of the Hindu Temples and also have control on their assets and property. Not only this, the government can take hold of the capital generated by these temples and can put it entirely on alien purposes which have nothing to do with the Temple and also nothing to do with Hinduism as a whole. . Not only this, the government can take hold of the capital generated by these temples and can put it entirely on alien purposes which have nothing to do with the Temple and also nothing to do with Hinduism as a whole. But the strangeness lies in the fact that nothing of this sort implies to the Churches, Gurudwaras or the Mosques. The Government has no say in the management of any non-Hindu Place of worship.

3. There are different laws governing the majority and minority schools.

The minority educational institutions of India get a financial aid from the government in terms of grants, but still it is not essential for them to comply with the Education Act completely. The government is very strict on the Right to Education Act according to which all the private educational institutions have to reserve 25 per cent of their seats to the Economically Weaker Section, but the scenario completely changes in the minority institutions. The schools which are run by the Hindu organization have no such exemptions. Therefore it clearly depicts that there are differences in laws for minority and majority institutions.

The privileges and rights in every case should essentially be similar for all the sections of the society. But in India there are few of these privileges which are only given to the linguistic and religious minorities. It is ensured by the Government that the institutions that are run by the non-minorities are controlled but that is not the case with their minority counterparts.

Article 30: Right of minorities to set up and control educational institutions

Each and every person who is a minority, whether based on religion or language, has their right to set up and manage educational institutions of their choice.

- **Jordan**

Article 19: Any group of people comprising of a religious group has a right to set up and also manage their educational institutions for the education of their members on the condition that they comply with all other rules and regulations made by the state. There is no leniency given to a group of any religious group on any grounds.

Article 6 (i): This article states that the citizens of Jordan are equally liable in front of the Law. No kind of unfair or unequal treatment would be given to people on grounds of their faith and religion.

Therefore both in enjoyment of rights and privileges and in duties there is no discrimination among any religious or ethnic background of the citizen. The constitution of Jordan also does not discriminate on the grounds of language used.

- **Malaysia**

Article (12) Rights in respect of education:

- 1) There should be no biases against citizen on the grounds of descent, place of birth, race or religion on the matters of:
 - a) administration of educational institutions which are maintained by public funds, and specifically in terms of fees of these schools cannot be different;
 - b) providing funds out to the public authority in terms of the financial aid for the purpose of education of students.
- 2) Each and every religious group have the right to set up and manage an educational institution for the purpose of education of children of their community,. No kind of unfair or discriminatory treatment will be done against any religion in regards to these religions. But, all these privileges are given only when these educational institutions are abide by the laws made by the Federation. Therefore despite of the fact that Malaysia is an Islamic state still the country gives equal right in terms of education to all the citizen and religious groups.

4. The role of political parties and the media

This situation of secularism is often worsened by the fact that mostly all political parties and the media are being seen as overly eager to win the favor of a particular section of minority community. As an example to the above said fact, there was a very unfortunate act of mob lynching in Dadri where Mohammed Akhlaq, a person belonging to a minority community. This obviously was an act of utter shame but, the family of the deceased got a remuneration of Rupees Forty Five Lakhs and apart from this they also got four flats in NOIDA by the Uttar Pradesh Government and this was televised by the media for about twenty four hours straight.

About the same time an equally shameful incident took place in which Prashant Poojari, an animal rights activist was brutally lynched to death. The incident was not even covered by the mainstream media and the news channel. It was only after the outrage on Social Media platforms that this incident got coverage. As of now, I am still to get hold of any report of any kind of remuneration being provided to the family of the deceased. A private organization named Rashtriya Swayamsewak Sangh though donated Rupees Ten Lakhs to the Family.

These type of incidents send a clear picture that there are sections of Indian Society that value the existence of a particular society to be more than the same of other sections of the society. These are the type of incidents which should not take place in a secular country like ours. Angle of humanity should be above the politics of caste gender or religion.

7. CONCLUSION

A Secular State ensures that there is no chosen religion of the state i.e., there is no recognized religion of state. Treatment of all the religions by the state is similar. Secularism in its purest form should not discriminate against a section of people solely on the basis of their choice of faith and religion. But, a secular state does not in any sense means that the state is anti-religious, its essence is not to tolerate all the religions but to respect all the religions.

Secularism may be used as a tool to bypass the conflicts and solve the disputes which have already arisen or may arise in the future on the lines of faith and religion. The most basic aim of Secularism is to:

- 1) see that no community tries to take over or dominate over the others.
- 2) see that some members of the community does not dominate or takes over the other person within the same community.
- 3) the basic freedom of religion is not taken away from the citizen and that the state does not force a religion on them.

In its truest sense, Secularism gives people a platform to develop uniformity. But, the way the secularism is made to look; it makes mockery of the democratic and secular principles. This is quite clearly visible in the Constitution of India where the drafters of the Constitution knowingly or unknowingly opted for the policies which haunts and divides the nation to even this day. The rights granted based on the fact that whether a person comes from a minority or the majority and also the lack of a uniform civil code, continues to heighten the tension in India. It is suggested that the separate laws according

to the religion, caste base reservations and religion based reservation must be put to an end as soon as possible. Reservations should only be provided to the people who actually needs it; in the present scenario people who don't actually need the reservation exploits the provisions. The laws regarding the secularism should be evenly and uniformly enforced.

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I would also like to thank my friends who gave their inputs.

DECLARATION

I hereby declare that the project work entitled "**Secularism in India**" is submitted to Amity University, Noida is a record of original work done by me under the guidance of Dr. Neelma Devi.
