



The tussle between secularism and religious freedom in India: An analytical view

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Abstract

As per the western concept of secularism, secularism can be defined as a strict separation of state from religion. India's case, where religion has a significant role in individuals' personal lives, is quite different from Western ones. In India, there is no discrimination in the treatment of any religion. Religious freedom is a fundamental right in India, and one cannot discriminate based on religion. This paper tries to look into various theories of secularism in India along with religious freedom as enshrined in the Indian constitution. Furthermore, it highlights the importance of both secularism and religious freedom in India.

Keywords: secularism, religious freedom, fundamental rights, state

Introduction

The Grund Norm of India incorporates Secularism as a basic feature of the Constitution. India is the mother of numerous prominent religions and is home to the same. The Indian concept of Secularism does not allow the state to have its religion and mandates to treat all religions equally without intervening in it. On the one side of the thread, the Constitution attaches Secularism to the state, where the state cannot have its own official religion, and on the other side, it provides the right to freedom of religion to all the people.

Secularism, freedom of religion, and equality are so connected with each other and can be said to form a triangular relationship with one another. The Indian Constitution mandates the state to provide equality before the law or the equal protection of the laws to all the persons in the country. Therefore, it sometimes creates a conflict between the three- Equality, Secularism, and the Right to Freedom of Speech. The Uniform Civil Code is an example where the supporters and critics use these three concepts to support as well as criticise the advent of the Uniform Civil Code in India. People believe the terms Equality and Uniformity are similar and sometimes uses interchangeably.

Numerous incidents in India show the tussle between the Secularism and Right to Freedom of Religion. It is the duty of the state to maintain equality among the citizens without violating the fundamental right of the religion of the people. However, the right to freedom of religion is not an absolute fundamental right, it is also subjected to certain restrictions as mentioned under the Part III of the Constitution of India.

True Sense of Secularism in India

The original meaning of secularism traces back to the neutrality of the state towards religion.

Secularism in India does not mean that the state is anti-religion or atheistic but is neutral in religious matters. It obligates the state to protect all religions without any interference in religious matters. Religion is basically the beliefs of a person as to how he should live his life, which is nothing to do with the state. Therefore, it is the relation of a man and the god in which the state has no power to interfere. However, the state has the power to put restrictions on those practices of any religion if it is against the public order, morality, health, or other reasonable restrictions.

To understand the true meaning of secularism, following definitions can be referred:

- According to Dr. S. Radha Krishnan, Secularism does not mean that India totally rejects the faith in the existence of the Almighty power but it mean that no religion will be used to identify the state and control the state.
- According to Donald E. 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 religion, nor does it seek to promote or interfere with religion".

Charles Taylor published a book named The Secular Age in 2007, wherein he states about mainly three types of Secularism.

- First: Where people are allowed to practice any religion, and the state will not interfere in it.
- Second: Where the majority population of a state does not identify themselves with any religion.
- Third: In this form of Secularism no single view is taken, and all the beliefs and non-beliefs are equally important.

Historical and Constitutional aspects

In western countries, the concept of secularism refers to the separation of the church and the state. It means these two will not interfere with the works of each other, and the public will have the right to freedom of religion. However, the meaning of secularism may vary from country to country.

The Historical aspect of Secularism in India can be discussed mainly in two heads, Ancient History and Modern History.

- **Ancient History:** Under Ancient History, secularism can be studied from the vedic period to the advent of British Era in India.

The seeds of Secularism in India can be traced back to ancient India. India is the birth land of Sanatan Dharm, which accepts various traditions, cultures, and practices and also teaches tolerance towards the same. Vedas, Upanishads, and their interpretations indicate the plurality of Hinduism. The basic idea is God is one- the one supreme almighty power, people worship him in different forms and different ways, and that originates in various religions. Therefore, all religions must be respected and protected.

After the birth and advent of various religions in India, many Kings and Emperors have also advocated Secularism. The Great Emperor Ashoka is considered to be the first who has shown the face of Secularism when he ordered that no person shall be prosecuted solely on the basis of his religion.

The Sufi and Bhakti movements have also promoted Secularism in India as they promoted peace and love between various communities. The essence of every religion is that it teaches love and not hate.

The great Mughal Emperor- Akbar, has also watered the tree of secularism wherein he advocated Din-e-Ilahi (Divine faith) and Sulh-e-Kul (Peace with all). There are many instances that prove that Akbar was a secular ruler like he abolished the Jazia tax which was imposed on Hindus, had many Hindu ministers and advisors at higher posts, and many Hindu wives.

- **Modern History:** Under Modern History, secularism can be studied after the struggle of Independence started in India to present times. Many Indians have planted the seeds of secularism in modern India like Sri Raja Ram Mohan Roy's Brahma Samaj and Swami Dayanand Saraswati's Arya Samaj. They were not inclined towards any one religion. Many freedom fighters and nationalists also advocated the principles of Secularism in India like Dr. APJ Abdul Kalam, B.R. Ambedkar, Mahatma Gandhi, Pandit Jawahar Lal Nehru, Moti Lal Nehru, and many more. The Gandhian form of secularism does not have the values of western secularism. Gandhi Ji believed in pluralistic Vedantic belief, Sarvadharmā Sambhav. He believed and understood that religion is the part of the lives of the Indians and therefore, the western form of religion could not be acceptable in India. The more Britishers tried to Divide and rule the country, the more Gandhi ji tried to unite the Indians.

The struggle of all people from all sects and religion have helped the country to gain independence from the colonial rule. The efforts of the freedom fighters behind the freedom struggle of the country and the intellectuals & scholars behind the Constitution of India have resulted in the Indian form of Secularism.

Constitutional Aspects of Secularism

India is indisputably a Secular country. Indian form of secularism does not prohibit its citizens from professing, practising and propagating any religion but it casts a duty upon the state to stay neutral in the matters of religion and prohibition of religion in the matters of the state.

- The Preamble of the Constitution of India expressly states that the India is a “SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC”. It is significant to mention that the term ‘Secular’ and ‘Socialist’ has been added to the Preamble of the Constitution by the (Forty-second Amendment) Act, 1976. However it does not mean that prior to 1976 Amendment Act, India was not a secular state. India has been a secular state by the inception of the Constitution of India itself. Even, the Secularism is considered as the basic structure of the Constitution of India. It means that the Parliament cannot destroy or dilute the features of the Secularism in the Constitution by any amendment under Article 368.
- The Fundamental Rights: The essence of the Secularism can also be sensed in the Fundamental Rights given to the citizens under Part III of the Constitution of India. The Right to Equality (Article 14 to Article 18) also strengthens the roots of Secularism in the country. It casts negative obligation on the state to not to discriminate the citizens on the basis of religion along with some other factors as well. The state cannot prohibit any person from entering and enjoying the public resources on the basis of the religion. It can neither discriminate any citizen on the basis of religion when it comes to opportunities for any employment or office under the State. Even Article 19(1)(a) of the Constitution of India i.e. Freedom of Speech and Expression indirectly promotes the idea of secularism in India. It is intrinsic right given under the Constitution of India, without it a person cannot completely exercise the Religious Rights provided under the same part of the Constitution. The Fundamental Right to Freedom of speech is an umbrella of rights and has been interpreted in a liberal manner to include various other rights as well under it’s ambit. In the National Anthem Case, it was held that the freedom of speech includes freedom of silence as well. The Supreme Court held that no person can be compelled to sing the National Anthem “if he has genuine conscientious objections based on his religious faith”. The fact that those three children stood up while the

national anthem was played has shown their respect towards the national anthem and therefore they did not committed any offence under the Prevention of Insults to National Honour Act, 1971.

Right to Freedom of Religion (Article 25 to Article 28)

The Constitution provides every citizen a freedom of conscience and right to freely profess, practice and propagate religion, subject to the public order, morality and health. Therefore, the state cannot interfere and intervene in the religious freedoms of the citizens given by the Part III of the Constitution and any such law curtailing the rights of the citizens is ultra vires to the Constitution. Article 26 ensures freedom to manage religious affairs and provides distinct rights to every religious dominations with regards to the same. Article 27 provides freedom from taxes for promotion or maintenance of any particular religion. It demonstrates the secular nature of the state. Article 28 prohibits religious instructions in the state aided institutions.

In *Aruna Roy v. Union of India*, the validity of the National Curriculum Framework for School Education 2000 was challenged on the ground that it violates Article 28 of the Constitution as it provides comparative study of philosophy of all religions in educational institutions. The Supreme Court held that neither it violates Article 28 nor the fundamentals of Secularism and "Religion is the foundation for value based survival of human being in a civilised state".

Uniform Civil Code and Secularism

Is India ready for UCC? This is one of the most debatable questions where hours can be spent on the debate, yet will get an answer with doubt. Uniform Civil Code means one civil Code common to all by abolishing personal laws which are based on scriptures, and religious texts. These personal laws regulate activities like marriage, divorce, inheritance, and similar kinds. The question of UCC comes into mind as many believe that these personal laws are discriminatory in nature towards minorities and mainly towards women. Some practices like Triple Talaq, polygamy, and other issues sparked the debate of UCC in India. The concept of UCC was initially discussed during the formation of the Constitution of India where the members of the constituent assembly wanted to regulate every citizen of India according to the constitution so that no one will be deprived of their rights because of their personal laws. They wanted every person to enjoy his rights irrespective of his caste, gender, color, & religion, with the aim of "One Nation One Law". However, UCC remains a mere dream for constituent framers as India is the hub of a large number of religious and tribal communities, and they believed that UCC is a threat to their religious freedom it will diminish their authority in their society. Framers of the Indian constitution made UCC optional and put it under Article 44 of The Indian Constitution Stating "The state shall endeavour to secure for the citizen a uniform civil code throughout the territory of India" with the hope that India will accept the UCC when it will be ready. Even after decades, Goa is the only state that has implemented UCC within its territory.

In India, where personal laws are based on religion, caste, culture even geography, especially rights that deals with adoption, property inheritance, and marriage, states like Meghalaya, Mizoram & Nagaland have their own personal law which is based on their customs & practices move on to religious laws, in Muslims are determined from "Kuran" these laws consist of right related to marriage, adoption, divorce and other civil matters. In Muslim laws, women's rights, which consist of alimony, inheritance, & adoption depend upon the mercy of the Muslim Personal Law Board which is mostly run by men. These religious and territorial distinctions among citizens put the objective of the Indian Constitution into question. Father of the Indian constitution DR. B.R. AMBEDKAR during one of his constituent assembly debates said that "I personally do not understand why religion should be given this vast, expensive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities and discrimination that conflicts are fundamental rights. It is, therefore, quite impossible for anybody to conceive that the personal laws shall be excluded from the jurisdiction of the state".

Till now many personal has been codified by the Indian Parliament including Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Hindu Minority and Guardianship Act, 1956, Hindu Adoption and Maintenance Act, 1956, Muslim Women Protection Act, 1986, and many judgments which have been given by our Apex Court which creates tussle between secularism and religion. In the Shah Bano case of 1985, Shah Bano approached Apex Court seeking maintenance after her husband divorced her after 40 years of marriage by giving triple talaq and denying her regular maintenance. The Supreme Court bench, in a verdict in favour of Bano, stated: – "There is no evidence of any official activity for framing a common civil code for the country. A common civil code will help the cause of national integration by removing disparate loyalties to laws that have conflicting ideologies". Codification of personal laws and interpretations of courts are helping citizens of this nation in building such an environment that should be free from any religious and territorial restrictions."

International Conventions

In this era of the integrated world international conventions, declarations, and treaties play a significant role in the municipal laws of a country. Both the Monistic theory and Harmonisation theory support this philosophy of integrated international law with municipal law.

In the light of the right to freedom of religion, numerous international conventions provide individuals freedom of religion, the right to faith, and conscience. These rights do not interfere with the secular nature of a state.

The well-known Universal Declaration of Human Rights which provides basic human rights to all humans enshrines the right to religion under Article 18. It has been adopted by the United Nations General Assembly in 1948. It provides every human has-

- Right to freedom of thought, conscience, and religion
- freedom to change his religion or belief, and
- freedom to manifest his religion or belief in teaching, practice, worship, and observance.

The International Covenant on Civil and Political Rights, 1966 also provides every person the right to freedom of thought, conscience and religion. Similarly, Article 9 of the European Convention on Human Rights and Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief also provides the right to religion.

Apart from these, the following also provides right to freedom of thought, conscience and religion: -

- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC)
- General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Resolution
- General Comment No. 22 on the right to freedom of thought, conscience and religion (Art. 18), Human Rights Committee, and
- Other.

All these conventions provide, protect and promote the right to religion. Most of the Democratic countries are secular in nature but it does not mean that the citizens of that country are deprived from exercising and enjoying their right to religion.

Highlighted and controversial Cases in India and Role of Judiciary

In the past years there have been numerous incidents that highlight the conflict between Secularism and Religious freedom in the country. The Apex Court of the Country has undoubtedly not failed to resolve such disputes and establish harmony and unity within the country and to preserve one of the basic features of the Constitution of India.

- **The Ayodhya case:** The Ayodhya land dispute has been one of the most controversial cases in the country over decades. The conflict revolves around demolition of a Hindu temple in Ayodhya by the Mughal emperor and construction of a mosque commonly known as Babri Masjid. The Hindu claimed the land stating that originally there was a Hindu temple, the birth place of Lord Ram and Muslims claimed the land that a Mosque has been there. This conflict was fueled by various extremist groups and political parties. After long battle, various violent incidents and heated conflict of decades, the Supreme Court of India on November 9, 2019 held that the land should be given for the construction of the temple and The Muslims should be compensated with five acres of land in Ayodhya to construct the Mosque. The Apex Court of India has dealt this sensitive matter and tried to resolve the conflict between two major religions in the country. It is the duty of the state to establish peace and maintain harmony and unity among various religious and cultural groups without hurting their faith.
- **Sabarimala Temple case:** It is the case that revolves around religious faith, equality and customs. The Sabarimala Temple of Lord Lord Ayyappa is situated in Kerala. The customs of the prohibit women in their menstruating years to enter into the temple because the Lord Ayyappa is considered to be a celibate deity by their devotees. Not the first time but in 2006, Indian Young Lawyers Association filed a Public Interest Litigation challenging this prohibition on the basis that it contradicts Article 14 and Article 25 of the Indian Constitution, the fundamental rights of the citizens, and even 'derogatory to the dignity of women'. The Supreme Court on September 28th 2018, held that this prohibition is unconstitutional as it violates the fundamental rights of the women in their menstruating years. The case highlighted the conflict between the fundamental right to religion and customs. The Women were prohibited from practising and exercising their fundamental rights to religion as the custom disallowed them from entering into the temple. In this case it was also held that the custom was not an essential religious practice.
- **Citizenship (Amendment) Act 2019 Case:** The Amended Act has allowed specific religions namely Hindu, Sikh, Jain, Parsi, Buddhist and Christian from Pakistan, Afghanistan and Bangladesh to acquire easily the citizenship of the country in shorter period of time. It was allowed on the basis that these religions are minorities and have been persecuted in the three stated countries majorly, therefore the government is allowing them to acquire citizenship in a easy manner. However, a large number of protests were seen in different parts of the country against this law stating that it destroys the Secularism by discriminating the other religions. The Shaheen Bagh Protests that were led by the women was a peaceful protest against the CAA. It still holds significance.

The above mentioned cases are only a few cases that resolves around religious freedoms and Secularism and various other aspects. It is not limited to these only there are various other cases as well, e.g., Gyanvapi dispute and other similar.

Conclusion

It can be concluded that Secularism is indeed the need of the world as the 21st century cannot allow any state to interfere with the basic and fundamental right of an individual of religion. Every person has their own faith and has the right to worship and profess, propagate and practice his or her religion without any unnecessary intervention of the state. However, this freedom and right cannot exceed the reasonable limits and can cannot create chaos in the society or harm any other individual or the interest of the society.

The state should also take proper measures to stay neutral in matters of religion and promote religious tolerance in the country. The schools must teach religion tolerance and teach at least the basics of every religion with due respect without favouring one religion over other. The Indian government also subsidies the religious pilgrims such as Haj, four Kumbh Melas, Kailash Mansarovar Yatras, etc. The tolerance and respect towards all religion is the only way to secure the Secularism as a diamond in the gold ring. As ultimately all religion believes that there is only one supreme power in the universe.

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