

Secularism in India

Lumina L

National University of Advanced Legal Studies (NUALS)

LLM

Abstract

India is a multi- religious and multi- Cultural Country. India was the birthplace of four major religions namely Hinduism, Buddhism, Jainism and Sikhism. Though the word “Secularism”, is said to be first coined by a British Writer George Holyoake in 1831, Hindu Ethos for centuries practiced Secularism as a way of life. They totally advocated and followed “Sarva Dharma Sambhava”. Our Pre- Independent India which was ruled by rulers from Ashoka to Akbar were also preserving Secularism in India. When our Constitution was formed our constitution did not have the word “Secularism” anywhere. But the flavour of secularism was well mixed in our constitution. We were able to taste them in Article 14, 15,25,26, 27 and 28 of Indian Constitution. Later, through 42nd Constitutional Amendment the word “Secularism” was added in the Indian Constitution. Slowly, India is going through a phase where India’s inherent trait “Secularism” is being questioned. Starting from Rajiv Gandhi’s action after the judgment after the Shah Bano’s case to Ram Janmabhoomi India’s Secularism is being shaken. In order to preserve India’s Secularism some fundamental changes should be made in our constitution, civil law and criminal law. Moreover, laws should be made to prevent the usage of Religion as a means to achieve political endeavours in India.

This Research Paper focuses on the history of the of “Secularism”, comprehends the concept of “Secularism” in our Indian Constitution and tries to bring out the current problems affecting Secularism. The Research Paper will also provide solutions to prevent “Secularism” from being faded away in the course of time.

Keywords: Secularism, Hindu Ethos, Threats, Solution

1. Introduction

“Secularism must be applied everywhere because that is how everyone will be able to live in peace with each other”

By Manuel Valls, Former Prime Minister of France.

Secularism is one of the most important virtue that do not have a precise meaning or a meaning that everyone agrees upon. It was beautifully said by Jawaharlal Nehru in his autobiography that “no word perhaps in any language is more likely to be interpreted in different ways by the people as the word ‘religion’. That being the case, ‘secularism’ which is a concept evolved in religion to religion can also not have the same connotation for all”. There is a very popular notion that there are two models of Secularism. First Model is where the State and Church are completely different entities. It is like they have an invisible and unbreakable wall and the church will not interfere with the affairs of the State and State will not interfere

in the affairs of the church. This could be seen in United States of America. Second Model is where all religions are treated equally by the State.

This Secularism is actually embedded in our Indian Culture and that's how we have given birth to four different religions. This article analyses the History of Secularism in various timeline of Indian History and tries to make the reader understand that India and Secularism are interwoven. It also highlights the various threats that are faced by Secularism in the Present Indian Society and tries to bring out the different solution that can revive the Secularism in India.

1. Secularism in Hindu Ethos

Our traditional Hindu Ethos has always supported Secularism in its real form. One of the common tenets of Hindus is “Sarva Dharma Sambhava”. This means the way to truth may be different but the ultimate truth is the same. This may be illustrated as, one may in order to reach their office may choose bus or car, the means may be different but the destination (i.e.) the office is same. “Sarva Dharma Sambhava” is widely interpreted to mean that one may choose any religion as a means, but the ultimate destination is same for all religion. Such a type of idea widely prevalent among Hindu Ethos.

The Hindu Ethos also collectively believed in the concept of “Vasudhaiva Kutumbakam”. This can be found in Maha Upanishad. It is almost similar the Tamil Phrase “Yaadhum Oorae Yaavarum Kealeer” which means all people in the universe are same family. Irrespective of difference between all the people in the universe are a family. This is the inherent value that Hindus collectively had in early Indian Society¹.

2. Secularism in Pre-Independent India

Ashoka, though promoted Buddhism, aimed in a society where all the religion existed peacefully with mutual respect. The Mughal Ruler Akbar should be acknowledged for his Secularistic Rule in India. During his rule he tried to give equal space for all the religions.

During the British Rule though there was a mass spread of Christianity in India, the policy of the Britishers ensures neutrality.

This sense of Secularism can be found when India was fighting for its independence. Mahatma Gandhi not only felt that a person's religion should stop in his or her private space but also felt that recognition of various religions in the public space. One could infer this in the Khilafat Movement in 1919 where Gandhi joined hands with Muslim leaders. Mahatma Gandhi also believed that the Muslims should not be forced

¹ Sanghi, A. (2020, August 9). *Want to preserve secularism in India? Well, preserve the Hindu ethos first*. ThePrint. <https://theprint.in/opinion/want-to-preserve-secularism-in-india-well-preserve-the-hindu-ethos-first/477972/>

to give up cow slaughter. He always advocated his followers to make Muslims stop cow slaughter by peaceful means².

Actually, India not only had people who promoted secularism, but also had people who had progressive thoughts like Raja Ram Mohan Roy, E. V. Periyar etc., who condemned the backward ideas of Hinduism.

3. Secularism after Independence

When the Constitution was made in the Independent India, the word “Secularism” was not found anywhere in the Indian Constitution. But that does not mean that India didn’t have the idea Secularism in the Constitution when constitution was made. Indeed, it didn’t have the word “Secularism” but it had many articles which provided Secularism to its people.

Article 14 of the Indian Constitution talks about equality before law and equal protection of the law. Article 14 has the word “any person”. Hence a person may belong to any religion, but the law gives equal protection. Article 15 explicitly states that a state shall not discriminate any person in the basis of religion. Article 16 also explicitly states that a person shall not be discriminated based on religion. Apart from treating the minority religion people equally with majority religion people, Article 25 gives the right to a person to not only practice but also profess and propagate his or her religion. Also, Article 26 gives freedom to manage religious affairs and Article 27 restrains or protects the people from compulsorily paying religious taxes. Again, in Article 28 no religious instructions can be taken in a school wholly managed by the state. In addition to these rights our constitution has bestowed with Article 29 and 30 where special rights are given to minority³. In *St. Xavier College V. State of Gujarat*⁴ the Supreme Court rightly pointed out that though the word “Secularism” was not found in our Constitution one could interpret it in the words of Article 25 to 28 of Indian Constitution. Hence our Constitution although did not have a “Secularism” written anywhere in the constitution before 1976 one could infer that our Constitution indeed guaranteed Secularism.

In 1976, through 42nd amendment the word “Secularism” was added in our Indian Constitution. The Supreme Court in the case of *S.R. Bommai V. Union of India*⁵ held that “Secularism is the basic feature of the Constitution”. Also, in *Aruna Roy V. Union of India*⁶, the Supreme Court held that Secularism means developing, understanding and respect towards other religion. A landmark progress in the area of Secularism occurred in the case of *Kesavanandha Bharati V. Kerala*⁷. In this case the meaning of the word Secularism was enunciated by the Indian Supreme Court for the first-time. It stated that the word

² Abhinav Chandrachud. (2020). *Republic of religion : the rise and fall of colonial secularism in India*. Penguin/Viking, An Imprint Of Penguin Random House.

³ *Secularism and the law SECULARISM AND THE LAW National Foundation for Communal Harmony New Delhi August 2010 i.* (2010). <https://nfch.nic.in/documents/E-Books/Secularism.pdf>

⁴ AIR 1974 SC 1389

⁵ (1994) SCC 1

⁶ AIR 2003 SC 3176

⁷ AIR 1973 SC 1461

“Secularism” meant that the state which has no state religion. Also, in this case the Supreme Court that basic structure of the Constitution cannot be amended through the power given under Article 368 of the Indian Constitution and that Secularism is one among the “basic” structure.

So does things make us Secular. Well, that’s a question that we need to ponder. Simple, giving special privileges to minority on the basis of religion in itself can be regarded as an unsecular activity.

4. Threats to Secularism

Though there were lot of Secularistic ideas prevalent in the Indian Society, one should not forget that India is not fully Secular. Of course, no society can be totally secular. But something that one needs to remember is that we are country who was divided on the basis of religion. So, is India really Secular? The answer is NO. Nothing could be perfect. India is not an exception to that rule. The following are some of the things that made India fall back from being Secular.

When the Supreme Court gave its Judgment in the case of Mohammad Ahmed Khan Vs. Shah Bano Begum⁸, allowing a Muslim divorced wife to get maintenance under Section 125 of CrPC, due to the pressure given by the Muslims, Rajiv Gandhi Government overturned the judgment by passing Muslim Women (Rights on Divorce Act) 1986. A state which has guaranteed right to equality to all people has, merely because of the pressure of the Muslim religious group has made such a law. By failing to treat all religion equally, India chosen an unsecular path.

And then Secularism was again in threat when India became the very first country to ban Satanic Verses a book written by Salman Rushdie. Now very recently P. Chidambaram has said that banning of Satanic Verses was a “mistake”. Just to make sure that Muslim Votes are secured a Government has invariably went against the principle of Secularism.

Again, when the Babri Masjid was demolished in 1992, the principle secularism was bedridden the pre-planned demolition of Babri Masjid and the aftermath communal riots had effect all over India. And a sovereign was unable to take any effective action. Till now, after nearly 28 years, the people who demolished the Babri Masjid has not been traced out. A problem which should have been solved through a Judicial machinery was taken by some religious mobs and state was ineffective to stop it.

Gujarat Killing of 2002 is one of the shocking reminders that how an argument can lead to a very big communal riot. Many people where mercilessly killed. Actually, many where slaughtered. This has may be described as the death knell of Secularism⁹.

After the Ayodhya Judgment, there was a lot of speculation that a Prime Minister who practically leads the state, chose to attend a particular religious festival, hence it is an unsecular activity. Well, this could be

⁸ AIR 1985 SC 945

⁹ Gupta, S. (2020, August 8). *Modi redefined secularism with Ram Mandir as Hindu voters were fed up of Sonia-Left version*. ThePrint. <https://theprint.in/national-interest/modi-redefined-secularism-with-ram-mandir-as-hindu-voters-were-fed-up-of-sonia-left-version/477422/>

considered as unsecular. As we look onto the history, we would find that our Former Prime Minister Jawaharlal Nehru was against the then President Rajendra Prasad who visited the Somnath Temple for its inauguration¹⁰. If we look it in that way, it can be said as an unsecular activity.

5. Legal Changes needed to revive Secularism in India

Now after the 42nd Constitutional Amendment, we have the word Secularism in India. But what is the use? Our Constitution does not define the meaning of Secularism. Hence, till now the real meaning of “Secularism” is being continuously the question of law in our Indian Courts. If we look onto the Constitutional Assembly debates we would find that on 3rd December 1948, Mr. K. T. Shah, tried to include the meaning of Secularism in the Indian Constitution. His definition was that, state being secular shall have no concern on religion, creed or profession of faith. This definition did not take its place in Indian Constitution. This could be treated as a problem in our Indian Constitution that needs an immediate solution.

The word Minority in Article 30 of our Indian Constitution do not have a clear-cut definition for the word “Minority”. Of course, in *T. M. A Pai Foundation Vs. State of Karnataka*¹¹ it was held that “Minority” status would be determined on the basis of the demographic composition of States. But after that case also the question remains unsolved. It is the duty of the legislature make a clear law with regard to the Minority status. Also, the other part of the question, that is how to determine the Minority Institution? As to Whether it should be composed of Minority Management or is the majority need to be minority students? Remains unanswered. In this regard also, the legislature needs to make a clear law.

India is always being said to be a secular state where all the religions are treated equally. But that is not true. Till today people are treated on the basis of their religion. Till today, in India Hindus follow Hindu Personal Law, Muslims follow their Shariat Law and Christian follow Special Marriage Act and Indian Succession Act. This itself could prove that India is not a Secular Country. Article 44 of our Indian Constitution talks about the creation of Uniform Civil Code. But no Government so far has enacted a law to enforce the Uniform Civil Code. The Supreme Court while deciding *Sarala Mudgal V. Union of India*¹² advises the Prime Minister to have a fresh look at Directive Principles of State Policy and to secure Uniform Civil Code. This view of Supreme Court was again reaffirmed in *Lily Thomas V. Union of India*¹³. But the Legislature has and is neglecting both the constitutional and judicial recommendation¹⁴. Enacting the Uniform Civil Code would necessarily help us solve many problems. Some practices like Triple Talaq and polygamous marriage are valid under the Shariat Law. Under these laws, women are treated differently from men and women suffer a lot because of these laws. These are some of the Social evils that should not be practiced in the name of religion. This can necessarily be treated as unequal treatment to people based

¹⁰ ShivShankar, R. (2020, August 2). *What critics of PM Modi's Aug 5 Ayodhya Puja chose to forget*. Times of India Blog. <https://timesofindia.indiatimes.com/blogs/beyond-the-headline/what-critics-of-pm-modis-aug-5-ayodhya-puja-chose-to-forget/>

¹¹ AIR 2003 SC 355

¹² AIR 1995 SC 1531

¹³ AIR 2000 SC 1650: (2000) 6 SCC 224

¹⁴ G C Venkata Subbarao. (1979). *Family law in India : Hindu law, Mahomedan law, and personal law of Christians, Parsis, etc., including law of testamentary and intestate succession ...* C. Subbiah Chetty.

on religion. Moreover, here not only the Secularistic Principle of India is getting violated, but many Fundamental Rights like Article 14 and 15 of the Indian Constitution are also getting violated. People are treated differently on the basis of Religion and also on the basis of Gender. This type of discrimination needed to be wholly eradicated from the society. In order to eradicate these discriminations, the legislature should make unbiased legislation not favouring any religion. In other words, the only way to end discrimination is to end this discrimination is the enforcement of the Uniform Civil Code. In that way, India would try to be Secular in the near future.

Communal Violence is again a very big problem that a secular India faces today. A Communal Violence like that in Gujarat in 2002 has killed hundreds and hundreds of people. Religions in general, talks mainly about loving each other. But we the Human Beings do not understand them and we fight on the name of religion. Religion has always tried to show us the way to reach eternal happiness. But we the Human Beings interpret it in different ways according to our own convenience and cause social stratification and create problems by oppressing other people. “Religious Intolerance” can also be regarded as source of the Communal Violence in India. Actually, it won’t be an exaggeration to say that main reason for Communal Violence is “Religious Intolerance”. This problem can be solved only by Education. A child should be grown with the of “Religious Tolerance” and that he or she should be aware that different religion practice different things but ultimately all our Indian Citizens and that all views need to be accepted as natural. Also, strict laws should be enforced to stop the Communal Violence in India. There is no mention of the words like “Communal Violence” or “Hate Crimes” in our Indian Penal code. Indian Government had tried to pass Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, an act to punish the people who resort to Communal Violence in India. But this bill remains as a bill till now. There is a immediate need to either include the a special section for “Communal Violence” and “Hate Crimes” in India and punish the doers of these crimes very aggressively or to pass a separate bill to prevent such an act occurring in India. In this way India would move a step forward in becoming a Secular Country.

Usage of Religious Leader to gain more votes is on of the Classical technique that many political parties follow to secure votes. Here Religious Leaders formally or informally make an announcement or appeal before the people to vote for a particular party. There is a high risk of some people may be influenced by that Religious Leader and would vote on favour of the Political Party recommended by those Religious Leader. This practice needs to be stopped immediately, because it does not support the Secular nature of India. In order to control these kinds of acts many countries like Bhutan has made laws in this regard¹⁵. Our Parliament has also many a times tried to bring such a law which prevents the usage of Religious People to Secure votes. In 2017, there was a private member bill in our Indian Parliament to make an amendment in Religious Institution (Prevention of misuse) Act, 1988. The proposed amendment bill stated that no Religious Leader shall appeal to people asking them to vote in favour of a particular political party or asking them to refrain themselves from voting for a particular political party. This Bill further stated that those Religious Leader who don not follow this law would be punishable with imprisonment for a maximum of

¹⁵ Katyal, A. (2018, November 16). *As the line between religion and politics blurs, should India take a cue from Bhutan?* Scroll.In. <https://scroll.in/article/901191/as-the-line-between-religion-and-politics-blurs-should-india-take-a-cue-from-bhutan>

seven years¹⁶. However, this act was not passed in our Parliament and is hence is not enforceable in India. However, such a law is the need in today's India where all political parties compete with each other and use Religion as the means to reach their political heights. It is in the hands of Parliament to enact such a law that would help India to continue to be a democratic and Secular Country as stated in our Indian Constitution. In absence of such a law, India's Secularism will always be questioned.

6. Conclusion

India is a Diverse Country. It is known for its Unity in Diversity. But for the past few decades this diversity has caused problems and division rather than Unity among us. The Division is basically caused in the name of religion. The very old principle of our India, "Secularism" has been continuously forgotten and India is facing continuous tensions in the name of religion. Many use this as their political advantage and make use of this state. This may not be a problem now, but in long run, this would erupt as an unsolvable problem if not treated early. First of all. All should identify themselves as Indian. The sense of Nationalism alone can solve this problem. Of course, Secularism is not at all easy to be practiced. But we should not try being secular. Secularism of our country, should not be compared with other countries. We are one of a country with rich secular background. Comparing ourselves with others would be quite foolish. It is in the hands of the Indian Legislatures to make laws that could solve all the threats to the Indian Secularism. In that way not only Indian Secularism but also Indian Democracy would be preserved. Once, a long time ago, the Britishers came to India, divided us and ruled us quite comfortably. Now also, history repeats itself, the only difference is during that period it was Britishers who divided us and now it is the native Indian Politian who divide us. One should not forget, what was the result of such a division in India. Hence, the need of the hour is to preserve our most cherished value of Secularism and to secure peace in our society by practicing Religious Tolerance. In that way, India would remain Secular till the end of the world.

¹⁶Dec 3, P. /, 2017, & Ist, 18:41. (2017, December 3). *Parliament may take up bill seeking jailing of religious leaders seeking votes for party* | India News - Times of India. The Times of India. <https://timesofindia.indiatimes.com/india/parliament-may-take-up-bill-seeking-jailing-of-religious-leaders-seeking-votes-for-party/articleshow/61904294.cms>