

INTERNATIONAL
JOURNAL FOR LEGAL
RESEARCH & ANALYSIS
(ISSN 2582 - 6433)

VOLUME 2 ISSUE 6

(March 2022)

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Website – www.ijlra.com



IJLRA

INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

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Peer Reviewed Journal
FOR LEGAL RESEARCH & ANALYSIS

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN

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Concept of secularism in Indian Constitution

By: Jayesh P.K

DECLARATION

I, Jayesh P.K. a student of LLM Constitutional Law, CMR School of Legal Studies, do hereby declare that this research paper titled "Concept of Secularism in Indian Constitution" is an original work of mine and is result of my own intellectual efforts. I have quoted titles of all original sources i.e., original documents and Name of the authors whose work has helped me in writing this research paper have been placed at appropriate places.

Abstract:

India is popularly recognized as a “land of Unity in Diversity” for its vibrant culture and unique Tradition. The 42nd amendment inserted the term “Secular” and “Socialist” in the Preamble of our Constitution which, declared India as a Secular Country. Secularism on the perspective of Constitutional Philosophy can best understood in hindsight of Religion and Ancient India. Eventually, this 10-letter word has electrified heated debates in nook and corner of our country among Political leaders, Columnists, Writers and Authors. The Rise of Hindu Nationalism further triggered the minorities to wave the flag of Right to Freedom, entrusted in Article 25 of our Constitution. This research paper attempts to compare the idea of secularism in different countries, their recognition in constitution and implementation. The paper also summarizes the different instances which added flavor for widespread discussions and disputes in India. An overview of landmark judgements, Articles and comments of Top-notch intellectuals are inscribed in this paper to determine the relevancy of term in mere future.

Introduction:

The 42nd Amendment added the word “Secular” and “Social” to Preamble of our Constitution along certain other provisions amid the Emergency Period in 1976. The Procedure prescribed for amendment of Indian Constitution was thrown into thin air and then Prime Minister Indira Gandhi passed The Constitution (Forty-second amendment) Act,1976. The arbitrary move during a crucial situation prevailing has triggered discussions and has led to future controversies. The Amendment Act,1976 **"is responsive to the aspirations of the people, and reflects the realities of the present time and the future"**¹. Prime Minister Indira Gandhi in her terms meant, this enactment manifests a solution to the present and future prospect of the nation but has distinctively overridden the objectives on insertion of the term secularism. The amendment accorded an unrestricted power over the Parliament to amend any provisions of Constitution and denied the Supreme Court to consider

¹ Speech in the Lok Sabha,27 October 1976, Lok Sabha Debates, Fifth Series, vol. 65, no.3, cols.141-2.

the constitutional validity of a state law unless a Central law is under issue². The enactment amid turmoil has amended 40 articles, inserted 14 new articles and substituted many Articles. The debatable term “Secularism” erupted a wide spread discussion till date which is a deliberation of 42nd Amendment.

Research Objective:

The Author attempts to research on various factors and incidents which failed to fulfill intention of the constitutional term “Secularism” in India and makes a critical analysis of Constitutional secularism in India with a Comparative study. The validity of the term “**secular**” is analyzed and briefed in this research paper.

Secularism: Comparison with Other Constitutions:

With Developing Nations reeling round a spirit to top the best economies of the world, word Secularism has triggered intellectual discussions among leaders. Terrorism had a crucial impact on international relations. On the Outbreak of Terrorism, a threat to internal security by insensitive elements was visible from the end of 20th Century till date. Due to sectarian violence, fear seems to have built a house in the minds amongst the leaders of various countries over freedom of religion.

Many countries are Constitutionally secular while many lack its implementation. There is monarchy state with official state religion. With Christians, Muslims, Buddhists, Hindus, Jews positioning the Top most religions of the World, few other countries have incorporated State religion based on its population.

Saudi Arabia, a destination to two major holy destinations³ Mecca and Madina is an Islamic monarchy state. Term ‘S’ is inexistent since establishment and does not grant the Freedom of religion. Saudi Arabia ranks 23rd out of 198 nations to impose Government restrictions on the Freedom to practice the religion of your choice.⁴ India has guaranteed with the Freedom to profess or to practice the religion of their conscience subject to Morality, Public order and other provision⁵ France achieved to implement “laicite” in 1905. The French revolution succeeded to vacate the state from Monarchy and churches hereby preventing the church from involving in Government affairs. Article 1⁶ states equality is granted regardless of religion.

China having the world’s largest population is an atheist country. Under the influence of Communism and Irreligion, China has ranked the List of nations practices least religions⁷. The Constitution of the Republic of China has guaranteed the freedom of religious beliefs and protection of activities with public order and morality to its citizens⁸. While Citizens of China follows an atheist principle compared to India where Culture, traditions and customs are deep rooted into society.

United States of America has imbibed the principles of Secularism in its Constitution. The Congress

² M.P. Jain, Indian Constitutional Law, Pg 1784

³ [5 facts about religion in Saudi Arabia | Pew Research Center](#)

⁴ <https://www.pewforum.org/2017/04/11/global-restrictions-on-religion-rise-modestly-in-2015-reversing-downward-trend/>

⁵ Article 25 of Indian Constitution, M.P Jain Pg 1299

⁶ France Constitution, 1958 Pg 3

⁷ The survey of 65 countries, conducted by Gallup International and the WI Network of Market Research.

⁸ China’s Policies and Practices on Protecting Freedom of Religious Belief (Religion White Paper) (Apr. 2018)

is restricted to pass a law respecting the specific religion, prohibiting practices provided it is within morality and file a petition against the government to redress grievances.⁹ A similar interpretation to the word Secularism is also given in the Indian Constitution.

Reaffirmation of Hindu Nationalism in current times:

Hinduism being the fourth largest religion like India, Nepal and many other countries based on the culture, customs and practices. After World War I, the elevating number of riots were seen between Hindus and Muslims. Kashmir erstwhile emerged to become a burning issue post-independence. This added fuel on the issue when extremist Islamic state Pakistan begun penetrating and imposing its rule over the Kashmir state of Indian territory. This anguished the people of India and provoked Rashtriya Swayamsevak Sangh (RSS) and other organization to revolt against the efforts to acquire Kashmir.

The Indian National Congress nowhere stood to evacuate Hindu's who were persecuted in Pakistan nor raised a concern over dominated Hindu's. INC failed to recognize or raise concern on illegal slaughtering of Cows which is a sacred living being of Hindu's. Subsequently, The Bharatiya Janata Party (BJP) came to be established in 1980 and announced a Ratha Yatra in 10 years of its birth. "Mandir Wahi Banayenge"¹⁰ electrified the Hindu's with a joyful spirit which spread across the nation. This movement now laid a Foundation stone to Hindu Nationalism. After the downfall of Vajpayee Government, they stood as strong forces to support Hinduism in the opposition. In 2014, Narendra Modi who redefined Hindutva with "Hindu Nationalism on a new dimension. Even though he failed to achieve the cause, it succeeded to grab the 'B' voters investigate over Pakistan penetration, Chinese Intrusion, failure of INC to back Hindu's during the hour of necessity. Hindu nationalism added a first nail to the coffin of Secularism which later remains left untouched till date.

Intolerance in Multi-ethnic democracy:

Due to invasion of Mughal ruler Aurangzeb and his tyranny who tried to rule on sword, the society has been unresistant since date. Later, Indians have also agitated against Portuguese which liberated¹¹ Goa in 1961, British to leave the country in 1947. All the incidents were a favorable movement to free the country from external invasion. But this intolerance has rapidly grown among Indians.

India's vibrant culture and multi-traditional society has succeeded to grab the attention of World to tourists, Philosophers for its unique practices. Since three to five years, there has been rise in intolerance due to multiple incidents. M.M. Kalburgi criticized idol worshipping practiced by Hindus and later was shot for his controversial statements. Intolerance has grown to an enmity in the Nation which narrated "All Indians are my brothers and sisters". In 2016, a Muslim was killed for consuming beef. A nation-wide beef feast, beef party were organized as an outrage over the decision of Central Government to ban beef.

⁹ First Amendment to U.S. Constitution in the year 1971.

¹⁰ L.K. Advani, Ram Ratha Yathra in the year 1992.

¹¹ Through civil disobedience movement and Operation Vijay in 1961

Kanhaiya Kumar narrated the Azaadi slogan against the Central Government. He was arrested for sloganeering against execution of Afzal Guru who was convicted for Indian Parliament. Intrusion of Communism in Indian soil has reversed the definition of Nationalism by coining the term “Azaadi”. However, students of JNU got driven by fanciful and fake slogans heard during Anti-CAA protests in recent days. Justice D.Y. Chandrachud observed, an advertisement that depicted same sex to be pulled down as it was “Public intolerance”¹².

Eventually this term “Intolerance” has shattered the efforts of our freedom fighters, hampered the Unity of India and future of our Nation.

Love Jihad: A Hurdle to Harmony:

Conspired inter-faith marriages or conversions in the name of religion is a talk of the town familiar in Muslim populated area. The insertion of the word “Secularism” guaranteed a right to profess the religion of one’s choice or promote the status of oneness as a nation. Prime Minister Indira Gandhi never imagined the disastrous situation which would be witnessed in mere future. This term has failed to achieve the agenda and misused to cause irreparable damage to the society at large.

Few columnists came over an opinion “Celebrate love, don’t celebrate Jihad”¹³ while another says “Love Jihad is non sense”¹⁴ This smells a bit of ignorance to accept the truth among Indians because truth stands far from reality. India has failed to unearth the cause which is haunting girls and protect the dignity of Woman. Love is a substitute to 7th Heaven but not in the name of Jihad. Marriage is a celebration but not on a conspiracy.

Metro Man E. Shreedharan has opined “Hindu and Christian girls are being tricked into marriage by Love Jihad”¹⁵. This Love in the name of Jihad has raised an alarm specially in state of Kerala when a native has expressed concern over this issue. This attack on Hindu girls is with an agenda to suppress Hindu society and convert girls from their native religion. The Supreme Court adjudicated that “Right to Change of faith is part of Fundamental right of choice”¹⁶ A Good faith is a healthy practice whereas a coercion to believe in the faith posing a good faith is a threat. Unfairly, many aggrieved women deny to present themselves before the Media or express their opinion. The Press in India too have succeeded in telecasting Jihad as a myth.

Inter faith marriages are practiced to deplete population, attack the woman centric society and disrupt harmony not among single family but a society in large. A huge roadblock to Love Jihad emerged on the abolition of Triple Talaq by Supreme Court following a petition filed by Shyaro Bano. It was announced that 1st August will be celebrated as the “Muslim Women Rights Day”¹⁷.

Critical analysis of Constitutional Secularism in India:

In landmark judgement of Keshavananda Bharathi Vs. State of Kerala¹⁸ the Supreme Court held that, basic structure of the Indian Constitution also includes the term “Secularism”. The scope of

¹² “Empowerment of Women through Legal awareness” on launch of Legal awareness by NALSA.

¹³ Rajdeep Sardesai, Tweet dated 5th July 2021

¹⁴ Talveen Singh, “Conspiracy to prey on Hindu girls and convert them to Islam is ludicrous”,

¹⁵ In a Press Conference ahead of joining BJP, India Today, February 2021

¹⁶ Shafin Jahan vs. Ashokan K.M.

¹⁷ By Abbas Naqvi, Ministry of Minority affairs, 1st August 2019.

¹⁸ AIR 1973 SC 1461

Secularism gained prominence due to wide interpretation given by the Indian judiciary. Indian soil is enriched with vast heritage, customs, beliefs and ethical values of historical importance since time immemorial. Since Indus civilization, culture and traditions have flown along with history. India is land which gave birth to four among the major religions of the world-Hinduism, Sikhism, Jainism and Buddhism. Due to these reasons, ritual and beliefs have stretched into roots. India has introduced to the World on Yoga and spirituality. The Krishna consciousness movement has influenced the western minds towards devotion and attain mental peace.

Eventually due to rulers who conquered Indian territories diluted traditions and customary practices. Subsequently, rise of Terrorism, Love Jihad, Anti-Nationalism, communism, naxalism, atheism has devastated unity. Secularism has paved the way for foreign funding favoring anti-national activities and terrorism. Silent stand of Congress in violent Anti-CAA protests by minority groups drives a clear conclusion.

The Ayodya verdict¹⁹, reinstated a ray of hope among thousand Hindu's thereby recognizing the history and valuing beliefs of Hindu community. The Supreme Court has quoted "Hindutva is a way of life"²⁰. The authors analyse this judgement on an example from his perspective as like When an Indian falls down, he says "Amma" and this word owes an Indian origin.

It is best advised to strike down secularism in our Preamble since Article 25 itself entitles the right to profess the freedom of their choice. It is advisable for the state to enact a Uniform Civil Code in India to promote equality. To prevent Love Jihad, Anti-conversion law is well suited to settle the prevailing problems. Karnataka Government has introduced the Karnataka Protection of right to freedom of Religion Bill,2021 to prevent Inter-faith marriages on unfaithful grounds and religious Conversions.

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¹⁹ M. Siddiq (D) Thr Lrs vs Mahant Suresh Das & Ors., 9th November 2019.

²⁰ 1996 AIR 796