

# GENESIS OF SECULARISM

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## INTRODUCTION

The genesis of secularism can not only be taken from the judicial pronouncements and the constitution of India, 1950 but also from very important sources these are freedom struggle and the constituent assembly debate. India is quite famous for its diverse culture, religion and socio-economic background. Here we see different types or diversity of religion prior to our independence, we regardless of our diversity were united and stood against the mighty British. This freedom struggle is actually the basis of our strong foundation of secularism. That means despite our diversity we struggled together and won independence together. During the struggle, the people of India fought with unity. This independence is a gift of people of India to the people of India.

After getting independence, all of us promised ourselves to share together a common faith i.e., we as a society could organize ourselves on a common faith.

The constitutional assembly debate, where all the members of the assembly were agreed, on the necessity of establishing a secular state. Most of them shared thoughts from history in which the "*drive for the departure of religion and state was irrevocably a part of the project for the democratization of the latter*"<sup>1</sup>. India after becoming republic established itself as democratic and secular polity. "*and for the smooth running of democratic setup, it is important to make arrangements to tackle communalism related issues which can put a dent of secular principles*"<sup>2</sup>. But the problem is a highly secular setup has to be pursued in a highly religious land. Here question arises that what does secularism mean? Strictly separating state and religion (what we

<sup>1</sup>The Constituent Assembly Debates, 1946-1950.

<sup>2</sup> *Id.*,

have seen in United States<sup>3</sup> or States role with a regulated intervention on religious activities. On this question three alternative positions were discussed in the constitutional assembly debate<sup>4</sup>

It is important to refer the debates in the constituent assembly to understand the contour of “secularism” in India. Firstly, it is important because, it will tell us the intent of our constitution makers. Secondly, it is the genuine source of reference as the constitution of India before 1976 does not carry the word “secular”<sup>5</sup> in itself; neither does the constitution define<sup>6</sup> it. The fact that Pt. Jawaharlal Nehru and father of the nation; Mahatma Gandhi perceived secularism differently is very important. For, Nehru being secular is for secular reasons<sup>7</sup>. But, Gandhi was secular for religious reasons<sup>8</sup>. It makes it quite obvious that both are aiming one thing but for different reason. There have been two departures of secularism the Gandhian understanding and the Nehruvian understanding. Gandhi was with the notion that Hinduism was tolerant and secular could not make state anti-religious. Hence, there the separation between state and religion is unnecessary. As per his understanding, the state while providing fair and equal treatment to all religions, could still abstain itself from all religions and religious communities. Albeit, Nehru comprehended; whatever the nature and belief of the religions may have been, it would not affect as economic aspirations and scientific beliefs prevail as a sufficient basis for secular tolerance. Nehru was with the neutral secularism i.e., neutrality of the state in matters of religion, hence state has no say with religious matters. Thus, his concept of secularisms was negative mound of equal distance from all religions. Indeed the concept of secularism in India came for transforming India from a “caste-ridden society” where communalism prevails.

Recalling the constituent assembly debate, we can say that our constitution makers had beautifully supported the definition of secularism with the “protection of minorities” and “the democracy”. The definition of secularism justifies “protection of minorities”<sup>9</sup>. India after the independence adopted positive secularism

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<sup>3</sup> Mathew John, Decoding Secularism: Comparative Study of Legal Decisions in India and US, conomic and Political Weekly, Vol. 40, No. 18 (Apr. 30 - May 6, 2005), pp. 1901-1906.

<sup>4</sup> *Id.*,

<sup>5</sup> The word 'secular' was added to the preamble of the Constitution of India vide Constitution (Forty-Two Amendment) Act, 1976 during internal emergency which was declared under article 352 and remained in force from 26th June, 1976 to 18th January, 1977.

<sup>6</sup> The preamble now runs as, "We, the People of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, and Democratic Republic and to secure to all its citizens...

<sup>7</sup> Jawaharlal Nehru, Speeches, Hindustan Times, Feb. 3, 1948, p. 1; June 4, 1941, p. 1; and April, 18, 1949, p.

<sup>8</sup> Islami Marhaz, what Gandhiji Has Done for India Articles on Gandhiji's life and work, Y.M.C. A, p. 121.

<sup>9</sup> Ahmet T. Kuru, Passive and Assertive Secularism: Historical Conditions, Ideological Struggles, and State Policies toward Religion, World Politics, Vol. 59, No. 4 (Jul., 2007), pp. 568-594.

ideology but due to caste and communal politics diverted to the negative model as the system absorbed with a passive system of settling religious and communal disputes; religious community do not interact and participate in settling their disputes and are started knocking the doors of the court for law and order implementation.

### **The No Concern Theory of Secularism<sup>10</sup>**

A definite line of separation between religion and the state is the main premise of this theory. While giving important liberty and rights like freedom of expression, it is on the individual to be a believer or an atheist, state's role in the individual and religion related matter is low or nil.<sup>11</sup> Henceforth the preamble did not hold any references to divinity, and neither should the constitution found associations between the state and any religion. This theory of religion being a private affair of religion was discussed in the sessions of the Constituent Assembly debate to embrace the further fundamental claim that religion must be confined to the private domain. Numerous leaders announced that the need of great importance was to fortify the character of Indians as nationals of the Indian state, instead of being individuals from some group or religious gathering. Radhakrishnan's discourse on the Objectives Resolution<sup>12</sup> on December 13, 1946 attested that "*patriotism, not religion, is the premise of current life.....the days of religious states is over. These are the times of patriotism*"<sup>13</sup>. After a month, G B Pant, addressing the Advisory Committee of the Constituent Assembly<sup>14</sup> declared that the "*singular native who is truly the foundation of the state,...has been lost here in that aimless body known as the group. We have even overlooked that the national exists in that capacity. There is the unwholesome, and to some degree, corrupting propensity for speculation dependably as far as groups and never as far as subjects*"<sup>15</sup>. Comparative considerations were communicated later in an overstated manner by Guptanath Singh: "*The state is most importantly divine beings. It is the lord of divine beings. I would state that a state being simply the agent of the general population is god himself*".

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<sup>10</sup> *Id.*,

<sup>11</sup> *Id.*,

<sup>12</sup> *Id.*,

<sup>13</sup> *Id.*,

<sup>14</sup> *Id.*,

<sup>15</sup> See supra note 27

These positions consistently prompted an origination of a common state as one that avoids religion in essence. It separations itself from all religions and in this way urges their restriction to a private circle; it presses for the narrowing of religion to the action of religious love and it indefatigably replaces regard for religion with building patriot nationals. India was occupied with making a present day country state and in this undertaking, religion, an obscurantist and divisive compel, had no place. Individuals supporting this sort of secularism included K T Shah, who as late as December 1948, requested the addition of an article isolating the state from any religious exercises.

### **The individualistic theory:**

This theory is about the individual rights and liberty. In this theory the state is against any bond which existed between individual and religion. A state needing to reinforce itself must support the rationality of dynamic independence in order to debilitate all relationship in the public eye other than itself. It can then supplant this relationship without anyone else's input as the locus of the individual national's personality. Secularism on this view implied the slow debilitating of the obligations of religion and their supplanting with patriotism. It implied that the state must not perceive religion as an open establishment. It was not only an issue of religious freedom but rather of the foundation of, the centrality of the state. Religion was to be consigned to as restricted a circle as conceivable so that the state could rise as a cutting edge Leviathan.

### **The Equivalent regard theory:**

Like the primary, the third position - which we call the equivalent regard hypothesis of secularism - likewise started with the rule of religious freedom, however held that in a general public like India where religion was such an essential piece of a great many people's lives, this rule involved not that the state avoid all religions similarly, yet that it regard all religions alike. Multiculturalism. The west was in emergency as a result of the dominance of realism, and it was looking towards India for a recovery of otherworldly esteems.

### **The essence of secularism in India**

The Indian model secularism is secular by essence if not by words as already stated by Professor Neera Chandhoke, through various judicial pronouncements and constitutional provisions. Hereby mentioning the same:

- (1) Freedom of conscience and religion;<sup>16</sup>
- (2) No discrimination on the ground of religion;<sup>17</sup>
- (3) Democratic universal adult franchise;<sup>18</sup>
- (4) Representation of People's Act, 1950;<sup>19</sup>
- (5) Untouchability is unconstitutional as per Article 17;<sup>20</sup>
- (7) Right to form and control organizations or institution for religious and altruistic purposes;<sup>21</sup>
- (8) No citizen can be discriminated against on grounds religion for employment or office under the state as for admission into educational institutions maintained or aided by state funds;
- (9) Public funds or revenues are taken outside the purview of any religious promotion.
- (10) Religious instruction can be only given to non-aided institution to make sure that state funded institution must follow the secular principles. Although, minority institutions are also to be taken care of by the state, without any discrimination.
- (11) With the coming of 1976 constitutional amendment, which for the first time after India becoming republic specifically mentioned the word "secular". Moreover, prior to this amendment, the secular India was already thought of and discussed in constitutional assembly and it was already present in essence if not in words in the constitution of India.<sup>22</sup>

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<sup>16</sup>Article 25 of the constitution of India, 1950, i.e., Freedom of conscience and free profession, practice and propagation of religion.

<sup>17</sup>Article 15, Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex or Place of Birth.

<sup>18</sup>Article 326 in the Constitution Of India 1949. Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult franchise...

<sup>19</sup> Section 123 in the Representation of the People Act, 1951, talks about corrupt practices where asking votes on the basis of religion.

<sup>20</sup> Untouchability is abolished and its practice in any form is forbidden The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law

<sup>21</sup> See supra note 39.

<sup>22</sup> See supra note 20

**Uniform civil code**<sup>23</sup>

Uniform Civil Code – The article<sup>24</sup> were initially put forward as justiciable rights contained clauses referring indirectly to a uniform civil code, K.M Munshi's suggestion on Uniform Civil Code: *“No civil or criminal court shall, in adjudicating any matter or executing any order recognise any custom or usage imposing any civil disability on any person on the ground of his caste, status, religion, race or language”*<sup>25</sup>. Mentioning Dr. Ambedkar writings i.e., state shall have the right *“to claim full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by other subjects regardless of any usage or custom based on religion and be subject to like punishment, pains and penalties and to none other”*<sup>26</sup>. Although, the Fundamental Rights Sub-Committee made the uniform civil code a directive principle of state policy, as no consensus was established at that time on uniform code bill. Reiterating Rajkumari Amrit Kaur words she highlighted the significance of the uniform civil code and said *“very vital to social progress”*<sup>27</sup>. Moreover, Amrit Kaur, along with Hansa Mehta and M R Masani, emphasized that *“One of the factors that has kept India back from advancing to nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life”*<sup>28</sup>, and wanted that the provision concerning the uniform civil code be moved from the part on directive principles i.e., part IV to that on part III fundamental rights. This point was opposed by the debaters of the Constituent Assembly; one of them is Mohamed Ismail Saheb, supported by B Pocker Sahib, they wanted to comprise a right to personal law in right to religion. They wanted that uniform code should not be forced to any religious community and wanted to be ensured that it should contain the following proviso: *“Provided any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law”*. This must be done if the right to religious practice was to have any reality because the right to follow personal law is part of the way of life of those people who are following such laws; it is part of their religion and part of their culture. Mahboob Ali Baig Bahadur said, *“People seem to think that under a secular state, there must be a common law observed by its citizens in all matters including matters of their daily life, their language, their culture,*

<sup>23</sup>Article 44, Uniform civil code for the citizens The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

<sup>24</sup> *Id.*,

<sup>25</sup> *Id.*,

<sup>26</sup> *Id.*,

<sup>27</sup> *Id.*,

<sup>28</sup> *Id.*,



*their personal laws. This is not the correct way to look at the secular state. In a secular state, citizens belonging to different communities must have the freedom to practice their own religion, observe their own life and their personal laws should be applied to them*".<sup>29</sup> A midway situation was that the creation of the uniform civil code must be done gradually, with the consent of all communities. Moreover, K M Munshi's – raised his concern on the personal law of Hindus as discriminatory against women and contravened an Indian citizen's right to equality. Therefore, "*religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible, a strong and consolidated nation.*"<sup>30</sup> So, by this analogy, Muslims who are stating that triple talaq is as per the sharia, can weaken their argument as it is clearly stated in the constituent assembly debate that those practices which are going against the notion of equality can be regulated or modified, instead of this they should refer the statement made by Dr. Ambedkar that the code would only apply to those who wanted it to apply to them.<sup>31</sup>

## Conclusion

The issue concerning Secularism in India is the lack of exact Hindi terminology to provide the understanding of the notion in India. Many scholars refer Hindi expression "Dharma Nirpeksha" termed as a comparable meaning of the word "Secular" is actually not a proper comparison. Because the word Nirpeksha i.e., neutrality, is only the Hindi translation of the word, also it denotes the western idea of secularism, i.e., to say negative or neutral stand of state in the religious matters. As per the Indian philosophy the word "Dharma" is the code of conduct to the human beings, it holds the notion of tolerance, which is the base of Indian secularism unlike western notion.

The contemporary understanding of secularism in India has taken (mistakenly) some of its features from the Western notion of secularism. The idea of Secularism is basically of western creation. It is an invention of power struggle between the State and the Church. It was advocated by the church as a declaration of its liberation in its affairs from the control by the state authority. It works on the principle of the clear separation of the State and the Church. History hints that Secularism was a drive against religion and particularly church.

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<sup>29</sup> See supra note 27

<sup>30</sup> See supra note 27

<sup>31</sup> See supra note 27

It indicates the departure of the State and Church. As, in western politics the notion of church-state was prevalent, so the secularism was introduced to get the separation of religion from the state action. Here it's important to establish that Indian model of secularism is not about church and state tussle but about the spirit called "tolerance" and understand and respect other's religion and culture. The said spirit is about the attitude of life. It promotes the peaceful co-existence of diverse religious belief. Hence, the Indian concept of secularism cannot be termed as Dharma Nirpekshatvaad. It would be preferable to call it Sarva Dharma Sambhava.

As already said before, the Hindi word for secularism cannot be found, so for near reference, sarva dharma samabhava is the Indian meaning of secularism. The genesis of secularism, if taken directly from the constitution without referring other important sources can lead to ignorance of Indian model of secularism. Prior to the constitutional inclusion of the word "secular", India were secular by essence, the constituent assembly debates are the clear example of the same. Where the constitution makers thoroughly discussed, assessed and ponder upon the holistic effect of the secular principles in India and decided not to include the word in the constitution but surely in essence it is accepted by all. There different models or approach were taken into discussion. "No concern theory" and "equivalent regard theory" are the most common ones. Where "no concern theory" was taken on the line of "wall of separation" the strict demarcation between state and religion were present. On the other hand "equivalent regard theory" is based upon multiculturalist model where the absorption of all the religion and culture are done, instead of secularization. India has its genesis from the multiculturalist and pluralist model where, diversity of religion, caste, creed and culture exist. So, the western notion of church-state separation was not there in Indian genesis, the idea of sarva dharma samabhava is the genesis of Indian secularism.

The Indian way of secularization religion is on the line with secularism. Hindu code bill is the best example of a secularization religion and Mahatma Gandhi is the greatest supporter of this form of secularization of religion. Religious tolerance is the spirit of Indian Secularism. Religions present in propagate tolerance, fairness, compassion and unification. Hence, all are Secular. Secularism is not antithesis to religious belief but the intolerance. Mahatma Gandhi wrote, "*All religions are founded on the same moral laws. My ethical*



*religion is made up of laws which bind men all over the world.*"<sup>32</sup> The importance of religion should not be restricted to personal gains and purity but for community and societal harmony too. The true religion works for unity and tolerance. It is always a works for the communal brotherhood if it is worked in the sense in which Gandhi observed.



<sup>32</sup> Anil Dutt Misra And Sushma Yadav, Gandhian Alternative (vol. 3 : Socio-Political Thoughts)