

# Concept of Secularism under Indian Constitution

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**ABSTRACT:** *Today, in the light of experiencing division of the citizen among different religious group across the country, a debate on 'secularism' appears to be extremely important. It is to be noted that the challenge of communalism in Indian society is not a new fact or event in the society. It is rather disconcerting and shameful that, even after more than 70 years of independence the situation is not so favorable. Even the Constitution of India clearly declares that India is secular country, but it has nothing to add in practicality and the situation remains the same as it was before the insertion of the word 'secular' in the Constitution. By safeguarding countrywide harmony, unity and dignity, the concept of secularism is integrated into the advancement of democracy. The Constitution of India for the establishment of secular communities, incorporated relevant provisions. For instance, Article 15 provides that state shall not distinguish on the basis of religion, color, caste, gender, place of birth against any person. Further, under Part III of the Indian Constitution, Article 25 provides right to freedom of religions to all the person including citizens and non-citizens. The concerned article provides that every person (whether citizens or not) is entitled to practice and promote his religion without any restrictions. Similarly, article 30 provides to build religious educational institution by the minorities. Article 28 demonstrates that no religious institutions shall be made by the help of state funds and thus restrict the interference of the state in religious affairs to some extent. In this review paper, the researcher will discuss the concept of the word Secularism, their history and meaning in different jurisdictions. Further, the researcher will discuss the existence of the secularism under the Indian Constitution. At last the researcher will discuss the importance of the secularism in India and challenges accorded in implementing the concept.*

**KEYWORDS:** *Constitution, Communism, Religious Group, and Secularism.*

## INTRODUCTION

It is evident that the concept of secularism has important and significant place in the subject matter like Political Science and Constitutional Law. Since the term secular was not added or placed in the original text of the Indian Constitution drafted by the Constituent Assembly, the essence of secularism has always been practiced in India. Like Hindu religious text, comprises of Vedas and Upanishad highlights the religious plurality of Hinduism. Similarly, during the 3<sup>rd</sup> century Indian emperor Ashoka- The Great proclaims that state would not follow any religious activity.

During the medieval period the two movements- Sufi and Bhakti brought a new form of religious expression amongst Muslims and Hindus and bond other communities with the love and peace. The concept of religious tolerance also marked their presence during the regime of Akbar. During the British era it was found that the concept of secularism was strengthened by the Freedom Movement all across the countries[1].

After the 42<sup>nd</sup> Constitutional Amendment the term Secular was added by the Parliament in the Indian Constitution. Today the Constitution in its essence reflect the concept of Secularism. Through the 42<sup>nd</sup> Constitutional Amendment India has adopted Principle of Secular State. Under this principle, the state is neither religious nor anti-religious. The state does not have any religion and they do not promote any religious activity of particular community. The state primarily believes in the principles of “*Sarva Dharma Sama Bhava*” meaning thereby “all religions are the same” and “Dharma nirapekshata” that means indifference of state to religion.

It is to be noted that concept Secularism has different meaning in different nations, for instance in the United States of America the secularism is understood as a separation of State from the Church. Similarly, in the United Kingdom, secularism is viewed as religious tolerance. While in Soviet Union, the secularism is viewed as anti-religious. In this way it can be said that Indian concept of secularism differs from those of the Western concept. However, the concept of Communalism- mainly focus to create a religious identity has given different perspective to the Secularism in India.

The concept of secularism as it exists today is more or less similar to the view of Pd. Jawaharlal Nehru. According to him secularism in respect of state denotes that state does not have any religion and state shall protect all religions. Mahatma Gandhi on the other hands, viewed secularism as from non-communal point of view. According to him secularism means religious tolerance. His theory of secularism is based on the Hinduism and is similar to those followed by the Untitled Kingdom.

As far as the perception of Non-interference of Secularism is concerned, there is diverse of opinion. Like Hindu has more acceptability than the other religions. It means that the interference of the state in the religious matter was mostly accepted by the Hindus. On the other hands, the Muslims are more rigid with believes that they are not ready to accept any interference in their religious practices.

#### *Secularism as a part of Basic Structure of Indian Constitution:*

India got independence in 1947 from the Colonial British Rule. Now they aimed to undertake on a fresh and difficult effort to create an economically self-governing democracy that would treat all its people fairly. In lieu of that India was committed to the concept of secularism. The concept of secularism acquires more importance after the separation of Pakistan from India based on the religious ground. Since during the separation India was of the view that they want to develop a nation where there will be no religious identity of its citizens.

Despite the unwillingness of the Constituent Assembly to add the term 'secular' during the drafting of the Indian Constitution, the term was later on added by the 42<sup>nd</sup> Constitutional Amendment (1976) into the Preamble of the Constitution of India. It indicates that India as Union of states is distinct from religion and will guarantee religious freedoms to people of all religions, while not discriminating against any person on the basis of religion. Under the heads of the Fundamental Rights enshrined under Part III of Constitution of India article 25 to 28 provides individual and collective religious freedom to all the person. Non-discrimination on the basis of religions is also assured in Article 15 and 16 of the Indian Constitution. Thus it can be said that through its Preamble, Fundamental rights and DPSPs, India have developed themselves into secular state grounded on the belief of impartiality, justice and fairly[2].

The concept of Secularism has been considered as one of the Basic Structure of the Indian Constitution with the emergence of the Indian Constitutional ideology of social and economic democracy. That means parliament in exercise of his power of amendment enshrined under Article 368 of the Constitution cannot amend the basic structure of secularism from the Constitutional law. It is said that religion is subject-matter of belief. While the critics may not agree, it is definitely a fact that, while India and its people have entered the globalized age, they still uphold profound religious values at the heart. Indeed, the current image of 'Secularism' in India is a cause of concern.

It cannot be denied that today it is perceived that the secular essence of Indian democracy is under pressure. For instance, the riots after the demolition of the Babri Masjid in Ayodhya resultant into murders of the Hindus by the Muslims. Further, this riots in Ayodhya (Uttar Pradesh) led to the huge killing if man and women in the State of Gujarat near Godhra district. The official records show that around 800 Muslims and 300 Hindus were murdered during the riots. It was believed that demolition of Babri Masjid was the reason behind Godhra riots. These two incidents weakened the environment of secularism under which these religious communities had existed in the state of the Gujarat State.

#### *Judicial Pronouncement:*

The Supreme Court of India has developed the concept of the Secularism from time to time. For instance, in the case of the *Sardar Taheruddin Syedna Saheb v. State of Bombay*[3] the Hon'ble Supreme Court for the first time discusses the concept of the Secularism. The Ld. J Ayyangar of the Hon'ble Supreme Court while discussing the Secular nature of the Constitution elucidated that the traditional view of secularism incorporating principle of religious toleration has been incorporated under the Article 25 and 26 of the Indian Constitution.

Again in the case of the *Keshwananda Bharti v. The State of Kerala*[4] case, the Court held that Secularism is the basic structure of the Constitution. Highlighting the nature of the Constitution J Sikri ruled that Constitution is Secular in its character. However, in the case of the *Ahmedabad St. Xavier's College Society v. The State of Gujarat* the court ruled that they were not sure about the such a nature of the Constitution. These two interpretation creates contradictory views regarding the nature of the constitution.

Finally, in the case of the *S.R. Bommai v. Union of India*[5] the court laid down the modern concept of the Secularism and held that secularism is the part of the basic structure of the Constitution. However, there arise a question regarding the definition of the Secularism. Different judges gave their definition of the Secularism, like, Ahmadi, Ld. J defined Secularism as theory of tolerance. Further, the court taking up the discussion forward said that there is no combination of faith and practices connected with the real world. Religion's equality and tolerance is only to the point that it allows for a spiritual life separate from secular life to be followed. The tolerance of religion is subject matter of the state affairs. In addition, the Court ruled that any type of intrusion or invasion in religious matter is against the secular character and thus was severely not allowed to practice.

In his distinct judgment, Ramaswamy, Ld. J, claimed that the State is required by law or executive order to maintain the essence of secularism in the society. The most possible scenario was also explained by him in way that- political parties organizing programs, agendas or curriculum based on religion is explicitly prohibited by the Constitution. He emphasized that if any political activities go contrary to secular integrity of state, like casteism and religious hatreds, it is the responsibility of the court to correct such a misbehaving activities against the state by the political parties. He is of the view that anti-casteism is a part and parcel of the secularism.

The two other judges firmly agreed with the opinion of the Ramaswamy, Ld. J. They are Jeevan Reddy, Ld. J and Agrawal, Ld. J. They were not only agreed upon the opinion of the Ramaswamy, Ld. J. but also stretched the discussion and opined that the notion of secularism in the Indian Constitution is broader than the first amendment of the US Constitution. Jeevan Reddy, Ld. J and Agrawal, Ld. J. further articulated the opinion that the State has the authority to enact laws related to religious affairs, comprising of personal laws under Article 44 of the Indian Constitution and related to materialistic activities at the places of worship. They further said that political parties involved in any religious activities or advocating or promoting any religious cause will be considered as unlawful activities and will be considered as unconstitutional. The reaming judges who were the part of the bench has conveyed no view on secularism

Thus, from the above judicial pronouncement it can be concluded that, from its particular opinion on secularism, the Court has not advanced his position as it was during the time 1950s and 1960s. It can be rightly said that Court has followed to its distinctive stance of 'secularism' with slight exceptions. The court has not interpreted secularism as it was in west like interpreting it as a divider between the Church and the State. The court here interpreted the term which is more or less similar to those which we are following from the ancient time i.e. religious tolerance and principle of "Sarva Dharma Sambhava" between citizens of different faiths[6].

However, in some stances in the case of the S.R Bommai it was believed that the court was making similar judgment as those in the United States. But at last, and citing the case of the Ram Janambhoomi it can be said that judicial body was successful in interpreting the word secular. As a concluding remark it can be said that court is of the view that "secularism" is custom-dependent toleration.

#### *Evolution of the word Secular around the World:*

The term "secular" was originated around a hundred years or so from the word "saeculum" in Latin, meaning a fixed time. This developed into "century" in the Romance languages. Secularism was a useful concept in Christian Latin for separating this earthly era of the earth from God's divinely eternal domain. Instead of theological affairs, something "secular" has to do with all sorts of affairs. For the word "secular", the Oxford English Dictionary incorporates following meaning: "Belonging to the world and its affairs as distinguished from the church and religion; civil, lay, temporal."

Gradually, the word "secular" acquired further significance after the explanation and discussion by the thinkers who discovered more and more possible and imaginable affairs that should be separate and autonomous from classification and regulation of religion. The slow unravelling of capitalist economy and democratic politics from religion in the 17th and 18th centuries are two main examples. The secular came to be understood as something that originates in degrees, has phases, and can gradually develop from time to time. It is seen as a system. More scholars and advocates of the secularism dreamed of a possible ideal society during the 19th century that could become fully secular[7].

Though the concept of secularism was embodied in our culture and traditions since the dawn of civilization the term was first developed in 1846, by the George Jacob Holyoake. He described the word as it is- a form of belief that only worries questions, the questions of which can be tested by the experience of this life. In comparison to religion, 'secularism' did not specifically represent the idea of anti-religious; but, it only applies reasonably to the notion of concentrating on this existence as opposed to speculation on some other natural life. This certainly removes certain systems of religious belief, most notably Holyoake's Christian faith, but it does not necessarily exclude all potential religious beliefs. The term secular now days means that it is explicitly exempt from religious standards and lessons.

*Concept of Secularism in different jurisdictions:*

#### *A. United States of America*

The US Congress on September 25, 1789 passes a modification which was later on confirmed by the congress on December 15, 1791. The modification declares that Congress is not entitled to make any law which is related to the religion with its foundation. It also prohibits Congress from making any law pertaining to free exercise of religions, freedom of right to speak and speech. For the partisan wars that were so devastating, the crucial shift made by the United States is a marvelous solution.

It also facilitated to explain the numerous issues held by religious groups that had fled from Europe to avoid persecution by their legislatures to America. Right now, the early law has reached the area from its very establishment. For another reason, this law was fundamental: to explain that America is not just a Christian nation.

Many people have started to assume that America is a Christian nation, and a major problem would have been arising from the situation of inequality resulting from the premise of religion. Do Christians overwhelm the population in general by numbers? Without a doubt, however, that is the reason why it was so important to make laws in terms of the lucidity of the legal situation in the United States so that it can guarantee individuals practicing some other religion in the Country.

#### *B. France*

In France, the word Laïcité defines the meaning of the secularism. The word Laïcité literally means conventional quality. One of the key Western countries to request this concept is France. Since 1905, when a law was passed with the intention to advance more liberties, it had embraced this concept. In France, this concept was important for the protection of minors from social encumbrances and for maintaining a strategic distance from any conflict between minors demonstrating their religious relation.

It is necessary for a minor to understand and consider the different choices made by other people. In France today, there is more remarkable social variety than before, which is the reason why the nation needs secularism now as never before, because it empowers all residents, regardless of their philosophical or religious convictions, to live respectively, obtaining a charge of always being willing, a tiny speech, a chance to rehearse or decide not to rehearse a religion, to measure up to rights and responsibilities, and a Republican club. Among others, secularism is not a thought, but the chance to have an end or an examination instead. Secularism is, therefore, neither brilliant nor antagonistic to religion.

### C. India

In India, the notion of secularism undertakes an integral work. Secularism in India is an optimistic, liberal, open-minded and comprehensive concept that follows a few religions within its spectrum in each of the networks in India. The notion of secularism as it exists in India is neither unfavorable, nor antagonistic to God. The importance of religious belief in human life is viewed by Indian secularism. It trusts that no religion has the limiting metaphysical information infrastructure that allows all religious to release their ability inside their true words. Indian secularism perceives the need and specifically for such supplication and love, on the off chance that people need to venerate their God.

It does not prescribe the actions of a particular faith. The full capacity of faith is enshrined in our Indian Constitution. The Indian Constitution guarantees, before the law, equality of all religions. Our constitution is purely based on a secular principle in that regard. The basic rights to religious freedom are protected in our constitution. In India, the notion of secularism has a strong base. This fact is known by the entire world[8]. Thus the difference between Western Secularism and Indian Secularism can be summarized as given in the Table 1:

**Table 1: Difference in Western and Indian Secularism**

S. No.	Western-Secularism	Indian-Secularism
1.	In the West, the State is separate from the functioning of all religious institution and groups.	Secularism in India means that the state is neutral to all religious groups but not necessarily separate
2.	The Western concept of Secularism does not believe in an open display of religion with except for places of worship.	In India, all expression of Religion is manifested equally with support from the state.
3.	The distinction between state and religion is clear and set in stone	There is no clear distinction between the state and religion in India.
4.	The state treats all religions with equal indifference. It does not aid any religious institutions through financial means or taxes them.	The state gives financial aids to a religious institution and taxes them as well
5.	A single uniform code of law is used to dispense justice regardless of religious background.	Although the law is the same for all citizens, certain personal laws with regards to marriage and property rights are different for every community. But they are all given equal consideration under the Indian Penal Code.

### D. Russia

There are two elements of secularism, one that is written in the Constitution and the other that is already practiced. Like Constitution of all other countries, the constitution of the Russia also provides freedom of religions and accords equality in the law to all religious beliefs. Although it is impossible in any situation to achieve the chance of religion. As in 1997, there were several occasions for religious imprisonment. The Ministry of Justice began to break down approximately 2000 legally segregated partnerships on 31 Dec. 2001.

Several religious social orders practiced the action of defiling, giving the administration a benefit as they would profess to put an end to a non-degenerate religious social order by calling it degenerate. There are several instances that have been further recorded by individuals against religious social orders. There were

heartless structures that regarded a network as religious associations because of which many religious networks were called social associations.

#### *Why Secularism is needed in India:*

In a culturally diverse nation like India, secularism has no substitute choice, so secularism has been embraced by the Indian Constitution. People living in the Indian Union come from various traditions; cultural or languages. To hold them united, India needed secularism. It was therefore necessary, with the right to freedom, to embrace secularism. While in India there is an effort to bring unity in diversity, the minority communities are facing inequality and minority oppression. Of course, the spirit of nationalism couldn't be developed even after the establishment of a secular state. The obstacle to national integration is the perception of social intolerance among minorities.

It cannot be denied that there is a need for secularism among the minority communities in the country to introduce a sense of nationalism. Though India has accepted the idea of a secular state, religion has actually been politicized. Religious institutions are used in the politics of elections. Therefore, by growing communalism, the idea of secularism is falling behind. Communalism is anti-democratic, so it is important to base the idea of secularism on the pursuit of democratic ideals. Politics based on faith is counterproductive to national dignity in a pluralistic society like India. Therefore, in order to create a strong democracy, the ideals of secularism, while upholding religious values, must be respected in society[9].

#### *The challenges before secular character of India and its Constitution:*

India is not related to any single religious practices. Religion, however, was adopted, along with freedom of religion and secularism, as an integral part of Indian social life. A major problem facing the secular state is the increasing intervention of religion in politics. The candidates chosen for the elections are picked on the basis of faith. In the face of religious emotions, the politics of votes are cast. Therefore, they do not elect the right candidates. There are minority sects with the Hindu majority, such as Muslims, Christians, Parsis, Sikhs. Everyone has the freedom to spread his or her faith and encourage it. Despite this, there still seems to be no decrease in feelings of vulnerability among religious minorities. This makes establishing a secular culture challenging. One of the biggest problems facing secular society is India's increasing racism. A secular society is not possible until all the cultures of the country come together more closely with a national spirit[10].

### **CONCLUSION**

Intentional and expected efforts are needed for scientific approaches to the practice of secularism and the establishment of equal and social justice in worldly life. The right to freedom of religion has been guaranteed by the Constitution and this is indisputable. We should understand the sense in which the right to religion is not granted to the person. In India, the majority of individuals believe in faith. Many believe that every scripture has a teaching that is humanitarian. We should understand if all religions are tolerant, autonomous and integrate the complementary components of modernity with the curriculum and incorporate it into the curriculum of the school. Everyone can recognize all religions by doing so, and the right to freedom of faith can be deliberately enforced. People may accept religion or deny it. This will not deter loneliness, alienation or polarization and will lead to religious peace.

An important part of secularism is the scientific point of view. This concerns the premise of your directive and the essential duties of people. Religion and politics must both be different, and the real sense of secularism, if it happens, is that religion should be removed from public life. The state does not formally have a religion. In India, the majority of people believe that the basis of all scriptures is faith and charitable preaching. In establishing a secular culture, all the ideals of religious books introduced into the curriculum of schools will become supportive. The political system does not differentiate between religions, it supports all religions in the same way, and welfare services can be enforced at a strategic level for all religions.

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