

**THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES,**

**KOCHI**

**DISSERTATION**

*Submitted in partial fulfilment of the requirement for the award of the degree of*

**MASTER OF LAW (LL.M)**



2023-2024

**ON THE TOPIC**

**RELIGION AND STATE; ANALYSING SECULARISM IN  
INDIAN CONTEXT**

Under the Guidance and Supervision of

**Dr. Namitha K.L.**

National University of Advanced Legal Studies

Submitted by

Sreejaya s

Register No. LM0123014

LL.M (CONSTITUTIONAL AND ADMINISTRATIVE LAW)

## **CERTIFICATE**

This is to certify that Ms. SREEJAYA S., (Reg. No. LM0123014) has submitted her dissertation titled, “Religion and State;Analysing Secularism in Indian context” to the National University of Advanced Legal Studies, Kochi under my guidance and supervision as a part of her course in Master of Laws in Constitutional and Administrative Law. It is also affirmed that, the dissertation submitted by him is original, bona-fide and genuine.

Dr.Namitha K.L.

Assistant Professor

NUALS, KOCHI.

DATE:

PLACE:

## **DECLARATION**

I declare that this dissertation titled, “RELIGION AND STATE; ANALYSING SECULARISM IN INDIAN CONTEXT” is researched and submitted by me to the National University of Advanced Legal Studies, Kochi in partial fulfilment of the requirement for the award of Degree of Master of Laws in Constitutional and Administrative Law, under the guidance and supervision of Dr. Namitha K.L., Assistant Professor and is an original, bona fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

SREEJAYA S

REGISTER NUMBER: LM0123014

DATE: 26/06/2024

PLACE: ERNAKULAM

## **ACKNOWLEDGEMENT**

I take this opportunity to express my profound respect and deep sense of gratitude to Dr.Namitha K.L., my guide and supervisor for the support, guidance and encouragement throughout the course of my research work. He has been patient with me and helped me to maintain the belief in my research and has given me cogent and meaningful suggestions which helped me navigate the relevant issues. I would like to extend my gratitude to the Vice-Chancellor Honourable Justice S. Siri Jagan (Retd.) for his support. I express my sincere thanks to Prof. Dr. Mini S, The Director of Centre for Post Graduate Legal Studies for her support and encouragement extended during the course. I would further extend my deep felt gratitude to all the Professors of NUALS for their guidance and support. I would also like to convey my thanks to all the Library Staff and Technical Staff for their assistance to carry out the work. I express my appreciation and gratitude to my family, friends and my classmates for their support and encouragement.

SREEJAYA S

## **ABBREVIATIONS**

- AIR- All India Reporter
- Art.- Article
- Bom- Bombay
- SC- Supreme Court
- SCC- Supreme Court Cases
- V.-Versus
- §- Section

## TABLE OF CASES

1. Peethambaram v. Supt. of Police, CBI, 1996 (1) KLJ 173
2. Z.B. Bukhari v. B.R. Mehra(1976) 2 SCC 17
3. Atheist Society of India v Government of Andhra Pradesh AIR 1992 AP 310
4. A.S. Narayana Deekshitulu etc.v.State of Andhra Pradesh and ors (1996) 9 SCC 548
5. S R Bommai v Union of India (1994) 3 SCC 1.
6. The Commissioner, Hindu Religious Endowment v. Sri Lakshmi Thirtha Swamiar of Sri Shirur Mutt, 1954 AIR 282
7. Bhuri Nath And Ors. vs State Of J&K And Ors,AIR1997SC1711
8. Sardar Syedna Taher Saifuddin Saheb vs The State Of Bombay, 1962 AIR 853
9. T.M.A.Pai Foundation & Ors vs State Of Karnataka & Ors, 31 October, 2002
10. N. Adithayan vs The Travancore Devaswom Board & Ors, AIR 2002 SUPREME COURT 3538
11. S.P. Mittal Etc. Etc vs Union Of India And Others AIR 1983 SC 1
12. Mahant Sri Jagannath Ramanuj Das And ... vs The State Of Orissa And Another, 1954 AIR 400
13. Mustt. Nasima Khatun And Etc. vs State Of West Bengal, AIR1981CAL302
14. Dr. P.M. Bhargava And Others vs University Grants Commission, 2001(3)ALD804
15. Ms. Aruna Roy And Others vs Union Of India And Others, 2002 (7) SCC 368
16. Ratilal v. State of Bombay, A.I.R. 1954 S.C. 388
17. The Durgah Committee, Ajmer Andanother vs Syed Hussain Ali And Others, 1961 AIR 1402
18. Mohammed Hanif Qureshi vs. State of Bihar, AIR 1958 SC 731
19. Girish Kumar Sharma v. State of Uttarakhand & others, Habeas Corpus Petition No. 20 of 2017
20. Lata Singh vs. State of Uttar Pradesh, (2006) 5 SCC 475
21. Arumugam Servai vs. State of Tamil Nadu, (2011) 6 SCC 405
22. Rev Stainislaus v. State of Madhya Pradesh, (1977) 1 SCC 677
23. M Siddiq (D) Thr Lrs vs Mahant Suresh Das & Ors, 2020 (1) SCC 1
24. Bijoe Emmanuel & Ors vs State Of Kerala & Ors,1987 AIR 748
25. Shayara Bano v. Union of India, AIR 2017 SCC 1388
26. Indian Young Lawyers Association vs The State Of Kerala , AIRONLINE 2018 SC 243

27. Govt. Of Nct Of Delhi vs Union Of India, AIR ONLINE 2018 SC 1029
28. Mrs. Mary Roy Etc. Etc vs State Of Kerala & Ors, 1986 AIR 1011
29. Sardar Syedna Taher Saifuddin Saheb vs The State Of Bombay, 1962 AIR 853
30. SAS v France [2014] ECHR 695, Application no. 43835/11. M. Hunter-Hénin
31. Am. Commc'ns Ass'n v. Douds, 339 U.S. 382, 414 (1950).
32. Everson v. Board of Education, 330 U.S. 1 (1947)
33. Abhiram Singh v. C D Commachem (2017)10 SCC 1

## **TABLE OF CONTENT**

- **CHAPTER I –INTRODUCTION (8-15)**
- **CHAPTER II- SECULARISM (16-25)**
- **CHAPTER III- INDIAN SECULARISM (26-35)**
- **CHAPTER IV- INDIVIDUAL AND RELIGION (36-45)**
- **CHAPTER V- CONVERSION LAWS IN INDIA (46-55)**
- **CHAPTER VI- INDIAN JUDICIARY AND SECULARISM (56-64)**
- **CHAPTER VII-SECULAR DEMOCRACIES (65-70)**
- **CHAPTER VIII- CONCLUSION (71-78)**
- **BIBLIOGRAPHY (79-81)**



# **1.INTRODUCTION**

## **RELIGION**

What is religion? The answer is very complex and cannot be defined in a monolithic language. Throughout the history of civilization, humans tend to be institutionalized. Religion was in a way result of this mentality. From ancient times itself religion play an important role in human history. It was widely influential in human life. It is not static but volatile matter. The dynamic of religion is growing every day that it is difficult to deal with. Religion need not be always about God and theism. Almost every ancient civilizations like Egyptian, Indian, chinese, Greece etc. had naturalistic pagan Gods of their own. According to E.B. Tylor, Religion is the belief in spiritual beings<sup>1</sup>. According to Max Muller, religion is a mental faculty or disposition which enables man to apprehend the infinite.<sup>2</sup> Religion is the worship of spiritual beings from a sense of need. G. Galloway states that, religion is man's faith in a power beyond himself whereby he seeks to satisfy emotional needs and gain stability in life, and which he expresses in acts of worship and service.<sup>3</sup> This states the cognitive, affective and conative level of human mind. It is nothing but religious consciousness of human being. According to Hegel; religion is the knowledge possessed by the finite mind of its nature as absolute mind. Religion is man's faith in a supernatural power and to satisfy this power or establish a relationship with this power he organizes worship and service.<sup>4</sup>

The religion is originated from the basic need of human life – the struggle for existence. The life of the primitive man was disrupted by various ways, e.g. by hostile nature, involved in danger by the attack of some ferocious animal. The primitive man felt that by his limited and small power it was impossible to win over the calamities of opposite power to protect his life. So, in that helpless moment he expected divine help from the outside world and imagined that a super human power was existed behind the strong natural objects and facts. By worshipping the power he prayed help from the imagined power. This was the stage were gods and other supernatural elements were born. In this axial period different prophets and saints were born out of humans and preached morality. They declared that they could hear from God and formulate code of conduct for humans. It was these demi gods who declared what is right and

---

<sup>1</sup> D. Miall Edward, The Philosophy of Religion

<sup>2</sup> D. Miall Edward, The Philosophy of Religion

<sup>3</sup> George Galloway, The Philosophy of Religion

<sup>4</sup> D. Miall Edward, The Philosophy of Religion

wrong for humans. Thus free religion was born out of superstitions. The famous religious preacher of this era were Zoroaster, Pythagoras, Confucius, Buddha, Mahavira etc

According to G. Galloway, the names by which we know the various 'Religion' today were in fact (with the exception of Islam) invented in the 18<sup>th</sup> Century. Before that they were imposed by the influence of the west. None had thought of himself belonging to one of the competing systems of belief concerning which it was possible to ask 'which of these systems is the true one'?<sup>5</sup> This does not stop them from finding the truth and questioning the existing system. There were rebels at that time too, like ajivikas who denied theism and embraced materialism.

Since the time unknown, religion is closely associated with man. So, the question arises: What element exists in the inner level of human mind which has made man associated with religion? What was present in the mental nature of human being for which primitive men feel satisfied through their religious belief, religious behavior in spite of different changes and evolution of human society? According to psychology there are three types of actions – thinking, feeling and willing through which we come to know the mind. Every experience and behavior of human is determined by these three actions of mind.

One of the oldest human pursuit world witnessed is none other than religion. Individual and social are the two forms of religion. In individual form it is a two-fold connection between individual and divinity. There they try to find a connection between divine souls. Social form is the collective nature of religion in which several people form a commune and find the connection between each other in the matter of spiritual belief and practices, e.g. Hinduism, Buddhism, Christianity, Judaism, Islam etc.

These religions have two common features:

1. Each living religion of the world has some particular faith in regard to the world and life situation as a whole.
2. In the light of such faith of man each living religion gives directions for a specific way of life for its followers

From this point of view every religion of the world is a specific way of life passed on certain specific beliefs in connection with the world and life situation as a whole

---

<sup>5</sup> George Galloway, The Philosophy of Religion

## INDIA AND RELIGION

India is known for its spiritual teachings throughout the history. It is the land of different faiths, beliefs, traditions and cultures. India and her tribal pagan Gods survived miraculously through centuries. Some of the common features of Indian faiths are that they are non-congregate, free and undefined. This free nature created a secular outlook to the world and true to its sense that India welcomed different faiths heart fully. Ancient Indian texts like Upanishads and Puranas highlight this pluralistic nature of the society. They follow a certain rules and principles named as Dharma in sanskrits. These Dharmic religions have certain characteristics like:-

### Hinduism:

- (a) Hinduism is a complex religion. It is polytheistic, monotheistic, monistic and atheistic – all at the same time. There are various kinds of beliefs and practices amongst its followers.
- (b) Hinduism has no one definite religious text. Vedas, Upanisads, Ramayana, Mahābhārata, Purānas, Bhagavad!itā are sacred texts of Hinduism
- (c) In Hinduism, both the theist and atheist exceptthe Cārvāka, believe that behind the material world there is a spiritual realm which is eternal.
- (d) Hinduism believes that the essential nature of man is spiritual and his soul is immortal<sup>6</sup>

### Jainism:

- (a) It is an atheistic religion, believing in no God behind the World-order. But the Jains accept the Tirthankaras as their God.
- (b) Man's soul is immortal. The nature of the soul is infinite power, infinite knowledge, infinite faith and infinite bliss.
- (c) Moksa can be attained by right faith, right knowledge and right conduct.<sup>7</sup>

---

<sup>6</sup> J.H. Leuba, 1912, Psychological Study of Religion, MacMillan, London

<sup>7</sup> J.H. Leuba, 1912, Psychological Study of Religion, MacMillan, London.

### Buddhism:

- (a) Buddhism is a humanistic religion without God. Its main aim is the liberation from the sufferings of mankind.
- (b) Buddhism refutes the authority of the Vedas and Vedic ritualism.
- (c) The main essence of Buddhism is the pursuit of the eight fold disciplines and the belief in the four noble truths.<sup>8</sup>

From ancient time onwards rulers promoted secular outlook in India like the 12<sup>th</sup> Rock Edit of Ashoka made an appeal not only for the toleration of all religion sects but also to develop a spirit of great respect toward them. He pleaded for restrain of criticism of other religious sects. He asked people to become perfect in the scriptures of other religions. The religious tolerance expressed by Ashoka more than 2,300 years ago has been one of the cherished Indian Social Value. The sufi- bhakti movements of medieval India also created harmonious bond among different communities.

Then there are other religions in modern India that makes it truly secular like:-

### Christianity:

- (a) Christianity believes in only one God. God is an internal trinity – God the father, God the son and God the holy spirit.
- (b) It believes that the soul is eternal and there is a life after death.
- (c) A sincere moral life of love is sufficient for man's liberation without any rituals and sacrifices.<sup>9</sup>

### Islam:

- (a) Islam believes in one and only one God, called 'Allah'. It is a monotheistic religion.
- (b) It believes in a life after death. Heaven and Hell are the permanent home of the righteous and the evil doers – respectively.

---

<sup>8</sup> J.H. Leuba, 1912, Psychological Study of Religion, MacMillan, London.

<sup>9</sup> J.H. Leuba, 1912, Psychological Study of Religion, MacMillan, London.

(c) It believes in perfect purity, service of humanity and brotherhood of mankind.<sup>10</sup>

Religion plays an inevitable role in Indian psyche. It is unavoidable, take any religion or sect in India it has some spiritual connection to the land and keeps that true secular nature to its core. That is exact reason why this nation survived throughout the history of oppression and colonialism. People India holds on that secular nature though they are not truly secularized. There is this invisible thread of religion and individual, state and religion and religion and state plays constantly to keep the political secular psyche in Indian minds.

### **SCOPE OF STUDY**

Religion and state are constantly in clash with each other throughout the history till present day and India is no exception to it. As a pluralistic multicultural composite nation, India cannot afford to be a theocracy. It cannot be possible even in the mindset of policy makers to make India a religious state because of the humongous diversity it holds. That is why our constitution makers thoughtfully prevented it from making it a Hindu rashtra despite having a huge number of Hindu populations. Secularism was the only solution for this, but what kind of secularism is the question. Ours is a religion affirming secularism in which state has a role in religious affairs. Constituent makers cleverly avoided the wall of separation in the name of religious reformation. May be it was a need at that time but what about the current scenario. Where these religion affirming nature lead us to? The problem with Indian secularism is it can be theocratized at any time. Look for example the Citizenship Amendment Act and its intention to ostracize Muslim community and to victimize the majority Hinduism by right wing politics is alarming. Not only this, take the recent Ram temple inauguration by Prime Minister, how on earth a prime minister in office of a secular nation take part the priestly duties of a particular religion. In the inauguration ceremony he said that: “This is not just a divine temple. It is a temple of India’s vision, philosophy, and direction. It is a temple of national consciousness in the form of Ram. Ram is the faith of India, the foundation of India.”<sup>11</sup> This is because of the strong connection between money and religion that rules Indian Politics. Whose fault is this? Is it the unique nature of our secularism that allows to freely interact with religion that brought us here? Isn’t it time to change our perspective on secularism? Can India really afford the free exchange of power happening between religion and state? There are unending questions to answer. This dissertation aims at critically

---

<sup>10</sup> J.H. Leuba, 1912, Psychological Study of Religion, MacMillan, London.

<sup>11</sup> <https://indianexpress.com/article/political-pulse/pm-modi-ram-mandir-ayodhya-9122200/>

analyzing the current nature of Indian secularism and check whether there is any need of change in the nature of Indian secularism. The study is very relevant in the current political situation of the country and it is beneficial to check the status of secular thought process the country poses.

## **OBJECTIVE**

- To understand and analyze the concept of secularism followed in the country
- To Understand whether state promoting all religion fit for a well diverse pluralistic country apt or not
- To understand analyze the relationship between individual rights and secularism
- To understand the religious laws promulgated by state
- To analyze and compare secular framework of other countries and to check whether we need a change in our idea of secularism

## **STATEMENT OF PROBLEM**

The secular outlook that Republic of India is following for the past is clearly unfitting. The state by promoting all religions equally is deviating from the basic idea of secularism. State engaging in any religious affairs is a violation of individual right and creates division in the pluralistic society.

## **RESEARCH QUESTIONS**

- Whether pluralistic approach of secularism beneficial in India?
- Whether religion a private right of individual or not?
- Whether state run religious institutions violate Articles 15(1) and 16 of the constitution of India?
- Whether complete disengagement from religious activities by the state restricts right to freedom of religion under the constitution of India?

## **HYPOTHESIS**

The pluralistic secular approach that promotes all religion seems unfit in the present scenario of the nation and it is better if the state completely disengages itself from religion as it is purely an individual matter. It might be beneficial if India adopts a new form of secularism

where state withdraw from religion and leave it to individual's choice. There seems to be no direct connection between secularism and right to freedom of religion.

## **RESEARCH METHODOLOGY**

The research study of the study would be carried by purely doctrinal method and the study would be based on the collection of data from primary and secondary sources. The primary sources of data include statutes; case laws etc. and secondary sources include books, journals, newspaper articles, online sources etc.

## **CHAPTERISATION**

### **CHAPTER I: INTRODUCTION**

The first chapter is introductory chapter which build the background for the topic. It deals with the idea of religion and its origin, the history of religion India and their secular nature, then scope of study, statement of problem, research questions, hypothesis, objectives, research methodology etc.

### **CHAPTER II: SECULARISM**

The chapter deals with the origin of secularism, what is the idea and nature of the doctrine, what are the different interpretations and definitions of the concept; how secularization and secular thought process works etc.

### **CHAPTER III: INDIAN SECULARISM**

The chapter says about Indian secularism, its roots, how it evolved, how it worked in the colonial era, the constituent assembly debates, constitution on secularism, different religious institutions governed by state, how law and religion works etc.

### **CHAPTER IV: INDIVIDUAL AND SECULARISM**

The chapter deal with religious individual rights in the country, how individual rights and secularism differ- distinction between it, will complete disengagement from state and religion affect individual rights, does religion an individual right or matter of state etc.

## CHAPTER V: CONVERSION LAWS IN THE COUNTRY

The chapter says about conversion laws, its origin, history present laws, analysis of these laws, how it affects secularism and individual, is it a threat to individual rightsetc.

## CHAPTER VI: INDIAN JUDICIARY AND SECULARISM

The chapter says about Indian judiciary on secularism, judicial decisions, the way in which Indian judiciary sees secularism so far and its analysis, case laws etc.

## CHAPTER VII: SECULAR DEMOCRACIES

The chapter deals with analyzing secular outlook of countries such as France and United states of America and critically evaluate it with Indian secularism

## CHAPTER VII: CONCLUSION

This is the concluding chapter where conclusion and suggestions are included.



## **2. SECULARISM**

### **INTRODUCTION**

“I have shown, Athenians, as I was saying, that Meletus has no care at all, great or small, about the matter. But still I should like to know, Meletus, in what I am affirmed to corrupt the young. I suppose you mean, as I infer from your indictment, that I teach them not to acknowledge the gods which the state acknowledges, but some other new divinities or spiritual agencies in their stead. These are the lessons which corrupt the youth, as you say.

*Yes that I say emphatically.*

Then, by the gods, Meletus, of whom we are speaking, tell me and the court, in somewhat plainer terms, what you mean! for I do not as yet understand whether you affirm that I teach others to acknowledge some gods, and therefore do believe in gods and am not an entire atheist - this you do not lay to my charge; but only that they are not the same gods which the city recognizes - the charge is that they are different gods. Or, do you mean to say that I am an atheist simply, and a teacher of atheism?

*I mean the latter - that you are a complete atheist*

That is an extraordinary statement, Meletus. Why do you, say that? Do you mean that I do not believe in the godhead of the sun or moon, which is the common creed of all men?

*I assure you, judges that he does not believe in them; for he says that the sun is stone, and the moon earth.”<sup>12</sup>*

The place was Athens; the trial of Socrates was going on. He was accused of asebia. They said he failed to worship Athenian Gods and thus corrupted youth. Socrates defended himself unsuccessfully in front of hundreds of jurors but at last succumbed to the hollow soul of hemlock, the state injected.

This was ancient Greece. Let us roll the clock to the medieval Germany. It was a fine Wednesday morning in Wittenberg, a young man was pacing right and left in his study room, the year was 1517, thirty first day of October, the man was named Martin Luther. As a priest he was facing a dilemma he never witnessed ever in his life. Luther was going behind a

---

<sup>12</sup> Plato, “Apology,” the Pennsylvania State University, Electronic Classics Series, PP.11.12

predicament he thought would scam the lives of common people. Mother of God! The thought of the new way of indulgences made his mind unusually chaotic. Sale of indulgences it is...just to rebuild a basilica in Rome, they are scamming the poor... isn't it blasphemous. The pope is rich right; he must rather build the church with his own money than taking from the poor people, he thought. He tried to settle it amicably, but in vain. He did write a letter to his bishop about disputation on the power and efficacy of indulgence...What to do with no response. He must do it for the sake of his sanity. He may be excommunicated, but he will do it. With that determination he went to Wittenberg Castle church and posted his ideas, which later came to be known as ninety five theses, on the church door. This not so smooth journey paved way to a change, may be a revolution of idea indeed.

These two incidents happened in two different time lines in two different places under different circumstances. Only thing that binds them is the undeniable connection between the state and religion shown in them. One thing for sure, the unholy matrimony between the state and religion is not a modern phenomenon. It was continuously happening from time immemorial. So that 'custom' is something debatable, right? This chapter mainly focuses on secularism, its various definitions, origin and development, modern day approach and the idea of secularism. The main objective is to understand the skeleton of secularism.

## **THE IDEA OF SECULARISM**

*"Then give to Caesar what is Caesar's, and to God what is God's."*

Secularism is one of the most debatable concepts ever existed in political ideology. This single word depicts different ideas for different nationalities and cultures across the globe. One thing that is common for all these ideas are the relationship between state and religion. The core concept of every one of those ideas is the interlinking between state and religion. Whether it is agreeable or not, religion plays a bigger role in political and no-political affairs of a state and it is the truth. Secularism is the concept which is part and parcel of this wedlock. The confusing factor is that the various ideas of secularism are contradictory in itself. For example, a branch of western secularism claims the concept to be complete separation of religion and state and calls for a religion negating statehood. On the other hand Indian secularism is perceived as religion affirming secularism, which treats all religions equally. The irony in these concepts is clearly evident. If the original concept was of complete disengagement of state and religion then how come it mutated to a religion

affirming status. So the main thing to remember is that, there is no universally accepted idea of secularism but the concept is changed to such a level that, each and every one perceives the concept according to their whims and fancies.

The root of the word 'secular' goes back to Latin. The original term, 'saeculum', means a period of long duration: age<sup>13</sup>. It was medieval Christian thinkers who adopted the word to English language. Oxford classical dictionary describes process as: In Roman conceptions of time, the saeculum became the longest fixed interval, calculated as a period of 100 or 110 years (as opposed to, e.g., a lustrum of only five years; cf. "census"). The term originally indicated a "generation" or "lifetime," but greater significance developed through its association with the Ludi Saeculares (Secular Games), which were performed to celebrate the advent of a new saeculum in Rome. Through the Secular Games, the emperor advertised his role in establishing his dynasty and ushering in an age of peace; emperors who wished to capitalize on this expression of authority made official references to the saeculum in coinage and inscriptions if they were unable to hold the Games during their reigns, thus creating a close link between the saeculum, imperial families, and political control. In Late Antiquity, the Christianization of the empire led to other usages. Because of its association with political power, the saeculum came to signify "the present age of the world," in contrast with an eternal, heavenly realm; it could also be applied to a new, Christian era.<sup>14</sup> So the crown or state played an important role.

There are most importantly two ideas of secularism. The first one is complete disengagement of state and religion, that is, religion negating secularism. In this form of secularism the state does not engage in any religious activity or does not recognizes a religion as its own. Religion is insignificant for state in this case. There is no state religion. They view religion as a private entity or an individual's choice, state has no role to play in it. There is an obstruction or a wall created by the state which prohibits encroachment from both sides. The second one differs from where the wall starts to diminish. In this form of secularism, the state treats every religion equally, though they don't have a state religion, they actively interfere in religious matters when it affects public order. This is a religion affirming secularism where state engages in religious matters.

---

<sup>13</sup> "Saeculum." Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/saeculum>. Accessed 18 May. 2024.

<sup>14</sup> Bilynskyj Dunning, Susan. "saeculum." Oxford Classical Dictionary. November 20, 2017. Oxford University Press. Date of access 18 May. 2024, <<https://oxfordre.com/classics/view/10.1093/acrefore/9780199381135.001.0001/acrefore-9780199381135-e-8233>>

## **DEFINITIONS**

*'Oh, water, what is your colour?'*

*'The colour of whatever you mix me in!'*

There is no universally accepted single definition for secularism. A monolithic definition of secularism is as non-existent as a Sherlock Holmes. Different theorists gave different definitions to secularism at different times. The Cambridge Dictionary describes secularism as, "the belief that religion should not be involved with the ordinary social and political activities of a country"<sup>15</sup> This definition mainly focuses on the religion negating side of secularism which separates religion from the political sphere of a country. The definition added social activities parallel to political activities is another important factor to be noted. According to the Dictionary Merriam-Webster, secularism is "indifference to or rejection or exclusion of religion and religious considerations."<sup>16</sup> Both of these dictionaries meaning emphasizes on the disengagement of religion from state rather than maintaining equidistance.

Jacob George Holyoake was considered to be the first one to use the term secularism in 1851. He used the term to describe a new order which separate society from religion. In his reply to Rev. Brewin Grant he says that "by secularism is meant giving the precedence to the duties of this life, over those which pertain to another world. The leading points with respect to Secularism that I undertake to explain are:-

1. That attention to temporal things should take precedence of considerations relating to a future existence
2. That science is the providence of Life, and that spiritual dependency in human affairs may be attended with material destruction.
3. That there exist (independently of scriptural religion) guarantees of morality in human nature, in intelligence, and utility.

These as you perceive, include the series of advantages I regard as conferred by Secularism."<sup>17</sup> This early notion of secularism is little bit philosophical as well as atheistic. Now look at much later version of secularism through C. V. van Peursen's view. According

---

<sup>15</sup> Cambridge Advanced Learner's Dictionary & Thesaurus © Cambridge University Press

<sup>16</sup> Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/secularism>. Accessed 18 May. 2024.

<sup>17</sup> Christianity and secularism Report of a public discussion between Rev Brewin Grant and George Jacob Holyoake and Co., 2, Paternoster Row.

to him secularism is ‘the deliverance of man, first from religious and then from metaphysical control over his reason and his language. It is .... the dispelling of all closed worldviews, the breaking of all supernatural myths and sacred symbols. It represents the...the discovery by man that he has been left with the world on his hands, that he can no longer blame fortune or furies for what he does with it.’<sup>18</sup> It is philosophically so similar yet different by portraying the reasoning of human beings to be separated from religious intrusions. Peursen is bolder by claiming religion to be super natural myth.

D.E.Smith’s concept of secularism relates with much liberalistic view point of individuals right to religion. He states that secularism is the concept “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 either to promote or interfere with religion”.

Now it is clear that though the concept of secularism is closely related to religion it is not exactly synonymous to absence of religion. It is a political doctrine that is concerned with the state and its way of handling religion. Look at the court’s observation about secularism as it ‘is not an anti-religious doctrine in spite of its emphasis on absolvent of politics from religion and theocratic society is not the solitary antonym of secular society.’<sup>19</sup>It clearly states that secularism does not intend to be anti-religious. In *Z.B. Bukhari v. B.R. Mehra*<sup>20</sup>, the court align a narrow philosophical view of religion as ‘a system of utilitarian ethics, seeking to maximise human happiness or welfare quite independently of what may be either religious or the occult’

The concept of secularism cannot be shared in a single definition is not at all amusing. The idea of secularism is so intermingled with theistic and non-theistic philosophies at a level that the idea is often misunderstood. The various intentions in these definitions show the different perceptions the idea holds in different minds. For example, above mentioned observations of Indian courts clearly focuses on the religious side of secularism whereas Van peursen’s view had a philosophical lenience to it. Anyway, the most assured fact is that religion is an integral part of the idea of secularism.

---

<sup>18</sup> Harvey Cox ‘The Secular City: Secularisation and Urbanisation - A Theological Perspective. (1966, Pelican Books).

<sup>19</sup> *Peethambaram v. Supt. of Police, CBI*, 1996 (1) KLJ 173 at 175

<sup>20</sup> *Z.B. Bukhari v. B.R. Mehra*(1976) 2 SCC 17

## **ORIGIN AND DEVELOPMENT.**

The idea of secularism was there since a long time. Though the word was coined relatively later by Holyoake, the concept was still ancient. It was well hidden under the spectrum of atheism more often. It was European continent that lead the world regarding the development of the concept. History of secularism mends well with the European church's history. Eighteenth century Europe and its peculiar political environment that interlinked with the church played a huge role in shaping the core character of the ideology. The church and the state were constantly in conflict with each other for supremacy and power. To trace the shadow of this conflict we should go back to the Roman Empire, where dualism for administrative and spiritual power was laid after long deliberations.<sup>21</sup>The church was highly influential, which cannot be denied by the crown. It forced theistic belief upon common man that religious freedom was unheard of Apostasy was thought as a crime. There were instances in which crown tried to restrict papacy and its unholy powers but in vain. State was always considered subordinate. Some men like Sir Thomas advocated imprisoning heretics for preservation of religion.<sup>22</sup>Reformation was the key change in this phase, which encouraged common people to fight against the established system of power centre. It led them to question anything and everything including religion and God. Thus came the question of mediation, Why is there a mediator? Is it necessary? These questions gave way to the need for a greater individual choice, namely religious freedom. Even the monarchs rebelled against church in this period. The Henry VIII of England was one such king who fought with the papacy and established the Church of England for his own personal reasons. Enlightenment and scientific revolution of nineteenth century pushed the markets for the ideology further. Human rationalism attained a new light through renaissance and it led society to the direction of secularization thus prompted state towards separation from religion. Theo dogma was thoroughly criticised by scholars and supported rationalism. Sovereignty based on rational thoughts rather than theology spread across the globe in line with enlightenment. This was proved right when Napoleon Bonaparte refused to be crowned. State became the predominant actor in this regard. Many ideologies like Bentham's Utilitarianism supported the idea of secularism. French revolution made a strong base for secular thought processes. It attained the notion of secular state to reality. Likewise soviet revolution was also a catalyst for the ideology to flourish in that era.

---

<sup>21</sup> Sidney Z. Ehler, *The Secular Belief in the State*, 25 ( Oxford publishing press, London, 1966)

<sup>22</sup> G.J.Holyoke, *The Origin and Nature of Secularism*, 41 (Oxford Publication press, London, 1986)

Secularism as an ideology stems from deep rooted rational thought process for individual choices and against the anarchy sprouted by the established system of religion. The unholy matrimony of religion and state created ruckus among the masses. It was indeed abuse of power and suppression of basic human rights of the people in general. Religion was very influential in the administrative realm that it created an imbalance and injustice towards the human beings who were already toiling in the tramps of daily life. Renaissance showed a beam light upon this darkened path. Secularism was the right ideology that political sphere needed at that point of time for the development of human society and state. It is not an anti-religious doctrine but just pro human. Later on many newly formed nations, like India, who escaped from the evil hands of colonialism, adopted and adapted the ideology into its environment in a new spirit of its own.

### **OBJECTIVE**

Secularism sought a political objective of separation of state and religion. It seeks for individual liberty and equal treatment for all theistic and non-theistic organisations.

“Secularism not only means a bundle of guarantees in respect of freedom of religion and conscience and in respect of cultural and educational rights, but a sense of basic fraternity, fellowship and unity among all citizens, which is a goal as well as a process. As an ideology and a bundle of working norms it is conditioned by past legacies and the prevailing realities, and in course also shapes the course of social revolution and thought process. It is an alloy of nationalism, national integration, language and communal harmony.”<sup>23</sup>The ideology intent to create harmonious wellbeing and egalitarian character from the society. Its attitude attracts not only harmony but also liberty to choose. It gives people freedom to choose and to express them. The main objective is the manifestation of liberty that gained its free hands from the shackles of religious suppression. Secularism protects individuals from unwanted chains of state imposed religion and the fear induced by them instead it provides a system of tolerance that makes human beings at peace. The partition of religion from state ensures that state is free from unnecessary interventions by clergy in administration for their personal gain. This abuse of power is restricted by the effective utilisation of secular thought process in state affairs and secularization of the masses. The process is not easy but when state employs such neutral stance in its official capacity then it will become effortless and legally viable.

---

<sup>23</sup> Atheist Society of India v Government of Andhra Pradesh AIR 1992 AP 310

## **SECULARIZATION.**

The problem with secularism is that, there is a chance misinterpreting the doctrine with secularization. Secularism is basically a political doctrine; it has nothing to do with the process of reducing religious activities in a place. Religion has no actual place in secularism; it is a shadow that should be kept aside. In A.S. Narayana Deekshitulu etc.v.State of Andhra Pradesh clearly state that “Secularism is a political ideology, strictly may not accept any religion as the basis of State action. There is a difference between secularism and secularisation. Secularisation essentially is a process of decline in religious activity, belief, ways of thinking and in restructuring the institution. Though secularism is a political ideology and strictly may not accept any religion as the basis of State action or as the criteria of dealing with citizens, the Constitution of India seeks to synthesise religion, religious practice or matters of religion and secularism. In secularising the matters of religion which are not essentially and integrally parts of religion, secularism, therefore, consciously denounces all forms of super-naturalism or superstitious beliefs or actions and acts which are not essentially or integrally matters of religion or religious belief or faith or religions practices. In other words, non-religious or anti-relations practices are antithesis to secularism which seeks to contribute in some degree to the process of secularisation of the matters of religion or religious practices.”<sup>24</sup>

Secularism and secularization are used and misused frequently without realising the significant difference in the intentions of both these words. One is purely political ideology that has no direct connection with any religion and the other is sociological that has directly related to anti-religious sentiments. A secular state is where there is a complete disengagement of religion from state affairs which is completely legal action whereas secularisation is the process of removing overly religious thoughts from the minds of the people in a social environment. Secularization is a sociological phenomenon which has nothing to do with legal matters. It is the gradual process of promoting the rational thought process among the masses. This thought process in time convert to secular thought process and people will began to acquire secular consciousness throughout the process. Whereas secularism and secular state are political concepts which the masses entrusted upon state to build a well maintained egalitarian nation which allows them the ultimate liberty to worship or not to worship and to follow or not to follow any religion

---

<sup>24</sup> A.S. Narayana Deekshitulu etc.v.State of Andhra Pradesh and ors (1996) 9 SCC 548



There is a clear distinction between both the concepts. Secularization involves the psychology and ethos of a human being in a broader view point it requires the mentality of human society as a whole. A secularized nation need not be a secular state and a secular state need not be secularized. Secularization happens when people attain a level of rational and free thinking that leads them to an egalitarian mind set but secularism on the other hand is a political achievement that the policy makers try to create for the legal set up of the country. Secularism as a doctrine if practiced is legally bound but secularization on the other hand does not have any legal backing. The authority and legality it holds is what makes secularism different from other similar doctrines. The righteous feature of making a personal choice completely untouched from the state imposition is what the power centre of secularism as a doctrine is. A secular state thus gives its citizens the liberty to choose their fundamental choice of practice or to not practice a religion without the fear of a monopolistic state religion. A state attains a level of equality when it acquires both secularism and secularization. A secular state without secular citizens is equally disastrous as a religious state with secular citizens. There should be a balance power among both the concepts.

## **CONCLUSION**

Secularism in every aspect is a very noble ideology that was developed over the years by thousands of minds and like-minded human settlement for a better political arena. The strenuous relationship between religion and secularism is a controversial topic in recent years. The past few decades witnessed the rise of orthodox religious sentiments among the masses which resulted in serious tension and conflicts. Secularism was developed as an answer to the monopoly and supremacy showcased by established state religions. The problem was that, it was expected to lessen the influence of religion but what happened is quite contrary and the influence religion hold on states continues strongly.

### **3.INDIAN SECULARISM**

"I do not expect India of my dreams to develop one religion, i.e., to be wholly Hindu or wholly Christian or wholly Mussalman, but I want it to be wholly tolerant, with its religions working side by side with one another." Mahatma Gandhi

#### **INTRODUCTION**

21<sup>st</sup> April 2024, a fine sunny Sunday, Bharathiya Janata Party's star pracharak and India's Prime minister Narendra Damodardas Modi asked thousands of his cheering supporters in an election rally in Western Indian state of Rajasthan (Bhanswara) "Earlier, when his government was in power, he had said that Muslims have the first right on the country's property, which means who will they collect this property and distribute it to – those who have more children, will distribute it to the infiltrators. Will the money of your hard work be given to the infiltrators? Do you approve of this?"<sup>25</sup> With a roaring support he continued his not so polite words saying that "This Congress manifesto is saying that they will calculate the gold of the mothers and sisters, get information about it and then distribute it. Manmohan Singh's government had said that Muslims have the first right on property. Brothers and sisters, these urban Naxals thoughts will not let even your mangalsutra escape, they will go this far. Is it acceptable to you? Do governments have the right to confiscate your property which you have earned through hard work? The gold with our mothers and sisters is not for showing off; it is related to their self-respect. The value of their mangalsutra is not in gold or its price, but is related to her dreams in life. And you are talking about snatching it?"<sup>26</sup> These vile words came from the sacred mouth the prime minister of a secular democratic country during an election campaign against a particular community who has significant percentage of population in the country was not at all amusing as it was just one among the many hate speeches delivered by democratically elected law makers of this great nation. The fact that the same person was again elected as the prime minister of India for a third term indicates how degenerating of a hell hole Indian secularism has become over the decades is alarming in many ways. This is the result of the unique way of working of Indian secularism which indicates the gigantic flaws in the system and the concept. Whether Indian secularism and its

---

<sup>25</sup> [https://thewire.in/communalism/act-against-pm-modi-over-2200-citizens-write-to-ec-over-hate-speech-in-rajasthan/?mid\\_related\\_new](https://thewire.in/communalism/act-against-pm-modi-over-2200-citizens-write-to-ec-over-hate-speech-in-rajasthan/?mid_related_new)

<sup>26</sup> [https://thewire.in/communalism/act-against-pm-modi-over-2200-citizens-write-to-ec-over-hate-speech-in-rajasthan/?mid\\_related\\_new](https://thewire.in/communalism/act-against-pm-modi-over-2200-citizens-write-to-ec-over-hate-speech-in-rajasthan/?mid_related_new)

close tie up with religion, unlike other branches of the concept, is successful or not is a seriously debatable topic.

## **INDIA AND PLURALISM**

India from time immemorial is a pluralistic multicultural society. It is this various cultures and groups of conglomerates that made this sub-continent a diversely populated land mass. Culture is an important term that is very much used and overused in the country. The wording so much controversial in India that, what exactly the word indicating is a question indeed. What is the idea of Indian Culture? Is it monolithic and uniform or Composite and pluralistic? There is difference of opinion in this regard like some point the view towards Hinduism as the sole bearer of Indian culture and the other point of view state it as a composite culture nourished with diverse traditions, sects, languages and guilds. If we look into culture as what we are and how we live, then Indian culture is definitely pluralistic because there is no monolithic trait in India as a nation. It is diverse and different in each inch of its existence. The fusion of different opinions and flow of diverse knowledge is what made the composite nature of Indian society. The trade exchanges, migration and invasion brought various foreign cultures to the land gave it a cosmopolitan attitude.

Since ancient times itself India holds a pluralistic outlook. Even during Vedic and later Vedic period there were different traditions and sects existed in the subcontinent. There were atheists sects like ajivikas who outright denied the existence of God and relied more on materialism. Then there were shramana tradition which brought out a different view of human life. Unlike their contemporaries Buddhism and Jainism installed secularism in Indian way of life through humanistic approach and equal way of treating human beings. This provided a composite attitude in people and they began to think in that way. This was the basis of the welcoming nature of Indian subcontinent. Even Islamic invasions instilled a cultural integration among masses in the nation. So without a doubt there is a long line of pluralistic approach among the people in the country though the rulers tend to suppress individual freedom

Colonial era sowed so many undercurrents of current multiple complexes we face as a nation. Religious rivalry is one among them. Though they paved way to modern secular thought process in the country, but it was mostly motivated by selfish reasons. The British

implemented a number of religious reformation policies in that era. These policies combined three different roles:

- Commercial objective of British Government,
- Traditional Aspect of India and
- Pressure from Christen missionaries<sup>27</sup>

They mostly refrained from interfering in traditional aspects of individual's lives as part of religious neutrality. British introduced secular education which opened much modern thought processes in the nation that helped in secularization of urban elites. Anyway these all facts still helped India remain a pluralistic society

### **CONSTITUENT ASSEMBLY DEBATES**

Indian freedom struggle was basically driven by nationalism but was not free from the clutches of religion. The movement started with the aim of securing a secular society but slowly communal and separatists elements crept in the way which further complicated the issues. The opportunists' tendencies of the British oiled the situation further up. British worked as a double agent as promoting their own selfish motives in disguise of promoting communal harmony. But in reality many of their policies helped speed up separatism and communalism. This communal politics still stay strong in Indian ethos that it is difficult to remove it from the mind-set of the people of the nation. The leaders thoroughly brought up religion often to gain momentum. There are instances when extremists of Indian National Congress brought in religion for mass mobilization like Tilak used Shivaji festivals for mass mobilization, Patel stressed that goal of every Hindu is to consolidate as sects into Hindu Nation<sup>28</sup>. Likewise Khilafat movement prompted for Muslim nation as well. So the freedom struggle saw the inner evil of communalism in multi-cultural environment which proved disastrous later on. Though these struggles helped in gaining the long sought independence it still resulted in blood bath. These dirty communal politics succeed in overshadowing secularism to a certain level that the fruits of independence were tainted with appalling partition. It was this communalistic tendencies of the movement that led us to a brutal partition and as independent countries India, Pakistan and to an extend Bangladesh are still holding to its after effects. There where instance s like Karachi session of Indian national

---

<sup>27</sup> Vivek Singh Rajput, Analytical Study on Secularism: Concept, Origin And Its Importance In India, Journal of Positive School Psychology, 2022, Vol. 6, No. 3, 7698– 7715

<sup>28</sup> B.G. Tilak, Continuity and Change in Indian Politics, 96 (People's Pub. House, New Delhi, 1996)

Congress where secular proposals were put forth but basically all these steps went null when the partition happened. Policy formulations of independent India were mostly based on the experience of partition and its after effects.

Secularism was discussed as a part of Article 19 of the draft constitution on constituent assembly on Monday, 6<sup>th</sup> December, 1948. The content of the Article was mainly related to freedom of religion. Secularism was not a unanimous decision in the assembly, there were doubts regarding it, Shri Loknath Misra from Orissa asked that Sir, it has been repeated to our ears that “ours is a secular State. I accepted this secularism in the sense that our State shall remain unconcerned with religion, and I thought that the secular State of partitioned India was the maximum of generosity of a Hindu dominated territory for its non-Hindu population. I did not of course know what exactly this secularism meant and how far the State intends to cover the life and manners of our people. To my mind life cannot be compartmentalised and yet I reconciled myself to the new cry.”<sup>29</sup> There is this evident doubt about the nature of secularism in this query. He further states that ‘secular State’ is a slippery phrase, a device to by-pass the ancient culture of the land.<sup>30</sup> There is a fear of losing monopoly and he proposed an amendment for the word ‘propagation’ regarding religion. There were doubts regarding complete disengagement of religion and state. For example Shri H.V.Kamath moved for an amendment “relating to the disestablishment or the separation of what you may call in Western parlance the Church from the State, and relates to the deeper import of religion, namely, the eternal values of the spirit.”<sup>31</sup> Most of the members were proposing for religion confused secular state with secularization that there were a sense of paranoia in there contentions against secularism. The word propagate was the most contentious one because it was perceived to be synonymous with Christian religion. There was befitting reply to this bigotry like Shri T. T. Krishnamachari contented that “it does not mean that this right to propagate one's religion is given to any particular community or to people who follow any particular religion. It is perfectly open to the Hindus and the Arya Samajists to carry on their Suddhi propaganda as it is open to the Christians, the Muslims, the Jains and the Bhuddists and to every other religionist, so long as he does it subject to public order, morality and the other conditions that have to be observed in any civilised government. So, it is not a question of taking away anybody's rights. It is a question of conferring these rights on all the citizens and seeing that these rights are exercised in a manner which will not upset the economy of

---

<sup>29</sup> CONSTITUENT ASSEMBLY DEBATES, Volume 7.Monday, the 6th December, 1948

<sup>30</sup> CONSTITUENT ASSEMBLY DEBATES, Volume 7.Monday, the 6th December, 1948

<sup>31</sup> CONSTITUENT ASSEMBLY DEBATES, Volume 7.Monday, the 6th December, 1948

the country, which will not create disorder and which will not create undue conflict in the minds of the people.”<sup>32</sup>

The main thing to note in these debates is that most of the members did not wish to label India as a secular state for explicit religious reasons. Propagation was one among the strongest reasons. Even though the assembly explicitly did not label India as a secular state the intention of the constitution proved it to be secular enough. The word propagate was indeed included as part of Art.19 (Art. 25 of the constitution of India) and it proved the strong will of the constitution makers.

### **NATURE OF INDIAN SECULARISM**

Indian secularism sometimes goes in line with Gandhian philosophy. Mohandas Karamchand Gandhi was a religious person yet he treated and respected all religions equally, this is what exactly Indian secularism holds to an extent. It treats every religion equally. State's role in religious affairs is more prominent in Indian secularism. There is no domination of any religion and state equally interferes in affairs of all religions, no discrimination at all! This probably stems from the ancient Indian philosophy of 'sarva dharma samabhava' which literally means treating every religion equally. Unlike its western counterpart Indian secularism is said to be unique in the sense that state does not completely shut down religion from its hands. There is no complete disengagement instead state actively plays a role among religion and treats them with equal intensity. It is a positive view point where state interferes in religious matters which is actually an individual right. So the question of legality and righteousness of this approach remains unanswered.

It is in the Preamble to the Indian constitution that the term secular is mentioned. It states India as a secular country. There was not a single mention of the word secularism in the initial constitution; it was by the 42<sup>nd</sup> Amendment Act of 1976, that the word secular was added in the preamble of the constitution. A clear cut definition of the term word secularism is not given anywhere in the constitution. It is mostly through judicial pronouncements the word attained a Skelton. S.R. Bommai<sup>33</sup> judgment says that “Secularism is deeply embedded in the Constitution of India 1950. It is a basic feature of the Constitution of India 1950 and adequate safeguards must be ensured to protect the secular character of the country and

---

<sup>32</sup> CONSTITUENT ASSEMBLY DEBATES, Volume 7.Monday, the 6th December, 1948

<sup>33</sup> S R Bommai v Union of India (1994) 3 SCC 1.

without prejudice to the interests of religious, linguistic and ethnic groups.” The main characteristic feature of Indian secularism is that it does not take away your religion and it does not enforce any religion as well. There is a sense of belongingness for religion in Indian secularism. We can vaguely define it as treating every religion equally without any state religion. In Upendra Baxi’s view Indian Secularism means<sup>34</sup>:-

- State has no religion
- No religion shall be promoted by using public finance
- Any economic, financial activity related to religious practices can be regulated by the state.
- The Hindu religious institution of government nature can be left open for social welfare and reforms by law, as well as for all Hindus classes and sections.
- Every person should have freedom of conscience and religion.

The attitude we observe here is neutrality and impartiality. The word God is eliminated from the log book of state. But in reality the concept of God is not the culprit here, it is the established organization that is termed as religion with its own rules and principles that is interfering in state affairs. Look at Supreme Court’s observation in *H.R.E. vs. L.T. Swamiar*<sup>35</sup>, ‘Religion is a matter of faith with individuals or communities and it is not necessarily theistic. A religion has its basis in a system of beliefs or doctrines, which are regarded by those who profess that religion as conducive to their spiritual well-being. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship, which are regarded as integral parts of religion and these forms and observance might extend even to matters of food and dress’. So it is not the concept but an establishment running with its own rules and regulation clashing with the procedure established by law is the problem. It creates an unequal due process that creates serious dilemma in a secular democracy like India. If a majority religion infiltrates into law making process and dominates the politics, then it becomes easy for them to be a mouth piece of that particular religion and the chances of acting like a theocracy is more rampant. The nature of Indian secularism is so vague for a pluralistic, multi-cultural society, from our past experiences it is evident that it is high time we should completely disengage state from religion.

---

<sup>34</sup> Upendra Baxi, *The Philosophy of Secularism*, 29 (Oxford University Press, Delhi, 2002)

<sup>35</sup> *The Commissioner, Hindu Religious Endowment v. Sri Lakshmi Thirtha Swamiar of Sri Shirur Mutt*, 1954 AIR 282



## **STATE AND RELIGION IN INDIA**

Religion and state had connection with each other in India from early days itself. Rulers of ancient kingdoms were patrons of different religions. So this umbilical cord between state and religion is historically connected. Pre Islamic rulers acted as the protectors of religion and built temples, mutts and sanctuaries. These emperors distributed wealth and done arbitration of disputes through religion or temples. They need temples to maintain their kingship. This is exactly followed till today by the modern politics through a different way

The involvement of Indian government with religion is not a lazy irrelevant fact to be ignored. The magnitude of the cooperation and administration is gigantic. It will be clear when we get into the length and breadth of this trajectory. One thing important thing to be noted is that religion is a vulnerable subject to majority of Indian lives that they ignore the state interference into their personal choice to preserve faith.

Indian state involves with religious life of citizens in many ways, take for example Hindu religious institutions. The depth of involvement of state in Hindu temples, mutts and charitable institutions are magnanimous. This trend is more seen in the southern states though it does happen throughout the country. As it is a state subject the central government's involvement is negligible. The state governments explicitly make laws and regulations for these religious institutions and their administration. Tax exemptions for these institutions are not rare at all. Think about the level of discrimination in the system when a certain institution is exempted of tax only because it is administered by the state. What about the other irreligious institutions and their contribution to the state. Tax exemption is just a tip of the iceberg. There is an annual support and a fund allocation in the budget for these institutions. A report in The Hindu newspaper about Kerala government fund allocation to Devaswom boards says that "The State government has allotted ₹20.80 crore during 2021-22 (up to December 31) to the Travancore Devaswom Board (TDB). The amount of allocation was ₹90.40 crore during 2020-21, including ₹90 crore of special allocation for the COVID-19 and flood relief period. The allocation to the TDB has varied between ₹80 lakh during 2018-19 and ₹70 lakh during 2019-20, said information received under the Right to Information Act by Raju Vazhakkala, an activist. The Malabar Devaswom Board was allocated a total of ₹36.95 crore during 2018-19, ₹18.16 crore during 2019-20, ₹60.61 crore during 2020-21, and ₹44.55 crore up to December 31 during the financial 2021-22. The Cochin Devaswom Board was allocated ₹25.23 crore during 2020-21 and the Koodalmanykiam Devaswom Board was

allocated ₹15 lakh during 2020-21, said the information from the Devaswom department. The information received under the RTI said the State government had not received any amount from the Devaswom boards so far.”<sup>36</sup> Look at the figures allocated, which is common tax money of all people irrespective of religion given to some specific religious institutions. What about the equal treatment of all religions? How can we say it as a secular state when the state budget itself deals with religious institutions? Where the secular values of the constitution here is, is a genuine doubt.

## **RELIGIOUS INSTITUTIONS**

Hindu temples in the country are classified into two heads<sup>37</sup>:-

- Public- subject to government control and open, with some restrictions, to all Hindus
- Private- owned and operated by private families or trusts and serving limited constituencies

The controversial thing here is the fact that there are public government controlled religious institutions in a secular democracy. The operation and administration of these public religious institutions varies according to the state. The four southern states, Viz., Tamil Nadu, Kerala, Andhra Pradesh, and Karnataka have different temple boards and committees in their respective states like Tirumala tirupati devasthanam in Andhra Pradesh and Travancore, Malabar Devaswom Boards in Kerala. There are several small temples under these boards as well. It is the government who administer lands, assets, finances, appoint employees and act as legal custodian of these temples. Kerala have five devaswom boards which collectively are the richest statutory bodies in the state. These boards are powerful in every sense because they control a large amount of finances and administer a vast body including appointment of employees. These bodies are administered by government executives. Though they are not autonomous they enjoy great power. The only check in between these powers is the judiciary. These boards needs the approval of the high court of Kerala for even the smallest amount spend. The budgetary approval is also done by the high court in this matter. These public temples are powerful and in a way source of income to the government concerned. The main aim of these matters is religious reforms they say. Ronjoy Sen says that ““Celebratory

---

<sup>36</sup> <https://www.thehindu.com/news/cities/Kochi/rti-plea-elicits-details-of-allocation-to-devaswom-boards/article65394225.ece>, May 12, 2022 07:04 pm IST - KOCHI

<sup>37</sup> Deepa Das Acevedo, Secularism in the Indian Context, 38 Law & Soc. Inquiry 138 (2013), [https://scholarship.law.ua.edu/fac\\_articles/81](https://scholarship.law.ua.edu/fac_articles/81)

neutrality entails a state that assists, both financially and otherwise, in the celebration of all faiths. Reformatory justice involves regulating and reforming religious institutions and practices, setting aside some core elements that are beyond regulation”<sup>38</sup> Reformation of religion definitely is a matter of concern of the state, but it is time to stop it right? or is it a peculiar case in our county where religion is the main code of conduct for its citizens. These cultural traits were unavoidable and untouchable in the country for decades, even after the independence.

In addition to Hindu religious institutions there are Muslim Wakf boards which are formulated by the government. There are statutes nation-wide regarding wakfs about their constitution, functions and administration. Apart from the law making part, government is not involved in any other part of wakf boards. It is strictly maintained by the community and followers of the religion.

In India social reform must always be balanced against the demands of multiple cultures, whose resistance to changes threatening to their ways of life finds support in constitutional provisions that explicitly endorse cultural preservation. Such provisions are as much an expression of political reality as they are a measure of constitutional acquiescence. So where exactly does secularism stands in this very necessary deal between state and religion. It is a blunder to avoid the fact that principle of non-interference is just in paper in the country. If the very essential doctrine of secularism is not practiced, then how come India can be termed as a secular country? Despite the assurance from the judiciary repeatedly that India is indeed secular and secularism is the basic structure of the constitution, in reality secular principles in the country is very much adulterated for no doubt.

---

<sup>38</sup> Sen, Ronojoy. 2007. *Legalizing Religion: The Indian Supreme Court and Secularism*. Washington, DC: East-West Center.

## **CONCLUSION**

It can be observed by facts that secular governance is not followed in India till date. The governance in the country was always tied with religion. This interference of state in religious matters is essentially a feature of theocracy. India as a secular democracy following this theocratic tendency in the excuse of a unique form of secularism is basically falsehood. India as a country is in denial all these years after the independence that it is a secular state. But in reality India is neither secular nor theocratic, like every other features of our democracy; we are still in a confused state. Indian secularism holds a beautiful standard of equality while treating each and every religion equally but it shatters the moment government interfere in religious administration.

It was indeed a necessity to assist religious institutions at the time of independence. Every institution was in ruins at that era but time changed, people changed, technology changed and most importantly our policy matters changed. So is the time to shift to real form of secularism. India should change its secularism into complete disengagement and treat religion as a personal choice. India is still in pre-colonial era in concern with religious matters. Isn't it time to stop religious reformation and start social, technological reformation in the country?

## **4.INDIVIDUAL AND RELIGION**

### **INTRODUCTION**

Mohammad Akhlaq, a fifty two year old farm worker, was brutally beaten to death for suspicion of cow slaughter on twenty eighth September 2015 in Bisahda village, near Dadri in Uttar Pradesh. On 28 September 2015 evening, one of Akhlaq's neighbors allegedly accused him of stealing and slaughtering his missing calf at Bisahda village near NTPC Dadri in Uttar Pradesh. Soon a crowd gathered and insisted on searching his house for traces of slaughter which was refused by family. Soon things took an ugly turn when two boys used the local temple's public address system and announced that the family of Akhlaq had killed the cow calf and consumed its meat on Eid-ul-Adha. Mob carrying sticks arrived at Akhlaq's house at around 10:30 p.m. that evening. The family had finished dinner and were about to go to sleep. Akhlaq and his son Danish were already asleep. The mob woke them and accused them of consuming beef. They found some meat in the refrigerator and seized it, but the family insisted it was mutton. However, the mob proceeded to drag the entire family outside; Akhlaq and Danish were repeatedly kicked, hit with bricks and stabbed. The family's neighbours tried to stop the mob but were not able to. The police were called and arrived an hour later. By then, Akhlaq was dead and Danish was badly injured.<sup>39</sup> The police arrested the temple's priest and his assistant for questioning. An FIR was filed naming ten of the attackers based on the testimony of the family members. It contained charges under Sections 147 (rioting), 148 (rioting with deadly weapon), 149 (unlawful assembly), 302 (murder), 307 (attempt to murder), 458 (house-breaking), and 504 (intentional insult with intent to breach of the peace) of the Indian Penal Code. Six of them were found and arrested by 1 October 2015. On 1 October, the number of arrests went to eight. The arrests were protested by locals. The protesters set fire on vehicles and vandalised shops.<sup>40</sup>

This is one of the thousands of infamous cow lynching by cow vigilantes in the country. The very brutality of these incidents is the clash between two fundamental individual choices of citizens of India in the name of religion, namely right to food and practice of religion. This individual choices clashing with state affairs resulted in this type violence is basically because of the confusion created by a private affair that is religion.

---

<sup>39</sup> "Indian mob kills man over beef eating rumour". Al Jazeera. 1 October 2015.,

"Why India man was lynched over beef rumours". BBC News. 1 October 2015.

<sup>40</sup> "Eight held for lynching 'beef-eater' in Dadri". Mumbai Mirror. 1 October 2015.

## **RELIGIOUS RIGHTS**

Religion is a strictly private affair and basic human right inherent in every person irrespective of their caste, creed, gender, sexuality, nationality etc. It is a personal choice of every human being. Almost every country and most international organizations agree upon the fact that religion is a basic human right. Article 18 of the Universal Declaration of Human Rights (UDHR) adopted by the United Nations in 1948, Article 18(1) of the International Covenant on Civil and Political Rights 1966 (ICCPR), and Article 9(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ECHR) all guarantee freedom of thought, conscience and religion. All three state that this includes freedom to change one's religion or belief and freedom, either alone or in community with others and in public or in private, to manifest one's religion or belief, in worship, teaching, practice and observance.<sup>41</sup> Freedom of religion is a twofold manifesto in international human rights<sup>42</sup>:-

- The right to freedom of thought, conscience and religion, which means the right to hold or to change one's religion or belief and which cannot be restricted under any circumstances.
- The right to manifest one's religion or belief, which, according to Articles 9(2) ECHR and 18(3) ICCPR, can be restricted but only if the restriction is prescribed by law and is necessary – Article 9(2) adds here 'in a democratic society' – for the protection of public safety, public health or morals or for the protection of the rights and freedoms of others.

The right to freedom of religion is confined to the private life of an individual where they have the freedom to practice their own religion of choice. They have the freedom to change, choose or abstain from any religion as they wish. Religious rights are recognized internationally as basic rights of an individual to manifest their personal belief or faith according to their free will. This free will cannot be tampered by any external forces whether it's the state, any other organization or any other individual. These rights start and end within the person itself. That is why it is strictly personal and state has no role in a personal right of a person and they cannot interfere in these matters at any cost.

---

<sup>41</sup> Dr Alice Donald and Dr Erica Howard, The right to freedom of religion or belief and its intersection with other rights, ILGA-Europe, 2015

<sup>42</sup> Dr Alice Donald and Dr Erica Howard, The right to freedom of religion or belief and its intersection with other rights, ILGA-Europe, 2015

## **RELIGION AS A FUNDAMENTAL RIGHT IN INDIA**

Right to freedom of religion is one of the fundamental rights guaranteed by the constitution. One of the benefits of being a citizen of a secular nation is that you can follow or not to follow any religion, the choice is solely yours. This liberty to follow any religion becomes chaos when it is a multi-cultural, multi religious, pluralistic and composite nation. This liberty is not only to follow but also to practice and propagate the religion of your choice peacefully. Tolerance is the key word. Religious tolerance is an inevitable phenomenon in countries like India.

Articles 25, 26, 27 and 28 of the Indian constitution clearly enumerates different aspects of right to freedom of religion.

Art.25 of the constitution of India<sup>43</sup> says that:

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

---

<sup>43</sup> The Constitution of India, 1950

Profess, practice and propagate are the three important words to note here in Art. 25. It guarantees every individual the right to follow, to preach and spread their own religion but with certain restrictions that is public order, morality and health which means that social harmony of the nation should never be disrupted at any chance and they cannot infringe upon the welfare of fellow citizens. This means that a person's freedom ends when another's freedom start. Propagate was one of the controversial words from the constituent assembly itself. Many members did move for an amendment to delete the word. These words combined with the restriction indicate that the right is not at all absolute but it is still fundamental. And state can make any law subjected to the conditions mentioned in clause (2) of the Article. Another thing to be noted is that the distinguishing factor between religious freedom and secular activities. The Article clearly differentiates between the two terms. The state has every right to regulate or restrict secular activities associated with religious practices, such as social reforms, economic activities, and other activities unrelated to the core aspects of religion. It also includes the right of religious denominations or any section thereof to manage their own religious affairs, including establishing and maintaining religious institutions, as long as they do not violate any other laws or public order.<sup>44</sup> In *Vaishno Devi Shrine, Board v. State of Jammu and Kashmir*<sup>45</sup> the court abolished the hereditary post of priests and made it open merit, the Court held that the service of a priest is a secular activity and it can be regulated by the state under clause 2 of Article 25. In *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*<sup>46</sup> the court emphasized that the state should not interfere in matters of religious faith unless such practices are considered immoral or contrary to public order.

Article 26 of the Constitution of India<sup>47</sup> says that:

Subject to public order, morality and health, every religious denomination or any section there of shall have the right—

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and

---

<sup>44</sup> <https://indiankanoon.org/doc/631708/>

<sup>45</sup> *Bhuri Nath And Ors. vs State Of J&K And Ors*, AIR1997SC1711

<sup>46</sup> *Sardar Syedna Taher Saifuddin Saheb vs The State Of Bombay*, 1962 AIR 853

<sup>47</sup> *The Constitution of India*, 1950



(d) to administer such property in accordance with law.

Art. 26 deals with the freedom to manage religious affairs. From the wordings of the Article it is understandable that the provision aims for a community right rather than an individual right. It is basically the right of the particular religious denomination to manage its own affairs in matters of religion. So this is not particularly individual right but collective right which is exercised by the religion per se.

Art.26 (a) gives every religious institution the right to maintain institutions for religious and charitable purposes. If a religion has an established religious institution or if it intends to establish then they have the right same. They have right to administer the said institution without external interference. The Supreme Court in T.M.A.Pai Foundation<sup>48</sup> observed that “Article 26 does not deal with the right of an individual, but is confined to a religious denomination. Article 26 refers to a denomination of any religion, whether it is a majority or a minority religion, just as Article 25 refers to all persons, whether they belong to the majority or a minority religion. Article 26 gives the right to majority religious denominations, as well as to minority religious denominations, to exercise the rights contained therein.”

Art.26 (b) says about the right to manage its own affair which again state has no right to interfere. In N. Adithayan v. The Travancore Devaswom Board & Ors<sup>49</sup> it was observed that “it cannot be ignored that what is protected under Arts. 25 (1) and 26 (b) respectively are the religious practices and the right to manage affairs in matters of religion. If the practice in question is purely secular or the affair which is controlled by the statute is essentially and absolutely secular in character, it cannot be urged that Art. 25 (1) or Art. 26 (b) has been contravened. The protection is given to the practice of religion and to the denomination's right to manage its own affairs in matters of religion. Therefore, whenever a claim is made on behalf of an individual citizen that the impugned statute contravenes his fundamental right to practise religion or a claim is made on behalf of the denomination that the fundamental right guaranteed to it to manage its own affairs in matters of religion is contravened, it is necessary to consider whether the practice in question is religious or the affairs in respect of which the right of management is alleged to have been contravened are affairs in matters of religion.”

Art.26 (d) give right to administer such property in accordance with law. The phrase in accordance with law gave away state the right to regulate the administration of the property

---

<sup>48</sup> T.M.A.Pai Foundation & Ors vs State Of Karnataka & Ors, 31 October, 2002

<sup>49</sup> N. Adithayan vs The Travancore Devaswom Board & Ors, AIR 2002 SUPREME COURT 3538

if needed. But they cannot entirely take away the right. In *S.P. Mittal v. Union of India*<sup>50</sup> the supreme court observed that “it is the Fundamental Right of a religious denomination or its representative to administer its properties in accordance with the law; and the law, therefore, must leave the right of administration to the religious denomination itself, subject to such restrictions and regulations as it might choose to impose a law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority, would amount to a violation of the right guaranteed under cl. D of Art. 26”.

Art. 27 of the Constitution of India<sup>51</sup> say that:

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

The above mentioned Article is the embodiment of religious neutrality and prevents use of public funds for a specific religion or its expenses. It ensures that public is not forced to contribute any money for the promotion of a particular religion. The main aim of the Article is to ensure the working of secular values by imparting impartial treatment for all religion and to avoid the wastage of taxpayer’s money towards any religious denomination and thus ensure the equal religious freedom of each and every citizens. In *Sri Jagannath v. the State of Orissa*<sup>52</sup> the Supreme Court observed that “What is forbidden by article 27 is the specific appropriation of the proceeds of any tax in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.” In *Nasima Khatun v. State of West Bengal*<sup>53</sup>, after the amendment of the Bengal Wakfs Act, 1973, it asked for a contribution by the people for economically weaker meritorious students, which was challenged and the Calcutta high court held that it does not fall under Art.27 as it is a kind of contribution not tax. In a similar line in *P.M. Bhargava v. University Grants Commission*<sup>54</sup>, the court held that the teaching of jyothish vigyan in universities by UGC is not religious teaching but secular activity and thus does not fall under the purview of Art.27 of Constitution of India.

---

<sup>50</sup>S.P. Mittal Etc. Etc vs Union Of India And Others AIR 1983 SC 1

<sup>51</sup> The Constitution of India, 1950

<sup>52</sup> Mahant Sri Jagannath Ramanuj Das And ... vs The State Of Orissa And Another, 1954 AIR 400

<sup>53</sup> Mustt. Nasima Khatun And Etc. vs State Of West Bengal, AIR1981CAL302

<sup>54</sup> Dr. P.M. Bhargava And Others vs University Grants Commission, 2001(3)ALD804

Article 28 of the Constitution of India<sup>55</sup> says that:

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Freedom of religion in educational institutions is the main content of Art.28 of the constitution of India. It safeguards the rights of individuals, religious groups, and educational institutions with regards to religious instruction, religious worship, and attendance at religious ceremonies.<sup>56</sup> Religious instructions are strictly prohibited in educational institutions fully maintained by state funds which include aided institutions as well. Public educational institution funded by government should be free from religious intrusion to maintain secular thought process and neutrality. This is to maintain the secular nature of public educational institutions which are run by taxpayer's money and by that they can uphold the religious freedom of individuals. Religious instructions are allowed in institutions that does not involve public funds but with the permission of parent or guardian. Students can learn about a particular religion of their interest with free will in educational institutions which are not wholly funded by the government. In *Aruna Roy v. Union of India*<sup>57</sup>, a PIL was filed based on the contention that provisions of National Curriculum Framework for School Education is violating constitution and is anti- secular that it should be set aside. The court ruled that there is no violation of Article 28 and there is also no prohibition to study religious philosophy for having value-based life in a society. The main purpose of this Article is to maintain the secular character of public educational institutions.

---

<sup>55</sup> The Constitution of India, 1950

<sup>56</sup> <https://indiankanoon.org/doc/1734560/>

<sup>57</sup> *Ms. Aruna Roy And Others vs Union Of India And Others*, 2002 (7) SCC 368

## **JUDICIARY AND FREEDOM OF RELIGION**

The term religion is defined by judiciary in many occasions. In *Ratilal v. State of Bombay*<sup>58</sup>, the court defined religion as “a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being”. Religion is a complex term which affects the holistic environment of a person including their dress, food and thought process. Article 25 of the constitution of India not only guaranteed freedom to simply believe in their faith but also to practice the religious traditions that are part of the community. So how will we distinguish the essential practices that are part of the religion? Or whether every practice can be attributed to religious practices? These questions are answered by the judiciary. Only judiciary can determine the originality of these religious practices with authority. The courts in India since independence had struggled to define the structure of religion within the framework of Art. 25 (1) and matters of religion in Art.26 (b).

In *Ratilal Panachand Gandhi vs State Of Bombay*<sup>59</sup>, the court observed that “whatever binds a man to his own conscience and whatever moral and ethical principles regulate the lives of men, that alone can constitute religion as understood in the Constitution. A religion may have many secular activities, it may have secular aspects, but these secular activities and aspects do not constitute religion as understood by the Constitution. There are religions which bring under their own cloak every human activity. There is nothing which a man can do, whether in the way of clothes or food or drink, which is not considered a religious activity. But it would be absurd to suggest that a Constitution for a secular State over intended that every human and mundane activity was to be protected under the guise of religion, and it is therefore in interpreting religion in that strict sense that we must approach Articles 25 and 26.” In *The Durgah Committee, Ajmer And another vs Syed Hussain Ali And Others*<sup>60</sup>, it was said that, “all persons are equally entitled to freedom of conscience and their right freely to profess, practise and propagate religion. This freedom guarantees to every citizen not only the right to entertain such religious beliefs as may appeal to his conscience but also affords him the right to exhibit his belief in his conduct by such outward acts as may appear to him proper in order to spread his ideas for the benefit of others.” These judicial pronouncements show the intensity of Art. 25 and Art.26 in dealing with religion and the way in which religion is brought under the square of constitution. It ensures the free exercise of religion along with

---

<sup>58</sup> *Ratilal v. State of Bombay*, A.I.R. 1954 S.C. 388

<sup>59</sup> *Ratilal Panachand Gandhi vs State Of Bombay*, AIR1953BOM242

<sup>60</sup> *The Durgah Committee, Ajmer And another vs Syed Hussain Ali And Others*, 1961 AIR 1402

strictly adhering what the provision stipulates. There are instances in which Supreme Court strictly pronounced about the phrase matters of religion by limiting them to those very essential, obligatory traditions pertaining to one's own religion.<sup>61</sup>

## **RELIGIOUS RIGHTS AND SECULARISM**

The main thing that is always confusing is the clash between secularism and freedom of religion. Both these concepts are entirely different and go parallel with each other which mean that it will never clash as general perception. Secularism is a political doctrine that concerns with the separation of state and religion. It says about non-interference of religion in matters of state. There is religion affirming secularism which treats every religion equally and state interfere in religious matters moderately and there is also religion negating secularism which proposes a complete disengagement of religion from state matters. On the other hand right to religion is a personal right of an individual. Unlike secularism, right to religion is concerned about a single individual only, unless he/she interferes in other peoples' matters. It is a strictly private right an individual inherently possess. Nobody except that particular person has the right to exercise their right to freedom of religion. State has nothing to do with right to religion of people. If the state interferes in their religious freedom or restricts their religious freedom then it is nothing but simply encroaching upon your rights. Here is the significance of secularism; a secular state will never encroach upon the religious rights of their citizens. The fundamental difference in both the ideas is that their objective is entirely different. One is a political doctrine and the other is a personal right.

Religion negating secularism will never suppress the personal religious rights of citizens. A complete disengagement of religion and state does not mean that individuals cannot enjoy their right to freedom of religion. In fact nobody can take away the fundamental right of freedom religion from anybody as it is naturally inherent in each and every one. So complete disengagement of state and religion never affects the individual freedom in fact it ensures the religious freedom of citizens. Religion is always a private affair state is just the watch dog in relation with religion and individual. Individual is the stake holder of religious right. State does not have the right to interfere unless there is a fundamental right violation. IN short, state and religion in a secular state is two ends of a pole that are not supposed to meet and individual stand in between them freely practising their personal right.

---

<sup>61</sup> Mohammed Hanif Qureshi vs. State of Bihar, AIR 1958 SC 731

## **CONCLUSION**

Individual and religion is always mutually intelligible factors in India. Religious Indians and religion in India were used simultaneously and frequently that, now it is confusing regarding their stand points in realm of rights. Indian constitution guarantees religious freedom to every citizen. These provisions clearly depict the importance of religious rights in a secular democracy. Indian secularism is in a unique position that allows state to interfere in individual religious freedom which is a clear violation of non-interference principle of secularism. One thing that is sure is that state has no right to encroach upon on individual's freedom. It is the liberty of an individual to practice, profess and propagate a religion or not to do so. State has no role in this matter and secular state should keep a distance with religion.

## **5.CONVERSION LAWS IN INDIA**

“A person cannot choose anything if he doesn’t know what choices are open to him”<sup>62</sup>

### **INTRODUCTION**

Hadiya Jahan, who was originally known as Akhila Ashokan was a Hindu by birth. She converted her religion into Islam when she was studying for Homeopathy (BHMS) form Shivraj Homeopathic Medical College, Salem in Coimbatore, Tamil Nadu. She stayed in a house with her friends named as Jaseena and Faseena. She then married a Muslim man named Shafin Jahan at the age of twenty-five years. On 6th January 2016, Mr Ashokan, father of Hadiya, found that her daughter was inspired by someone to change her religion from Hindu to Muslim. After finding out about the marriage of her daughter, Mr Ashokan filed a police complaint before S.P. Malappuram District. He then moved to High court and filed a habeas corpus petition challenging the validity of the marriage on the ground of misleading and forcing his daughter to become a Muslim. The divisional bench of the High Court rejected the petition and stated that Hadiya has expressly affirmed her marriage to Sahfin Jahan and conversion to Islam. Hadiya appeared before the High Court and stated that she had accepted Islam as a religion of choice and settled at the establishment of Sathyasarani Education Charitable Trust at Mallapuram. So, the High Court observed that Hadiya was not wrongfully confined by Sahfin Jahan, and she has free will to do so. The Kerala High Court held that the marriage between Hadiya and Sahfin Jahan is only a sham and is of no consequence.” After seven months, Ashokan filed another writ (habeas corpus) petition before the High court alleging that his daughter had been forcefully converted into Islam and was likely to be transported out of the country. The High Court ruled in favour of Mr Ashokan and held that it is the father’s responsibility to keep custody of his daughter until she may realize her actions. The court exercised the parens patriae jurisdiction and mentioned that it is for the welfare of the child of such an age. The court also stated that a girl aged 24 years may be exploited easily as they are weak and vulnerable. Therefore, the court declared the marriage as null and void and allowed the custody of Hadiya to her parents, despite the fact that Hadiya did not consent to it.<sup>63</sup> Her husband, Shafin Jehan approached the Supreme Court for challenging the High Court order. At Supreme Court, Hadiya expressed her will to

---

<sup>62</sup> Malavika Balasubramanian & Vishnu Gopinath, Decoding Dr. B.R. Ambedkar's Conversion to Buddhism, The Quint, (Mar. 26, 2021), <https://www.thequint.com/news/india/br-ambedkar-conversion-to-buddhism>

<sup>63</sup> <https://blog.ipleaders.in/shafin-jahan-v-k-m-ashokan-freedom-of-choice-and-religion/>

continue practicing Islam, live with her husband and complete her internship.<sup>64</sup> Later on 8<sup>th</sup> march 2018 the Supreme Court restored their marriage.

This is one of the infamous love jihad case also known as Hadiya case, which brought to lime light the confusing dilemma that is religious conversion. Whether Hadiya's conversion was original or forced, conversion has always been seen as a social stigma by Indian society. Freedom of religion Act's or Anti-conversion laws is the result of this societal pressure and closed mentality. The problem is that it creates a fundamental right violation for the individuals actually intend to convert.

## **HISTORY**

As discussed in earlier chapters India is a pluralistic multi-cultural society which includes a number of religions, belief systems, traditions and aboriginal faiths. The subcontinent is said to be the birthplace of four major world religions—Hinduism, Buddhism, Sikhism, and Jainism.<sup>65</sup> Apart from this conversion by repeated invasions and colonialism created paranoia in peoples' minds that they began to apprehend religious conversions. Anti-conversion laws are not a new phenomenon, it began to appear during the colonial era itself. During initial decades of twentieth century many Hindu princely states introduced Anti-conversion laws to preserve their kingship and religion from Christian missionaries. The Raigarh State Conversion Act 1936, the Patna Freedom of Religion Act of 1942, the Sarguja State Apostasy Act 1945, the Udaipur State Anti-Conversion Act 1946 and many other such examples can be found all over India.<sup>66</sup> Over a dozen of princely state had such laws in practice.

Constituent Assembly too witnessed debates relating to conversion laws. On 1<sup>st</sup> May. 1947, Sardar Vallabhai Patel introduced clause relating to forced conversion but he did not even once opposed the idea of religious propagation.<sup>67</sup> Some people like Ananthaswamy Ayyangar called for a ban on conversion. There were people like K.M. Munshi who proposed a rational thought for propagation of religion aswell.

---

<sup>64</sup> "Kerala love jihad case: 'I want freedom', says Hadiya; SC allows her to resume medical studies in Salem". Firstpost. First Post. 28 November 2017.

<sup>65</sup> Religion: 2001 Census Data, OFFICE OF THE REGISTRAR GENERAL & CENSUS COMMISSIONER, INDIA, [http://censusindia.gov.in/Census\\_And\\_You/religion.aspx](http://censusindia.gov.in/Census_And_You/religion.aspx) . [india.gov.in/Census\\_And\\_You/religion.aspx](http://india.gov.in/Census_And_You/religion.aspx)

<sup>66</sup> Dr. Monika Jain, Anti-Conversion Law: Critical Analysis in India, JOURNAL OF HUMAN RIGHTS LAW AND PRACTICE[STM Journal] (2019)

<sup>67</sup> CONSTITUTION OF INDIA CAD [https://www.constitutionofindia.net/constitution\\_assembly\\_debates/volume/3/1947-05-01](https://www.constitutionofindia.net/constitution_assembly_debates/volume/3/1947-05-01)



This trend followed even after the independence. Several times parliament of India tried to introduce a nationwide Anti-conversion law which failed to be enacted for various reasons. In 1954 the Indian Conversion (Regulation and Registration) Bill was introduced which was for the object of ‘licensing of missionaries and the registration of conversion.’<sup>68</sup>This attempt was first of such kind that failed miserably in Lok Sabha. In 1960, the Backward Communities (Religious Protection) Bill was introduced with the objective to prevent conversion of Hindus to non-Hindu religions including Christianity, Islam, Zoroastrianism and Judaism<sup>69</sup>. This bill also met the fate of its predecessor. One more Bill was failed which was introduced in the year 1979 in the name Freedom of Religion Bill with the intention of “official curbs on inter-religious conversion.”<sup>70</sup>

## **STATE LEVEL LEGISLATIONS**

After the failed attempt of a national level enactment, state level laws began to pop up in the name of freedom of religion Acts which aim at forced conversions. These laws ban conversions by fraud, force, allurement or inducement, while Himachal Pradesh, Uttarakhand and Uttar Pradesh laws even place ban on conversion for marriage.<sup>71</sup>Currently almost eight states in India have anti-conversion laws in effect including Arunachal Pradesh, Orissa, Madhya Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Uttarakhand etc. The object and content of almost every one of these laws are one and the same with little to no variations. Most of these laws aim to “prevent conversions ‘carried out’ by ‘forcible or ‘fraudulent’ means or by ‘allurement’ or ‘inducement.’ ”<sup>72</sup>Monetary fine to imprisonment are given as penalty for the breach of these laws. The punishment ranging from one to three years of punishment to five thousand to fifty thousand rupees fine.

---

<sup>68</sup> Dr. Iqtidar Karamat Cheema, Constitutional and Legal Challenges Faced by Religious Minorities in India, (Dec. 2, 2020)

<sup>69</sup> INDIAN LAW INSTITUTE, A STUDY OF COMPATIBILITY OF ANTI-CONVERSION LAWS WITH RIGHT TO FREEDOM OF RELIGION IN INDIA 31 (2007) (submitted to India’s National Commission for Minorities), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2359250](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2359250)

<sup>70</sup> George Menezes & Arul B. Louis, Bill introduced in Lok Sabha by former Janata Party MP O.P. Tyagi creates a scare among minorities, India Today, (Dec. 3, 2020), <https://www.indiatoday.in/magazine/indiascope/story/19790430-bill-introduced-in-lok-sabha-by-former-janata-party-mp-o.p.-tyagi-creates-a-scare-among-minorities-821980-2014-03-06>

<sup>71</sup> Aneasha Mathur, Anti-conversion laws in India: How states deal with religious, CONVERSION INDIA Today, (Feb. 12, 2021), <https://www.indiatoday.in/news-analysis/story/anti-conversion-laws-in-india-states-religious-conversion-1752402-2020-12-23>

<sup>72</sup> BECKET FUND FOR RELIGIOUS LIBERTY, SUBMISSION ON UNITED NATIONS HUMAN RIGHTS COUNCIL: UNIVERSAL PERIODIC REVIEW: INDIA 2 (Nov. 20, 2007).

The Orissa Freedom of Religion act, 1967 was the first Anti conversion law enactment. Directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion Section 3 Of the Act says that “no person shall convert or attempt to convert, either.”<sup>73</sup>The Act says that forcible conversion is punishable with imprisonment of up to one year, a fine of up to 5,000 rupees, or both.<sup>74</sup>The Act recognizes the provisions as cognizable offences.<sup>75</sup>The Orissa High court in 1973 held the Act to be Ultra vires the constitution.<sup>76</sup>

The Second state to enact an Anti-conversion law was Madhya Pradesh which is the the Madhya Pradesh Freedom of Religion Act, 1968.<sup>77</sup> Instead of using the term “inducement,” the Act uses the term “allurement,” which is defined under section 2(a) as an “offer of any temptation in the form of

- (i) any gift or gratification, either in cash or kind;
- (ii) grant of any material benefit, either monetary or otherwise.”<sup>78</sup>

The Act says that “No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use [of] force or by allurement or by any fraudulent means nor shall any person abet any such conversion.”<sup>79</sup> The crime is punishable with imprisonment of up to one year, a fine of up to 5,000 rupees, or both.<sup>80</sup>Madhya Pradesh High court, Unlike Odisha High court, upheld the constitutionality of the statute.

Arunachal Pradesh Freedom of Religion act was passed in the year 1978 and is exact replica of the other two Acts.<sup>81</sup>Section 3 of the Act says that “no person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to any other religious faith by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.”<sup>82</sup> Religious faith is termed as indigenous faith in the Act which is defined as “religions, beliefs and practices including rites, rituals, festivals, observances, performances, abstinence, customs as have been found sanctioned, approved,

---

<sup>73</sup> Orissa Freedom of Religion Act § 3

<sup>74</sup> Orissa Freedom of Religion Act § 4.

<sup>75</sup> Orissa Freedom of Religion Act § 5.

<sup>76</sup> Yulitha Hyde & Ors. v. State of Orissa & Ors., A.I.R. 1973 116 (Ori).

<sup>77</sup> Madhya Pradesh Dharm a Swatantrya Adhiniyam [Madhya Pradesh Freedom of Religion Act], 1968

<sup>78</sup> Madhya Pradesh Freedom of Religion Act § 2(a).

<sup>79</sup> Madhya Pradesh Freedom of Religion Act § 3.

<sup>80</sup> Madhya Pradesh Freedom of Religion Act § 5.

<sup>81</sup> Arunachal Pradesh Freedom of Religion Act, 1978, <http://acts.gov.in/AR/2897.pdf>

<sup>82</sup> Arunachal Pradesh Freedom of Religion Act § 3.

performed by the indigenous communities of Arunachal Pradesh from the time these communities have been known and includes Buddhism as prevalent among Monpas, Menbas, Sherdukpens, Khambas, Khamtis and Singaphoos, Vaishnavism as practised by Noctes, Akas, and Nature worships including worships of Donyi-Polo, as prevalent among other indigenous communities of Arunachal Pradesh.”<sup>83</sup> The crime of forcible conversion is punishable with imprisonment of up to two years and fine of up to 10,000 rupees.<sup>84</sup>

After the formation of Chattisgarh in 2000, the state retained its Anti conversion Law from Madhya Pradesh under the title Chhattisgarh Freedom of Religion Act, 1968.<sup>85</sup>

In the year 2003 Gujarat enacted their Anti conversion law, the Gujarat Freedom of Religion Act.<sup>86</sup> The purpose of the Act was same as those of other Acts to prevent forced, fraudulent conversions. One novel feature of the Act was that there is a need of prior or subsequent notice as the person wanting to convert should ask prior permission from the District Magistrate.<sup>87</sup> There was uproar from the Jain and Buddhist communities for making them a denomination under a subsequent amendment to the Act and the Amendment Act was withdrawn by the State government.<sup>88</sup>

Himachal Pradesh Freedom of Religion Act, 2006 was an exact replica of several other anti-conversion laws and came into effect on February 18, 2007. Section 3 of the Act prohibits conversion “by the use of force or by inducement or by any other fraudulent means.”<sup>89</sup> The only difference is that the Act further states that ‘any person who has been converted from one religion to another, in contravention of the provisions of this section, shall be deemed not to have been converted.’<sup>90</sup> Section 4(1) of the Act requires any person wishing to convert to another religion to give at least thirty days’ prior notice to district authorities. However, “no notice shall be required if a person reverts back to his original religion.”<sup>91</sup> Later on Himachal Pradesh High Court struck down the provision in a 2007 decision.

---

<sup>83</sup> Arunachal Pradesh Freedom of Religion Act . § 2(c).

<sup>84</sup> Arunachal Pradesh Freedom of Religion Act § 4.

<sup>85</sup> Chhattisgarh Passes Anti-conversion Bill, GULF NEWS (Aug. 4, 2006 ),  
[http://gulfnews.com/news/asia/india/  
chhattisgarh-passes-anti-conversion-bill-1.248514](http://gulfnews.com/news/asia/india/chhattisgarh-passes-anti-conversion-bill-1.248514)

<sup>86</sup> Gujarat Freedom of Religion Act, 2003, available at [https://home.gujarat.gov.in/Upload/Gujarat Freedom of Religion Act2003\\_new\\_home\\_1\\_1\\_221015.pdf](https://home.gujarat.gov.in/Upload/Gujarat%20Freedom%20of%20Religion%20Act2003_new_home_1_1_221015.pdf),

<sup>87</sup> Gujarat Freedom of Religion Act, 2003 § 5.

<sup>88</sup> Gujarat Withdraws Freedom of Religion Amendment Bill, THE INDIAN EXPRESS (Mar. 11, 2008),

<sup>89</sup> Himachal Pradesh Freedom of Religion Bill § 2.

<sup>90</sup> Himachal Pradesh Freedom of Religion Bill § 3

<sup>91</sup> Himachal Pradesh Freedom of Religion Bill § 4(1).

In Rajasthan legislative assembly passed the Anti-conversion Bill.<sup>92</sup> But the Governor did not give assent to the Bill mostly citing opposition from religious minorities. Under the bill, “conversion” was defined as “renouncing one’s own religion and adopting another” and “own religion” was described as “the religion of one’s forefathers.”<sup>93</sup> Punishment for conversion is two years’ imprisonment, which may extend to five years, and fines of up to fifty thousand rupees.<sup>94</sup> It is regarded as “cognizable and non-bailable and shall not be investigated by an officer below the rank of Deputy Superintendent of Police.”<sup>95</sup>

Tamil Nadu first issued an ordinance in the name of The Tamil Nadu Prohibition of Forcible Conversion of Religion Ordinance 2002 but was immediately replaced by an titled Tamil Nadu Prohibition of Forcible Conversion of Religion Act 2002<sup>96</sup> The Act adhere to the general framework of other similar Acts stated in section 3 that “no person shall convert or attempt to convert directly or otherwise any person from one religion to another either by use of force or by allurement or by any fraudulent means.”<sup>97</sup> Anyone who “converts any person from one religion to another either by performing any ceremony by himself for such conversion as a religious priest or by taking part directly or indirectly in such ceremony” was required to send notice to the District Magistrate within the prescribed period.<sup>98</sup> The Act was repealed because of public protest.

The Jharkhand Legislative Assembly passed the Jharkhand Dharm Swatantra Bill, 2017 (also known as the Jharkhand Freedom of Religion Bill, 2017) on August 12, 2017<sup>99</sup>. According to section 4, the contravention of section 3, “Prohibition of forcible conversion”, is a cognizable and non bailable offense punishable with imprisonment for up to three years, a fine of up to 50,000 rupees, or both.<sup>100</sup>

---

<sup>92</sup> Rajasthan Freedom of Religion Bill, No. 12 of 2006, [http://www.kandhamal.net/DownloadMat/Rajasthan\\_Freedom\\_of\\_Religion\\_Bill.pdf](http://www.kandhamal.net/DownloadMat/Rajasthan_Freedom_of_Religion_Bill.pdf).

<sup>93</sup> Rajasthan Freedom of Religion Bill § 2(c).

<sup>94</sup> Rajasthan Freedom of Religion Bill § 4.

<sup>95</sup> Rajasthan Freedom of Religion Bill § 5.

<sup>96</sup> Tamil Nadu Prohibition of Forcible Conversion of Religion Act, No. 56 of 2002, available at [http://www.lawsofindia.org/pdf/tamil\\_nadu/2002/2002TN56.pdf](http://www.lawsofindia.org/pdf/tamil_nadu/2002/2002TN56.pdf).

<sup>97</sup> Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002 § 3.

<sup>98</sup> Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002 § 5(1).

<sup>99</sup> Prashant Pandey, Jharkhand Passes Anti-conversion Bill, Govt Rejects Demand for More Scrutiny, INDIAN EXPRESS (Aug. 13, 2017), <http://indianexpress.com/article/india/jharkhand-passes-anti-conversion-bill-govt-rejectsdemand-for-more-scrutiny-4794360>

<sup>100</sup> Jharkhand Dharm Swatantra Act, 2017 § 5.

Uttarakhand took initiative to pass the conversion law after their high court suggested to do so. It was a case of alleged conversion and inter-religious marriage. The court ruled that “In order to curb this tendency, the State Govt. is expected to legislate the Freedom of Religion Act on the analogy of Madhya Pradesh Freedom of Religion Act, 1968 as well as Himachal Pradesh Freedom of Religion Act, 2006, without hurting the religious sentiments of citizens. The Court, while making this suggestion, is well aware that it is not the role of the Court to give suggestions to the State Government to legislate but due to [the] fast changing social milieu, this suggestion is being made.”<sup>101</sup> Section 3 of the new law provides that forced conversion is punishable with imprisonment of between one to five years and a fine<sup>102</sup>. Section 8 stipulates that a person who desires to convert his/her religion is required to give a declaration at least one month in advance to the District Magistrate or the Executive Magistrate “that he wishes to convert his religion on his own and at his free consent and without any force, coercion, undue influence or allurement.”<sup>103</sup> There is a provision of marriage that makes significant difference from other Acts, which reads as: “Any marriage which was done for the sole purpose of conversion by the man of one religion with the woman of another religion either by converting himself before or after marriage or by converting the woman before or after marriage may be declared null and void by the Family Court or where [a] Family Court is not established, the Court having jurisdiction to try such case on a petition presented by either party thereto against the other party of the marriage.”<sup>104</sup>

## **SCOPE OF ANTI-CONVERSION LAWS**

Anti-conversion laws in general are apprehensive in the sense that it lacks a basic human dignity. There is a human right implication about the absence of equity among these laws. The US Commission on International Religious Freedom (USCIRF) says that “these laws, based on concerns about unethical conversion tactics, generally require government officials to assess the legality of conversions out of Hinduism only, and provide for fines and imprisonment for anyone who uses force, fraud, or ‘inducement’ to convert another.”<sup>105</sup> There is no sense of equal treatment of religion in these laws. It infringes people’s right to convert

---

<sup>101</sup> Girish Kumar Sharma v. State of Uttarakhand & others, Habeas Corpus Petition No. 20 of 2017 (Nov. 14, 2017), [http://lobis.nic.in/d\\_dir/uhc/RS/orders/15-11-2017/RS14112017HABC202017.pdf](http://lobis.nic.in/d_dir/uhc/RS/orders/15-11-2017/RS14112017HABC202017.pdf)

<sup>102</sup> Uttarakhand Freedom of Religion Act, 2018, § 5.

<sup>103</sup> Uttarakhand Freedom of Religion Act, 2018, § 8(1).

<sup>104</sup> Uttarakhand Freedom of Religion Act, 2018, § 6.

<sup>105</sup> USCIRF, ANNUAL REPORT 2016: INDIA 162, [http://www.uscirtf.gov/sites/default/files/USCIRF\\_2016\\_Annual\\_Report.pdf](http://www.uscirtf.gov/sites/default/files/USCIRF_2016_Annual_Report.pdf) ,

to their religion of choice which is a violation of secular principles and constitutional values. There are incidents of arrest over these laws based on mere suspicion which is alarming. In 2017, religious minority leaders and adherents faced intimidation and arrest as a result of these laws. For example, a Catholic nun, along with four tribal women, was detained in June 2017 based on suspicion of induced conversion.<sup>106</sup> The Jharkhand Police have arrested sixteen preachers, including seven women, for allegedly trying to convert local residents to Christianity and making objectionable comments against tribal places of worship in Dumka. All sixteen were booked under the Freedom of Religion Act.<sup>107</sup> These incidents show the plight of religious minorities in the nation under these laws. The laws provide a deep rooted insecurity towards the minority religions and they are biased as well. There are provisions for prior consent in some Acts and some Acts like Uttarakhand mentions about marriage which are violation of right to freedom of religion of people concerned. Conversion comes from the right to conscience; if a person's conscience drive them to a different faith then it is there right to hold to it. State entering into that private space of individuals is violation of basic human rights. These laws and their provisions in real sense hold no value or scope in the face of constitution but still it project to be constitutional indicates that secular values are at stake in the country.

## **JUDICIARY ON ANTI-CONVERSION LAWS**

Judiciary over the years has been taking mixed stand over conversion laws. In *Lata Singh v. State of Uttar Pradesh*<sup>108</sup> the court took a positive stand by honouring the people's choice by stating that an adult has the right to marry whom so ever he/she chooses. In *Arumugam Servai vs. State of Tamil Nadu*<sup>109</sup> Supreme thoroughly criticized these incidents and ordered the government to take immediate action. In *Rev Stainislaus v. State of Madhya Pradesh*<sup>110</sup> the Supreme Court examine the status of right to conversion and upheld the *Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968*, and the *Orissa Freedom of Religion Act, 1967*. The court observed that : It has to be remembered that Article 25(1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular

---

<sup>106</sup> USCIRF ANNUAL REPORT 2018, Tier 2: India, at 165 (Apr. 2018), <http://www.uscirf.gov/sites/default/files/2018USCIRFAR.pdf>

<sup>107</sup> Jharkhand: Under Act, 16 Preachers Held for 'Conversion Bid', THE INDIAN EXPRESS (July 9, 2018), <https://indianexpress.com/article/india/jharkhand-under-act-16-preachers-held-for-conversion-bid-5251495/>,

<sup>108</sup> *Lata Singh vs. State of Uttar Pradesh*, (2006) 5 SCC 475

<sup>109</sup> *Arumugam Servai vs. State of Tamil Nadu*, (2011) 6 SCC 405

<sup>110</sup> *Rev Stainislaus v. State of Madhya Pradesh*, (1977) 1 SCC 677

religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike. It has to be appreciated that the freedom of religion enshrined in the Article [25] is not guaranteed in respect of one religion only, but covers all religions alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following the other religions. What is freedom for one, is freedom for the other, in equal measure, and there can therefore be no such thing as a fundamental right to convert any person to one's own religion.<sup>111</sup> This decision was widely criticized for not including conversion as a fundamental right under propagation mentioned in art.25 of the constitution of India. Professor Mustafa and Professor Sohi writes that the Supreme court "did not revert to the legislative history of Article 25—the term propagate was included in the Constitution as a compromise to assure Christians that it would include freedom to convert. Moreover, if one takes the reductionist understanding of propagation—given the court in this case—the inclusion of such a term in the Indian Constitution would be rendered meaningless. The mere right to propagate for the enlightenment of others would already be covered under the right to free speech and expression under Article 19(1)(a) of the Indian Constitution. Thus, we submit that the right to convert was actually included in Article 25, and, as such, the decision of the Supreme Court in *Stainislaus* not only was erroneous but also led to instability in society, as Indian Christians feel they have been cheated in this matter. The assurances given to them in the Constituent Assembly on the inclusion of the word propagate have not been fulfilled, and the government has done nothing to remedy the situation arising out of the highly restrictive interpretation of the term propagation by the Supreme Court.<sup>112</sup> The court is still under spell of majority mind set and does not understand the importance of inclusion in a pluralistic democracy. Conversion is one such topic where judiciary so far denied the stand of minorities and deviated from basic principles of secularism.

---

<sup>111</sup> *Rev Stainislaus v. State of Madhya Pradesh*, (1977) 1 SCC 677

<sup>112</sup> Faizan Mustafa & Jagteshwar Singh Sohi, *Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy*, 2017(4) *BYU L. REV.* 915, 942-3 (2018), <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=3113&context=lawreview>

## **CONCLUSION**

The Anti-conversion laws prevailing in different states of India seem to be arbitrary and unconstitutional. It poses a serious threat to the secular nature of the country and violates the fundamental rights of religious minorities. It restricts the personal liberty and privacy of the citizens of this nation. Right to freedom of religion enumerated under the constitution is violated and the said laws pose a serious threat to the secular nature of the country. The said laws are used to discriminate against minority religious groups and create division within the nation. Above all they are inconsistent with the international human rights laws.



## **6.INDIAN JUDICIARY AND SECULARISM**

### **INTRODUCTION**

“Mohd. Yaseen, aged 66 years (as on 07.10.1996) also states following: -

“...I live in Ayodhya, so I often meet some Hindus and Priests also. We also meet them in marriage ceremonies. They believe that this is the birth place of Lord Rama. (Then said they have their own faith). Hindus consider it a sacred place and worship here...”

Mohd. Qasim, aged 74 years, admits in his cross-examination that what he call ‘Babri Masjid’ is called ‘Janamsthan by Hindus’. He states : “after that there is Babri Masjid on its one side. It is true that the place I call ‘Babri Masjid’ is called ‘Janamsthan’ by Hindus.”

Three-dome structure was treated as Birthplace of Lord Ram. People worship of the three-dome structure, parikrama of the entire premises by the devotees have been amply proved by oral evidences led in the Suit.

The sequence of the events as noticed above clearly indicate that faith and belief of Hindus was that birth place of Lord Ram was in the three-dome structure Mosque which was constructed at the janamasthan. It was only during the British period that grilled wall was constructed dividing the walled premises of the Mosque into inner courtyard and outer courtyard. Grilled iron wall was constructed to keep Hindus outside the grilled iron wall in the outer courtyard. In view of the construction of the iron wall, the worship and puja started in Ram Chabutra in the outer courtyard. Suit of 1885 was filed seeking permission to construct temple on the said Chabutra where worship was permitted by the British Authority.

Faith and belief of the Hindus as depicted by the evidence on record clearly establish that the Hindus belief that at the birth place of Lord Ram, the Mosque was constructed and three-dome structure is the birth place of Lord Ram. The fact that Hindus were by constructing iron wall, dividing Mosque premises, kept outside the three-dome structure cannot be said to alter their faith and belief regarding the birth place of Lord Ram. The worship on the Ram Chabutra in the outer courtyard was symbolic worship of Lord Ram who was believed to be born in the premises.

It is thus concluded on the conclusion that faith and belief of Hindus since prior to construction of Mosque and subsequent thereto has always been that Janmaasthan of Lord Ram is the place where Babri Mosque has been constructed which faith and belief is proved by documentary and oral evidence discussed above.”<sup>113</sup>

This is the concluding statements of a land dispute judgment by the court of law in a secular democratic country. The reason given for the judgment is so vague and superficial that they came to conclusion about the birth place of a deity, whose existence not proved till date, through religious texts. The 1045 page long judgment was full of contradictions and religious rules. Paragraph 786 states that “Though, the case of the [Muslim] plaintiffs ... is that the mosque was constructed in 1528 by or at the behest of Babur, there is no account by them of possession, use or offer of namaz in the mosque between the date of construction and 1856-7. For a period of over 325 years which elapsed since the date of the construction of the mosque until the setting up of a grill-brick wall by the British, the Muslims have not adduced evidence to establish the exercise of possessory control over the disputed site. Nor is there any account in the evidence of the offering of namaz in the mosque, over this period.”<sup>114</sup>

There was clear evidence to indicate it as birth place at one side and no evidence for the other and still in another paragraph(798) they stated that “The exclusion of the Muslims from worship and possession took place on the intervening night between 22/23 December 1949 when the mosque was desecrated by the installation of Hindu idols. The ouster of the Muslims on that occasion was not through any lawful authority but through an act which was calculated to deprive them of their place of worship. After the proceedings under Section 145 of CrPC 1898 were initiated and a receiver was appointed following the attachment of the inner courtyard, worship of the Hindu idols was permitted. During the pendency of the suits, the entire structure of the mosque was brought down in a calculated act of destroying a place of public worship. The Muslims have been wrongly deprived of a mosque which had been constructed well over 450 years ago.”<sup>115</sup>

This shows the eagerness of the court to appease the ruling majoritarian religion then. This is the plight of Indian judiciary when it comes to religion. The above said judgment clearly violated the basic principles of rule of law yet it became the law of the land simply because of

---

<sup>113</sup> M Siddiq (D) Thr Lrs vs Mahant Suresh Das & Ors, 2020 (1) SCC 1

<sup>114</sup> M Siddiq (D) Thr Lrs vs Mahant Suresh Das & Ors, 2020 (1) SCC 1

<sup>115</sup> M Siddiq (D) Thr Lrs vs Mahant Suresh Das & Ors, 2020 (1) SCC 1

the fundamentally fascist crony capitalism that is slowly shadowing Indian Secularism. This chapter intend to analyse Indian judiciary on its stand on religion and secularism.

## **RELIGION, SECULARISM AND JUDICIARY**

There are always three stake holders in every political doctrine human, the state and the religion. These three parties inter-connect and depend on each other forming various ideologies. When state and religion forms a wall of separation to respect the religious freedom of individual, there develops secular thought process. Indian judiciary always supported secular thought process and consider India as a secular state. In *S R Bommai v Union of India*<sup>116</sup> the court held that “It is a basic feature of the Constitution of India 1950 and adequate safeguards must be ensured to protect the secular character of the country and without prejudice to the interests of religious, linguistic and ethnic groups.” Secularism is indeed a basic structure of the constitution. In *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdas Mehra*<sup>117</sup> the court observed that “Secularism is a system of utilitarian ethics, seeking to maximise human happiness or welfare quite independently of what may be either religious or the occult.” So religion is always there with the ideology so is religious freedom. Religious freedom is a fundamental right guaranteed by the constitution. Yet in *A S Narayana Deekshitulu v State of Andhra Pradesh*<sup>118</sup> the court said that The right to religion guaranteed under various provisions of the Constitution of India 1950 is not an absolute or unfettered right but is subject to the state limiting or regulating any activity, that is, financial, economic, political or secular, and is subject to reform on social welfare by competent legislation. The legislature is thus competent to enact the law taking away the hereditary right to succeed to an office in the temple and equally to the office of the priest.” These various judgments become contradictory and confusing to a point that we start to accuse secularism to be anti-religious. But again the same judiciary opined that “Secularism ’ is not an anti-religious doctrine inspite of its emphasis on absolvent of politics from religion and theocratic society is not the solitary antonym of secular society.”<sup>119</sup> This indicates the level playground secularism and religious freedom holds in India. Let us analyse some case laws regarding religious freedom in India.

---

<sup>116</sup> *S R Bommai v Union of India* (1994) 3 SCC 1.

<sup>117</sup> *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdas Mehra* AIR 1975 SC 1788

<sup>118</sup> *A S Narayana Deekshitulu v State of Andhra Pradesh* AIR 1996 SC 1765

<sup>119</sup> *Peethambaram v. Supt. of Police, CBI, 1996* (1) KJL 173 at 175

- **Bijoe Emmanuel v. State of Kerala**<sup>120</sup>

This is a land mark case in India which deals with the freedom of religion and conscience. The facts of the case - Bijoe. Binu Mol and Bindu Emmanuel, are the faithful of Jehovah's Witnesses. They attend school. Daily, during the morning Assembly, when the National Anthem 'Jana Gana Mana' is sung, they stand respectfully but they do not sing. They do not sing because, according to them, it is against the tenets of their religious faith-not the words or the thoughts of the Anthem but the singing of it. This they and before them their elder sisters who attended the same school earlier have done all these several years. No one bothered, No one worried. No one thought it disrespectful or unpatriotic. The children were left in peace and to their beliefs. That was until July, 1985, when some patriotic gentleman took notice. The gentleman thought it was unpatriotic of the children not to sing the National Anthem. He happened to be a Member of the Legislative Assembly. So, he put a question in the Assembly. A Commission was appointed to enquire and report. We do not have the report of the Commission. We are told that the Commission reported that the children are 'law-abiding' and that they showed no disrespect to the National Anthem. Indeed it is nobody's case. that the children are other than well-behaved or that they have ever behaved disrespectfully when the National Anthem was sung. They have always stood up in respectful silence. But these matters of conscience, which though better left alone, are sensitive and emotionally evocative. So, under the instructions of Deputy Inspector of Schools, the Head Mistress expelled the children from the school from July 26, 1985.<sup>121</sup>

The issue was mainly regarding the expulsion from school and violation of fundamental right to freedom of religion and conscience. The court held that the students fundamental rights are indeed violated and school authorities should protect the freedom of religion of the students at any cost. The court observed that “Article 25 is an article of faith in the Constitution., incorporated in recognition of the principle that the real test of democracy is the ability of even an insignificant minority to find its identity under the country’s Constitution. This has to be borne in mind in interpreting Article 25”.<sup>122</sup>

The judgment put a surety in protecting the fundamental religious freedom of citizens of this country and duty of public authorities to safeguard it.

---

<sup>120</sup> Bijoe Emmanuel & Ors vs State Of Kerala & Ors,1987 AIR 748

<sup>121</sup> Bijoe Emmanuel & Ors vs State Of Kerala & Ors,1987 AIR 748

<sup>122</sup> Bijoe Emmanuel & Ors vs State Of Kerala & Ors,1987 AIR 748

- **Shayara Bano v. Union of India**<sup>123</sup>

The land mark of Shayara Bano v Union of India deals with the Islamic practice of triple talaq, which is a form of instant divorce where husband could divorce his wife by saying the word talaq three times. Shayara Bano a muslim woman from Uttarakhand, who was divorced by her husband approached the apex court to challenge the constitutionality of triple talaq. She claimed that it violated her fundamental right as a citizen of this country. She argued that the discriminatory practice violated the basic equality enshrined in the constitution of India.

The case marked the clash between two fundamental rights namely, right to equality and right to freedom of religion. The main issue was regarding the fundamental right to freedom of religion under Art.25 and the court delivered its landmark judgment, banning the practice of triple talaq while declaring it illegal and unconstitutional. One of the judges in the verdict reasoned that “the freedom of religion under the Constitution of India is absolute and on this point, I am in full agreement with the learned Chief Justice. However, on the statement that triple talaq is an integral part of the religious practice, I respectfully disagree. Merely because a practice has continued for long, that by itself cannot make it valid if it has been expressly declared to be impermissible.”<sup>124</sup> The court stated that personal laws should be subjected to constitutional validity and gender justice. The practice was held to be derogatory and violating the right to equality enshrined under Art.14 of the constitution of India. Then the dissenting opinion stated that “Religion is a matter of faith, and not of logic. It is not open to a court to accept an egalitarian approach, over a practice which constitutes an integral part of religion. The Constitution allows the followers of every religion, to follow their beliefs and religious traditions. The Constitution assures believers of all faiths, that their way of life, is guaranteed, and would not be subjected to any challenge, even though they may seem to others (and even rationalists, practicing the same faith) unacceptable, in today’s world and age. The Constitution extends this guarantee, because faith constitutes the religious consciousness, of the followers. It is this religious consciousness, which binds believers into separate entities. The Constitution endeavours to protect and preserve, the beliefs of each of the separate entities, under Article 25.”<sup>125</sup> Thus the widely celebrated judgment held two contradictory opinions at the same time yet the victory was with gender justice and equality.

---

<sup>123</sup> Shayara Bano v. Union of India, AIR 2017 SCC 1388

<sup>124</sup> Shayara Bano v. Union of India, AIR 2017 SCC 1388

<sup>125</sup> Shayara Bano v. Union of India, AIR 2017 SCC 1388

- **Rev. Stainislaus v. State of Madhya Pradesh**<sup>126</sup>

Reverend Stainislaus a Roman Catholic priest was arrested in State of Maharashtra accused of violating provisions of the Madhya Pradesh Dharma Swatantrya Adhiniyam (Freedom of Religion Act), 1968. The Act was intended for prohibiting forced conversion. Reverend Stainislaus challenged the action in Madhya Pradesh High Court, which rejected the petition. Then an appeal was made to the Supreme Court of India stating violation of fundamental rights. The court ruled in favour of the petitioner at the end stating that the statute was indeed unconstitutional and violated the fundamental right to freedom of religion. The court made important observations regarding right freedom of religion. The court stated the fundamental difference between propagation and conversion stating that “The expression 'propagate' has a number of meanings, including "to multiply specimens of (a plant, animal, disease etc.) by any process of natural reproduction from the parent stock", but that cannot, for obvious reasons, be the meaning for purposes of Article 25 (1) of the Constitution. The Article guarantees a right to freedom of religion, and the expression 'propagate' cannot therefore be said to have been used in a biological sense.”<sup>127</sup> Then further stated that “We have no doubt that it is in this sense. that the word 'propagate' has been used in Article 25 (1), for what the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25 (1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike.”<sup>128</sup> The case was very important in shaping the stance of the nation regarding conversion laws by affirming the right to propagate religion as fundamental right which is different from forced conversion. The court tried to reason the need of scrutinising any law that opposes the right to freedom of religion guaranteed by the constitution to its citizens.

---

<sup>126</sup> Rev. Stainislaus vs State Of Madhya Pradesh And Ors, 1977 AIR 908

<sup>127</sup> Rev. Stainislaus vs State Of Madhya Pradesh And Ors, 1977 AIR 908

<sup>128</sup> Rev. Stainislaus vs State Of Madhya Pradesh And Ors, 1977 AIR 908

- **Indian Young Lawyers Association v The State Of Kerala**<sup>129</sup>

The landmark judgment of Indian Young Lawyers Association v The State of Kerala also known as the Sabarimala temple case deals the ban on women of menstruating age from entering into Sabarimala temple. The temple is one of the main pilgrimage sites in Southern India is located in the Western Ghats. There has been a long standing tradition of excluding women of menstruating age from entering into the temple citing the special form of deity as he is a nashtik brahmachari. This has legal backing under the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 as well. The Key issues revolve around Articles 14, 15 and 25 of the Constitution of India. A five judge bench in September, 2018 delivered the practice as unconstitutional and discriminatory with a 4:1 majority. The judgment stated that “There is inequality on the path of approach to understand the divinity. The attribute of devotion to divinity cannot be subjected to the rigidity and stereotypes of gender. The dualism that persists in religion by glorifying and venerating women as goddesses on one hand and by imposing rigorous sanctions on the other hand in matters of devotion has to be abandoned. Such a dualistic approach and an entrenched mindset results in indignity to women and degradation of their status. The society has to undergo a perceptual shift from being the propagator of hegemonic patriarchal notions of demanding more exacting standards of purity and chastity solely from women to be the cultivator of equality where the woman is in no way considered frailer, lesser or inferior to man.”<sup>130</sup> The judgment put forth a level of gender justice and equality that is beyond the traditions of religion. The judgment quoted Government of NCT of Delhi v Union of India<sup>131</sup> by stating that “Constitutional morality highlights the need to preserve the trust of the people in institutions of democracy. It encompasses not just the forms and procedures of the Constitution, but provides an “enabling framework that allows a society the possibilities of self-renewal”. It is the governing ideal of institutions of democracy which allows people to cooperate and coordinate to pursue constitutional aspirations that cannot be achieved single-handedly.” The dissent judgment by Indu Malhotra J. was also noted as she observed that notions of rationality cannot be determined in matters of religion by the court.

---

<sup>129</sup> Indian Young Lawyers Association vs The State Of Kerala , AIRONLINE 2018 SC 243

<sup>130</sup> Indian Young Lawyers Association vs The State Of Kerala , AIRONLINE 2018 SC 243

<sup>131</sup> Govt. Of Nct Of Delhi vs Union Of India, AIRONLINE 2018 SC 1029

- **Mrs Mary Roy Etc. Etc. v. State Of Kerala & Ors**<sup>132</sup>

Mary Roy v. State of Kerala is one of the beautifully crafted judgments that gave way to the gender justice for the women toiling under religious laws. Mary Roy was a Christian woman from Kerala who challenged the Travancore Succession Act of 1916 which denied Christian women from inheriting property as they were only entitled to life interest. Mary Roy Challenged it by arguing that it violated her right to equality. The case was a pioneer to gender justice in the country at the same time it showed the limitations of religious freedom. Primary issue was regarding right equality but right to freedom of religion was also there in question. The Court ruled in favour of the petitioner and ruled out the constitutionality of Marumakkathayam system of inheritance. The judgment showed religious right in a different view that equality cannot be compromised at any cost.

- **Sardar Taheruddin Syedna Saheb v. State of Bombay**<sup>133</sup>

It was one of the first cases where secularism was acknowledged by the Supreme Court of India. The fact is regarding differences between two different sects in Islam and Bombay Prevention of Excommunication Act, 1949 which prevented religious communities from excommunicating members from the community. The court explained that "Articles 25 and 26 embody the principle of religious toleration that has been the characteristic feature of Indian civilisation from the start of history. The instances and periods when this feature was absent being merely temporary aberrations. Besides, they serve to emphasise the secular nature of the Indian democracy which the founding fathers considered to be the very basis of the Constitution."<sup>134</sup> The court further stated that the "right guaranteed by Art. 25 (1) is not confined to freedom of conscience in the sense of the right to hold a belief and to propagate that belief, but includes the right to the practice of religion, the consequences of that practice must also bear the same complexion and be the subject of a like guarantee."<sup>135</sup>

---

<sup>132</sup> Mrs. Mary Roy Etc. Etc vs State Of Kerala & Ors, 1986 AIR 1011

<sup>133</sup> Sardar Syedna Taher Saifuddin Saheb vs The State Of Bombay, 1962 AIR 853

<sup>134</sup> Sardar Syedna Taher Saifuddin Saheb vs The State Of Bombay, 1962 AIR 853

<sup>135</sup> Sardar Syedna Taher Saifuddin Saheb vs The State Of Bombay, 1962 AIR 853



## **CONCLUSION**

The contours of secularism and religious freedom in the country have been well defined and shaped by Indian judiciary since independence. It has reinforced the idea of secularism and treats all religions equally through its judgments. By triple talaq and Mary Roy's verdict it balanced the gender equality and secularism perfectly to fit into a modern democracy. Other constitutional values such as equality and gender justice were also revered. Though equality still holds an upper hand, the balance of religious freedom is equally well maintained.

Judiciary's commitment to upholding constitutional values remains crucial in a diverse and pluralistic society like India

## **7. SECULAR DEMOCRACIES**

### **INTRODUCTION**

“Charlie Hebdo, a controversy attracting French satirical weekly newspaper published a cartoon which allegedly attacked Islamic sentiments. In retaliation to this on the morning of 7 January 2015, a Wednesday, at about 11:30 a.m. in Paris, France, the employees of the French satirical weekly magazine Charlie Hebdo were targeted in a shooting attack by two French-born Algerian Muslim brothers, Saïd Kouachi and Chérif Kouachi. Armed with rifles and other weapons, the duo murdered 12 people and injured 11 others; they identified themselves as members of al-Qaeda in the Arabian Peninsula, which claimed responsibility for the attack. They fled after the shooting, triggering a manhunt, and were killed by the GIGN on 9 January. The Kouachi brothers' attack was followed by several related Islamist terrorist attacks across the Île-de-France between 7 and 9 January 2015, including the Hypercacher kosher supermarket siege, in which a French-born Malian Muslim took hostages and murdered four people (all Jews) before being killed by French commandos.<sup>136</sup> On 16 December 2020, 14 people who were accomplices to both the Charlie Hebdo and Jewish supermarket attackers were convicted.”<sup>137</sup>

This is one of the incidents that shook the world in 2015. The murderous glint that killed dozens was a result of the serious tensions existed between French secularism and religions especially Islam. There is a chilling norm for inflicting fear in this type of incident to attack secular values. This type violence shows that secularism is a tough concept that so many fundamental fascist powers fear off. Secularism in different forms should be analysed and studied to create a better form of the doctrine. This chapter intend to critically analyse, compare and contrast the features of French and American secularisms for the better understanding of the doctrine and to derive a crux to fill the gap in Indian way of Secularism. Two major countries which follow secularism are France and United States of America that is why these countries are chosen for the study

---

<sup>136</sup> Jolly, David (2 November 2011). "Charlie Hebdo, French Magazine, Firebombed". The New York Times. ISSN 0362-4331

<sup>137</sup> Salaün, Tangi (16 December 2020). "French court finds accomplices to Charlie Hebdo attackers guilty". Reuters. Retrieved 16 December 2020.

## **FRENCH SECULARISM**

“Secularism (laïcité): the word smells of gunpowder; it evokes passionate and contradictory resonances; and the contradiction is not just the usual one where minds are opposed for or against a clear idea; it relates to the very content of the notion, and the meaning of the notion. These disagreements should not surprise us. The notion of secularism was born in tumult: the conflict of ideas and, above all, the conflict of parties. It conveys the intuitions, temperaments, mystiques. Moreover, it does not follow from a calm development and an effort at definition .”<sup>138</sup>

French Laicite or secularism is simply the formal separation of the state and religion in general terms but it has deep rooted historical accuracies attached to it. It involves the complete removal of religious values from the public sphere and their replacement with secular values such as liberty, equality, and fraternity. To understand this complexity we should check the relationship between state and religion in France. “France, for its part, has experimented throughout its history with nearly all of the existing formulas for church-state relations. If France has finally opted for what is termed a secular stance, it is because France found, at the beginning of the twentieth century, that the secular stance conforms more than any other to France’s inclinations and ideals. This secular approach is not the only one to be practiced among democratic states; indeed, the secular approach is rare. Other approaches are perfectly conceivable and have been adopted by many states.”<sup>139</sup> There is a lack of fusion of temporal spiritual stance in France like many other countries of the same vigour, there is literally a wall of separation in between.

The substance of the notion of secularity is found entirely within two articles of the French Law of 1905:

Article 1: The Republic ensures the liberty of conscience. It guarantees the free exercise of religion, under restrictions prescribed by the interest in public order.

Article 2: The Republic does not recognize, remunerate, or subsidize any religious denomination.<sup>140</sup>

---

<sup>138</sup> J. Rivero, ‘La notion juridique de laïcité’ D 1949 Chr 137.

<sup>139</sup> Jacques Robert, Religious Liberty and French Secularism, 2003 BYU L. Rev. 637 (2003).

<sup>140</sup> Law of Dec. 9, 1905, arts. 1–2, J.O., Dec. 11, 1905, p. 7205 [hereinafter Law of 1905].

This two are the core of secularism as it ensures the individual's right to freedom of religion at the same time full fills the separation of church and state. There is a notion of non-recognition of religion in this law which does not mean hostility or anti-religious sentiments but simply means that state does not recognise religion in public affairs. From a financial point of view, the law of separation only prohibits the inscription of credits intended to subsidize, permanently and regularly, service by churches. One can therefore conclude that the Law of 1905 allows for:

- The possibility of state subsidies for activities that have a general character despite taking place in a religious setting: charities, hospitals, nurseries, general charitable activities, etc.
- Direct administration by public collectives of certain religious services (religious instruction in public establishments such as high schools, junior high schools, hospitals, asylums, prisons, etc.) if the organization is deemed indispensable to insure for everyone the free exercise of religion.
- The payment of religious ministers when they render services to the general public (national religious ceremonies, media events, etc.).<sup>141</sup>

Then there is a sense of neutrality which the Conseil constitutionnel has rightfully stated as:

“The principle of secularism is listed among the rights and freedoms which the Constitution guarantees. The neutrality of the State follows from it. It also follows that the Republic does not recognise any religion. The principle of secularism requires especially respect for all beliefs, the equality of all citizens before the law regardless of religion and that the Republic guarantees the freedom of religious practice. It implies that the State does not fund any religion.”<sup>142</sup>

There is negative and positive notions for this religious neutrality. It is negative because the state that allows for all the diverse manifestations of thought, that does not reject any ideology but welcomes them all, would not know how to choose one it would officially champion and promote. Of course, the state might have secret preferences, but it must keep from publicizing these preferences, from supporting or giving priority to those who share

---

<sup>141</sup> Conseil d'État, Nov. 28, 1913, Commune de Chambon, Rec. P. 774; Conseil d'État, May 16, 1919, Commune de Montjoie

<sup>142</sup> Decision 2012-297 QPC of 21 February 2013, para. 5.

these preferences, and from attempting to impose these preferences on other groups through pressure<sup>143</sup>

Article 10 of the Declaration of the Rights of Man reads as: “No one shall be harassed on account of his or her opinions, including religious views, provided their manifestation does not disturb the public order established by law.”<sup>144</sup> This shows the level of importance given to public order not even religion can affect its maintenance. The liberty given is only complacent if the public order and safety is maintained. This public safety was confirmed in *SAS v France*<sup>145</sup> when the 2010 loi banning the wearing of the full-face veil in public was upheld by the Strasbourg Court. So the debate in France centres on the application of French principles, rather than the European Convention. The case law on both the power to restrict public expressions of religious practice on grounds of public order and to control the exercise of religious liberty by the users of public services is essentially casuistic. The reconciliation between the right of religious freedom and the neutrality of the public service encourages a similar casuistic and fact-sensitive approach. The tension between maintaining a secular public sphere and accommodating religious diversity is a central challenge for laïcité. Supporters of strict secularism argue that it ensures equality and prevents religious conflicts. However, critics contend that an inflexible approach to laïcité can marginalize religious minorities and hinder social cohesion. French secularism is a deeply ingrained principle with a complex legacy. While it has played a crucial role in shaping a neutral public sphere, contemporary challenges highlight the need for a nuanced approach that respects religious diversity while upholding the core values of the Republic. The on-going debate over laïcité underscores the dynamic nature of French society and its continuous struggle to balance secularism and multiculturalism.

---

<sup>143</sup> Jean Rivero, La notion juridique de laïcité, D. 1949 CHRONIQUE 137; J.B. Trotabas, La notion de laïcité dans le droit de l’Eglise catholique et de l’Etat républicain, Paris L.G.D.J. 19670, at 223; J. Coulombel, Le droit privé français devant le fait religieux depuis la separation de l’Eglise et de l’Etat, 1956 REVUE TRIM. DE DROIT CIVIL 7.

<sup>144</sup> DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN, art. 10 (Fr.) (approved by the National Assembly of France on Aug. 26, 1789)

<sup>145</sup> *SAS v France* [2014] ECHR 695, Application no. 43835/11. M. Hunter-Hénin

## **SECULARISM IN THE USA**

The secular nature of the United States is primarily rooted in its Constitution, which ensures the separation of church and state. This principle is a fundamental aspect of American democracy, aiming to protect religious freedom while preventing governmental endorsement of religion. This analysis explores the constitutional provisions that establish and maintain the secular character of the United States, the historical context behind these provisions, and the contemporary challenges they face.

First Amendment (1791): The most significant constitutional provision related to secularism is the First Amendment, which states:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."<sup>146</sup>

This clause also known as the Establishment Clause, prohibits the government from establishing an official religion or favouring one religion over another. The Free Exercise Clause ensures that individuals can practice their religion freely, without governmental interference.

Article VI, Clause 3: This clause further reinforces the secular nature of the government by stating:

"The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

This provision known as religious test clause ensures that individuals of all religious backgrounds, or none, can hold public office. The provision prohibiting religious tests does not prohibit other types of oaths for public officeholders,<sup>147</sup> although First Amendment

---

<sup>146</sup> <https://constitution.congress.gov/constitution/amendment-1/#:~:text=Congress%20shall%20make%20no%20law,for%20a%20redress%20of%20grievances.>

<sup>147</sup> Am. Commc'ns Ass'n v. Douds, 339 U.S. 382, 414 (1950).

protections for speech and association may sometimes limit the government's ability to require oaths that burden those rights.<sup>148</sup>

The secular nature of the United States is a foundational aspect of its constitutional framework, designed to protect religious freedom and ensure government neutrality in religious matters. While historical context and Supreme Court interpretations have reinforced these principles, contemporary challenges highlight the ongoing tension between accommodating religious diversity and maintaining secular governance. In *Everson v. Board of Education*<sup>149</sup>, the Supreme Court held that the establishment clause is one of the liberties protected by the due process clause of the Fourteenth Amendment, making it applicable to state laws and local ordinances. The dynamic nature of these debates reflects the evolving landscape of American society and its commitment to upholding the core values enshrined in the Constitution.

## **CONCLUSION**

Secularism in both the countries operates differently. While France holds a rigid, strict separation, United States of America keeps a middle path. The wall of separation in the USA is reasonable and is a model to follow. France is a tough nut to crack; it is a different outlook which is difficult to follow as it continues to practice the literal version of secularism. A country like India cannot be able to follow secularism with that rigidity to be exact. Both versions have their positives and negatives. The truest nature of secularism is provided by France for no doubt and that is why it is difficult to follow as well.

---

<sup>148</sup> Amdt1.4.2.3 Denial of Employment or Public Benefits

<sup>149</sup> *Everson v. Board of Education*, 330 U.S. 1 (1947)

## **8.CONCLUSION**

“The Madman.-Have you ever heard of the madman who on a bright morning lighted a lantern and ran to the market-place calling out unceasingly: "I seek God! I seek God!" - As there were many people standing about who did not believe in God, he caused a great deal of amusement. Why! is he lost? said one. Has he strayed away like a child? said another. Or does he keep himself hidden? Is he afraid of us? Has he taken a sea-voyage? Has he emigrated? - the people cried out laughingly, all in a hubbub. The insane man jumped into their midst and transfixed them with his glances. " Where is God gone?" he called out. "I mean to tell you! We have killed him, - you and I! We are all his murderers! But how have we done it? How were we able to drink up the sea? Who gave us the sponge to wipe away the whole horizon? What did we do when we loosened this earth from its sun? Whither does it now move? Whither do we move? Away from all suns? Do we not dash on unceasingly? Backwards, sideways, forwards, in all directions? Is there still an above and below? Do we not stray, as through infinite nothingness? Does not empty space breathe upon us? Has it not become colder? Does not night come on continually, darker and darker? Shall we not have to light lanterns in the morning? Do we not hear the noise of the grave-diggers who are burying God? Do we not smell the divine putrefaction? - for even Gods putrefy! God is dead! God remains dead! And we have killed him! How shall we console ourselves, the most murderous of all murderers? The holiest and the mightiest that the world has hitherto possessed, has bled to death under our knife, - who will wipe the blood from us? With what water could we cleanse ourselves? What lustrums, what sacred games shall we have to devise? Is not the magnitude of this deed too great for us? Shall we not ourselves have to become Gods, merely to seem worthy of it? There never was a greater event, - and on account of it, all who are born after us belong to a higher history than any history hitherto!" - Here the madman was silent and looked again at his hearers; they also were silent and looked at him in surprise. At last he threw his lantern on the ground, so that it broke in pieces and was extinguished. "I come too early," he then said, "I am not yet at the right time. This prodigious event is still on its way, and is travelling, - it has not yet reached men's ears. Lightning and thunder need time, the light of the stars needs time, deeds need time, even after they are done, to be seen and heard. This deed is as yet further from them than the furthest star, - and yet they have done it!"

- It is further stated that the madman made his way into different churches on the same day, and there intoned his Requiem aeternam deo. When led out and called to account, he always



gave the reply: "What are these churches now, if they are not the tombs and monuments of God?"<sup>150</sup>

The complexity of life starts and ends within human whether it is political, legal or spiritual. Theism and religion are two sides of a coin in the human mentality. It is human mind set that coexists with each other and fight with each other that lead to the theistic fear. Religion in every sense is part of human psyche, whether as denial or acceptance. The problem is with the way it interferes in public affairs that leads to inequality and discrimination. State favouring a religion over other is unacceptable. It violates the basic principles of rule of law. A public body in a multicultural diverse state should act according to the need of people. Democracy is inclusiveness; it is the acceptance of minorities to its public realm. Secularism aids to this inclusiveness. It avoids the dominance of majoritarian rule and religion. Secularism is ought to create a separation between religion and state. The Western concept of secularism is based on the ideas of Thomas Jefferson. He had said in 1908, "erecting the wall of separation between Church and State is absolutely essential in a free society"<sup>151</sup> According to him, there ought to be a separation between religious institutions from the institution of States. Freedom of conscience for individuals circumscribed only by the need for public order and respecting other individuals' rights is a guiding principle.<sup>152</sup> Indian secularism on the other hand is altogether a different scenario. Indian secularism is clearly defined by H.V. Kamath in Constituent Assembly debates as "“When I say that a State should not identify itself with any particular religion it does not mean that a State should be antireligious or irreligious. India would be a secular State, but according to me, a secular state is neither a godless State nor an irreligious nor an anti-religious State”"<sup>153</sup> This is indeed a noble idea but how come it is practical in a composite nation with huge majoritarian religions fighting with each other. So far the Indian experience with this type of secularism is not at all pleasant. It is quiet contrary to the popular belief and it is time for India to start a new way of secularism which completely disengages with the religion.

---

<sup>150</sup> Friedrich Nietzsche - The Gay Science Book III - Aphorism # 125 Cambridge University Press 2001

<sup>151</sup> <https://www.newworldencyclopedia.org>

<sup>152</sup> <https://www.newworldencyclopedia.org>

<sup>153</sup> CONSTITUENT ASSEMBLY DEBATES, Volume 7. Monday, the 6th December, 1948

## SECULARISM

According to the Hackman, The word ' secularism ' implies a life lived in full indifference to God and religious values. The same opinion has gained more strength.<sup>154</sup> True its intention secularism emerged as the indifference to god in general. It later on managed to take a neutral stand but the initial contention was purely atheistic. The distinction drawn by scholastic faith while leaving room for theology was capable of evolving into a kind of philosophical subject matter that placed its emphasis on the truths of reason and a broad category that served not all physical understanding but God's knowledge. It also points out that the generations of political workers have continued to emphasize the ideal of the happiness which is proclaimed by the Napoleon period. It is also described that this has to the extent shaped the temper of religion that are forced that the humanity will have to create the justice through the most enlightened techniques.<sup>155</sup> Even the Britannica points out that some scholars advocated that the Secular Christianity in 19th century by proposing that the Christianity should not concerned with the otherworldly.<sup>156</sup> The anti-religious origin of secularism does not make it deflate the individual right to freedom of religion. The major benefit of secularism is its journey from indifference to a major political doctrine in the world currently. It just believes in the concept of indifference of religion in a public affair not private right of individuals. The public and private affairs are treated differently here, so as secularism concludes religion has no role in public affairs of the state. The word “secularism” implies as an effort on the part of the community to modernize belief in the society, therefore a strategy of not being interpreted, the ideology of the secularism is movement of thought aimed at improving the welfare on ethical basis. The Western atmosphere of the 20th century supported development of the motion. This notion has been assimilated in philosophical thinking and assumed connotations of beliefs. Secularism in any way is a feasible concept in the lives of human beings. Both the religion affirming secularism and religion negating secularism holds its own merits. But in a public point of view, religion negating secularism holds upper hand because it creates a wall between the state and religion thus prevents a specific religion from dominating the political affairs of the state and creates discrimination.

---

<sup>154</sup> Rajeev Bhargava, “The Religious State”, 22 EPW 11 (1998)

<sup>155</sup> Mahmood Monshipouri , Secularism and Human Rights in the Middle East, 76 (Rienner Publishers, Nagpur, 1998)

<sup>156</sup> <https://www.britannica.com/topic/new-religious-movement>

## INDIAN SECULARISM

In the words of Dr. B.R. Ambedkar secular state “does not mean that we shall not take into consideration the religious sentiment of the people. All that a secular State means is that this Parliament shall not be competent to impose any particular religion upon rest of the people. This is the only limitation that the Constitution recognizes”<sup>157</sup> This exactly was the true sentiment of Indian secularism at the beginning but over the years it changed its course to a religion imposing nature. Recent developments with Indian politics indicate this theocratization of Indian secularism. Religion is always an individual affair, it is the private matter of a person, and state has no role in huge or small. It is not states’ business. The uniqueness of Indian secularism lies in the fact that it creates an equal honour among all faiths. This is actually a Utopian idea; no state with multi religious identity could honour all faiths equally. There will always be an imposing majority religion. In the case of *Abhiram Singh v. C D Commachem*<sup>158</sup>, there was a question before the Court whether secularism means complete separation of religion from politics? The Court held that secularism does not say that the State should stay aloof from religion; instead, it should give equal treatment to every religion. Religion and caste are vital aspects of our society, and it is not possible to separate them completely from politics. The Court held that secularism is the basic structure of the Constitution and therefore cannot be amended. But the real problem is this equal treatment of all religion is not at all possible in Indian society and it creates unequal treatment among people of different faiths. To end this treatment we should completely separate religion and caste from politics. Principles of tolerance and equality are the core values of secularism that ensures equality of all religions. But recent years showed us that India is no were near tolerance, so the true sense of secularism does not work in that environment. No religion will be at risk in India if the government completely disengages from religion. IN fact it will be a relief. The religious institutions in affiliation with state is an absolute violation of secular principles, it should be put to an end. It is not appropriate for a secular state to maintain religious institutions. It will only create chaos and discrimination. Secularism and democracy are inherently connected with each other. Democracy is intended to be inclusive of marginalised sections of society, this inclusiveness is practical only if secularism works properly in the state.

---

<sup>157</sup> Pylee, M.V. 2007. India’s Constitution, S.Chand Publication, Delhi, ,p.14

<sup>158</sup> *Abhiram Singh v. C D Commachem* (2017)10 SCC 1

## **INDIVIDUAL AND SECULARISM**

Secularism is a concept connects with state, individual and religion. Individual here is of utmost importance because they constitute the nation. Articles 25 to 28 of the Indian Constitution make clear that everyone living in India should be entitled to profess his religion without hindrance, so long as the citizen obeyed the common law of the land. Art. 25 is the main source of religious freedom and indirectly holds the apex power of secularism. The Article guarantees to every person the right to freely profess, practice, and propagate his religion.<sup>159</sup> This is purely an individual's choice, no state has any role in this choice and it has nothing to do with the separation of religion and state. These two go parallel with each other. State will not interfere in religious affairs of individuals but the right is not at all absolute. The state will interfere if there is a fundamental right violation or affects public order. For example triple talaq ban, abolition of sati, devdasi etc. That is the limit of interference of state with individual's religious choices. It enters when there is a clash between the religious freedom and public order and of course most of the time public order wins. That is exactly happened in Sabarimala judgment as well. This is not encroachment upon religious freedom but just the governance of rule of law.

There is nothing to worry about individual rights to freedom of religion in a truly secular state. Complete disengagement of state and religion happens when state separate itself from religion in public affairs. It means that religion has no role in public matters concerning a state or there is no religion involved in politics, this is to ensure the transparency and equality. When a state separates itself from religion, a sense of non-discrimination and neutrality happens in the place. This does not affect the personal religious choices of individuals

Conversion laws are absolute abomination in a secular democracy. It is the right of an individual to choose one's own religion. What state doing in this matter is a complete fascism and deviance from the secular principles of the country? The irony in this matter is that these statutes are termed Freedom of religion Acts and the actual thing they do is the exact opposite. It clearly violates Art.25 and the notice requirements and the burden of proof can create a chilling effect, discouraging individuals from converting or engaging in religious activities. It targets minorities and is in contradiction with international Human rights laws.

---

<sup>159</sup> Constitution of India, 1950

## **REALITY OF SECULARISM IN INDIA**

The core principles of equality should be ensured to be a meaningful secular democracy. Only when equality is revered democracy attains true sense. If there is no commitment towards equality, then there will be no commitment towards democracy. As a secular state India should not favour any religion to protect and preserve the pluralistic nature of the country. It should preserve the inclusiveness by including all kinds of minorities to protect democratic values. But the reality in India is far from inclusiveness. India as a secular state does not have to encroach upon religious rights of minorities. Take Uniform Civil Code for example. It unifies personal laws. It is a noble idea and the government is aspiring for it. Though it is an idealistic concept there is an inherent doubt in the practicality of that law in a pluralistic society like India. How could it be possible to be reality in a multi religious country with multiple traditions? It is not at all practical in this level of diversity. So it is better for the government to keep away from religious thoughts like this. India is known for its diversity not monotheism; let us just keep it that way itself.

Citizenship (Amendment) Act, 2019(CAA) is a matter of debate in concern with secular principles. Actually whether it violates the principles of secularism is a matter of doubt as it involves foreign nationals as well. In a sense it does violate secularism because the Act grants citizenship to migrants belonging to Hindu, Sikh, Buddhist, Christian, Jain, and Parsi communities who came to the country from Pakistan, Bangladesh, and Afghanistan on or before December 31, 2014 but does not include Muslim in its purview; and what about Srilankan Tamils? So it does involve religious politics and thus affects secularism of this nation.

In a secular state majority and minority should be treated equally. India as a secular state has every secular values of its own in paper. The reality is quite contrary as the rising religious politics in the country is twisting uniqueness of Indian secularism for own benefit. It should not be surprising in future if they rewrite the constitution into a theocracy. The reality of Indian secularism is alarming and there should be steps to be taken for correcting the wrong. The only benefitting factor is to change the course of secularism from religion affirming to religion negating. That means that state should be completely disengaged from religious activities.

## **SUGGESTIONS**

- **INDIAN SECULARISM**

Indian secularism need a complete change of action as the current nature of secularism does not really work in our environment. Indian secularism has always been appeasing religion, which need to be changed for the benefit of the people of this nation. Religion negating secularism is benefitting in Indian scenario. There should be a complete disengagement from religion. There should be a wall separating religion and state. Both French and American secularism is not benefitting in Indian case though America is really close to follow. We can follow a middle path were religion and state should be separated completely unless fundamental rights or public order is violated.

- **RELIGIOUS INSTITUTIONS**

Religious institutions governed by state are a clear violation of secular principles. It violates the fundamental rights of both followers and non-followers of the religion. It must be changed. Tax payers money should not be deviated to a particular religious institution, it violates the right to equality and equal treatment of every person. Hindu religious institutions such as devaswom board should not be under government administration. Same is in case with Wakaf boards. Let followers maintain it, public money should not be spending on it.

- **INDIVIDUAL RIGHTS**

Individuals' right to religious freedom should not be infringed at any cost. Religion is a private right of individual and should be maintained in that way only. State has no role in the religious rights of individuals and their choices. It is the liberty of individual to choose one's own religion and it should be kept that way itself.

- **RELIGIOUS LAWS**

State has no role in maintaining religious laws as well. Laws relating to temple administration and other religious denominations are not states duty, it's the duty of that particular religion. State should not entertain religious laws unless it affects the public order and safety.

- **ANTI-CONVERSION LAWS**

Anti-conversion laws or Freedom of religion laws are absolute abomination to a secular nation and should be repealed by the states concerned. It violates the basic fundamental right of religious freedom of the person concerned and it is a right of every individual to convert to any religion of their choice.

- **SECULARIZATION**

Ours is basically an undemocratic society to preserve democracy of a pluralistic country secularism is needed. State must promote steps to secularize our society to step into the modernist approach of twenty first century and must promote scientific and technological progress instead of wasting time around religion

## **BIBLIOGRAPHY**

### **ARTICLES**

- Md Musa Ali, SECULARISM IN INDIA: CONCEPTS, HISTORICAL PERSPECTIVE AND CHALLENGES, Asia Pacific Journal of Research, Vol: I. Issue XXIV, February 2015
- Gerard Phillips, INTRODUCTION TO SECULARISM, the National Secular Society, August 2011
- Rajeev Bhargava, POLITICAL SECULARISM: WHY IT IS NEEDED AND WHAT CAN BE LEARNT FROM ITS INDIAN VERSION,
- Rajeev Bhargava, The Distinctiveness of Indian Secularism, Published in T.N. Srinivasan (ed.) The Future of Secularism, Oxford University Press, Delhi, 2006, pp.20-53.
- András Sajó, Preliminaries to a concept of constitutional secularism, available at <https://academic.oup.com/icon/article/6/3-4/605/654429>
- Shabnum Tejani, Defining Secularism in the Particular: Caste and Citizenship in India, 1909–1950, available at <https://www.cambridge.org/core/terms>.  
<https://doi.org/10.1017/S1755048313000606>
- Prof. Dr. Yves Bizeul, Secularism in Europe, European Liberal Forum asbl.
- ELIZABETH SHAKMAN HURD, The Political Authority of Secularism in International Relations, European Journal of International Relations Copyright © 2004
- Siti Norhanani Binti Musni, Sharifatul Nadiah Binti Sulim, Muhamad Helmi Md. Said, Fatima Abdel Rahim Ali, Secularism: Freedom of Religion or Freedom from Religion?, Geopolitics Quarterly, Volume: 19, Special Issue, Summer 2023
- Sara Elias, Concept of Secularism under Indian Constitution, JETIR March 2019, Volume 6, Issue 3
- Karun Sanjaya, Mohammad Saleem, Law and Religion in Secular India, available at <https://www.researchgate.net/publication/369088452>
- Arun Kumar Singh, Myth and Reality of Secularism in India: An Analysis, The NEHU Journal Vol. XIX, No. 1 (January –June), 2021, pp. 74-83



- HANNA LERN, PERMISSIVE CONSTITUTIONS, DEMOCRACY, AND RELIGIOUS FREEDOM IN INDIA, INDONESIA, TSRA ET., AND TURKEY, Cambridge University Press, <https://www.jstor.org/stable/42002225>
- Michael Rectenwald, Secularism  
<https://www.researchgate.net/publication/297445823>
- Jon Abbink, Understanding ‘Secularism, Secular Studies 5 (2023) 1–7
- Dr. Anamika Das, Secularism and communalism in India: Role of the state and the citizens, International Journal of Political Science and Governance 2020
- Tijani Ahmad Ashimi, Secularism: Meaning, Kinds and Characteristics, International Journal of Research and Scientific Innovation (IJRSI) |Volume VIII, Issue X, October 2021
- John Bell, Secularism French style, available at  
[https://core.ac.uk/outputs/83939561/?utm\\_source=pdf&utm\\_medium=banner&utm\\_campaign=pdf-decoration-v1](https://core.ac.uk/outputs/83939561/?utm_source=pdf&utm_medium=banner&utm_campaign=pdf-decoration-v1)
- Deepa Das Acevedo, Secularism in the Indian Context, Available at:  
[https://scholarship.law.ua.edu/fac\\_articles/81](https://scholarship.law.ua.edu/fac_articles/81)
- AKEEL BILGRAMI, SECULARISM: ITS CONTENT AND CONTEXT, social science Research council, October, 2011
- SHAFI MD MOSTOFA, Secularism: A Religion of the 21st Century, available at  
<https://www.e-ir.info/2023/04/25/secularism-a-religion-of-the-21st-century/>
- Craig Calhoun, Time, World, and Secularism, New York University press, 2012

## **BOOKS**

- Edward Jayne, An Archaeology of Disbelief: The Origin of Secular Philosophy, Western Michigan University, 2018
- Plato, Apology of Socrates and Crito, edited on the basis of Cron’s edition by Louis Dyer, Ginn and Company, 1890
- John Keane, The Political Quarterly – Secularism. Oxford: Blackwell Publishers, 2000
- Ronjoy Sen, Legalizing Religion: The Indian Supreme Court and Secularism, The East-West Center Washington, 2007
- Veit Bader, Secularism or Democracy? Associational Governance of Religious Diversity, Amsterdam University Press 2007

- FRIEDRICH NIETZSCHE, The Gay Science, available at <http://www.holybooks.com/the-gay-science-friedrich-nietzsche/>
- Austin Granville, The Indian Constitution: Cornerstone of a Nation, 1999