

## **RIGHT TO FREEDOM OF RELIGION AND SECULARISM: SOME JUDICIAL REFLECTIONS**

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“It is the duty of all progressive intellectuals to propagate and popularized. This principles of secularism and explain to the people at large all its facets and its aspects.”

- Justice P.B. Gajendragadka

### **Introduction**

Indian society is a blend of more than six religions. Since long these religions are living with great unity and integrity, while adopting Indian Constitution drafters encountered a superhuman task to unite the different religions under one umbrella. India is a country which bounds in personal laws every religious community in personal matters is governed by own laws<sup>1</sup>. Freedom of religion is guaranteed as a fundamental right under Indian constitution. This freedom connotes very citizen of India can profess, practice and propagate any religion as per his/her aspirations. Though this freedom is guaranteed still there is a question before Indian democracy that how to protect the freedom. If we observed Indian conditions then at one par India is secular country, and at other end freedom of religion is greatedened, the secularism means complete neutrality state in the matters of religion. The state shall not boost any religion as an official religion of state. The state shall not give grant in aid to any religious institutions or any financial support to religious activity, religion shall remain a private business of individual. But the central Government and various state Governments are giving financial aid to religious endowments. For example expenditure on *Guru Da Gaddi*, expenditure on Kumbhamela, expenditure for renovation of Temples, Mosques, *vihars*. If we are true secular? Then why this

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<sup>1</sup> Paras Diwan, *Muslim Law in Modern India*, Allahabad Law Agency reprint 2008, p. 1.

expenditure we have to think twice it is necessary to prohibit these kinds of attempts. Secularism does not mean equal protection to all religion, but complete neutrality of religion in the matters affairs of state.

### **Concept of Freedom of Religion and Secularism**

The religion is a matter of personal faith and belief. Every human being is attached with a kind of religion. Religion is nothing but a way of life generally adopted by the people in a particular territory. Religion has played a very important role in initial stage of life and up to certain extent today itself has relevancy. We have seen a religion growing up from stage to stage, from the simplest childish prayers to the highest metaphysical abstractions<sup>2</sup>. Swami Vivekananda while delivering a lecture on religion asserted that, religion is idea which is raising the brute unto man and man unto God. Religion is manifestation of natural strength that is in man. The basic aim of religion is to bring peace to man. Any religion that can bring it to man is the true religion for humanity<sup>3</sup>. The religion is nothing but doctrine of belief which is binding on flowers of religion. Religion provides moral principles to be followed by followers in their day to day life, due the existence of religion there is peace in the world. India is the most populous country of the world. The people inhabiting this vast land profess different religions and speak different languages. It is a mosaic of different religion languages and culture. Each of them has made a mark on Indian polity and India today represent synthesis of them all. Despite the diversity of religion and language there runs through the fabric of the Nation the golden thread of a basic innate unity<sup>4</sup>. As the concept of religion was developed and it has controlled whole human life certain evils entered in religion. Many philosophers and jurists suggested that there should be a complete separation between state and religion. The religion should remain as private business of individual.

The freedom of religion is guaranteed in plethora of countries in the world, but this freedom give rise to

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<sup>2</sup> Prof. Hari Narke, Dr. B.R. Ambedkar Writings and Speeches Vol. 3 Unpublished writing, second edition P. 7.

<sup>3</sup> *Atheist Society of India v. Govt. of A.P.*, AIR 1992 AP 310.

<sup>4</sup> *St. Xavier's College V. State of Gujarat*, AIR 1974 SC 1389.

arbitrary use of doctrines and customs and traditions of religion which resulted in control over religion. Secularism is evolved as complete neutrality of religion in the matters of state, but the study religion therefore in school education cannot held to be an attempt against the secular philosophy of the constitution<sup>5</sup>. United State of America adopted complete water tight compartment between religion and state, it means religion shall not interfere state affairs. No doubt freedom of religion is guaranteed under American constitution by First Constitutional amendment Act. Secularism is a condition of a state where no more importance will be given to religion is here that the second meaning of secularism in India applies secularism means and some of this is written in to constitution of country that all religions and cultural groups in India are entitled to practice their faith to be instructed through the medium of their mother tongue to be protected, not attacked without cause by the police<sup>6</sup>. No doubt citizens will have freedom of religion still this liberty is not exclusive reasonable restrictions can be imposed on individual freedom. The state shall keep itself way from observance of any particular religion.

## **Constitutional Provisions of Freedom of Religion and Secularism**

### **1. Preamble of Indian Constitution**

Preamble is the key to open the mind of legislature. It contains aspirations of makers of Indian constitution. Under preamble liberty is guaranteed of thought, expression, belief, faith and worship. It means citizen of India can exercise their freedom of religion without any disturbances. A person can exercise his religious freedom so long as it does not come in to conflict with the exercise of fundamental Rights of others<sup>7</sup>. Whenever there is confusion about interpretation of constitution. In *Keshwananda Bharti's*<sup>8</sup>

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<sup>5</sup> D.J. De, Constitution of India, Asia Law House, Hyderabad, vol. 2 P-1420.

<sup>6</sup> N. Sundaram, Religious Freedom and Secularism Theory and Practice,, Amicus Books, The ICFAI University Press ISBN 81-314-1372-1 P-93.

<sup>7</sup> M.P. Jain, Indian Constitutional Law, 6<sup>th</sup> edition, 2010, Butterworth's LexisNexis Wadhwa,, Nagpur, p. 1321.

<sup>8</sup> AIR 1973 SC 1461.

landmark judgment Supreme Court of India held that preamble of India Constitution is integral and inseparable part of constitution. Forty Second Amendment Act, 1976 inserted Secular word under preamble of Indian constitution.

## 2. Fundamental Rights:

Article 25 to 30 of Indian constitution devoted to freedom of religion to Indian Citizens. They are as follows.

1. Article 25 of Indian Constitution: Freedom of conscience and free profession, practice and propagation of religion-  
Subject to public order morality and health and to the other provision of this part, all persons are equally entitled to freedom of conscience and the freely to profess practice and propagate religion. 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;

Providing for social welfare and reform or throwing open of Hindu religious institutions of public character to all classes and sections of Hindus.

*Explanation I :* The wearing and carrying *kripans* shall be deemed to be included in the profession of Sikh religion.

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

2. Article 26 of Indian Constitution: Freedom to manage religious affairs.—Subject to public order, morality and health, every religious

denomination or any section thereof 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
- (d) To administer such property in accordance with law.

3. Article 27 of Indian Constitution: Freedom as to payment of taxes for promotion of any particular religion.—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

4. Article 28 of Indian Constitution: Freedom as to attendance at religious instruction or religious worship in certain educational institutions.—

(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 recognized 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.

5. Article 44 of Indian Constitution: Uniform civil code for the citizens.—The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

## **Legislative Attempts to Keep India as Secular Country**

The Parliament of India is the highest legislature for India. Parliament can make laws for whole nation to keep its mandate our Parliament has enacted various laws to protect freedom of religion and to keep India as secular country, union as well as state legislature enacted various legislations which is one step in the achievement of secularism in India. The 42<sup>nd</sup> Amendment Act, 1976 which inserted Secular word under preamble of Indian Constitution, which declare India as secular state. Some legislative attempts are as follows:

1. Code of Criminal Procedure Code, 1973
2. Special Marriage Act, 1954
3. Dowry Prohibition Act, 1961
4. Foreign Marriage Act, 1969
5. Medical Termination of Pregnancy Act, 1971
6. Protection of Women from Domestic Violence Act, 2005
7. Prevention of Child Marriage Act, 2006
8. Religious Institutions (Prevention of Misuse) Act, 1988
9. Places of Worship (Special Provisions) Act, 1991
10. Bigamy prohibition under Government Service Rule, 1964
11. Birth and Deaths Registration Act, 1969
12. Schedule Caste and Scheduled Tribes (Prevention of Atrocities ) Act, 1989

## **Judicial Approach towards Right to Freedom of Religion and Secularism**

The Indian Supreme Court is final interpreter and watch dog of Indian constitution but apex court in plethora of judgments interpreted secularism as equal treatment to all religions. Freedom of religion and secularism are opposite concepts and state have to maintain balance between two. There was a time in India history when religion provided, regulated fully controlled the legal and judicial system of country. Today the situation is other way round. In the secular India of our times it is the law of land that determines the role of religion in the society and it is the judiciary that determines what the laws on

this aspect of life say mean and require<sup>9</sup>. It is necessary to protect the freedom of religion but most important we have to maintain secularism in India. Secularism is the basic structure of Indian constitution which was confirmed in *S.R. Boomai v. Union of India*<sup>10</sup>. It means state shall not interfere in religious matters of religion. The state will be a complete neutral role and freedom of religion will be very private affair of individual. We are secular first and then freedom of religion is guaranteed under Articles 25 and 26 of Indian Constitution. These Articles itself give power to state that they can intervene in religious matters on the ground of morality, health, public order it clearly implicates that secularism is genus and freedom of religion is species. The rule is that Indian shall remain secular and exception is of freedom of religion. Propriety shall be given to secularism and freedom of religion shall be a very private affair of Individual. Current Indian scenario is ample clear on secularism but role of parliament of India and state legislatures is in big question. It is highly expedient to check and balance the role of legislature and Judiciary in the area of secularism and freedom of religion.

It is the constitutional duty of Indian Judiciary to uphold constitutional mandate. Supreme Court of India also interpreted in different manner in plethora of decisions Apex court held that secularism means equal treatment to all religion, but actual meaning of it is complete demarcation between state and religion. Society not only expects the courts to ensure procedural fairness, but also expects them to be efficient. The courts are the machinery for enforcing laws and regulations. The legal system might have very good laws which provide for the granting of substantive rights to the citizen vis-à-vis his fellow citizens, and vis-a-vis the government<sup>11</sup>. It is the duty of state to incorporate these ideas in reality. Plethora of marginal religious communities are living in India and they shall not feel insecure equal opportunity shall be given to everybody for proper progress and

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<sup>9</sup> Prof. Tahir Mahmood, *Laws of India on Religion and Religious Affairs*, Universal Law Publishing Co., ISBN 978-81-7534-659-8, p. 10.

<sup>10</sup> AIR 1994 SCC 1.

<sup>11</sup> Shimon Shetreet, *Law and Social Pluralism*, LexisNexis Butterworths, ISBN 81-8038-003-3 P 224.

development, and it is the duty of majority to protect the interests and aspirations of minorities. In *Bijoe Emmanuel v. State of Kerala*<sup>12</sup>, which is also known as *National Anthem* case Apex court of India held that it is not mandatory to sing a National Anthem if particular religion doesn't permit its followers then it is optional, this was a landmark judgment because it respected the personal liberty to follow any religion. The role of Indian judiciary can play very important role in this area, still there are plenty of hopes from Apex court of India. In *Acharya Jagdishwaranand Avaduth v. commissioner of police Calcutta*<sup>13</sup>, the basic question before supreme Court of India was that whether a particular rite or observance is an essential religious rite of an religion Apex court of India held that performance of *Tandava* dance with skulls and daggers is not an essential part of religious rites to be observed by *Anand Margis*. In this way state can interfere in the religious matter on the ground of public order. Hence secularism is a basic stricture of Indian Constitution. In another path setting decision Supreme Court of India in *Mohd. Hanif Quareshi v. State of Bihar*<sup>14</sup>, curtail question was that total Bann on cow slaughter vocative to Article 25 of Indian constitution. It was observed by Court that total Bann on cow slaughter is invalid and unconstitutional.

Indian secularism is very different kind of secularism. If we observed Indian conditions minutely particularly the judgments of Courts in India then from the inception of Supreme Court in this Country the Apex court of India wrongly interpreted the concept of secularism. Secularism may be considered as an ethical system founded on the principles of natural morality and independent of revealed religion or supernaturalism<sup>15</sup>. The dictionary meaning of secularism is neutrality of state in the matters of religion. The basic question is that whether this meaning was actually considered by our judiciary the answer is no. every time Apex Court India held in many cases that *Sarvadharmha Sambahv* which means equal treatment to all religions. Is it practically possible for country like India where more than six

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<sup>12</sup> AIR 1986.

<sup>13</sup> AIR 1983.

<sup>14</sup> AIR 1958.

<sup>15</sup> *Encyclopedia Americana*, 1965.



religions are living from thousands of years? If court's interpretation is correct then India may not remain as secular country. But Forty Second Amendment Act, 1976 which inserted Secular world under preamble of Indian Constitution, which specifically declare India as a neutral state in the matters of religion. If we study the decisions of courts particularly after 42<sup>nd</sup> Amendment Act, there is no change in interpretation of concept of secularism.

### **Minority Rights and Secularism**

Minorities are specially protected under Indian constitution. These classes of citizens are very few in number as compare to majority religious institutions. A theoretic state cannot protect the interest of religious minorities as it is committed to one particular religion, whereas a secular country acts as the guardian of religious minorities<sup>16</sup>. It doesn't mean that state shall provide financial assistance for religious purpose because it may against the concept of secularism. Article which provides effective protection to minorities in India are as follows:

Article 29 of Indian Constitution: Protection of Interests of Minorities.—

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

9. Article 30 of Indian Constitution: Right of minorities to establish and administer educational institutions. —

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

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<sup>16</sup> Legal News and Views, Vol. 26: No 11: November 2012, p. 1.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

### **Suggestions**

1. There is an urgent need to redefine the concept of secularism.
2. There is immense necessity to stop grant in Aid for religious purpose.
3. The Indian State in letter and spirit shall play a neutral role in the area of religion.
4. The Supreme Court shall interpret secularism as per dictionary meaning.

### **Conclusion**

The concept of freedom of religion and secularism enshrined under Indian constitution are very vague and it is the right time redefines it. These concepts are creating ambiguity in the mind of common people as well as in the mind of judiciary. In a country like country which is developing in every sector of human life it is necessary to concentrate on developmental activities and so the state shall stop from funding religious institutions and denominations. No doubt religious freedom is guaranteed but it doesn't mean that the state shall devote its revenue for such expenditure. If particular religion wants to develop then there is no bar on it but nowadays its becoming the fashion every Government is appeasing the religious institutions.