

Secularism and Indian Constitution- Is the Secular Character of Indian Democracy Under Threat

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India, the land of bewildering diversity, is a conglomeration of people, cultures, languages and religions. India's diversity is reflected in the coexistence of sensuality and asceticism, carelessness and efficiency, gentleness and violence. In short, India is a kaleidoscope, you touch it and there is a new combination of shapes and colours.

The American society is looked at in the terms of a 'melting pot', India, on the other hand, is not a 'melting pot' it is a 'mosaic'. India is a country which is a host to all conceivable religions and ways of life. India has followed a principle of "unity in diversity". This unity is based on democracy, federalism, tolerance and secular character of the state. Many societies have sought to hide their diversities and refuse to accept their heterogeneity and have paid a high price. The post- Cold War world has seen the disintegration of some states which were, though federal in appearance, non-democratic to the core. The key to India's success as a federal democracy is the recognition of its diversities. Acceptance of all religions and different ways of life is the cornerstone of the Indian culture, heritage and polity.

At independence in 1947, India was a nation embarking on a new and challenging endeavour of building an economically independent democracy that would treat all its citizens equally. As a part of this enterprise, India made a commitment to 'secularism', which in the context of the two nation theory and the creation of Pakistan on the basis of religion, acquired even more significance. The message was that India would not construct its citizenship and nationality on the basis of religious identity.

During the drafting of the Indian Constitution, despite the reluctance of the Constituent Assembly to incorporate the word 'secular', and despite the fact that the word 'Secular' was formally inserted in the Preamble to the Constitution of India by the 42nd Amendment of 1976 to the Constitution of India, still, a survey of the provisions of the Indian constitution suggest that India as a state is separate from religion and would guarantee religious freedoms to the citizens of all faith, while not discriminating against any citizen on the basis of religion. Thus, the Indian Constitution guarantees both individual and collective freedom of religion through the Articles 25-28 enshrined in the Part III of the constitution which deals with Fundamental rights. Article 15 and 16 also guarantees non discrimination on the ground of religion. The Indian constitution through its preamble, fundamental rights and directive principles has created a secular state based on the principle of equality and non-discrimination. With the advancement of Indian Constitutional philosophy of social and economic democracy, secularism has been held to be one of the 'Basic Structures' of Indian Constitution. Thus, the nature of polity promised in the preamble is incapable of alteration even in the exercise of the power to amend the Constitution under article 368.

Religion is a matter of faith. Though the critics might not agree but it is indeed a fact that India and its people, though have entered the globalised era, but still maintain the deep religious values at the core.

The present scenario of 'Secularism' in India is indeed a cause of concern. Today, the secular character of the Indian democracy is considered to be under threat. The razing of the Babri Mosque in Ayodhya (Uttar Pradesh) led to riots and killings by Muslims and by Hindus. The recent massacres of innocent Hindus in Godhra (Gujarat), presumably ignited by smoldering Muslim resentments against the Hindutva proponents over Ayodhya, touched off a larger massacre of equally innocent Muslims in tit-for-tat killings that undermined yet further the amity under which these religious communities had lived earlier in Gujarat State in an atmosphere of secularism. Apart from these, the unspeakable atrocities of 1984 against the Sikhs in Delhi after the assassination of Prime Minister Indira Gandhi; and an occasional slaying

of proselytizing Christian missionaries clearly presents a grim picture of “Indian Secularism”, moreover, the intrusion of religious passions and caste loyalties into Indian politics casts serious doubts over the claim of India to be a secular and theocratic state.

This is also highlighted from the changing trends of the decisions given by the Hon’ble Supreme Court of India, which is regarded as the guardian of constitutionalism in India. The Hon’ble Supreme Court of India in *Sardar Taheruddin Syedna Saheb v. State of Bombay*, AIR 1962 SC 853, 871 for the first time explained the concept of secularism wherein Ayyangar, J., explained: *"Articles 25 and 26 embody the principle of religious toleration that has been the characteristic feature of Indian civilization from the start of history. The instances and periods when this feature was absent being merely temporary aberrations. Besides, they serve to emphasize the secular nature of the Indian democracy which the founding fathers considered to be the very basis of the Constitution."*

In *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225, the Constitutional Bench of the Hon’ble Supreme Court reiterated that secularism was a part of the basic structure of the Constitution. This view crystallized in the landmark case of *S.R. Bommai v. Union of India* (1994) 3 SCC 1. In fact, the Judges in *S.R. Bommai’s* case went on to say that the concept of secularism in the Indian Constitution is in broad agreement with the U.S. Constitution's First Amendment. However, within a year the Hon’ble Supreme Court in *Ismael Faruqui v. Union of India* (1994) 6 SCC 360 started diluting the active, positive concept of secularism based on scientific thinking it had advocated in the *S.R. Bommai’s* case. Subsequently, in the infamous *Ram Janambhoomi case*, the Hon’ble Supreme Court justified its concept of secularism by quoting extensively from Indian scriptures. Verma, J. (as he then was) (speaking for Venkatachaliah, C.J. and Ray, J.) quoted from the *Yajur Veda*, *Atharva Veda* and *Rig Veda* to justify its concept of secularism: 'Sarwa Dharma Sambhava', i.e., tolerance of all religions. This reasoning seemed to be odd wherein the Hon’ble Supreme Court was justifying secularism by religious scriptures. The Supreme Court seemed to have rejected the western concept of secularism based on separation of the Church and the State as explained in the earlier verdict of *S.R. Bommai* and went back to equating secularism with tolerance. The Court also noted that the State has the power to take over any religious place including a mosque. Though dissenting, *Bharucha, J.*, supported the concept of absolute, positive and active secularism, more in tune with that spelt out in *S.R. Bommai*. Yet even he accepted that secularism in India exists because of the tolerance of the Hindus who are the majority religion. However, though in some of the recent judgments the Hon’ble Supreme Court has again shifted from the confusing interpretation of Secularism. But this again highlights an important issue that the secular character of India has in fact received a setback and the issue of Secularism in India today is not simple especially in light of the growing religious fundamentalism which owes its revival to the failure of the government in controlling societal attacks.

Another probable cause for the threat to “Secularism” can be attributed to the large scale religious turmoil at the international level. The after impact of the 9/11 has, as a matter of fact, led to the rise of religious fundamentalism across the world which has grown itself into religious fanaticism probably because of the singling out of one particular religion, despite the fact that the act was done by a handful of people. This indifferent approach of singling out a religion has led to large scale resentment amongst people of various walks of life. India as a part of the globalised world has been adversely effected by this turmoil.

However, still there is hope, as if we trace bits and pieces of Indian history it can be safely said that India, despite numerous adversaries has always been able to find a via media for survival by maintaining the same diverse socio-religious culture. India still maintains its secular character, however, what is probably required is that India as a democratic and secular State must not allow itself to be identified with any religion, and also must ensure that while guaranteeing the freedom of religion for all, it should not legislate on the basis of any religion. To sum it up, we should adopt the approach encapsulated in the famous hymn of the father of the nation, Mahatma Gandhi, that is, *iswar allahteryra naam* (Ishwar and Allah are but the two names of the same god)