

- (4) Through plea bargaining, a prosecutor can avoid much of the hard work of preparing cases for trial and for trying them. In addition, prosecutors can use plea bargaining to create seemingly impressive conviction rates.

### **Conclusion**

Plea Bargaining in India has moved from being pronounced illegal, unConstitutional and immoral to a great messiah for the criminal justice system and a welcome and inevitable change. Plea Bargaining is indeed a welcome change, but only as long as one considers the chief aim of the criminal justice system to be swift and inexpensive resolution of cases.

To conclude, plea bargaining is undoubtedly, a disputed concept. Few people have welcomed it while others have

abandoned it. It is true that plea bargaining speeds up case load disposition, but it does that in an unConstitutional manner. But perhaps we have no other choice but to adopt this technique. The criminal Courts are too overburdened to allow each and every case to go on trial. Only time will tell if the introduction of this new concept is justified or not. Hence, in my opinion, it is better to implement the concept of Doctrine of Plea Bargaining broadly in Indian Judiciary so as to decrease the lakhs of pending cases in Indian Courts but it should be applicable to only those offences which are punished not more than 3 years.

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## **SECULARISM UNDER INDIAN CONSTITUTION – A CRITICAL STUDY**

*By*

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### **Introduction**

The word “secular” is like the word religion is among it the richest of all words in its range of meanings. The term secularism has been expanded by certain writers to include formidable list of objects in the contemporary scene these objects include scientific humanism, nationalism, materialism, agnosticism and positivism, intellectualism, rationalism, existentialism and philosophy, nationalism and totalitarianism democratic faith and communism, utopian idealism, optimism and the ideal of progress, moralism, ethical renationalism and nihilism

the industrial revolution and its divorce from nature, modern education is separation from religion, historical method when applied to the biblical revelation massathism and the depersonalization of man.

In the 19th century, in Great Britain George Jacob Holyoake, started a separate organized movement and coined the word secularism. Holyoke insisted from the very start that the relation of secularism to religion were to be mutually exclusive rather than hostile. The movement was a success because it presented an opportunity to curtail the oppressive control of religion and later on

took on an anti-theistic nature. In France and other catholic countries secularism took the anti-clerical stand and the anti-theological stand and the concept of secular State emerged as it did after struggle between the Church and the people and was victory for anti-clericalism. Hence it took the line of atheism and anti-goodness then the spirit of religion and the spirit of freedom pursued courses diametrically opposed to each other.

In the United States, secular thoughts grew in distinct fashion basically because religious freedom was achieved with no hostility towards religion that was also because from the very inception there was diversity of religious beliefs amongst the groups that first settled down and the awareness that the pilgrim fathers came to the States to escape persecution for this religious non-conformity. The Church never took a positive stand against religious freedom as in France. Hence because of persecution

In the native lands leading to political disabilities, the pilgrim fathers were of the view that if religion was to be kept pure the State must not invade the realms of the faith with establishment. Madison and Jefferson took a leading part in the agitation for the separation of the Church and the State. Their efforts culminated in the enactment of the first amendment to the Constitution of the United States of America which laid down that "Congress shall make no law respecting an establishment of religion or prohibitions of free exercise thereof. England enjoys a unique position where an established Church does not stand in the way of enjoying full liberty of religion. That fact satisfies one of the tests of a secular State.

The State in Great Britain however, cannot by any means be said to be a secular State by reason of the close connection between the State and the Church there is not and can't be a wall of separation between the Church and the State as exists in America,

such an intensive co-mingling of the State and the Church has, however not precluded or even retarded secularism as being the guiding principles of her Statecraft. But the Church has lost much of its importance earlier in England there was no separate civil and ecclesiastical jurisdiction. Slowly the civil powers began exercising complete control over all matters. Except where a statute so provides; it recognizes the right of every one to follow the dictates of his conscience in the religious opinion he holds. There is a liberty of religion worship act wherein the right are acts providing for registration and use of places of worship and protection of religious worship *etc.*, this type of protection *i.e.*, by legislating on matters is typical of the United Kingdom because there is no Constitution in U.K. wherein any rights may be enshrined and guaranteed because in Britain it is the Parliament, that is the law making body, which is supreme.

## II. Constitutional Provisions

### *Preamble*

We, the people of India, having solemnly resolved to constitute India into a sovereign, socialist secular, democratic republic and to secure to all its citizens the rights, freedoms and opportunities, the preamble to the Constitution of India. The preamble represents the aspiration of the people of India.

We the people have been taken from the Constitution of U.S.A. this means the Constitution of India has been formed and enacted by the people of India the power to make the Constitution and means they were represented by their elected members of the Constitution assembly.

### *Secular*

Secularism is the basic structure of our Constitution, our Government respect all religions, it does not uplift or degrade any particular religion. The State has no religion.

it self, which our surrounding country have adopted particular religious India did not adopt any religion for it. The Articles 25 to 28 give the freedom of religion to every citizen the word secular has been inserted to preamble by the 42nd Amendment Act, 1976.

### ***Liberty of Thought and Expression***

Article 19(1) gives the fundamental rights to every citizen of freedom of thought, expression, freedom of the press is the pillar port of democratic country, freedom of speech, though is a fundamental right to every citizen, liberty of belief, faith and worship Articles 25 to 287 give the freedom of religion to every citizen. The Government does not oppress liberty of belief, faith and worship of the citizens.

### ***Equality of Status of Opportunity***

There are fundamental rights from Articles 12 to 35 more particulars, Articles 14, 15, 16, 17 and 18 provide right to equality to every citizen.

“Fraternity” Assuring the dignity of the individual democracy is irrespective of the race, religion, language, culture, sex and this noble idol id in rated in the Article 1 of Declaration of Human Right of United Nations Organization the same spirit and the words have been incorporated in preamble by the above Para. Particularly Articles from 14 to 18 teach us to live with equality brother hood. Indian become forms the State of police State to welfare State the preamble directs the Constitution to provide all the provisions to safeguard the dignity of the individual so that the nation becomes prosperous and stands highest level in the world.

### ***Unity and Integrity of the Nation***

It has been inserted by the Constitution 42nd Amendment Act, 1976. Every citizen

of India has been gives fundamental rights. But at the same time, he should respect the nation. He should do efforts for the unity and integrity of the nation. Article 51A has been inserted by 42nd Amendment Act. Article 51A confers certain fundamental duties to every citizen to uphold the sovereignty, unity and integrity of the nation to maintain secularism, common brotherhood amongst all the people of India

### ***Right to Equality (Articles 14 to 18)***

Articles 14 to 18 of the Constitution guarantee the right to equality to every citizen of India. Article 14 embodies the general principles of equality before law and prohibits unreasonable discrimination between persons. Articles 14 embodies the idea of equality repressed in the preamble. The succeeding Articles 15, 16, 17 and 18 lay down specific application of the general rules laid down in the Article 14. Article 15 relates to prohibition of discrimination on grounds of religion, race, caste sex or place of birth. Article 16 guarantees equality of opportunity to matter of public employment. Article 17 abolished “Untouchability” Article 18 abolishes title.

Article 14 deals with “Equality before-law” They shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The phrase “equal protection of laws” is a positive concept given the meaning equality of treatment in equal circumstances. The guarantee of equal protection applies against substantive as well as procedural laws. Article 14 is basic feature of the Constitution.

### ***Equal protection of the laws***

The phrase is a positive concept. It gives the meaning that the equality of treatment is equal circumstances. No one can be favored more and no one can be unfavored more. Equal law should be applied to all persons in the same situation. There should not be

any discrimination between one person to another, it forbids class legislation. Equality must become a lifting nation for the large masses of people. Article 14 applies to citizen and no citizen of India.

### ***Right to Freedom of Religion***

Articles 25, 26, 27 and 28 deal with the right to freedom of religion. Article 25 deals with freedom of conscience and free profession, practice and propagation of religion. Article 26 deals with freedom to manage religious affairs. Article 27 deals with freedom as to payment of taxes for promotion of any particular religion. Article 28 deals with freedom as to attendance at religious worship in certain educational institutions. These Articles embody the ideal of a secular State in India. The State will protect all religions but interfere with none. The State will treat alike the devout, the atheist and the agnostic. God is eliminated from the matters of the State and no person is to be discriminated against on the ground of religion. The State has no religion of its own. It treats all regions equally. The State is concerned only with the relations between man and man. It has nothing to do heaven in his own way. Everybody can worship his God according to the dictates of his own conscience.

Articles 25 and 26 should be read together. The right guaranteed by Article 25 is an individual right. Article 26 deals with the right of an organized body like a religious denomination or any section thereof both of these Articles protect matters of religious doctrine or belief as well as acts. Done in pursuance or religion rules, observances ceremonies and modes of worship these Articles embody the principle of religious toleration.

Freedom of conscience and free profession, practice and propagation of religion (Article 25). Article 25(1) provides that subject to public order, morality and

health and to the other provisions of Part III of the Constitution, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

Article 25(2) lays down that nothing in Article 25 shall affect the operation of any existing law or prevent the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice and providing for social welfare and reforms or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus, the wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh Religion.

### ***Freedom to Manage Religious Affairs (Article 26)***

Article 25(1) guarantees to every person (a) the freedom of conscience (b) the right freely to profess and practice any religion and (c) propagate any religion.

Article 26 provides that 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 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.

Freedom as to payment of taxes for promotion of any particular religion (Article 27)

Article 27 provides 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 Article 27 prohibits the levy is of a tax the proceeds of which

are specifically meant for the promotion or maintenance of any particular religion or religious denomination. The first condition for the application of this Article is that the levy must be a tax. Where the imposition is in the nature of a fee, it does not fall within the prohibition of this Article.

The reason underline Article 27 is that the India is a secular State freedom of religion is guaranteed by the Constitution, both individuals and groups. It is against the policy of the Constitution to pay out of public funds, any money for the promotion and maintenance of a particular religion or religious denomination.

Freedom as to attendance at religious instruction or religious worship in certain education institutions (Article 28)

Article 28(1) provides that no religious instruction shall be provided in any educational institution wholly maintained out of State funds. Article 28(2) lays down that nothing in Article 28(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 recognized by the State or receiving aid out of State funds shall be required to take part in any religious instructions that may be conducted in such institution or any premises attached thereto unless such person or, if such person is a minor, his guardian has been his consent their to.

Article 28 makes a distinction between educational institutions wholly maintained out of State funds.

The giving of religious instructions is completely prohibited in those educational institution which are wholly maintained by the State. There is no prohibition from giving religious institution or conducting religious worships in the institution which are recognized by the State or receiving aid out

of State funds. However there cannot be any compulsion on attendance.

### ***Culture and educational rights (Articles 29 & 30)***

Articles 29 and 30 of Constitution deal with cultural and educational rights. Article 29 protects interest of the minorities regarding their language, script and culture. Article 30 gives the minorities the right to establish and administer educational institutions.

Articles 29 and 30 confer 4 distinct rights. Any section of citizens has the right to conserve its own language script and culture. All religious and linguistic minorities have the right to establish and administer educational institutions of their own choice. Every educational institution has the right not to be discriminated in matters of State aid on the ground that it is managed by a religious or linguistics minority. Every citizen has a right not to be denied admission into any State maintained or State aided institution on the ground of religion, caste, race or language.

### ***III. Secularism and a Judiciary***

Judicial representation: In a history judgment is *Saral Madgal v. Union of India*, the Supreme Court has decided the Prime Minister *Narasimha Rao* to take fresh look at Article 44 of the Constitution which enjoys the State to secure uniform civil code which, accordingly to the Court is imperative for both protection of the oppressed and promotion of national unity and integrity.

The Court directed the Union Government through the Secretary to Ministry of Law and Justice, to file an affidavit by August, 1995 indicating the steps taken and efforts made, by the Government towards securing a uniform civil code for the citizens of India.

The above direction was given by the Court while dealing with case where the question for consideration was whether Hindu husband married of Hindu Law, after

conversion to Islam, without dissolving the first marriage can solemnize a second marriage. The Court has held that such a marriage will be illegal and the husband can be prosecuted for bigamy under Section 494 of the Indian Penal Code.

### Cases Article 29

In *Jagadev Singh Siddanthi v. Prathap Singh Danlita* : Supreme Court held that the right to conserve the language of the citizens includes the right to agitate for the protection of the language political agitation for conservation of a language of a section of citizens cannot therefore be regarded as a corrupt practice within the meaning of Section 123 of the Representation of the Peoples Act 1951 and like Article 19(1), Article 29 one is not subject to any reasonable restrictions.

Article 26: In *Raja Beera Kishore v. State of Orissa*. The management of temple of lord, Jaganath at Puri was taken away from the sole control of the Raja of Puri and vested in a committee by the Sri Jaganath Temple Act 1954. The act was held to be valid as it regulated only that aspect of the worship which related that it is managed by a religious or linguistic minority. Every citizen has a right not to be denied admission into any State maintained or State aided institution on the ground of religion, race, caste or language.

Article 29 applies only to citizens but Article 30 applies to both citizen and non-citizens

### Conclusion

In fact India is country of great diversity, it is absolutely if we wish to keep our country united to have tolerance and equal respect for all our communities *etc.*, it was due to the wisdom of our founding fathers that we have a Constitution.

Which is secular in character, and which caters to the tremendous diversity in our country. Thus it is the Constitution of India which is keeping us together despite of all our tremendous diversity, because the Constitution gives equal respect to all communities, legal and ethnic groups

### Notes and References

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## WORKERS PARTICIPATION IN MANAGEMENT W.R.T. INDIA – AN INSIGHT

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**Abstract:** The main aim of the concept of worker's participation in management is to help in increasing production, productivity and sharing the gains of productivity through

more effective management as well as through better industrial relations.

In order to achieve this goal, the Government of India has introduced a