

## The ideology of secularism in Indian constitution

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### Abstract

The modern political system all over the world is fashionably enamored of political ideology-SECULARISM which has taken different shapes even in fascist totalitarian and dictatorial regimes.

The political concept of secularism is so significant and imperative for modern democratic polity that the Indian constitution despite being permeated with the spirit of secularism necessitated the 42nd amendment in 1976 to get word secular inserted in the preamble of the constitution as the basic philosophy or postulates of the Indian polity. The basic constitutional concept was added to affirm the resolve of non-discrimination on grounds of religion. Thus secularism is acknowledged as the cherished goal of the Indian political system.

In a multi-religious and multi-cultural society like INDIA, which has also accepted the goal of democracy, proper functioning of the political system and nation building is possible only within a secular framework. It is one of the basic elements in the process of modernization. It is one of the major factors affecting the future of democracy. India is a country where people professing different faiths and religions have been living since time immemorial. But communal strife's of the present century between the two major Indian communities, The HINDU AND the Muslims, and the recent communal tension between the Hindu and Sikhs or even between the Hindu and the Christians mark the development of a healthy polity in India.

**Keywords:** secularism, multi-religious, totalitarian, dictatorial, necessitated, cherished goal

### Introduction

The word 'Secularism' has been used in our country in the context of the concept of a secular state. Justice, liberty and equality have been professed in our constitution for all citizens without any distinction in terms of religion, caste, creed and sex. All citizens are equal in the eyes of law, whether they profess one religion or another or none at all. Every citizen is free to follow, practice or propagate any religion according to his own belief. The state neither involves nor promotes religious activities. The state also does not impart religious education. The state aims at social justice and provides equality of opportunity for growth irrespective of the religious persuasion of a person. Secularism is, in fact, an attitude of mind, which refuses to accept the division of humanity into religions, races and social classes based on caste. It is an attitude of mind, which is compatible with any religious doctrine in so far as the latter does not usurp the right of man to solve the problems of his earthly existence in the light of his own reason.

Accordingly to Oxford Dictionary, "Secularism" means firstly morality should be based solely on the well-being of mankind in the present life. Secondly, national education should be purely 'Secular'. Chambers Dictionary defines 'Secularism' as the belief that the state morals, education etc. should be independent of religion.

The pluralistic view of Secularism implies an attitude of accepting all religions rather than rejecting one or all religion Gandhiji and Dr. S. Radhakrishnan are the eminent exponents of this view. According to Gandhiji, "The soul of religion is one but it is in a multitude of forms. Similarly Dr. S. Radhakrishnan remarked: "Secularism does not mean anything irreligious or atheism or even stress on material

comforts. Rather it lays stress on the universality of spiritual values which may be attained by a variety of ways".

The national movement in India was initially secular in character. However, at the final stage, the separatist tendencies and upsurges like 'Muslim Nationalism' and 'Hindu Nationalism' emerged in the course of the national movement. This development retarded the growth of the Secular Nationalism, and ultimately caused the partition of the country in 1947.

According to Nehru, "the real struggle in India is not between Hindu culture and Muslim culture but between these two and the conquering scientific culture of modern civilization. His conception of secularism was linked with the idea of the good society".

There is also a school of thought which insists that a secular state cannot function in a religious society that 'Secularism' in government can only be built upon a broad-based philosophy of rationalism and materialism. According to this view "the Gandhian idea that all religions are actually true may lead to a non-communal state but never a truly secular state" Marxist materialism contributed much to the development of this view of secularism in India.

The Indian Constitution makers did a great service to Indian humanity by separating politics and law-making from religion. No religion has been recognized as the state religion and no discrimination has been permitted on the basis of religion. Articles 14, 15 and 16 of Part III on fundamental rights enshrined this principle. Article 15 says, "The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them". Article 25 of our Constitution not only concedes to every individual freedom of conscience but also the right to

propagate his ideas for the education of others. Obviously, this freedom of conscience entails freedom to establish and maintain religious institutions, manage their affairs, acquire, maintain and administer movable and immovable property. These rights are guaranteed by Article 26. When freedom of faith is allowed to every person or group of persons, one cannot forbid religious instructions in schools or institutions established by a religious denomination. This right too is guaranteed by Article 30.

### **Arguments to opt secular state**

The Secular State was 'opted because of the tradition of religious tolerance from the time of Asoka'.

Wadhava has explained that the concept of Secular State introduced in the Indian Constitution in view of the religious diversity of the Indian society for safeguarding the interest of religious minorities. A theocratic State due to its commitments of one particular religion would have been harmful to the religious minorities.

It can be pointed out that, Secularism was accepted because the framers of the Constitution had bitter experience of the partition of the country on the basis of religion. Therefore, Secularism was considered necessary and desirable for India. Similarly, in a country like India with its religious diversity, it was also difficult to make a choice of a particular religion as the state religion. Therefore, secularism was considered as a pragmatic solution to the problem of religious diversity and religious minorities. It can also be pointed out that Secular State was antidote of Hindu State which would have been theocracy which is out dated concept and against the principle of democracy. Therefore, the concept of Secularism which was considered progressive and conducive to the democracy, was accepted in the Indian Constitution.

### **The Preamble of the Constitution of India**

The Indian Constitution is, in fact, imbued with socialist ideology and aims at the establishment of a secular state through the word 'Secular' remained absent in the original Constitution. Though the concept of Secularism is, however, explicit in the Preamble to the Constitution of India.

The Preamble to the Constitution outlines the main objectives of the Constitution. It serves as a key to the Constitution.

The text of the Preamble is as follows: "WE, THE PEOPLE OF INDIA having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and secure to all its citizens. JUSTICE, Social, Economic and Political, LIBERTY of thought, expression, belief, faith and worship, EQUALITY of status and opportunity and to them all, FRATERNITY assuring the dignity of the individual and unity of the Nation. IN OUR CONSTITUENT ASSEMBLY This twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION".

It is important to note here that the word 'Secularism' was neither promised nor aimed at in the Preamble though many ideals of democracy as the liberty of thought, belief, faith and worships are included in it. The constitution 42nd Amendment Act which was passed by the Parliament in November, 1976 for the first time speaks of India as "Sovereign Socialist Secular Democratic Republic".

Thus, the Preamble to the Constitution now indicates the Secular character of the Indian Constitution. It also shows

how Secularism is being given a great importance in the constitution. It must, however, be pointed out that the change that has been made to the Preamble is by no means constitutionally significant. Because from the legal point of view, the Preamble, though included in the Constitution, is not supposed to be its integral part and it is non-justiciable. But it must be remembered that the Preamble is a grand declaration of the ideas and objectives which the Indian people have set before themselves.

### **Nature of Indian Citizenship**

In dealing with the concept of Indian Secularism, it is necessary to explain the character of citizenship in India. This is because of the fact that, the concept of Secularism is also implied in the ideal of Indian citizenship.

### **Constitutional Provision**

In the context of citizenship in India, it may be noted that the Constitution did not make detailed provisions regarding the acquisition and termination of the citizenship and left this task to be determined by the Parliament. Accordingly, The Citizenship Act, 1955, has been enacted by the Parliament—Articles 5 to 11 which are embodied in the Part-II of the Indian Constitution, and the provision in the Citizenship Act of 1955 give the clear picture of Indian citizenship.

### **Right to Equality**

The Secular character of the Indian Constitution can be traced in the constitutional provisions relating to the Right to Equality. Articles 14 to 18 of the Indian Constitution deal with the Right to Equality. These articles are intended to ensure the establishment of secular state in India. Similarly, equality in the political, social and economic field constitutes one of the basic aspects of Indian Secularism.

### **Equality before Law**

Right to Equality before Law is guaranteed in the Article 14 of the Indian Constitution. Article 14 says "The State shall not deny to any person equality before the law or the equal protection of the law within the territory of India".

The two expressions-'Equality before the Laws' and 'equal protection of the Laws' are not identical. Infact, they mean different things. 'Equality before Law' is a negative concept. It implies that everyone is equal before the law and absence of any special privileges in favour of any person, and equal subjection of all classes to the ordinary law of the land. 'Equal Protection of Laws' is a positive concept. It implies equal treatment in equal circumstances.

The Article 14 has been invoked in a large number of cases before the High Courts and the Supreme Court of India. The Supreme Court in many cases has upheld the view that Article 14 does not rule out classification for the purpose of legislation. However, the classification should not be arbitrary. It must be based upon just and proper difference.

The Right to Equality as guaranteed in the Article 14 is available to any person, citizen or foreigner. But it must be noticed that Article 14 prevents discriminatory action only by the State and not by the individuals, as it would be interference with the liberty of individuals. Similarly, it should be noted in this context that the Indian Constitution does not confer absolute equality on the citizens. The Constitution recognises some exceptions, for example, the

President or the Governor of a State shall not be answerable to any court while they are performing the powers and duties vested in their respective offices. No criminal proceeding shall be instituted or continued against the President or the Governor in any court during his term of office. These immunities, however, are not applicable in the cases of impeachment.

### **Prohibition of Discrimination on various Grounds**

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth is explained in the Article 15 of the Indian Constitution. This Article says “(1) The State shall not discriminate against any citizen on the grounds of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them be subject to any disability, restriction or condition with regard to: (a) access to shops, public restaurants, hotels and places of public entertainment, or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public. (3) Nothing in this Article shall prevent the State from making special provisions for women and children. (4) Nothing in this Article or in clause (5) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizen or for the Scheduled castes and the Scheduled tribes”.

From the wordings of Article 10, it is clear that, it is illustrative, and its scope is very wide. But, the rights under Article 15 are available only to the citizen of India. Clause (1) of the Article contains prohibitions against the State action; Clause (2) explains the prohibition against the State individual action. Clause (3) of the Article provides that the State can make special provisions in favour of women and children. Clause (4) of the Article empowers the State to make a special provision for the advancement of any specially and educationally backward class of citizens or for the Scheduled Castes and the Scheduled Tribes. The Clause (5) was added to the Article by the First Amendment Act, 1951 of the constitution. The amendment was necessitated by the decision of the Madras High Court declaring ‘Communal Order’ of Madras Government, reserving seats in certain educational institutions for the student of certain castes and communities as ultra-vires.

The word ‘only’ which is used in the Article 15 has been a matter of controversy and it has been discussed in many cases in the High Courts and the Supreme Court of India. Two cases namely *Doraijan v. State of Madras (I.L.R.) 1951: Mad. 149* and *V. Venkataramana v. State of Madras (S.C.J.) 1951, 318*, can be mentioned.

In this context, it is explained that ‘the Constitution does not forbid discrimination by the State on grounds of religion. The principle of religious non-discrimination embodied in Article 15(1) is that the State cannot discriminate against any citizens on the sole basis of their religion. It can, however, discriminate on religious ground provided that, it is accompanied by another ground. Further, the State can make religion the sole basis of discrimination amongst its citizens when making special provision for the advancement of the Scheduled Castes and the Scheduled Tribes’. About the clause 4 of the Article 15, it has been pointed out that ‘preferential treatment can validly be given because the

socially and educationally backward classes need it, so that in the course of time, they stand in equal position with the more advanced section of the society’.

However, it may be noted that the expression ‘socially and educationally backward class of citizen’ in the clause 4 of the Article 15, is very vague. There is no definite test to decide what social backwardness is. When it starts and when it ends. It has created confusion in the formation and implementation of the policy.

The general guarantee contained in the clause (1) of Article 15 is illustrated in the various other provisions of the Constitution. For example (i) Equality of opportunity in matters of employment is provided in Article 16(2), (ii) Article 325 provides that ‘No person to be ineligible for inclusion in or to claim to be included in a special electoral roll on grounds of religion, race, caste, or sex. It means that, there shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to either House of Legislature of a State, (iii) Universal adult suffrage is provided in Article 326, (iv) The provision is made for maternity relief for women workers in Article 42, (v) Provision of free-education for children is made in Article 45, (vi) Measures for the prevention of exploitation of children are explained in Article 39 F.

Similarly, some special provisions relating to the certain classes have been made in Part XVI of the Constitution. Article 330 provides for the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of People. Article 331 provides for the reservation of Anglo-Indian Community in the House of People by nomination. Article 332 makes a provision for the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the Legislative Assemblies of the State. Article 333 provides for the representation of the Anglo-Indian Community in the Legislative Assemblies of the States. Article 334 makes provision for the termination of the seats and special representation after certain period. But according to the 45th Constitutional Amendment Act, 1980, the reservations have been extended up-to next order. This indicates that, there is tendency of continuing these privileges. But it may be pointed out that, such grant of special privileges to some backward communities for almost an indefinite period would create conflict with the other people who have no such privileges. And this would hamper integration of the different social classes and communities. Thus, it is evident from the preceding discussion that clause 4 of the Article 15 and the provisions contained in Articles 330 to 334 are inconsistent with the concept of Secularism as explained in the clause I of Article 15 of the Indian Constitution.

### **Equality of Opportunity**

Article 16 of the Indian Constitution guarantees Equality of Opportunity in matters of Public Employment. The Article 16 reads as follows:

1. There shall be equality of opportunity for all citizens in matters relating to the employment or appointment to any office under the State.
2. No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for any office under the State.
3. Nothing in this Article shall prevent parliament from making any law prescribing in regard to a class or classes

of employment or appointment to an office under any state or local authority or Union territory.

4. Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in opinion of the State, is not adequately represented in the services under the State.
5. Nothing in this Article shall affect the operation of any law which provides that, the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the Governing Body thereof shall be a person professing a particular religion or belonging to a particular denomination.

From the wordings of the Article, it is clear that, in regard to the public employment, the guarantee is given both positively and negatively. Clause (1) of the Article 16 asserts it positively and clause (2) of the Article contains an exception to the prohibition contained in clause (1) and (2). According to this clause, the Parliament has the right to prescribe any residential qualifications in the case of appointment under the State or local authority or Union territory. Clause (4) also contains another exception, by which, the State has power to make provision for the reservation of appointments or post in favour of any backward class of citizen which in the opinion to the State is not adequately represented in the services under the State.

The privileges given under the Article 16 (4) may be abused. Therefore, a safeguard against it is provided in the Article 365 which says 'that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration in the making appointments to the services and posts in the Union as well as States'. Clause (5) of the Article 16 is another exception to the principle embodied in the clause (1) and clause (2). The clause (5) provides that offices connected with a religious or denominational institutions may be reserved for the persons professing the particular religion or belonging to the particular denomination to which the institution relates.

It is to be noted that the right guaranteed under Article 16 is available only to the citizens of India, and it ensures economic equality by giving equality of opportunity in matters of public employment. But because of the provisions of reservation as it is made in clause 4 of the Article 16, the principle of equality of opportunity has lost its significance. In this context, Smith D.E. has observed that when the scope for equality of opportunity is reduced to three posts out of ten, the modern concept of the individual as the basic unit with the State is in grave peril. This kind of arrangement produces a State composed of castes and communities, not individuals. It may effect a static kind of justice but it does not lead to a dynamic society or a truly Secular State'.

The framers of the Constitution assumed that these special provisions and reservations would be of a temporary nature. They expected that- after certain period (10 years), there would be more equality and fewer special provisions for the citizens in the State. However, later on, we find that vested interests have been created in this system and there is tendency for its perpetuation. Therefore, the 'protective discrimination' which is provided in the Articles 15 (4) and 16 (4) and special provisions in the Articles 330 to 334,

though it has been upheld by the judiciary, should not be a permanent feature of the Constitution.

### **Abolition of Untouchability**

Abolition of untouchability is explained in the Article 17 of the Indian Constitution. This Article says "Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with the Law". This constitutional provision may be regarded as a revolution because it abolished the age-old practices of Indian society. It also indicates the secular character of our Constitution. Abolition of untouchability is definitely important because with this provision social equality will be promoted which is necessary for the creation of secular society. It must, however, be noted that the word 'Untouchability (Offence) Act, 1955' passed by the parliament under the authority given in the Article 35 of the Constitution.

Although the constitutional provision is made for the abolition of untouchability, it has not been enforced strictly. In this context, it may be pointed out that, the evil of untouchability which had deep roots in the past and which had religious sanction cannot be eradicated completely only by constitutional provisions or by some legislation. Untouchability is basically a social evil and its remedy lies in the change of attitude of the people themselves.

### **Abolition of Titles**

In accordance with the principle of equality, the constitutional provision is made for the Abolition of Titles. It is explained in the Article 18 of the Constitution which says:

1. "No title, not being a military or academic distinction, shall be conferred by the State.
2. No citizen of India shall accept any title from any foreign State.
3. No person who is not a citizen of India, shall while he holds any office of profit or trust under the state, accept without the consent of the President any title from any Foreign State.
4. No person holding any office of profit or trust under the state shall, without the consent of the President, accept any present emolument, or office of any kind from or under any foreign state".

Thus, for ensuring equality to all, the State is prohibited from conferring title on any person. However, the conferment of military and academic distinction is not debarred. The state is also allowed to confer any distinction or award of social services. 'Bharat Ratna', 'Padma Vibhushan', 'Padma Bhushan', 'Padmashri' and other State awards are not regarded as titles under the Article 18 of the Constitution. It may here be noted that these awards were discontinued during the rule of Janata Party Government, but revived after 1980, when the Congress (I) Party came to power.

The foregoing analysis of the Right to Equality clearly shows that the principles of equality and non-discrimination by the State on the grounds of religion, race, caste, sex etc. is compromised in various fields in view of 'protective discrimination' in favour of the citizens of backward classes. It may be noted that backwards has been identified with caste and sub-castes. The result is that new vested interests have been created in the caste system. It has also strengthened the

caste consciousness, which certainly retards the growth of Secularism.

Similarly, the principle of equality before the law becomes ineffective when different personal laws are applied to the citizens belonging to a particular religion. Therefore, 'uniform civil code', as it is directed in Article 44 of the Constitution, is an urgent necessity if the equality before the law is to be maintained.

### **Freedom of Religion**

Freedom of Religion constitutes the basis of Indian Secularism. Therefore, the place and role of religion in the Indian society and the constitutional law of India deserves a detail consideration.

Historically, India has been a land of many religions and religious sects. In this country, people cling to their religious faith at all costs. To them, religion is the dearest object. They live for religion and die for it. It is revealed at the time of partition of the country and then after in many communal riots in Independent India. The influence of religion on the mind of the people in India is so great that, it is rarely absent in the thinking of large number of people. Therefore, every problem more or less is mixed with the religion.

### **Constitutional Provisions**

The framers of the Constitution of India have recognised the relevance of religion in the life. They have made constitutional provisions guaranteeing the right to freedom of religion in the Articles 25 to 28 of the Indian Constitution. These Articles of the Constitution form the basis of Indian Secularism. These provisions also explain one of the objectives of the Constitution declared in the Preamble, "To secure to all its citizens—liberty of faith, belief and worship". The right to freedom of religion is available not only to the citizens of India but to all persons including aliens. These are not absolute, but subject to the limitations prescribed in the Constitution itself.

### **Religious Freedom of Individual**

The Constitution of India in Article 25 has guaranteed the freedom of Religion to an individual. Article 25 (1) of the Indian Constitution, guarantees the freedom of conscience, the right to freely profess, the right to practice and the right to propagate one's own religion. Freedom of conscience means that the individual can choose any religion he would like to believe in. In a secular state, individual's freedom of conscience is absolute and the State has no power to restrict the individual's freedom of conscience. But the text of Article 25 of the Constitution makes it clear that the freedom of conscience is not absolute and like other fundamental rights, it is subject to public order, morality and health. It may here be noted that the Indian Constitution also provides the limitations on the freedom of religion. The limitations include public order, morality and health and the other provisions of Part-III of the Constitution. Similarly, the freedom of religion is subject to the control by the State while regulating secular or non-religious activities which may be associated with the religious practices. Like-wise, the freedom of religion is also subject to the power of the State to make legislation for the social welfare or throwing open the Hindu religious institutions to all classes and sections of Hindus. If there is conflict between the freedom of religion and the

constitutional limitations on it, then the religion has to yield and public order, morality, health etc, would prevail. Thus, Indian Constitution seeks to maintain a balance between the freedom of religion and the powers of the State.

Commenting on Article 25 of the Constitution, Justice Gajendragadkar, has observed that 'while the right to freedom of religion is guaranteed in ample measures, the restrictions imposed are no less significant. Article 25, therefore, brings out clearly the intention of the Constitution to allow religion to function within its legitimate sphere and leave the State to carry on all its activities uninfluenced or unhindered by the intrusion of religion'.

The Constitution also guarantees the right to profess the religion. It means that a person is free to declare his creed in the public, subject to the honour of other person religion; this right to profess religion is of particular importance in our country in which we have several religions and religious sects.

The right to practice of religion is also guaranteed in the Article 25 of the Constitution. This right implies the practical expression of one's faith or belief in the form of private or public worship. What constitute an essential part of a religion or a religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices regarded by the community as part of its religion'.

The Indian Constitution further guarantees the right to propagate religion means spreading of one's religion by advocacy or preaching. It does not mean conversion by force or fraud or inducement etc. It is to be noted that the right to propagate the religion is given to all, and not to a particular religion or community.

Though the right to profess and propagate is conferred on all persons, and not merely on citizens, a question would arise whether a corporate body which is only a juristic person can claim such a right as the Fundamental Right. The trend of judicial decision so far has been that the word 'person' in the Constitution does not contemplate such artificial entities. In this connection, Shelat has remarked that 'To deprive, however, a religious body such as a missionary or a religious society of such a right of action on the ground that the Constitution envisages only human person and not artificial legal entities is to deny the freedom much of its content'

### **Religious Freedom of Denomination**

The Constitution of India has also guaranteed the right to Freedom of Religion to the religious denominations. The Article 26 of the Constitution reads as follows:

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right.

- 1) To establish and maintain institutions for religious charitable purpose.
- 2) To manage its own affairs in the matters of religion :
- 3) To own and acquire movable and immovable property and,
- 4) To administer such property in accordance with law.
- 5) To consider this Article 26 in more detail it can be said that, it provides the corporate or collective freedom of religion, without which the mere freedom of religion of the individual becomes meaningless. The reason is that man does not live alone. He is a member of the various groups, institutions and society at large. Thus, Article 26 is a corollary of Article 25 of the Constitution.

The right provided in the Article 26 falls in two parts, the one dealing with the religious institutions and their religious affairs and the other concerning the property which is not essentially religious matter of religious institutions. The right under this Article is subject to the limitations of public order, morality, and health and the law of the state. The State can enact the law for the purpose of regulating the property of religious institutions. Bombay Public Trust Act, 1950 and Madras Religious Charitable Act, 1951 can be mentioned here.

### **Freedom as to Payment of Taxes for Religion**

The Secular character of the Indian Constitution is also expressed in the Article 27 which says "No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion and maintenance of any particular religion or religious denomination".

This article explains that the public funds raised by taxes shall not be utilized for the benefit of any particular religion or religious denomination. This article prohibits the State from levying taxes for religion. However, it is to be noted that, it is applicable, only in levying taxes and not fees or contribution.

### **Religious Instructions in Educational Institutions**

The secular character of the Indian Constitution can be traced in the Article 28 which prohibits religious instructions imparted in the educational institutions wholly maintained by the State. The complete text of the Article reads as follows:

- i) No religious instructions shall be provided in any Educational Institution wholly maintained out of the State fund.
- ii) Nothing in clause (1) shall apply to an educational institution which is administrated by the State but has been established under any endowment or trust which requires that religious instructions shall be imparted in such institutions.
- iii) 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 institutions or to attend any religious worship that may be conducted in such institutions or in any premises attached thereto unless such person or 'if such persons is a minor his guardian has given his consent thereto'.

From the wording of the Article, it becomes clear that the question of religious instruction is considered in three different types of Educational Institutions. Firstly, the educational institutions which are wholly maintained out of the State fund, or in other words, the Government educational institutions, secondly, the educational institutions which are established under endowment or trust and which require imparting of religious instruction and thirdly, the educational institutions which are recognised by the State and which receive aid from the State.

### **Protection of Minorities**

India is a multi-religious and multi-lingual State. Therefore, it comprises various minorities based on the religion, language, culture, race, caste etc. It becomes essential to protect the interests of these minorities. Therefore, the constitutional

provision is made in the Article 29 and 30 of the Indian Constitution. In this context, Gajendragadkar has remarked that 'the provisions of these two articles indicate that while providing for common secular citizenship and guaranteeing common fundamental rights and imposing fundamental obligations on all citizens, the Constitution makers were conscious of the fact that, religious or linguistic minorities needed protection in respect of their language, script and culture and they did not hesitate to make appropriate provisions The Article 29 and 30 are unique that make our State more secular than even the United States of America'. Which do not have such provisions. The text of these two Articles reads as follows:

### **Article 29**

- 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.

### **Article 30**

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

The protection under Article 29 is equal. In the first place, it guarantees the right of a religious or linguistic minority to conserve its language, script or culture and, secondly it protects an individual citizen against the discrimination on the ground of his religion, race, caste or language.

The right of minorities to establish and administer the educational institution is guaranteed in the Article 30 of the Constitution. This right, though independently mentioned, is in fact a corollary to the right guaranteed in clause 1 of the Article 29. This has been held in connection with the Kerala Education Bill, 1957. But the important point to note is that, the term 'Minority' is not defined in this Article or elsewhere in the Constitution. In this context, it is stated that the expression 'minority' in Article 30 refers to any community which is numerically less than fifty percent of the population of a particular State as a whole.

### **Uniform Civil Code**

The secular character of the Indian Constitution is also explicit in the Directive Principles of State Policy, especially in the Directive Principles relating to the 'Uniform Civil Code'.

### **Ban on Cow-Slaughter**

The Directive Principle relating to the prohibition on Cow-Slaughter has often been discussed in relation with the Indian secularism. The reason is that the Directive Principle given in the Article 48 of the Constitution has raised a controversy since its inclusion in the Constitution of India

### **Provisions Inconsistence to Indian Secularism**

Though India's Constitution contains elements of secularism, there are certain provisions and aspects which are not in according with the principles of secularism;

### **Special Provisions and reservations**

One of the anti-secular principles can be traced in articles 15.<sup>[4]</sup> And 16<sup>[4]</sup> by which, the State can make special provision for the advancement of backward classes and reservation in appointments or posts in favour of any backward class of citizens. This constitutional provision has created caste and communal consciousness and vested interests in economic, social and educational reservations. This constitutional provision injures the Secular character of the State. Therefore, it needs reconsideration, if not, it will create alienation and segregation, in different communities in India.

### **Prohibition on Cow Slaughter**

The principle contained in the Article 48 of the Constitution which direct the State to prohibit cowslaughter and accordingly, many of the States have passed the legislation to that effect, cannot be called secular, The reason is that the word 'cow' which has certain religious reference especially in Hinduism, has been specifically mentioned in this article of the Constitution.

### **Representation on the basis of Religion and Caste**

The representation and reservations based on religion and caste is also contrary to the principle of secularism. The Constitution gives the right of representation to the Anglo-Indian community in the House of the People (Article 333). The Constitution also provides for the reservation of seats to the Scheduled Castes and the Scheduled Tribes in the House of the People (Article 331) and in the Legislative Assemblies of the States (Article 333) and in the Legislative councils of the States (Article 334).]

### **Procedure of Oath**

The Constitution of India, no doubt, vests sovereignty in the people of India and not in the God. However, it is to be noted that 'God' finds a significant place in the constitutional provision. This is evident from the Third Schedule of the Constitution of India, which describes the procedure of taking Oath of high officials like those of the President, Governor, Prime Minister etc. It requires one to take oath in the name of the God or solemnly affirm his loyalty to the Constitution. It can be pointed out that, taking oath in the name of the God, is not compulsory. One may just solemnly affirm his loyalty to the Constitution. But the point to note is that swearing in the name of God proceeds that of solemn affirmation. This constitutional practice is contrary to the meaning of secularism which excludes all references to God. There is also a practice of taking oath in the courts of India in the name of God or touching 'Gita' or 'Quran' etc.

### **Performance of Religious Ceremonies**

The state dignitaries like President, Governors, Prime Minister and other Ministers and officers perform religious ceremonies at public function. The practice of starting new project with the religious ceremony such as 'Bhoomi puja', breaking of coconuts, invocation of Hindu God, and holding of Hindu rituals has become common. The participation of government officials in such functions give an official recognition to them. In the line of the secular character of the Constitution, religious ceremonies should be avoided on official functions.

Similarly, the political leaders and the important officials in the government visit to places of religious significance and offer 'Puja' or 'Mahapuja' there. These things should be in private and not in the official capacity.

### **Religious demands of Political Parties**

The political parties in India make religious or communal demands and play politics in the name of religion. In India, we find that, political party can declare 'Dharmayudha'. In view of the secularism, and secular State in India, there should be restrictions on political parties taking up communal and religious demands. 'Dharmayudha' for political purpose should be prohibited by law. This is because of the fact that it often leads to intercommunal violence.

It can also be pointed out that, generally, a candidate contesting the election to the legislature, Central or State, goes to temple of *Durgah* and prays there for the success in the election. A candidate also starts his election campaign with blessing of some religious person, as 'Guru' or 'Maharaj' or 'Baba' and breaking coconuts and performing other religious ceremonies.

### **Other Practices**

In our national life, there are numerous other practices which are contrary to the spirit of secularism. For example-every year, the government recognises and we observe many public holidays on religious festivals and holidays of all the communities, Hindu, Muslim, Christians, Buddha, Jain, Sikh, and Parsi etc. Similarly, there are also pictures of Hindu Gods and Goddesses in some public offices in many states. The Government also arranges special facilities for the pilgrimages to the religious places of almost all the communities in India.

There are many educational institutions named such as 'Hindu' school, college and university, 'Muslim' school, college and university, 'Christians' school and college etc. Such things need to be prohibited by law.

Similarly, there are separate hostels for the students on the basis of caste and religion. Infact, this must be avoided and there should be common hostels and common mess. There are also columns of caste and religion in the application forms of government or private institutions. This must also be avoided. Similarly, prohibiting the playing of the band while a procession passes by a mosque can be called secular.

All the above mentioned and many other inconsistencies are found in the Indian secularism because the common people by and large are stepped in superstition and ignorance, and our leaders have not followed the principle of secularism strictly in their public life. The inconsistencies in the Indian secularism can be removed by the measures like

constitutional amendments and secularization of social and political life in the country.

### **Conclusion**

The foregoing analysis of the Secularism in the Indian constitution makes it clear that the constitution enunciates secularism through its innumerable provisions. The incorporation of the word 'secular' in the preamble of the constitution by 42nd amendment 1976. Professed faith of the Indian political system have somewhat different connotation in the Indian context. However, Indian secularism is confronted with the several and serious challenges such as communalism, castesim, party politics and obscurantism. These problems and challenges are the result of the Indian life and therefore the solution to them should be find in Indian circumstances.

The solution to these challenges and the inconsistencies in secularism can be found in building up a secular society in India. It means that a society will be based on secular values of life and the social life and the institutions in the society will be free from the hold of religion. The secular society can be created through secularization.

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