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## Secularism and Freedom of Religion in India

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### ABSTRACT

*India does not accept any religion as state religion. India maintains absolute neutrality and impartiality towards all religions. That is why India is a perfect example of a secular state. A secular state does not seek to regulate human's relations with God or his spiritual aspirations. Secularism is concerned with the regulation of men's social relations. The provisions relating to "Right of Freedom of Religion" of the Articles 25 & 28 of the Constitution of India make India a secular state. To make assurance doubly sure, the 42nd amendment of the constitution inserts the term "secular" in the preamble of the constitution.*

**Keywords:** *Secularism, freedom of religion, communalism, sarva dharma sambhav, 42<sup>nd</sup> amendment.*

### INTRODUCTION

Secularism means equal treatment of all religions by the state.- With the 42<sup>nd</sup> amendment of the constitution of India enacted in 1976.[1] the Preamble to the Constitution asserted that India is a secular nation. However, neither India's constitution nor its laws define the relationship between religion and state. The laws implicitly require the state and its institutions to recognise and accept all religions, enforce parliamentary laws instead of religious laws, and respect pluralism.[2][3] India does not have an official state religion . In matters of law in modern India, however, the applicable code of law is unequal, and India's personal laws - on matters such as marriage, divorce, inheritance, alimony - varies with an individual's religion. Muslim Indians have sharia-based muslim personal law, while Hindus, Christians, Sikhs Muslim Indians live under common law. The attempt to respect unequal, religious law has created a number of issues in India such as acceptability of child marriage,[4] polygamy, unequal inheritance rights, extrajudicial unilateral divorce rights favourable to some males, and conflicting interpretations of religious books.[5][6]

Secularism as practiced in India, with its marked differences with Western practice of secularism, is a controversial topic in India. Supporters of the Indian concept of secularism claim it respects a Muslim person's religious rights and recognizes that they are culturally different from Indians of other religions. Supporters of this form of secularism claim that any attempt to introduce a common civil code, that is equal laws for every citizen irrespective of his or her religion, would impose majoritarian Hindu sensibilities and ideals, something that is unacceptable to Muslim Indians.[8][7] Opponents argue that India's acceptance of Sharia and religious laws violates the principle of common civil law, discriminates against Muslim women, allows unelected religious personalities to interpret religious laws, and creates plurality of unequal citizenship; they suggest India should move towards separating religion and state.[9][10]

Secularism is a divisive, politically charged topic in India.[10][11]

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## WHAT IS INDIAN SECULARISM?

The Indian Constitution mandates that the Indian State be secular. According to the Constitution, only a secular State can realize its objectives to ensure the following: 1. That one religious community does not dominate another; 2. that some members do not dominate other members of the same religious community; 3. That the State does not enforce any particular religion or take away the religious freedom of individuals. The Indian State works in various ways to prevent the above domination. First, it uses a strategy of distancing itself from religion. The Indian State is not ruled by a religious group and nor does it support any one religion. In India, government spaces like law courts, police stations, government schools and offices are not supposed to display or promote any one religion. The second way in which Indian secularism works to prevent the above domination is through a strategy of non interference. This means that in order to respect the sentiments of all religions and not interfere with religious practices, the State makes certain exceptions for particular religious communities.[12]

## IS INDIA A SECULAR STATE?

Looking at the various constitutional provisions, the answer is 'yes'. The ideas of secular state have clearly been embodied under the Indian constitution and the provisions are being implemented in substantial measure. But the conditions after independence have posed a challenge before secularism of India for a number of times. Sometimes it is also alleged that by common civil code, the existence of minorities in India is in danger or it is an assault on the identity of minorities. India being still a traditional nation that contains no one, but many traditions owing their origin in part to the different religions that exist here. While India carries with it many traditions it has managed to retain the secular character of its polity, while in many countries especially from the third world, a secular authority has crumbled in face of conflicting traditions. In sum up, it may be submitted that it is beyond the scope of this paper to outline the implications of the conceptual failings of secularism in India. The judiciary is trying to strike the balance in the harmonious way but the people of India should not forget the dream of farmers of the constitution and the ancient philosophy of Sarva Dharma Sambhav.

In *S.R. Bommai vs. Union of India* [13] is about religious denomination, religion a matter of individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the state by enacting a law.

The Indian State is secular and works in various ways to prevent religious domination. The Indian Constitution guarantees Fundamental Rights that are based on these secular principles. However, this is not to say that there is no violation of these rights in Indian society. Indeed it is precisely because such violations happen frequently that we need a constitutional mechanism to prevent them from happening. The knowledge that such rights exist makes us sensitive to their violations and enables us to take action when these violations take place.

## PROBLEMS AGAINST SECULARISM?

The preamble reads as, "we the people of India, having solemnly resolve to constitute India into sovereign, socialist, secular, democratic, republic," etc. Some of the series of articles in the

constitution which underline the idea of secularism in India are Article 14 to 16, Article 19, 21, Article 25- 30 etc. These precepts show that our law does not discriminate between citizens on ground of religion. This is a great advance and one of the most precious legacies of our freedom struggle and one of the best results of the spread of modern, liberal democratic ideas in India.

Secularism is no doubt the ideal principle in a democratic country but in practice it is not so easy to follow. In India, the reality is quite disappointing. The majority community as also the minorities are totally disillusioned with the working of secularism in India. Some of the issues which raise serious doubts about how secular India is, to name few: (a) non-separation of politics from religion (b) continued widespread communalism and communal violence in several parts of the country which lead to many deaths (c) banning of cow slaughter leading to curtailment of freedom of persons to eat and restricting their freedom to carry on any profession and trade, etc.

Communalism has been one of the biggest threats to Indian secularism. Religious intolerance and communal riots are on the rise today and it has challenged not only the democratic credentials of the Indian polity but a great threat to the unity and integrity of the nation. Communalism is not phenomena confined to only one community; the followers of all religious denominations have been susceptible to its influence. Yet, the organizational advancement, social reach, political and ideological influence that Hindu communalism achieved during the recent years are so extensive that it could succeed the government. Of late, the attack towards minority religious groups is not only confined to the Muslims but also to the Christians too. Every now and then, India witnesses sustained periods of gruesome communal violence and violates human rights that question the very secular fabric of the country and its history of peaceful co-existence.

Today there is a huge confusion between 'Hindu' and 'India'. Many ceremonies and public rituals are perceived by Hindus as cultural and nationalistic expression but to the non-Hindus, these are manifestation of Hindu culture. Such rituals are performed even in state functions and therefore, create unnecessary misgivings about the neutrality of the state. Of late, an attempt has been made by few sections of Indian society to equate Hindu cultural symbols as national culture. This is possibly the expression of what has been called the 'Hindu backlash', which is believed to be the consequence of the rise in Muslim and Hindu fundamentalism. Such action destroys the credibility of the secular character of the state and question democracy.

In recent times, serious questions are being raised about India's secularism. No society can be at peace and can prosper, if one-fourth of the population feels neglected, deprived and unwanted. If we want a Secular Society, we have to stop identifying oneself by religion, caste, or language and start thinking ourselves as equal citizens of one nation both in theory and practice. This involve mutual obligation between the state and the citizens. A great deal remains to be done if secularism is to become a way of life in Indian democracy.

## CONCLUSION

The one sentence which concludes my research and what I have understood through my research is that – India is a secular nation. Though as stated above in the research questions, there are challenges to our secular nature, but in no way does it show that our country has not been able to overcome these challenges and maintain its secular nature. Development of the nation not only depends on economic development but also in preserving the secular nature of this nation. Democracy is a continuous process with no final objective but the very process of maintaining a

democratic nature is the objective itself. That is why maintenance of secular nature is the objective and not the distant goal of a secular nation without any sectarian violence.

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