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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INDIA AS A MOTHER OF SECULARISM AND ITSEVOLUTION: A COMPARATIVE STUDY

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Abstract

Recently, the debate on secular character of Indian constitution started due to the central government's move in respect of matters which are, directly or indirectly, connected to religions. Constituting high level committee for implementation of law, CAA, NRC, Triple talaq law are some of the examples of such matters. Secularism in India is a foundational principle enshrined in the constitution, aimed at maintaining a religiously neutral state while protecting religious freedoms for all citizens. This concept has evolved over time, influenced by India's diverse historical and colonial experiences. Therefore, the research article deals with the historical aspect of it as well as its evolution in India. It analyses the role of Indian Judiciary in preserving, expanding and making the concept of secularism more relevant to Indian atmosphere. In this article Indian secularism is also compared with the secularism in other countries. Its suitability to present legal framework will be discussed in the light of its Politico-social effects to society. The fate of secularism is also explored along with the suggestions.

1. Introduction

Secularism in India is a fundamental principle enshrined in the country's constitution. It plays a crucial role in the nation's political and social fabric. Secularism is the principle of separating religion from the government and ensuring religious freedom for all citizens. It involves the idea that religious beliefs and practices should not dictate or influence government policies, laws, or public institutions. Instead, secularism promotes a neutral and impartial stance by the government toward all religions and beliefs, ensuring that individuals have the freedom to practice their religion or belief system without discrimination while also maintaining the principle of government neutrality in religious matters. In essence, secularism seeks to create a society where all individuals, regardless of their religious or non-religious beliefs, can coexist peacefully, and the government remains impartial and inclusive of

diverse perspectives. This principle is often enshrined in the constitutions or laws of many countries to protect religious freedom and prevent the dominance of any particular religion in state affairs.

A. Secularism in ancient India

Ancient India had a diverse array of religious and philosophical traditions, and the concept of secularism, as it is understood in modern times, did not exist in the same form during those ancient periods. Instead, India had a history of religious pluralism and coexistence. In ancient India, various religious and philosophical schools, such as Hinduism, Buddhism, Jainism, and others, coexisted and often engaged in philosophical debates. The rulers of different regions might have favoured certain religious traditions, but they generally allowed freedom of religious practice. The Mauryan Emperor Ashoka (3rd century BCE) is notable for his efforts to promote religious tolerance and non-violence through inscriptions and edicts. However, it's important to note that the concept of secularism as a separation of religion from state affairs, as seen in modern democracies, did not exist in the same form in ancient India. वसुधैव कुटुम्बकम्, i.e., whole world is one family is the peremptory norm of Indian culture. The history of secularism in India is closely intertwined with the country's struggle for independence and the subsequent framing of its constitution. Here is an overview of the historical development of secularism in India.

B. Pre-Independence

While the British colonial era, India did not practice secularism in the modern sense, it did have an impact on religious dynamics and the subsequent development of secular principles in independent India. The legacy of British policies, along with the struggles for religious and political rights, played a role in shaping the secular and diverse India we see today. During the British colonial era in India, which lasted for nearly two centuries until India gained independence in 1947, the concept of secularism as we understand it today did not exist in the same form. The British colonial rule had a significant impact on religious and social dynamics in India, but it did not adhere to a strict separation of religion and government as we see in modern secular states. Here are some key points regarding secularism during the British era in India-

Religious Freedom: The British colonial rulers did not impose a single religion on the Indian population. India was home to a diverse range of religious communities, and the British generally

allowed these communities to practice their faiths freely. They did not interfere extensively in religious matters.

Religious Policy: While not strictly secular, the British colonial government adopted a policy of "non-interference" in religious matters, which meant they refrained from actively promoting any particular religion or interfering in religious practices. However, they did pass laws that regulated certain religious practices, such as sati (widow burning) and child marriage, which were seen as harmful.

Influence of Christian Missionaries: Christian missionaries were active in India during the British colonial period, leading to conversions to Christianity in some regions. The British government did not discourage missionary activities, but it also did not officially promote conversions.

Separate Electorates: The British introduced a system of separate electorates based on religion, particularly for Muslims and other minority communities. This policy aimed to protect the political representation of these communities but also had the effect of dividing society along religious lines.

Legacy of Communalism: The communal divide between Hindus and Muslims, exacerbated by British policies like separate electorates, had a lasting impact on Indian society. It eventually contributed to tensions and, ultimately, the partition of India in 1947 into India and Pakistan, along religious lines.

Legacy for Independent India: The experience of religious diversity and British colonial policies influenced the framers of the Indian Constitution when they were crafting the secular principles of the new nation. Independent India's secularism, as enshrined in its constitution, aimed to ensure religious freedom, equality, and the separation of religion from state affairs.

The idea of secularism in India can be traced back to the pre-independence period when leaders like Mahatma Gandhi and Jawaharlal Nehru advocated for a secular and inclusive society as part of the larger struggle against British colonial rule. The Indian National Congress, the leading party in the independence movement, adopted secular principles early on.

C. Post-Independence

Constitutional Framing (1947-1950): India gained independence from British rule in 1947, and a Constituent Assembly was tasked with drafting a new constitution. The framers of the Indian Constitution recognized the religious diversity of the country and sought to ensure that the new nation would be secular by inserting Article 25 to 28 in our constitution. The term "secular" was explicitly added to the Preamble during the drafting process in 1976 by the 42nd Amendment Act.

Nehruvian Era (1947-1964): Jawaharlal Nehru, India's first Prime Minister, played a pivotal role in shaping the secular character of the Indian state. He emphasized the importance of separating religion from politics and encouraged scientific temper and rationalism.

Protection of Minority Rights: Secularism was seen as crucial to protecting the rights and interests of religious minorities, such as Muslims, Christians, Sikhs, and others, in a predominantly Hindu-majority country.

Uniform Civil Code Debates: The question of implementing a uniform civil code, which would apply a common set of laws to all citizens irrespective of their religion, has been a recurring debate in India. This issue underscores the challenges of reconciling religious practices with secular laws.

Legal Interpretation: The Indian judiciary, particularly the Supreme Court, has played a vital role in interpreting and upholding secular principles. Landmark cases, such as the Shah Bano case and the Babri Masjid-Ram Janmabhoomi dispute, have tested the boundaries of secularism and religious freedom.

Equal Treatment of Religions: Indian secularism mandates that the government treats all religions and religious groups equally, without favouring or discriminating against any particular faith. The state is expected to maintain a distance from religious affairs.

Freedom of Religion: India guarantees its citizens the fundamental right to practice, preach, and propagate any religion of their choice. This includes the right to change one's religion. The state is responsible for safeguarding these freedoms.

Religious Freedom and Minorities: Secularism in India is particularly significant for religious minorities, such as Muslims, Christians, Sikhs, and others. It is intended to protect their rights and ensure they are not marginalized or disadvantaged in a predominantly Hindu-majority country.

Equality Before Law: The principle of secularism underscores the idea that all citizens, regardless of their religious beliefs, are equal before the law. No one should receive special privileges or face discrimination based on religion.

Religion in Politics: While the constitution promotes secularism, religion continues to play a significant role in Indian politics. Political parties may appeal to religious sentiments and identities to secure votes, which can sometimes lead to tensions and debates over the proper role of religion in politics. Section 123 of Representation of people Act 1951 explicitly prohibits use of religion in politics.

Challenges and Controversies: India's practice of secularism has faced challenges and controversies, including debates over the uniform civil code, religious conversions, and disputes related to places of worship. These issues often test the country's commitment to secular principles.

Judicial Role: India's judiciary plays a critical role in upholding secularism by adjudicating cases related to religious freedoms, secularism, and conflicts involving religious communities.

2. Secularism in other countries

Secularism is implemented differently in various countries around the world. Here are some examples of how secularism is practiced in different countries-

France: France is known for its strict form of secularism known as "laïcité." This principle emphasizes the complete separation of religion from the state. In France, public institutions, including schools, are expected to be entirely secular, and public servants, like teachers, are not allowed to wear religious symbols such as hijabs, crosses, or turbans.

Turkey: Turkey practices a secular system where the government controls religious institutions. The

state appoints religious leaders, and religious attire is restricted in government buildings and schools. However, there has been ongoing debate about the extent of secularism in Turkish society.

United States: The United States practices a form of secularism where there is a clear separation between church and state. The First Amendment to the U.S. Constitution prohibits the establishment of a state religion and guarantees religious freedom. Public schools, for example, cannot promote or endorse any particular religion.

Canada: Canada practices secularism by ensuring freedom of religion for all citizens. The Canadian Charter of Rights and Freedoms protects religious freedom and prohibits discrimination based on religion. Public institutions, while secular, accommodate religious diversity and practices.

Sweden: Sweden is known for its secular approach, where the church and state are separate. While the Church of Sweden is the largest denomination, it is financially independent of the government, and citizens are free to practice any religion or none at all.

Japan: Japan practices a form of secularism where religion and government are separate. Shintoism and Buddhism are the dominant religions in Japan, but there is no state religion, and religious freedom is protected.

It's important to note that the implementation of secularism can vary widely within these countries and may evolve over time due to legal, social, and political factors. The balance between secularism and religious freedom is often a subject of debate and discussion in many nations.

3. Judicial approach toward Secular India

The Supreme Court of India has given comprehensive interpretation to the concept of secularism in several significant cases related to secularism. With the passage of time, in several landmark cases, the secular principles of Indian Constitution are discussed by the Supreme Court. A few notable cases are-

S.R. Bommai vs. Union of India¹: This case addressed the dismissal of state government in Karnataka on grounds violation of secularism. The Supreme Court held that secularism is part of basic structure of the Constitution and thereby the court is empowered to review the decision of President to dismiss a state government if it appears to be based on extraneous or irrelevant considerations.

Ismail Faruqui vs. Union of India²: In this case, acquisition of land adjacent to the Babri Masjid in Ayodhya was in question. Although, the case was primarily concerned with property rights, but because the Masjid was a religious site, so it was also related to secularism. The court held that the presence of mosque was not part of essential practice of Islam, so the right to freedom of religion is not infringed.

T.M.A. Pai Foundation vs. State of Karnataka³: This case was related to rights to administration of minority educational institutions without interference from the state. The rights of religious and linguistic minorities to establish and administer educational institutions and the state's regulatory authority was dealt in this case. The implications of case is the secular character of education in India.

Shayara Bano vs. Union of India⁴: In this landmark case the practice of instant triple talaq in Muslim personal law and its impact upon the rights and dignity of Muslim women was dealt. The Supreme Court held that the practice of instant triple talaq as unconstitutional, emphasizing on equality and gender justice. Primarily the case was related to gender rights, but it also had implications upon secularism as while addressing religious practices court held them as discriminatory.

Abhiram Singh v C.D. Commachen⁵ by a 4-3 majority, a seven-judge Constitution Bench held that if votes are sought in the name of the religion, the election will be annulled. The elections process is a secular exercise and during the elections of State legislature or to the Parliament or any other body in the State secular practices shall be adopted. The Constitution forbids mixing of religions or religious considerations with state's secular functions. Religion is a personal matter of an individual

¹ S.R. Bommai vs. Union of India, [1994] 2 SCR 644 (India).

² Ismail Faruqui vs. Union of India, (1994) 6 SCC 360 (India).

³ T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 (India).

⁴ Shayara Bano vs. Union of India, (2017) 9 SCC 1 (India).

⁵ Abhiram Singh v C.D. Commachen, CIVIL APPEAL NO. 37 OF 1992 (India).

with which neither the State nor any other individual has power or right to interfere.

4. Politico-social effects of Secularism

Secularism affects Politico-social affairs of a country and on the other hand, it is also affected by Politico-social affairs of a country. Therefore, the effects are interlinked. Followings may be some of the effects of secularism on the society-

Inclusivity and Equality: Secularism advocates treating all citizens equally, irrespective of their religious convictions. It contributes to the development of a more welcoming political environment in which people of different religious origins may engage in politics without facing prejudice.

Religious Freedom: The protection of religious freedom is ensured by secularism, which forbids the government from supporting or favouring any one religion. This guarantees that people can follow their religion freely from interference from the government.

Reduction of Religious Conflict: Religious disputes are frequently downplayed in secular political systems since the state is not affiliated with any one faith. This lessens the likelihood of conflicts and bloodshed between religions.

Focus on Governance: Instead of utilizing religion as a weapon for mobilization, secularism encourages political leaders to concentrate on governance and policy-making. Making decisions based on reason and efficacy may result from this.

Protection of Minorities: The protection of religious minority' rights depends on secularism. It guarantees the protection of minority rights by preventing the majority from forcing its beliefs on the minority.

Social Cohesion: Secularism, which breaks religion and politics apart, promotes common citizenship above religious differences and therefore helps foster social cohesiveness.

Freedom of Expression: A secular political system tends to protect freedom of expression. When people may criticize or challenge religious behaviors and beliefs without fear of retaliation, they are

more likely to find a secular political structure to allow them to do so.

5. The future of secularism in India

The future of India's secularism depends on a number of variables, including as public sentiments, political trends, and legal interpretations. It could still be a pillar of Indian democracy, but how it is interpreted and used might change over time. If we want to have a clearer understanding of India's future trajectory, we must closely observe how its institutions and society handle issues pertaining to religious plurality and secularism in the years to come.

In conclusion, secularism is a fundamental tenet of Indian society that aims to uphold the nation's neutrality toward religion while defending the rights and freedoms of all citizens to practice their religion. Yet, the real-world implementation of secularism in India continues to be a dynamic and changing facet of the nation's political and social environment.

Suggestions

A multifaceted strategy encompassing civil society, governmental policy and the general public is needed to protect secularism in India, which is a basic principle of the nation's Constitution. Although commendable steps have already been taken or being taken on the part of executive and judiciary as well, but here are some suggestions for protection and promotion of secularism in India-

Reforms in Education and Educational Institutes: Bringing changes in education system that prioritize respect for all religions, diversity, and tolerance may be one of the major keys to preserve and protect secularism. It creates an inclusive community, instill secular principles in children from very beginning. Change in syllabus, fee structure and accessibility of educational institutes is equally important.

Strict Enforcement of Laws: Ensuring that the rules against discrimination on the basis of religion are strictly enforced. This covers strict legislation prohibiting hate speech, hate crimes, and discrimination in the workplace, housing market and public place.

Political Neutrality: Government is required to have strong control over political leaders and parties

to make them remain apolitical on matters of religion during elections and in government. Encourage the keeping of politics and religion apart.

Interfaith Dialogue: Encouraging religious communities to communicate and comprehend one another on an interfaith basis and motivating religious authorities to collaborate in order to advance unity and tolerance may help a lot in protecting secularism.

Media Responsibility: Directions to media outlets to report responsibly by steering clear of sensationalism and slanted coverage may boost the secular tenets of country. On the other hand, Media organizations should also make efforts to be impartial and avoid inflaming religious differences.

Constitutional Safeguards: A vigilant eye on the secular provisions included in the Constitution of India may take it to next level. It is important to carefully examine, scrutinise and discuss every attempt to change these clauses to make sure they are consistent with secularism.

Equal Access to Resources: Assuring equitable access to government benefits, resources, and protection for all religious communities may also be beneficial. There should be no discrimination or marginalization of any community at the time of distribution of resources.

Promote Civil Society Initiatives: Role of Civil society is very important. Thus, supporting civil society organizations, which are advocating for promotion of secularism, religious tolerance, and human rights, is necessary. These organizations play a crucial role in advocating for these principles.

Citizen Awareness: Cultivating in the populace the value of secularism by making them aware of its benefits and the method they may contribute to its maintenance may play a key role. Encourage citizens to hold elected leaders responsible and to actively participate in the democratic process. Public Discourse is another tool. Therefore, encouraging the development of a civil conversation culture in which people of different backgrounds may discuss ideas and viewpoints without using violence or hate speech.

Legal Reforms: With the time, laws should be reviewed and updated to meet new threats to

secularism. It must be adjusted and accommodated as per evolving conditions while maintaining the fundamental values of equality and freedom of religion.

International Collaboration: Collaborating with international organizations and countries that uphold secular values to share best practices and ideas for preserving secularism is a new and very successful way. Working together to exchange best practices and concepts for maintaining secularism with nations and international organizations that support these ideals will be useful in preserving and making Indian secularism more relevant.

Therefore, it can be said that secularism is life and blood of our constitution. Though, presently it does not seem that it is working in its proper form, but that does not mean that it will be vanished away from Indian soil. Protecting secularism is an ongoing process. It requires the commitment from all the stakeholders - government, civil society, religious leaders, and citizens. It's essential to maintain a balance between state's responsibility and religious freedom to ensure equality and justice for all its citizens. If we sincerely follow the path of secularism as shown by our constitution drafters, then majority of problems would be solved and our country will become a abode of prosperity, peace and tranquillity. In present scenario, secularism is the only adhesive which can bind the diversity of India in a better way.

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