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Critical analysis of the term “secularism”

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Abstract

Secularism is the freedom that is given to all the citizen of India through the Constitution regarding the religion. The term means there is no religion of the state and the belief that religion should not influence or be involved in the organization of society, education or government. From the implementation of the Constitution, the concept of secularism remained a debatable issue in India. India being a welfare country provided various fundamental rights to all its citizens. India is country in which people of different religions reside, therefore they all have right to profess the religion they believe such as Hindu, Muslim, Christianity etc. The right to religion was secured by giving the declaring the concept of secularism as basic feature of the Constitution by Indian Judiciary. But the basic feature of secularism i.e. right to religion has become a debatable issue these days. People of different religion are outraging the religious feelings of others. In this way two fundamental rights i.e. right to religion and right to freedom of speech and expression have come before each other. Moreover the term “Secularism” was considered as an obstacle in the path of implementing uniform civil code i.e. common civil law for all the citizens of India. Freedom of speech and expression has the key value in a democratic country as it ensures the freedom to all to express the views they lie including those related to their religion. But now a day, this freedom is misused by way of abusing the religious feelings of the people. Unrestricted use of words related to the religion of different community has created hectic environment in the nation. It is the need of time to create a balance between the two fundamental rights.

Introduction

Secularism is the most important part of the Indian Constitution. The term “Secularism” means that the state shall have no religion of its own. It means the state shall not be identified by the religion like other states in the world such as Muslim state or Christian state. The citizens residing in the state shall have right to profess any religion they like. It is important to mention here that the term “Secularism” had no space in the Indian Constitution when it was implemented. At the time of implementation of the Constitution, right to religion

was provided to the citizens under article 25 of the Constitution as a fundamental right only. The secular character of the state was added later on via 42nd amendment act². India is a vast country with people of different religions and culture. The right to religion was ensured in the Constitution so that all the people can live with the liberty of religion they like and thoughts relating to the religion they believe. The term “Secularism” as it reflects the right to freedom of religion has given space in the Constitution of India in the year 1976 via 42nd amendment act when the term “secularism” was added in the preamble of the constitution. Preamble is an important part of the Constitution as it was held in the *Keshwanand Bharti* case that preamble is an integral part of the Constitution. In the case of *Berubari*, the Apex court held that preamble is the key to open the mind of the makers. It means, if there is any issue in interpretation of the Constitution, help can be taken from the preamble to know what the makers of constitution intended. The term “Secularism” was declared by the Apex court as a basic feature of the Constitution. In the case of *Keshwanand Bharti vs. State of Kerala*³, the apex court held that secularism is a part of the constitution and a basic feature also. The court further observed that the elements which constitute the basic features can't be amended.

The concept of Secularism was added to the Constitution of India to ensure complete freedom to its citizens but it has become a debatable issue these days. Concept of secularism always remained as an obstacle in the implementation of uniform civil law in the nation. India is a country in which people of different religion reside. The Constitution at one side has secured the freedom of religion according to which the people shall have right to profess any religion by birth, by conversion or even reconversion. This concept gave rise to different legal issues such as bigamy, change of religion for the benefit, forced conversion, conflict between right to freedom of religion and freedom of speech and expression etc. The concept of secularism has become a hectic issue these days. At one side, where the government is trying to implement uniform civil law to the people of all the religions, the government is trying to handle the controversy raised due to unrestricted use of freedom of speech as in the case of Ms. Nupur Sharma at other side. It is important to mention here that the constitution has given the freedom of religion only and not the freedom to abuse or outrage the religious feelings of others.

Law relating to secularism

Secularism i.e. right to religion has been protected by the law so that all the citizens can profess the religion they believe. In this regard the different provisions under different laws have been enacted. Provisions to protect the freedom of religion have been given under Constitutional law as well as under criminal law which are discussed as under.

² 42nd amendment act, 1976

³ AIR, 1973, SC

Constitutional Law relating to Secularism

As mentioned above, the concept of secularism was not there at the time of implementation of the Constitution. That which was given place in the Constitution of India was the freedom of religion as a fundamental right under part III of the constitution. Under this part, the right to religion has been given under specific provision i.e. article 25 to 28. The law relating to secularism i.e. religion as provided under article 25 is as under:

“All the persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.”

Therefore the Constitution has given the freedom of religion to all its citizens under article 25 as mentioned above. However, like other fundamental rights, this right is also not absolute and subject to the restriction such as public order, morality, health and other provisions of the part III of the Constitution.

Apart from the freedom to profess any religion, the Constitution has also given the freedom to manage religious affairs⁴ to every religious denomination or any section of such denomination. Such management includes establishment and maintenance of institutions for religious and charitable purpose, managing the affairs by such institutions in the matters of religion, own and acquire movable and immovable property and administer such property. Like the freedom of religion, this freedom is also not absolute and subject to public order, morality, health and other provisions of part III of the Constitution.

The Constitution has provided the freedom to religious institutions to give instruction. In this regard Article 28 (2) provides that religious instructions can be provided in the educational institutions but such education should be established under the endowment or trust other than the state.

The provisions mentioned above provide the law relating to freedom of religion. These provisions does not show the secular character of the State in any way, however, concept of secularism was adopted in the constitution by adding the same in the preamble having reference to the freedom of religion.

Criminal law relating to secularism

Secularism i.e. right to religion has also been protected under criminal law. In this regard chapter xv containing sections from 295 to 298 has been incorporated in Indian Penal Code. The criminal provisions protecting the right to religion are as under:

Section 295 A⁵ provides the punishment for intentional outraging the religious feelings of any class by insulting the religion or religious beliefs of that class by deliberate or malicious acts. The section provides that if any person intentionally outrages the religious feelings of any class by insulting the religion of that class by

⁴ Article 26 of the Constitution of India

⁵ Section 295 A of Indian Penal Code, 1860

words spoken or written or by signs shall be punished as provided in the section. Section 295 provides for injuring or defiling the place of worship with the intention of insulting the religion of any particular class. In reference to right to religion, section 298 is very important as this section indirectly puts restriction on the freedom of speech and expression. The section provides that uttering the words with deliberate intention to wound the religious feelings of any person shall be punishable.

Secularism and fraternity of the nation

The Constitution of India was drafted by a committee headed by Dr. B.R Ambedkar. Apart from Dr. Ambedkar, there were 6 other members in the committee who were K.M. Munshi, Muhammed Saadulah, Alladi Krishnaswamy Iyer, Gopala Swami Ayyangar, N. Madhava Rao and T. T. Krishnamachari. The committee included specially included fraternity in the constitution and given place to it in the preamble. The preamble of Indian Constitution is as under:

“WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India in to a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens:
Justice, social, economic and political;
Liberty of thoughts, expression, belief, faith and worship;
Equality of status and of opportunity; and to promote among them all
Fraternity, assuring the dignity of the individual and the unity and integrity of the Nation;

Dr. Ambedkar laid great stress on fraternity. According to Ar. Ambedkar, fraternity means the sense of brotherhood between all Indians. The word fraternity is derived from the French word “Frater” which means brotherhood. Therefore the term “Fraternity” means brotherhood or cooperation. Both the terms i.e. fraternity and secularism have included in the preamble of the Constitution as one is the basic feature of the Constitution and another is the need of the nation. But secularism is obstructing the way of fraternity. The right to religion i.e. secularism has been misused by the people by abusing the religious feelings and making religious comments on the people of other religion. Political persons are using such abusing language frequently in their speech. The incidence of Ms. Nupur Sharma is recent one who commented on Prophet Mohammad regarding his wife Ayisha. Such types of comments are threat to the feeling of brotherhood as it may create a feeling of enmity between the people of different religions.

Secularism and UCC

The Constitution under article 44 provides for securing uniform civil code throughout the nation for all its citizens. Uniform Civil Code means a uniform i.e. common civil law for all the citizens. India is a country of unity in diversity. People of different religions, caste, race and community reside in India. These people have

their own culture and custom depending on their religion. The main religions which are followed in India are Hindu and Muslim. Hindus and Muslims follow different customs and culture. Different laws are applicable on them. Hindus are governed by the law enacted by the legislature whereas Muslims are governed by their personal law. Rules and provisions governing them are totally different. Hindus have right to solemnize one marriage at one time i.e. a Hindu male or female can have one husband or wife at a time. Whereas under Muslim law, Muslim male has the right to solemnize four marriages at one time. Hindu and Muslim laws are different in the case of marriages by male and female. Under Hindu law rule of monogamous is applicable to both male and female whereas under Muslim law, the male person can solemnize one marriage while Muslim female can solemnize one marriage. Age of solemnization of marriage is also different in the laws. Under Muslim law the male and female can solemnize the marriage after the age of puberty whereas under Hindu law the marriage can be solemnized only after the age of 21 years. Apart from this rule of halala is applicable only under Muslim personal law. It is only because of the secular character of the nation that the people of Muslim religion to be governed by their personal law. In this way, secular has become as an obstacle in the path of implementation of uniform civil law in India. After 72 years of implementation of Constitution, the uniform civil code could not apply.

Judicial aspect

Secularism is a part of the basic feature of the Constitution of India. In the case of *Keshwanand Bharti vs. State of Kerala*⁶, Hon'ble apex court observed that preamble is the part of the Constitution and secularism is a basic feature of the same. The basic structure of the constitution can't be destroyed by the amendment process. This case is also known as fundamental right case. It is important to mention here that though the right to freedom of religion was there in the Constitution at the time of its implementation but the term secularism was inserted in the preamble via 42nd amendment act in the years 1976.

Though the term "Secularism" was first time declared to be the part of basic structure of the Indian Constitution, but the first case which emphasized on the secular character of the nation is *Sardar Taheruddin Syedna Sahib vs. State of Bombay*⁷. In this case the apex court observed that article 25 and 26 show the secular nature of Indian democracy which is the base of Indian Constitution.

The meaning of the term "Secularism" was further elaborated by the apex court via its other important judgments. In the case of *S.R. Bommai vs Union of India*⁸, the apex court observed that secularism means equal treatment of all the religions. The apex court established the connection between article 25 to 28 and the term secular via this judgment and observed that the term "Secular" highlights the fundamental rights of religion.

⁶ AIR, 1973 SC

⁷ AIR, 1962, SC

⁸ AIR, 1994, SC

Further the Apex court enhanced the importance of the term secularism by declaring the same as the essence of democratic country. *In the case of Aruna Roy vs. Union of India*⁹, the court observed that secularism is the essence of a democratic country as it ensures non-discrimination of the people of the state on the basis of religion.

The concept of secularism has gone through a long journey till today. As it has been mentioned earlier that though the right to freedom of religion was incorporated as a fundamental right but the concept of secularism was added in the preamble in 1976. After that the concept passed through different situations from declaring it as a basic feature to declaring it as an essence of democratic country. But during this journey it was never expected that the concept will become an obstacle in the progress and peace of the nation. The concept of secularism has given the right to profess and propagate the religion to all the persons and such right can be exercised by the use of another important right i.e. right to speech and expression. But both the rights are encroaching in the field of each other. People while using their right to religion have started abusing the religion of other. They started making abusing comments on the God and Goddess of other religion. The case of BJP spoke person Ms. Nupur Sharma is recent one when she made comments on Prophet Mohammad and his wife Ayisha. Her statement gave rise to a worldwide controversy for which her arrest was demanded by the Muslims of India as well as other Muslim countries. However, the apex court refused to entertain the petition filed seeking the arrest of Ms. Nupur Sharma on the alleged matter and dismissed the same. Later on Ms. Nupur withdrawn her remarks about Pagambur but justified her comments stating that he did so in aggression due to continuous insult and disrespect of Hindu God "Lord Shiva." The concept of secularism has now become a controversial issue. Though the term secularism means that the state shall have no religion of its own but it does not mean non-interference of the state in the religious matters of the people.

In the year 2017, the question was raised before the apex court that does secularism mean complete separation of politics from the religion. In the case *Abhiram vs C.D.Commachem*¹⁰, the apex court observed that the term "Secularism" does not mean complete separation of politics from religion. Secularism does not ask the state to stay aloof from the religion. What the term secularism demands is to give equal treatment to the persons of every religion. People should not be discriminated on the ground of religion. The court further observed that secularism is the essence of a democratic country like India.

Conclusion

India is a secular country. Secularism has been declared as the basic feature as well as the essence of the democratic country. Secularism means remain to be neutral in the religious matters of the people. But the fact is little different from the expectation. To protect the people of minority i.e. Muslim community, special laws are made for them. However, such laws are made for the minorities on the ground of religion only and not any

⁹ AIR, 2002, SC

¹⁰ AIR, 2017, SC

other ground like language etc. in a secular state, equal treatment should be given to the people of all religions and people of minorities and majorities should not be discriminated. Though India is a secular state, but the state did not make any difference in implementing the criminal law. Therefore the state should also not make any difference in civil matters. It is true that there are different religions being followed in India, but believing a particular religion is one thing and observing the law made by legislature is other. Uniform civil law is the way which can minimize the issues created due to the secular character of the nation.

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