



## SECULARISM IS THE BED ROCK OF INDIAN CONSTITUTION

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**ABSTRACT** It is a well known fact the India is a secular nation meaning no state religion and the government remains neutral in religious matters. This Article explains the concept of secularism as enshrined in the preamble of the Indian constitution and its various provisions as well as the role of Indian Judiciary in promoting secularism in the country.

**KEYWORDS :** Secular, Religion, Constitution, Judiciary

### Introduction

With the 42nd Amendment of the Constitution of India enacted in 1976, the preamble to the constitution asserted that India is a secular nation. The supreme court of India in 1994 in SR Bommai V union of India established the fact that India was Secular Since the formation of India republic. The judgment established that there is Separation Of state and religion. It stated in matters of state, religion has no place. If the Constitution requires the state to be secular in thought and action, the same requirement attaches to political parties. The Constitution does not permit mixing religion and state power.

Indian secularism means the separation of religion from state. This separation is concept of secularism. The Indian constitution through its preamble, fundamental rights and directive principles has created a secular state based on the principles of equality and non-discrimination. With the advancement of Indian constitutional philosophy of social and economic democracy, secularism has been held to be one of the basic structure of the Indian constitution.

A secular state means that the one that protects all religion equally and does not uphold any religion as the state religion. Supreme court in St'Xaviers college v state of Gujarat observed India is a secular state. Secularism eliminates God from the matters of state affairs and ensures that none shall be discriminated against on the ground of religion.

### Indian Constitution and Secularism

I refer few fundamental Articles to show how state should have no religion as per the Indian constitution. The constitution of India recognizes the freedom to profess, practice, and propagate the religion under Article 25. Article 27 no tax can be levied for promoting any particular religion. This restricts the role of the state in religious affairs or in other words no public revenue is permitted to spend in favor of any particular religion. Article 28 of the constitution states that no religious instruction shall be given in educational Institution which are only maintained out of state funds. The purpose of this article again is to keep state away from religion especially when it comes to deliver educational institution through state funds. This Article also states that no educational institution recognize or aided by the state shall compel or force any person to attend religious classes or version that are funded by the state. The idea is again to ensure that no citizen is forced to follow religious practices in schools that are funded by the state. Article 25(2)(a) the state has been empowered to regulate secular activities associated with religions practices. Article 15 says it prohibits the state from discriminating against the citizens on the grounds of religion. So when we read these articles together it becomes very clear that the Indian state cannot be associated with any religion and the state and state itself should not display any inclination to any religion. This stand was reiterated by the supreme court in Indra Gandhi v Raj Narain case, were the Supreme court has ruled that state shall have no religion of its own. It is this principle of Indian secularism that has held the Indian Republic and the Indian nation together as it keeps away the majoritarian tendencies and prevents the country from turning into a theological state.

### Secularism and the role of Judiciary

The religions tolerance and equal treatment to all religious groups is the spirit of our secularism. Article 25 empowers the state to impose restrictions in the interest of public order. Article 25(1) public order here means a thing disturbs the current life of the community and does

not affect merely individual. If the situation affects the current life of the community, it will amount to a disturbance of public order. [Rev Stainslaus V state of MP]

An activity will be treated as a religious matter only if it is regarded as an essential and integral part of the religion and will be secular if it is not considered a necessary part of religion. The practice of Triple talaq is declared illegal holding that it is not protected under Article 25 of the constitution as it is not an essential religious practice. (Shraya Bano V Union of India).

Under certain circumstances, the state can interfere in religious practices for social reform. Sometimes situation compel the state to use legal coercion for urgent social reform. Eg: Sati system, polygamy, triple talaq these were abolished as they were social evils and not essential religious practices. In Indian young lawyers Association and other V state of kerala (Sabarimalai case). Menstruating women in the age group of 10 to 50 were denied entering the Sabarimala temple and thereby violated Articles 14, 15 and 17 of the constitution. In Shirur mutt case the supreme court in 1954 propounded test called "Essential Religious Practices" test. Essential religious practices are those which we cannot touch or judiciary can interfere because they are integral to a religion. Non religions practice judiciary can interfere and scrap it. Excluding mensurating women in the age group of 10 to 50 is not an essential feature. Supreme court gave emphasis on Personal autonomy and this essential religious practices test violates the autonomy provided by the constitution and other supreme court judgments. So this denial of women to Sabarimala temple is unconstitutional. Supreme court also said right of worship is equally available for men and women. Justice Chandrachud stated, Article 17 does not violate only caste untouchability, it also mention gender inequality. In this judgment it widened the scope of Article 17. Untouchability on the grounds of gender is also prohibited under Article 17 of the constitution of India. Supreme court said not to stereo type the women. So all age group can pray at Sabarimalai with regard to recent Hijab issue, six female students of udupi were not allowed to attend classes wearing Hijab. So students protested on December 31st 2021 claiming that the college was not allowing to attend the classes for 15 days. They filed a writ petition in the Karnataka high court and also approached the NHRC stating that wearing hijab is a fundamental right under Article 14 and 25 of the constitution. Karnataka government issued an order stating that students have to comply with the dress code prescribed by the college development committee. Wearing of head scarf is not an essential religious practice to Islam. The court upheld the state order banning head scarfs in class room. So whenever fundamental rights are invoked with respect to religion then the doctrine of essential religious practice will be looked by the judiciary. State cannot impose restriction on this essential religious practice.

### Adoption of uniform civil code

Uniform civil code refers to a common set of law governing personal matters such as marriage divorce, adoption, inheritance and succession that would apply to all citizen irrespective of their religion, caste and gender. According to my opinion uniform civil code is not interfering with religious tenets of any religion it is only uniformity in civil code. Uniform civil code does not do injustice to anyone rather it ensures equal rights for women from all religion. So there is nothing wrong in implementing uniform civil code and it is absolutely necessary.

Uniform civil code comes under Article 44 of the constitution which lays down that states shall endeavor to secure a uniform civil code for all citizens through out the territory of India.

Conclusion From the above mentioned provisions of the constitution and judgment shows it is clear that constitution does not allow any religion to interfere with the rule of the people even when people of different religion live in India. People of different languages and religion live in Indian union they needed secularism to keep them together. Therefore with the right to freedom it was necessary to accept secularism, though there is attempt to bring unity in diversity in India. In India Secularism has to be strengthened because if India as a nation has to survive it can survive only as secular state. Only when the state has no religion and only when the state is not involved in promoting any religion only then a multi diverse, multi religious society like India can survive thus highlighting the fact that principle of secularism is the bed rock of the Indian constitution. Recognizing the rights of others and respecting their sentiments constituted the basis of secularism.

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