SECULARISM IN INDIA

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Abstract: In western world the secular word stands for freedom of religion, equal citizenship to each citizen and separation of religion and state. Western states exercise their political authority in matter of law, accepting people’s right to pursue their own religion. The term secularism was introduced in India following it’s first amendment of the Constitution. The US model of secularism cannot serve the needs of India’s plural, traditional and undeveloped society. The current analysis is based on the literature search and anecdotal case studies of two major religions to see as to how Indian secularism differs from western world. It was also thought to fetch those important reasons, which make Indian secularism to be practiced in similar manner as done in western world. It was revealed that secularism practiced in India is different from western world. In west there is distinct separation between religion and state with freedom of religion and states practicing political authority in matters related with law. In India, there is no official state religion in comparison to US and west. The India’s Constitutional framework allows significant state interference in the matters of religion. It provides that the state must do nothing which aids or controls the religions in any way even though it is not preferential or discriminatory. This notion presupposes the existence of well organized religious institutions playing constructive role in the society and also the existence of progressive and developed society. At the time of adoption of this notion, these features had been existing in the U.S. But the problem which was to be solved was of evolving the U.S. as nation. This objective was achieved by the adoption of secularism which guaranteed non-interference by the state in the affairs of the churches and peaceful co-existence of non-conf ormists. The notion of neutrality of the state is neither consistent with our traditions nor can solve our problems arising from pluralism, traditionalism and undeveloped society. Therefore, the secularism has been adopted here both as a policy of the State and also as an ideology for the society so that the followers of all religions could live in this country peacefully and the feeling of nationhood could be infused among them and also the progressive and developed society could be built on modern values. Keeping these objectives in view, the secularism has assigned both positive and negative roles to the State. In the positive role, the state should not only guarantee religious freedom to the adherents of all religions but should also create favourable conditions for the exercise of such freedom. It seems secularism in India differs from the original concept of secularism evolved and practiced in western world.

Keywords: Secularism, Indian Secularism, Articles and Indian Constitution.

INTRODUCTION

Indian secularism does not subscribe to U.S. notion of secularism which has been embodies in the First Amendment of the Constitution as it cannot serve the needs of our plural, traditional and undeveloped society. The theory of ‘wall of separation’ which is the basic feature of the U.S. secularism, envisages ‘neutrality’ of the state i.e., passive aloofness of the state in the matters of religion. It provides that the state must do nothing which aids or controls the religions in any way even though it is not preferential or discriminatory. This notion presupposes the existence of well organized religious institutions playing constructive role in the society and also the existence of progressive and developed society. At the time of adoption of this notion, these features had been existing in the U.S. But the problem which was to be solved was of evolving the U.S. as nation. This objective was achieved by the adoption of secularism which guaranteed non-interference by the state in the affairs of the churches and peaceful co-existence of non-conf ormists. The notion of neutrality of the state is neither consistent with our traditions nor can solve our problems arising from pluralism, traditionalism and undeveloped society. Therefore, the secularism has been adopted here both as a policy of the State and also as an ideology for the society so that the followers of all religions could live in this country peacefully and the feeling of nationhood could be infused among them and also the progressive and developed society could be built on modern values. Keeping these objectives in view, the secularism has assigned both positive and negative roles to the State. In the positive role, the state should not only guarantee religious freedom to the adherents of all religions but should also create favourable conditions for the exercise of such freedom. It seems secularism in India differs from the original concept of secularism evolved and practiced in western world.

AIMS & OBJECTIVE

In this analysis we shall try to analyze
1. How Indian secularism does differs from western world.
2. To study the reasons causing difficulties in practicing secularism in India.

MATERIAL AND METHOD

Two important decisions of Supreme Court of India related with two major religions are chosen and data for discussion is collected from different sources, i.e. internet, research journals, law books and Wikipedia. The analysis of court decisions in light of constitutional provisions will be done in order to evaluate the differences from western world and difficulties in practicing the secularism despite provisions and acts in constitution of India. The reasons which cause difficulties in practicing secularism will also be discussed in discussion part.

Results

2. Ibid. The spirit of the first amendment by President Jefferson, a draft to Connecticut Baptist Association in 1802, church and states in United States vol. 1, 1950, p 335.
Case 1 - Shayara Bano’s case related with her Talaq (divorce) and decision by apex court of India. SC observed that the correct rule of Talaq as described in Holy Quran is that it should have a reasonable cause and be preceded by attempts of reconciliation between husband and wife by two arbitrators (one from each side). If such attempts fail then Talaq can be effective. The practice of triple Talaq cannot be considered as an integral part of religious course of Sunni Muslims, hence it is not the part of personal law and not protected by article 25(1) of constitution of India. However, the other minority view of bench felt that the “Talaq-e-Biddat” is an integral part of religious denomination of Sunnis belonging to Hanafi School and had sanction and approval of religion, hence it is a part of law; protected by Article 25(1) of Constitution of India. It is revealed that the institution of “Dar-ul-Qaza” established by Muslim personal law board is not sanctioned under Indian constitutional scheme, but it offers a dispute resolution mechanism and for issuing ‘Fatwas’, which too is legal part of it. However, ‘Fatwas’ involving the rights of individual at the instance of strangers may cause irreparable damage and therefore would be absolutely uncalled for, and in basic violation of basic Human Rights.

Case 2 - Restriction of young women from entering Sabramila Temple; by Young Lawyer association v. State of Kerala. Restriction of young women of age 10 to 15 years from entering the Sabramila temple was an essential part of religious practice. The majority was of opinion that exclusionary practice at temple cannot be called as essential religious practice because it laces continuity. The court observed that female worshippers of restricted age group tend to worship in temple every month for five days for first rice feeding ritual of their children and the restriction was only during Mandalam, ‘Makaevilakku and Vishnu days’. The court took such a view placing reliance on law laid down in Commissioner of Police v. Acharaya Jagdishwarnanda Avadhutt and opined that allowing women to enter the temple top offer their prayers will in no way alter the existence of Hinduism, as a religion, which is followed by Lord ‘Ayyappa’.

DISCUSSION

In western world the secular word implies for three things: freedom of religion, equal citizenship to each citizen irrespective of their religion and separation of religion and state. Western states assert their political authority in matter of law and accept individual’s right to pursue his/her own religion to formulate their own concepts of spirituality. Everybody is equal in the eyes of law and subject to same laws irrespective of their religion.

According to Rubbin, the purpose of the religious liberty is to maintain such a condition in the society that every individual will be able to pursue the highest spiritual aims without hindrance. It includes not only the protection against the interference in the freedom of religions of an individual and groups but includes the State aid for the flourishing of all religions as well. In the negative role, the state has been entrusted with the greater power to control the religious activities which come in the way of secularizing the society. In it’s entire role, the state should treat all religions equally.

The Indian traditions have laid foundation of two elements of our secularism i.e., supervision over religious denominations, to provide aid to religions for its flourishing and freedom to exercise religion by its followers. Indian traditions which were founded on Hinduism, a religion of the dominant majority, had been conducive to the growth of secularism. The outlook of the dominant majority was also shared by Muslims and Christians. Hinduism does not record any political alliance with the state power and never claimed to have an established church. It asserted the separation of state and religion and tolerance of all religions. It never advocated the union of state and religion. A clear cut distinction was made in ancient Indian polit in between the functions of priest and the king. The Vedic king performed no priestly function. The concept of two powers temporal and spiritual existed from earliest times. But the religious and charitable institutions were under the special protection of ruling authority. The British rulers also followed the traditions of the former rulers and asserted, by virtue of its sovereign authority, the right to visit religious and charitable endowments and prevent and redress abuses in their management. On the adoption of the Constitution, the right of the State to supervise the administration and management of religious and charitable institutions has specifically been incorporated in it. This is a special feature of our secularism.

The protection of religious institutions by the rulers included also flourishing of that religion. Since the ancient times, the religious institutions such as Churches, Temples, Mosques and Gurudwaras etc had been protecting and promoting the religion of its own sector denomination as these had exclusive authority over it. As the ruler had the interest in the flourishing of his religion, therefore, they provided aid to these institutions.

Another feature of the Indian tradition is the tolerance of all religions. Hinduism maintains that there are many ways, many paths which lead towards spiritual liberation. It does not believe in the conversion from other faiths. It permitted the worshippers to choose from among all the Gods conceived by men in the past, the one which best satisfies his spiritual loggins. It led to the establishment of the Indian tradition of religious freedom. The freedom of thought, in ancient India, was so considerable as to find no parallel in the west before the most recent age. Undoubtedly, because of the tolerant nature of the traditions, India had, like many other states, a distinct secular tradition.

References

4. 1984 AIR 512.
Europe, never experienced religious wars instead it encouraged the communities of Jew Syrians, Christians and Zoroastrians to settle and live peacefully in India. Moreover, the political need of India (unlike U.S) at time of the independence was of natural unity as the people living in this vast land profess different religions and speak different languages.

The Muslims conceived that because of their being educationally, economically and culturally backward, their religion and culture would be dominated by the Hindus, a dominant community. It created discord between these communities. In order to restrain the widening gap between them, they extended many favors to the Muslims. They were offered full freedom to exercise their religions and the state shall treat all religions equally.

In the U.S. the state has never confronted with such problems. There is a single common language which has effectuated integrated society. Ninety percent of population of America is Christians. Therefore, the U.S. is virtually a Christian country.

Like the U.S. India has no organised religious institution. There, the Christianity has well-organized institutions i.e., Church, which serve religious needs of its members. These institutions are also the most effective instrumentality in shaping the behaviors pattern, feelings and modes of living of an individual in the society. Churches have functioned effectively in secularizing the life of its members according to the needs of modern society.

The other reason is the social backwardness of India. It is a socially, culturally and economically backward country. The secularism has to solve the problems generated by the backwardness. It has also to act as an instrument for the modernization of the society.

During the British rule in India, the modern principles of individualizations and universalism were introduced through modern education and legislation but these did not bring about a complete social change. The reason is that the modern education was limited to the people of upper class and did not reach grassroot level of the society. Therefore, the traditional feelings, and behavior of the majority of the people did no change. Indian secularism must have to bring about complete social change and to build social order on the basis of modern values i.e. individualism and universalism.

In our social system, many of the inhuman practices such as child marriage, sati system, trade in slaves, prohibition of widow marriage, dowry system etc., were prevalent. These practices militated against the norms of human dignity, personal security and freedom. During the British rule, many of these inhuman practices were declared illegal. Sati was declared illegal in 1829. Trade in slaves and claim over them were declared illegal in 1832 and 1843 respectively. An Act legalizing the remarriage of the Hindu widows was passed in 1856. An Act prohibiting the child marriage was passed in 1929. After independence, the dowry in the marriage was prohibited by the Act of 1961.

As evident from case one of Shayra bano of triple Talaq, which is banned now by the order of apex court, it was available to Muslims in India previously. Muslims men could legally divorce their wives just by proclaiming three times the word ‘Talaq’ either spoken or written or even by electronic forms. Though the issue remained a subject of big debate & controversy for long time to involve government of India, Supreme Court, it’s implication with uniform civil code, justice, gender equality and religion. It is to be noted that 2 of 5 Judges declared this practice as constitutional against the majority decision of 3 Judges. The religion and state powers had difficulty in separating two from each other in this case. Ultimately the Parliament of India passed this bill on 28th Dec., 2017 and 30th July 2019 in Lok Sabha and Rajya Sabha respectively amid vivid and lengthy debates.

The second case presented here is also related with religious practices, where such practices were put to scrutiny by the law of India. It was observed that the practice claimed to be essential must be such that the nature of religion would be altered in absence of that practice. If there is a fundamental change in character of religion, only then such practice can be claimed to an essential part of that religion. Stressing the need to uphold the fundamental constitutional values of dignity, liberty and equality it was held that debarring young women from worship would be an odd to constitutional fundamental values.

CONCLUSION

Secularism as practiced in India has differences from western world. In west there is distinct separation between religion and state with freedom of religion and states practicing political authority in matters related with law. In India, there is no official state religion in comparison to US and west. The educational institutions owned by state cannot mandate religious instructions and taxed money cannot be used to support any religion. India’s Constitutional frame work allows significant state interference in religious issues, because an overlap between state and religion. There are several reasons, which pose a difficulty in practicing secularism in its similar spirit as practiced in western world. The people of multiple religions, faiths, linguistic, cultures and cast live together in India, where unity remains a main goal. Indian traditions, political compulsions, social backwardness are the other confounding factors in practicing secularism.