

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 4 | Issue 1

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Secularism: A Comparative Analysis from Past to Present

ARUNIM KATHURIA¹ AND BHAWNA SHAH²

ABSTRACT

SECULARISM!! What is Secularism? If we talk in a layman language, Secularism is originated from the word "SECULAR", which means a practice, which treats all religions equally and with full respect.

Do we all know who the father of the word Secularism is? GEORGE JACOB HOLYOAKE was an English secularist, who coined the word "secularism" in 1851. If we talk about the birth of the word secularism in India, with the 42nd amendment in the Indian Constitution in the year 1976, by H.R. GOKHALE, so we can say that the concept of secularism is founded by G.R. GOKHALE. I am proud of my opinion that I believe in the facts of "Hindutwa" and make the sheet more transparent; let's make it way parallel to the most pious evidence we Indians have, that is our National Flag.

If we talk about this research paper, the author has beautifully explained the concept of Secularism. The author took all the sources as a help for drafting this research paper. The author has explained the concept of Secularism through religious aspect, constitutional aspect. The author has used all the landmark judgments related to this concept, so as to clarify this concept more clearly. Our Honorable Prime Minister Sh. Narendra Damodardass Modi ji is the best example of being a secular person. Our PM respects all the religions with full care and respect. I am literally very astonished to see that a few days back I was searching something, and I saw that a Muslim man was drawing a sketch of Lord Shree Krishna. Thus, it can be proved that our India is a secular state.

The author and the co-author have tried their best to explain the concept of Secularism and I hope all the readers will read this research paper with full interest and dedication.

Keywords: Secularism; Constitution; Prime Minister; Religion; Law; Landmark Judgments

¹ Author is a student at JIMS Engineering Management Technical Campus School Of Law, Guru Gobind Singh, India.

² Author is a student at Uttaranchal University, Law College Dehradun, India.

I. PREFACE

“Secularism is not only in our constitution but also in our veins, we worship the mother nature too. We believe that the world is our family”³

I am proud of my opinion that I believe in the facts of Hindutwa and make the sheet more transparent; let's make it way parallel to the most pious evidence we Indians have, that is our National Flag. This is the common rule that if we Interpret things in a right way, it leads to great thoughts, so if I say – out the tricolor flag, saffron color depicts that India in its every aspect treats its all religion equally, the green color Indicated the law to be used in a dignified manner, the white color Indicates to take all the people together on the path of peace and blue charkha can be denoted as a Variant which is to maintain the equilibrium between the law and the faiths and beliefs of the people.

So, this is the beauty of our culture – because I believe in the Thoughts that reading the word of India with Hinduism is not wrong until and unless you know the correct meaning and the Interpretation of the words.

II. BACKGROUND

Whenever we talk about Law and religion, the ambiguity and the confusions get the highest weightage, because it has become our Human Nature that when we are debating about the topic Law and religion, it arises out to be in direction of Secularism. And the secularism ties its knots to never Ending Debates, so here it is the urgent need to clip the clutter, and first of all, understand the meaning of these words.

First taking into consideration the word “Secularism”, this word was first time used with a base concept in the 19th century, before that, there was no proper Meaning of this word. The history of Europe provides evidence before the 19th century, the people of Europe believed in the truth whatever was stated in the bible, and the thoughts of the bible as stated are –

Adams was the first Human being who lived in heaven, Eve was the first female, god gave her birth by using the extra body part of Adam, these were to the people who were living in Heaven, on the commission of their Mistake he were send on Earth which is referred to as Jail, so here the common theory is that to get back to Heaven they have to sacrifice and mold themselves in good behavior, and Erath is the place, where they will learn all these things, so the popes and Christians believe that we human beings re the sinners, we have to do follow good deeds to get back to heaven, so the basic thing we need to do is to pray and worship the

³ HON. PRIME MINISTER OF INDIA, SHREE NARENDRA DAMODARDASS MODI

god, and as a common reference we can take the example of the word " Holiday" which is the day we should pray, and according to Christians theology Sunday is the most suitable to visit churches proving the theorem of Holiday, " the day we should worship to god". This was the story before the 19th century, afterwards, there was the Arrival of the Renaissance period which believed in the thoughts, that God is in us, and whatever that is written I bible is not completely true, but the real interpretation of this theory depends on our Experience we get as being humans on this Earth.

Now if we talk about Indian culture, in terms of religion so it is just a way of living like for eg- In Hindu culture, tulsi, Neem is the herbs which are protected by offering prayers, and this protection is beneficial for our environment. But where do we need to believe in god, is it Mandatory?

Affairs not, if we take the example of present-day culture Hindus believe in God, and also Moksh, but on the other hand, Buddhist people do not believe in god, but they believe in Moksh.so obviously it is not Mandatory, but have faith in religion id the alternative to respecting every being on this earth.

And for all those people, who do not believe in God, for them the advanced Remedy is Law, to make people walk on the same line of Humanity, society created the law, which is inseparable twins, so if you talk about religion the other word is a law, the motive is same.

In our Country India there are Traces which shows that Minorities came here to seek as Refugees, The first came the Parsis, Islam took over Iran there was persecution and they came in India, The Jews came here but at the time of Israel they went back but here the common thing was that India always provided shreds to this Minorities by giving them representation in our country, considering them as these religions are born in India, here the Exceptions are the Christianity and the Islamism which are not believed to be born in India, but still they are considered as the belongings of India.

There has been a taboo about the use of the word Hindutwa . which in English means Hindu ness, which is the code of ethics to inculcate values in the people at a superior level. Hinduism generally refers to a relationship between our family members as we are connected with ties of relationship, which is the pillar of the life we are living in. And also in the judgment given by the supreme court- it said "Hindutwa" is not a religious term, it represents a code of ethics.

III. INTRODUCTION

“Law is the substitute for weapons, a variant that people in any part of the country prefer to create a diagonal between peace and war.”

According to the Former Union Cabinet Minister, Subramaniam Swamy, he believes in the thesis, that India is meant to be as "Hindutva Rashtra" the evidence he presents to support this Hindutva policy is the Ambiance of provisions embodied in the constitution Itself.

In one of the interviews when he was asked to give his opinion or portrait his thoughts, he took the illustrated examples, of eating beef as an offense in India, etc, and also said that these provisions are the theories that have been mentioned and taken from the Upanishads and Vedas. Now Irony here is, the constitution embodied with the provisions respects all religions, and if we use India and Hindutva in parallel flows, it will create great destruction to the existence of the word Secularism. But according to his words as stated is the problem in the definition of Secularism.

The definition of secularism at the time of Martin Luther is-

“that the state shall not have a religion”

This was the original concept that was propounded by Martin Luther, in his theory that the church should be independent of the government.

Hindu Religion does not have a church, profit, or one theology, nor the book but it believes in the concept of "Diversity In thoughts". which is not at all accepted by other religion like Buddhism and Islamism, According to them you cannot find peace and god in the life you are living in, but it can be only achieved by you when you die, but In the Hindu religion the theory is – 'god is present inside your soul, you are the children of God, and you can build up a healthy line with god by doing great acts with merciful Thoughts.

Law and the Indian State –

Law and religion have always been the hottest topics to be debated on and also give birth to the common word which is said as ‘secularism’, The reason behind this is that the conflict between the constitution and the provision embedded in the constitution which is laid down under Article 25 to 28. but here you need to review the words used in Article – 25 which are-

According to Interpretation, we come to the point that Article 25 talks about which are the following conditions on which the state can interfere and they are – public order, Morality etc. in any of the religions.

There has been the fact stated that the government is controlling 4 lakh 57 thousand temples which comes under the control of Secular Activity not to be misunderstood as the Religious activity.

Now here the basic question which arises here is that –

“Do we need religion to create a moral society?”-

So here there is no harm in taking the example of China, which does not provide secularism to its citizens but is still recognized for its moral values, and also there is no such theory, that people need to get some attachment, in order to live their human life, overall they abide by the rules and the regulations, even in the absence of secularism. But here think we should consider is the hidden secret behind the value of Morals in the Moral society, so do people believe that Morality comes from good, then the Answer will be yes if you believe in god and worship him.

Now let's illustrate this with an example, moving furtherance towards the argument, that morality comes from good, our constitution itself is the good example because it embodies several provisions which are evident to the fact – that the constitution Makers believed in the concept of Law and religion and then only they furnished Article 25-28, respecting the spirituals and values of other people.

IV. SECULARISM AS PER CONSTITUTIONAL PROVISIONS

With the forty- second amendment in the Indian Constitution in the year 1976, the preamble of the constitution asserted the word Secularism. As we all know that our Indian Constitution has explained the meaning of Secularism and Religion under Articles 25 to 28.

ARTICLE 25

Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious

institutions of a public character to all classes and sections of Hindus Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Jived vs. State of Haryana⁴

In this case, the validity of section 175(11)(q) of the *Haryana Panchayati act ,1994* which disqualifies the person from the election of sarpanch or Panch who more than two children. The validity was challenged on the ground that it infringes their right to freedom of religion under article 25 of Indian constitution. The Supreme Court held that it doesn't violate article 25 as the Muslim law permits marrying four women but does not anywhere mandates it as a duty to perform four marriages. Such practices which encourage bigamy or polygamy can be regulated by making laws. The right to contest election for any office in panchayat is neither fundamental right nor a common law right. It is a statutory right and subject to qualification and disqualification prescribed by law. If a person does not fulfil such qualification, he can be prevented from contesting election for such posts.

****Mohd. Hanif Oureshi vs. State of Bihar⁵**

In this case, the petitioner claimed that the sacrifice of cows on the occasion of Bakrid was an essential part of his religion and therefore the state law forbidding the slaughter of cows was violative of his right to practice religion. The court rejected this argument and held that the sacrifice of cow on the Bakrid day was not an essential part of Mohammedan religion and hence could be prohibited by State under clause (2) (a) of Article 25.

Article 26

“Article 26 of Indian Constitution states Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law”

⁴ 30TH JULY, 2003

⁵ 1958 AIR 731, 1959 SCR 629

Hence, Art. 26 states that the right of religion denomination. Here what here “denomination” means- it is a collection of individuals who are classed together under a same name specially for a religious section having a common faith, common organization and designated by a distinctive name. It guarantees to every religious denomination or a section of it the right to establish and maintain institution for religious and charitable purpose and to manage in its own way all affair in matters of religion.

Article 26 Clause a

Article 26(a) talks about the Management of Religious Matters – It confers on a religious denomination or a section of it the right to manage its own affairs in “matters of religion”.

Here “matters of religion” meaning extends to acts done in pursuance of religion and therefore, contains a guarantee for rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion. And in reference to integral part of religion the court will decide the essential part of religion or religious practice.

Article 26 Clause b

Article 26(b) states that if tenets of any religious sect of Hindu prescribe that offering of food should be made to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblation to the sacred fire. All these would be regarded as a part of religion and the fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all such practices should be regarded as ”matters of religion”

Article 26 clause c and d

Article 26(c) and (d) states guarantee to a religious denomination the right to own and acquire property and to administer such property in accordance with law. The administration of its property by a religious denomination has been placed on a different footing from the right to manage its own affairs in matters of religion.

The latter is a fundamental right which subject to public order, morality and health no legislature can take away, whereas the former can be regulated by laws which the legislature can validly make.

Kishore Deb V. State of Orissa⁶

1. In Him Kishore Deb V. State of Orissa, the Sri Jagannath Temple Act, 1954 was challenged as violative of Article 26(b).
2. By the Act, the management of the temple of Lord Jagannath at Puri was taken over from the sole control of the Raja of Puri and vested in a committee.
3. The Act provided that it shall be the duty of the committee to arrange for the proper performance of servapuja, etc. of the temple in accordance with the record of rights. Sevapuja has two aspects secular and religious.
4. The Act related only to the secular functions since it regulated that aspect of the worship which related to the provision of materials, etc. for the purpose of sevapuja which is essentially a secular function.
5. The Act did not affect the religious aspect of sevapuja as the persons who were to perform the puja and other rites as required by the dictates of the religion were left untouched.
6. Since the Act was concerned only with the secular management of the religious institution there was no violation of the freedom of religion.

Article 27

Freedom as to payment of taxes for promotion of any particular religion No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religions denomination

So, this article states that no citizen would be compelled by the state to pay any taxes for any kind of promotion or maintenance of any particular religion or religious institutions.

Article 28

Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

Article 28 provides freedom from any religious instruction in educational institutions which are maintained completely out of State funds. This article is not applicable to an educational institution if it is administered by the State, but was established under any endowment or trust requiring certain religious instruction to be imparted in that institution. This article also

⁶ 1964 AIR 1501, 1964 SCR (7) 32

protects a person from taking part in any religious instruction or attending any religious worship which may be conducted in an institution recognized by State or receiving aid from State funds unless his guardian has consented.

V. RELIGIOUS PERSPECTIVE

“Secularism and religion are both all about your personal performance. The gospel is the performance of another applied to you”⁷

If we talk about secularism from Religious perspective, we all believe that GOD is one. These different religions are made by us only. Let me quote you an incident for it. In our beautiful India, there are a huge number of SHREEMAD BHAGWATACHARYAS, who daily preach the holy book of our Hinduism (shreemad bhagwat). One of them is, one of the most renowned Shreemad Bhagwatacharyaa “DEVI CHITRALEKHA JI”. Devi ji, in her young age only, started preaching this holy book and moreover she took a great initiative GAU SEVA DHAM HOSPITAL, in which all types of animals, birds (especially cows) are being treated and being taken care of. Deviji, has specifically said in her preaching that irrespective of any religion, all are cordially invited in all the events of Deviji. Not only Deviji, but all the great saints and spiritual Gurus always welcome all the religions with a huge hug. This is our INDIA. Not only in India, if I talk about Lord Krishna’s conscience, devotion spread all over the world. The author and the co-author wonder and always get happy whenever someone calls them or greet them with the almighty’s name.

Not only Hinduism, but all the religions welcome all the other religions with broad arms. The author, believes that there is no bigger religion than humanity. As we all know that recently, the auspicious ceremony of LORD SHREE RAM, took place, and let me tell you a wonderful thing that the other religions are also very happy that finally after so long, our LORD is getting his official home. Also, the muslim community, got their separate land for the construction of the holy BABRI MASJID. Hence, it is proved that our INDIA is a SECULAR STATE.

VI. LANDMARK JUDGEMENTS

So, let’s talk about some of the important landmark judgments, through which we all will easily understand, about the term SECULARISM.

1. In “*S.R. BOMMAI VS. UNION OF INDIA*”,⁸ The Supreme Court has held that

⁷ TIMOTHY KELLER

⁸ AIR 1994 SC 1918

“SECULARISM” is a basic feature of the constitution. The state treats all the religions and religious denominations equally. Religion is a matter of individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the State by enacting a law. Hon. Justice Ramaswamy observed that secularism is not anti- GOD. In the Indian context, secularism has a positive content. The Indian constitution embodies the positive concept of secularism and has not accepted the American Doctrine of Secularism, i.e., the concept of erecting “a wall of separation between religion and state”. The concept of secularism separates spiritualism with individual faith.

2. In the famous NATIONAL ANTHEM CASE (*BIJOE EMMANUEL VS. STATE OF KERALA*)⁹, three children belonging to “Jehova’s witness” of the Christian community, were expelled from the school from refusing to sing the National Anthem. They challenged the validity of their expulsion on the ground that it was violation of their fundamental right under Article 25(1). A circular issued by the director of Public Instructions had made it compulsory for all children in schools to sing the National Anthem. They had stood up respectfully when the National Anthem was being sung every morning at their school but they did not join the singing of it. The KERALA HIGH COURT held that it was their fundamental duty under the constitution to sing the National Anthem. It held that pupil belonging to the religious group refused to participate in the singing of the National Anthem it would have a very bad influence on the other pupils and the HEAD MISTRESS was therefore within her right not to permit them to attend the class until they gave in writing that they would participate in the singing of the National Anthem in the school.

On appeal, the Apex Court reversed the High Court decision and held – No decision can be compelled to sing the National Anthem “if he was genuine, conscientious religious objection”. There is no legal obligation in India for a citizen to sing the National Anthem. The right under Art. 25(1) cannot be regulated by executive instructions which had no force of law. By standing up while the National Anthem was being sung the children had shown proper respect to the National Anthem and had thus not violated the fundamental duties laid down in Article 51- A of the Constitution. Their conduct did not amount to an offence under the *PREVENTION OF INSULTS OF NATIONAL HONOUR ACT, 1971* as they did not prevent the singing of the National Anthem nor caused disturbance to the assembly in the singing of the National Anthem. Accordingly, the court directed the authorities to re-admit the children in the school and to allow them to pursue their study.

⁹ (1986) 3 SCC 615

3. There is another famous case law on acquisition of place of worship. In “*ISMAIL FARUQUI VS. UNION OF INDIA*”¹⁰, the court held that the state can in exercise of its sovereign power acquire places of worship like mosques, churches, temples etc. Which is independent of Article 300-A of the Indian Constitution if it is necessary for maintenance of law and order. Such acquisition *per se* does not violate Articles 25 and 26 of the constitution.

4. In “*SHAYARA BANO VS. UNION OF INDIA*”¹¹, the Supreme Court by a majority of 3 to 2 declared Triple Talaq or Talaq-e-biddat being instant and irrevocable unconstitutional. Talaq-e-biddat is a kind of Talaq effected by one definitive pronouncement of ‘talaq’ such as ‘I Talaq you irrevocably’ or three simultaneous pronouncements like “talaq, talaq, talaq”, uttered at the same time. The court held- it is something innovative in Sunna, being an irregular or heretical form of Talaq recognised by Hanafi school of shariyat law which itself states that though lawful it is sinful that it incurs the wrath of GOD.

*** We all have often heard that there is a lot of noise pollution in the religion. So let’s discuss a judgement in this concern.

5. In “*CHURCH OF GOD IN INDIA VS. K.K.R.M.C WELFARE ASSOCIATION*”,¹² the Apex court held – in the exercise of the right to religious freedom under Articles 25 and 26, no person can be allowed noise pollution or disturb the peace of others. The custom of religious prayer through the use of loudspeakers is not an essential element of any religion. The order of the authorities under the Madras Town Nuisance Act, 1889 and the Noise Pollution Rules, 2000 is valid and constitutional. The direction given by the High court to authorities to follow guidelines for control of noise pollution issues in 1995 AIHC 4168 and to make Church to keep speakers of lower level are legal in view of the pollution control provision.

***We all know that the Muslim Community, believes in the sacrifice of cows and goats on the occasion of *Bakrid*. So, let’s discuss one of the important case laws related to forbidding of cows sacrifice.

6. In “*MOHD. HANIF QUARESHI VS. STATE OF BIHAR*”,¹³ the petitioner claimed that the sacrifice of cows on the occasion of *Bakrid* was an essential part of his religion and therefore the state law forbidding the slaughter of cows was violative of his right to practice religion. The court rejected this argument and held that the sacrifice of cow on the *Bakrid* day

¹⁰ (1994) 6 SCC 360

¹¹ AIR 2017 SC 4609, 4801, 4832

¹² AIR 2000 SC 2773

¹³ AIR 1958 SC 731

was not an essential part of Mohammedan religion and hence could be prohibited by state under clause (2) (a) of Article 25.

***As we all know that Article 27 of the Indian Constitution gives us freedom from taxes for promotion of any particular religion.

7. In “*SHRI JAGANNATH VS. STATE OF ORISSA*”¹⁴, the Supreme Court held that the levy under the Orissa Hindu Religious Endowments Act, 1939, was in the nature of a fee and not tax. The payment was demanded only for the purpose of meeting the expenses of the Commissioner and his office which was the machinery set up for due administration of the affairs of the religious institution. The object of the contribution was not the fostering or preservation of Hindu religion or of the denomination within it, but to see that religious institutions were properly administered.

***Article 28 of our constitution prohibits religious instruction in state-aided institution.

8. In “*D.A.V COLLEGE, BHATINDA VS. STATE OF PUNJAB*”¹⁵, the validity of Section 4 of the Guru Nanak University Act which directed the state to make provision for the study and research on the life and teaching of Guru Nanak was challenged on the ground that it was a violation of Article 28 which prohibited religious instruction in State aided educational institutions. The court rejected the contention and held that section 4 which enjoyed the university to encourage an academic study of the life and teaching of Guru Nanak did not amount to religious instructions or promotion of any particular religion and, therefore, was constitutionally valid.

9. In “*Nambudripad Kidangazhi v. State of Madras*”¹⁶, it was held that moral instructions are not prohibited. The court said that Article 28 only restricts religious and not moral education if it has no relation with any religious denomination.

10. In “*D.A.V. College v. State of Punjab*”¹⁷, Supreme Court ruled out that even though an institution might be receiving fees for affiliation or holding examinations, it may be considered ‘*wholly maintained out of State funds*’ if it is receiving grants for its expenditure.

VII. CONCLUSION

“*Western dictionaries define secularism as absence of religion, but Indian secularism does*

¹⁴ AIR 1954 SC 400

¹⁵ AIR 1971 SC 1737

¹⁶ AIR 1954 Mad 385, (1953) IIMLJ 699

¹⁷ 1971 AIR 1737, 1971 SCR 688

not means irreligiousness. It means profusion of religions”¹⁸

Hence, it is proved that our India is a Secular State, in which all religions are treated equally and with great care. I wonder when I listen from some of my Muslim Friends, who are purely vegetarian and would you believe, they call me with the name of the Almighty Goddess Shree Radha Rani. This is our India, where, there is no shame or abuse in any religion. I always say that GOD is one only, we humans made the concept of Religions. We all might have watched a renowned movie PK, in which the actor AAMIR KHAN simply stated that these religions are made by us only. So we are only responsible for all the acts or riots being occurred in the context of religions.

As a responsible citizen of this beautiful India, I am proudly speaking that all religions are whole heartedly welcomed in my India as we follow the principle of “*SARV DHARM SAMBHAV*”.

¹⁸ Shashi Tharoor