

ISSN: 2582 - 2942



LEX FORTI

LEGAL JOURNAL

VOL- I ISSUE- VI

AUGUST 2020

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



ISSN: 2582 - 2942

EDITORIAL BOARD

EDITOR IN CHIEF

ROHIT PRADHAN

ADVOCATE PRIME DISPUTE

PHONE - +91-8757182705

EMAIL - LEX.FORTII@GMAIL.COM

EDITOR IN CHIEF

MS.SRIDHRUTI CHITRAPU

MEMBER || CHARTED INSTITUTE
OF ARBITRATORS

PHONE - +91-8500832102

EDITOR

NAGESHWAR RAO

PROFESSOR (BANKING LAW) EXP. 8+ YEARS; 11+
YEARS WORK EXP. AT ICFAI; 28+ YEARS WORK
EXPERIENCE IN BANKING SECTOR; CONTENT
WRITER FOR BUSINESS TIMES AND ECONOMIC
TIMES; EDITED 50+ BOOKS ON MANAGEMENT,
ECONOMICS AND BANKING;

EDITOR

DR. RAJANIKANTH M

ASSISTANT PROFESSOR (SYMBIOSIS INTERNATIONAL
UNIVERSITY) - MARKETING MANAGEMENT

ISSN: 2582 - 2942

EDITORIAL BOARD

EDITOR

NILIMA PANDA

B.SC LLB., LLM (NLSIU) (SPECIALIZATION BUSINESS LAW)

EDITOR

DR. PRIYANKA R. MOHOD

LLB., LLM (SPECIALIZATION CONSTITUTIONAL AND
ADMINISTRATIVE LAW)., NET (TWICE) AND SET (MAH.)

EDITOR

MS.NANDITA REDDY

ADVOCATE PRIME DISPUTE

EDITOR

MS.SRISHTI SNEHA

STUDENT EDITOR

ABOUT US

LexForti is a free open access peer-reviewed journal, which gives insight upon broad and dynamic legal issues. The very objective of the LexForti is to provide open and free access to knowledge to everyone. LexForti is highly committed to helping law students to get their research articles published and an avenue to the aspiring students, teachers and scholars to make a contribution in the legal sphere. LexForti revolves around the firmament of legal issues; consisting of corporate law, family law, contract law, taxation, alternative dispute resolution, IP Laws, Criminal Laws and various other Civil issues.



Is Indian Secularism: An Uncomprehended Misapprehension

Kvvs Satyanarayana

As much of the discourse on secularism fulcrum around culture, any study of secularism these days would be deficient without an inspection of the cultural ethos. This becomes all the more important as numerous subjects and complications are being projected in cultural terms and frameworks. A vibrant question in this regard relates to the nature of Indian culture. Is it Hindu or composite? What are its implications for secularism in India? An inquiry into these issues acquires significance in view of the centrality of the concept of culture to the secular discourse.¹

The Indian culture epitomizes a synthesis of numerous streams and it is amalgamated in nature. Krishan Kant precisely orates that “All cultures in all countries are composite. There is no such thing as a pure culture. During thousands of years of history, various streams have intermingled and given shape to the culture of a country. All these contributions, throughout history go to make a syncretism culture of a country through the genius of the people as a whole.”²

Indian form of secularism as given in articles 25 to 28 of Part III of the Indian Constitution, which deals with fundamental rights, comprises and clarifies the provisions dealing with the Indian version of Secularism as was envisaged in the constitution of Independent India.

An examination of the Constituent Assembly debates evidently divulges the general understanding amongst members of the Assembly that India was to be a secular State. They constantly stressed the secular foundation of the Indian State.³ But surprisingly, these terms did not occur in the long speech Mr. Jawaharlal Nehru delivered at the time of moving the Resolution in the Constituent Assembly.⁴ They were also not referred to by Dr. B. R. Ambedkar, the Chairman of the Drafting Committee, in his speech given at the time of introducing the Draft Constitution in which he highlighted the salient features of the Draft.⁵

The opinion of Dr. P.B. Gajendragadkar, the ex-Chief Justice of India, seems to reverberate with the mind of the makers of the Constitution. He commented: “*The omission of the word ‘secular’ or ‘secularism’ is not accidental, but was deliberate. It seems to me that the Constitution-makers were apprehensive that if the words ‘secular’ and ‘secularism’ were used in suitable places in the Constitution, they might unnecessarily introduce, by implication, the anti-religious overtones associated with the doctrine of secularism as it had developed in Christian*

¹ Rajni Kothari, Politics and the people: In Search of a Humane India, Vol. II, (Ajanta, Delhi, 1989), p.372.

² Krishn Kant, “The Curse of Composite Culture” The Sunday Tribune, August 30, 1987, p.4

³ C.A.D., Vol. VII, No.20, p.823

⁴ Abdul Kalam Azad, India Wins Freedom, (Orient Longman, New Delhi, 1988), p.116.

⁵ CAD.Vol.7 pp. -33-34

countries ...making religion almost irrelevant... That is why the Constitution makers deliberately avoided Concept of Secularism: An Indian Scenario the use of the word 'secular' or 'secularism' in the relevant provisions of the Constitution".⁶

This word was introduced in the Preamble by the Constitution (Forty-Second Amendment) Act 1976 which came into force on 3 January 1977 by replacing the earlier version by "We, the people of India, have solemnly resolved to constitute India into a sovereign socialist secular democratic republic."

Professor S.V. Kogekar opined that the inclusion of the term 'secular' in the Preamble is "*only a recognition*"⁷ of the secular nature of the Indian State as enunciated in the various relevant provisions of the Constitution".

Sri H. Swaroop commented that "*the inclusion of the term, Socialism, Secularism and Integrity, in the Preamble are three jewels, which make the nation's most important manifesto a real document of a socio-economic revolution.*"⁸

Dr. D.D. Basu, another expert of the Indian Constitution, commented that a clarification to the meaning of the secular provisions of the Constitution would have been much more beneficial than adding the technical word, 'secular', in the preamble.⁹

Justice Shelat opines that "*secularism in India is a recent development arising out of Indian setting and problems, but India has not yet managed to attain the good of secular state.*"¹⁰

In the leading case of S.R Bommai v. Union of India (1994)¹¹ various judges of the Supreme Court of India individually explained the significance and place of secularism under the Constitution in very meaningful words sampled below:

- (i) The Constitution has chosen secularism as its vehicle to establish an egalitarian social order. Secularism is part of the fundamental law and basic structure of the Indian political system.
- (ii) Notwithstanding the fact that the words 'Socialist' and 'Secular' were added in the Preamble of the Constitution, the concept of secularism was very much embedded in our constitutional philosophy from the very beginning. By this amendment what was implicit was made explicit.

⁶ P.B. Gajendragadkar, *Secularism and the Constitution of India*, op. cit., p. 52.

⁷ S.V. Kogekar, *Revision of the Constitution: R.R. Kale Memorial Lectures* (Poona, Gokhale Institute of Politics and Economics, 1976), p. 13.

⁸ H. Swaroop, *New Jewels in the Constitutions Preamble*; in *Secular Democracy*, Vol.X. NO1&2[January1977] p.28.

⁹ D. D. Basu, *Constitutional Law of India*, third edition (New Delhi, Prentice- Hall of India, 1983), p.3.

¹⁰ J.M. Shelat, *Secularism: Principles and Applications*, (N.M. Tripathi, Bombay, 1973).

¹¹ S.R. Bommai and Others V. Union of India and Others (AIR 1994 SC, 1918).

- (iii) Constitutional provisions prohibit the establishment of a theocratic State and prevent the State from identifying itself with or otherwise favoring any particular religion
- (iv) Secularism is more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions.
- (v) When the State allows citizens to practice and profess their religion, it does not either explicitly or implicitly allow them to introduce religion into nonreligious and secular activities of the State. The freedom and tolerance of religion are only to the extent of permitting pursuit of spiritual life which is different from secular life. The latter falls in the exclusive domain of the affairs of the State.

Failure to recognize the distinctiveness of Indian secularism will pose internal threats to secularism. Unsurprisingly, I urge upon both the self-declared advocates of secularism and some of its ill-advised adversaries could learn from examining the original Indian variant. Indeed, it is my conviction that many critics of Indian secularism will espouse it once they correctly understand its nature and point.