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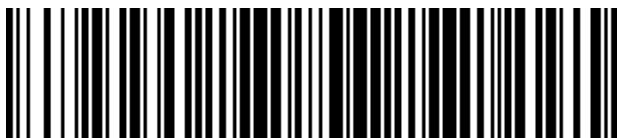
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**Judicial Interpretations of the Concept of Secularism in India**

**Anmol Singh Khanuja**

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## INTRODUCTION:

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The term Secular was added by the forty-second Amendment 1976 to make the concept of Secularism explicit in the preamble of the Indian Constitution. It is not 1976 where we made this term explicit but the concept of Secularism was imbibed in the Fundamental Rights of the Constitution in 1947 by the perusal of India's vibrant diversity<sup>1</sup>. The concept of Secularism as embodied in the Indian Constitution is not of the same character as that of the western nations where the administration of State(s) are separate entities from that of the religion and that they continue to oppose the use of religious institutions in the legal political and educational processes, here the state is religiously neutral, it neither endorses nor disapproves of religiousness. India's Secularism is that India is neither Anti-religious nor irreligious meaning thereby that the State neither practices any religion nor does it decry or despise any religion. The Indian concept of Secularism is that it respects all the religions and faiths, but keeps religion and politics separate. In India, the system lays stress on rationality, integration, and harmony within the society by keeping in mind the extension of its welfare services to citizens.

The Constitution of India guarantees equality before Law and Equal Protection of Laws<sup>2</sup>, it gives freedom of conscience, freedom of press, practice and propagate religion, and also the freedom to establish religious institutions and to manage and administer their affairs<sup>3</sup>. These freedoms are subject to regulations for reasons of public morality and health, every Indian is entitled to equal political and economic opportunity available in the State, every person is subject to the same fundamental rights and duties with certain intelligible exceptions. Thus, freedom to all, equality and tolerance of each other's religion with fraternity and harmony is the Indian philosophy of Secularism.

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<sup>1</sup> St. Xavier College V. State of Gujrat, AIR 1974 SC 1389.

<sup>2</sup> Article 14, 15 and 16 of the Indian Constitution.

<sup>3</sup> Article 25-30 of the Indian Consitution.



## **THE INTENTION OF SECULAR CHARACTER:**

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It is pertinent to note here that there was an argument made in the constituent assembly that the name of 'in the name of God' like Maa Durga, etc should be added in the preamble but the Constitutional framers and the members of the Constituent assembly rejected those and placed their faith on the Secular character of the Constitution. The main intention or aim behind bringing this character of the Constitution was that India has always been a land of enchantment that endorsed and embraced cultural tolerance and diversity.

The main reason of the difference between Indian and Western Secularism is that Indian Secularism tries to bring one community at par with the others by providing them some extra rights or by imposing certain restrictions on the rights of the dominant community(s), meaning thereby that one religious community will not dominate the other one or that some members of the same community shall not rule or dominate their religious community. The State neither enforces any particular religion on a particular Individual nor takes away the religious freedom of any Individual. The Indian Secularism recognizes the essential religious practices, whereas, in the Western Secularism, the State neither interferes in religion nor does the religion interfere in State's work. The main intent of interference in the Indian Secularism is that there still exists many such socio-religious problems in the society that hinders the constitutional principles of progressiveness and the State has got the right to curb the socio-religious evil prevailing in the society, for example– Abolition of Child Marriage, Abolition of untouchability, giving rights to women in property, Abolition of instant triple talaq, etc. This means that Indian Secularism is not completely separate from religion but it maintains a principle distance meaning thereby that the State can interfere in religious issues if those are found in contradiction to the Ideals of the Constitution.

## INTERPRETATION OF SECULARISM BY THE INDIAN JUDICIARY:

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After analyzing many of the Judicial approaches, I've observed that there exist 2 to 3 approaches or rules of interpretation adopted by the Judiciary towards this very concept. The first being, the approach that observes the communitarian practice that is mainly concerned with the large acceptance of a ritual as an integral part of religion, the past conflicts, the present law and the future remedy, that is something that relates to the Mischief rule of interpretation. The second approach is where the Judiciary has sought a holistic approach that not only looks at the content but also and most importantly to the spirit of the Constitution, this approach is similar to the Harmonious rule of construction where the object, purpose and spirit of the Constitution are observed when there exist two provisions for which the clarification is sought from the Court. The third approach is concerned with analyzing and determining the essential part of the religion, that is something that relates to the Golden rule of interpretation where intent and essentials are to be kept in mind while deciding a case.

In the landmark Judgement of *Keshavananda Bharati's*<sup>4</sup>, the Supreme Court held that the Secular character of the Indian Constitution comes under the purview of the Doctrine of Basic Structure and therefore cannot be amended meaning thereby that no legislation of the Parliament can take away the or destroy the very essential feature of Indian Constitution, the Supreme Court applied the Rule of Harmonious Construction because Article 13 (2) was in contradiction to the Art. 368 of the Indian Constitution where the Parliament had enormous powers to amend the Constitution. The point here to mention is that the instant case was not the initial case where the Apex Court gave its Judgement as the Supreme Court in *Sardar Taberuddin V. State of Bombay*<sup>5</sup>, here the Supreme Court enumerated that Article 25 and 26 of the Indian Constitution embodies the principle of religious toleration that is not new to the Indian Context because religious tolerance has been a basic distinctive feature from the beginning of the Indian Civilization, therefore that was the only intention of the Constitutional framers that they emphasized on the Secular nature of the Indian Constitution.

The Supreme Court in the case of *Abmedabad St. Xaviers College Society V. State of Gujrat*<sup>6</sup> while relying on the *Keshavananda Bharati's* case enumerated that the Constitution of India has not constructed a rigid wall between the State and the Church. The court said that there also exist provisions in the Indian Constitution in which a person may hesitate to characterize the Indian State

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<sup>4</sup> (1973) 4 SCC 225.

<sup>5</sup> AIR 1962 SC 853

<sup>6</sup> (1974) 1 SCC 717.

as Secular. It is in a much broader way that we observe India as a Secular State. Secularism in our Constitution means 'an attitude of live and let live developing into the attitude of live and help live'. This interpretation of Secularism gave a new and modern Indian theory of Secularism, this interpretation to some extent relates to the mischief rule of interpretation where the conflict regarding the past, the present position and the future course was enunciated.

It was also in the case of *Ziyauddin Bukhari V. Brijmohan Ram Das Mebra*<sup>7</sup>, where the Apex Court went on to providing an enunciation of the Secularism, under the context of philosophy, the court said that the role of a welfare state should be neutral in providing the benefit to its citizens and that it shall be the duty of the State to safeguard the interest of the citizens and that any kind of further disability is not imposed by the State which may hamper the life of any other citizen.

Some contentions have been made regarding the essential practice(s) doctrine by the Court, where the Court has provided definitions as per their wisdom of religion in a modern State.

In the case of *Hindu Religious Endowments V. Sri Lakshindra Thirtha Swamiar*<sup>8</sup>, where the issue before the Supreme Court was that when and where is the line drawn between matters of religion. While explaining the definition of religion the Justice Mukherjee said that 'what constitutes the essential part of religion is primarily to be ascertained with the doctrines of religion itself', therefore it was observed that for something to become a part of religion or practices, relating to food or any type of ceremonial conduct or recital tenet should be ordained by religious texts, the court said that it will not be correct to say that religion is nothing else but doctrine or belief.

In another case where the Supreme Court gave a judgment by applying the Harmonious rule interpretation was the case of *Sri Venkataramana Devaru V. State of Mysore*<sup>9</sup>, in this case, the State passed an act that removed the ban on Harijans from the entry in temples, so the issue before the court was that whether the exclusion of a person from entering into a temple for worship is a matter of religion was according to Hindu Ceremonial law or not. The Apex Court after referring to some of the excerpts of Hindu Upanishads, Vedas, etc. The harmonious rule was applied because, Article 26(b) of the Constitution gave the right to temple authorities to exclude persons from worshipping clashed with the power of the State under Art. 25(2)(b) of the Indian Constitution. The Apex court gave precedence to the latter over the former saying that limitations are applicable to every Hindu religious institution and that they included the denominational ones also. Therefore, the Supreme Court allowed the

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<sup>7</sup> (1976) 2 SCC 17.

<sup>8</sup> AIR 1954 SC 1005.

<sup>9</sup> AIR 1958 SC 895.

Harijans to enter and offer their praying. Meaning thereby that the State can interfere where the Ideals of the Constitution are brought to question.

In the Landmark judgement of *S.R. Bommai V. Union of India*<sup>10</sup>, the Apex Court held that Secularism is an integral part of the Basic Structure of the Constitution, Justice Ahmadi opined that the concept of Indian Secularism is based on 'principles of accommodation and tolerance', Justice Ramaswamy, on the other hand, provided a view that the State has a prerogative duty to ensure the inclusion of Secularism in its legislation or executive order, he further said that it shall be the duty of the Court to hold accountable any political party in line if that party goes against the very ideals of casteism and religious antagonisms meaning thereby that Secular word includes anti-casteism and is therefore rigid. Whereas, Justice Agrawal and Justice Reddy explained the character of Secularism in a much broader sense and said that the Indian Secularism is in agreement with the 1<sup>st</sup> Amendment to the U.S. Constitution. They further explained that the State has the power to bring a legislation on religion that included personal laws and that would be considered under the ambit of Article 44 of the Indian Constitution, here, in this case, it could be said that the Court adopted the Golden rule of Interpretation, where it observed the intent, object & purpose of imbibing the political philosophy called Secularism.

It is pertinent to note here that the Supreme Court in *Ismael Faruqui's Case*<sup>11</sup> and *R.C. Poddayal's Case*<sup>12</sup> again moved from their original position of Secularism in *S.R. Bommai's case*<sup>13</sup> by quoting the Indian context of Secularism from *Yajur Veda, Athar Veda and Rig Veda* and by relying on the principle of *Sarva Dharma Sambhava* meaning thereby tolerance of every religion. In these cases, it was observed that the court moved from the concept given in *Bommai* that inclined towards the western concept of Secularism. In these cases, it was also held that that State had the power to take over any religious place and that included mosque also.

The Court has also changed its stands on some of the cases like *Ramesh Prabhu V. Prabhakar K Kunte*<sup>14</sup>, *Manohar Joshi V. Nitin Bhau Rao Patil*<sup>15</sup> and *Ramchandra K Kapse V. Haribansh R Singh*<sup>16</sup>, these are also known as Hindutva Judgments in which the Court has said a speech with a Secular stance in which it was said that a religious state will be created cannot be brought under the ambit of corrupt

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<sup>10</sup> (1994) 3 SCC 1.

<sup>11</sup> (1994) 6 SCC 360.

<sup>12</sup> (1994) Supp (1) SCC 324.

<sup>13</sup> *Supra* nt. 10.

<sup>14</sup> (1996) 1 SCC 130.

<sup>15</sup> (1996) 1 SCC 169.

<sup>16</sup> (1996) 1 SCC 206.

practice u/s 123 (3) of the Representation of Peoples Act as an appeal on the ground of religion. It was also observed in these cases that *Hindutva* & *Hinduism* were brought under the same ambit of definition where the court said that *Hindutva* is understood as a way of life or a State of Mind and it is not to be equated or treated as Hindu Fundamentalism. Therefore, *Hindutva* can be understood as a synonym of 'Indianization' i.e. development of a uniform culture by removing the differences between the communities existing in the Country.

However, with due course of time, the Supreme Court has adopted a mid-way while dealing with the concept of Secularism, in the case of *M.P. Gopalakrishnan Nair V. State of Kerala*<sup>17</sup>, held that Secularism under the Indian Constitution doesn't mean the Constitution of an atheist society but it merely means that all religions enjoy equal status without any kind of discrimination or any kind of preference. The Supreme Court of India has also expanded and expounded the ambit of Secularism in the cases *I.R. Coelho V. State of Tamil Nadu*<sup>18</sup> & *M. Nagaraj V. Union of India*<sup>19</sup> where the Court has enumerated the relevance of Secularism in providing reservation under Article 15 of the Indian Constitution.

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<sup>17</sup> (2005) 11 SCC 45.

<sup>18</sup> (2007) 2 SCC 1.

<sup>19</sup> (2006) 8 SCC 212.

## **CONCLUSION:**

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It is observed that the judgments of the Supreme Court in the last 30 years have been circumstantial judgements because till the 1980s the Supreme Court very well enunciated its stand on the Secular character that was India's stand since the 1950s and 1960s. The Court after the 1990s has changed its stand and has deviated a little in interpreting the Indian intent of Secularism.

Thus, it can be said that the decisions of the Court in the early days was based on the progressive desire to reshape and reformulate certain essential religious practices. It is also contended by some of the stalwarts in the current day that the concept of Secularism is a rigid concept and that it wholly separates the State from interfering in religious matters so it is pertinent to note here that Secularism is a political philosophy and that political philosophies are always interpreted, for example– Marxism, interpretation of Marxism has differed from nation to nation i.e. Stalinism, Trotskyism, Maoism, etc. Therefore to sum up, the Indian Constitution considers that the State is not identified by any religion but every religious faith including an atheist is equally treated under laws and it is the Constitutional duty of the State and its citizens to endeavor, foster harmony amongst the people belonging to any community, only then it would be possible for India to be able to grow at multiple paces.

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