

Examining the religious freedom in india religion essay



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Religion is the “ belief in a super human controlling power, especially in personal God or Gods entitled to obedience and worship”, claims Oxford Dictionary. According to the Indian spiritual leader, Swami Vivekananda, religion “ is based upon faith and belief and in most cases consists only of different sect of theories that is the reason why we find all religion quarrelling with each other”[i]. Conflict thereby is seemingly inevitable between different religious ideologies. Secularism is a white flag to such clashes- a bridge that links the gaps between the divergences that different religions pose. It is true that about 82 percent of Indians are Hindus[ii]but India also has over 100 million Muslims and that qualifies it with the remarkable distinction of having the third largest Muslim Population in the world[iii]. India also has a Christian population of 2. 3 percent, a Sikh population of 2 percent, and other religions like Buddhism, Jainism, Zoroastrianism, and Judaism etc comprise of less than 2 percent[iv]. But given a population of more than one billion, these single digit percentages represent significant numbers. Quite a few religions co-exist in India and despite having a Hindu majority, it isn't a Hindu nation.

The Preamble of the Indian constitution declares India a “ secular” nation. Articles 15, 25, 26, 27, 28 and 30 of the Indian Constitution contain elements of religious freedom and introduce protective clauses to religious minorities. In Kesavananda Bharati v. State of Kerala[v], the Constitutional Bench of the Supreme Court of India clarified that secularism was a part of the basic structure of the Constitution. This view was further confirmed in the case of S. R. Bommai v. Union of India[vi]. Given the secular nature of the Indian Constitution and the fact that it guarantees freedom to profess, practice and

propagate any religion of one's own choice, what we often overlook that religion forms the foundation of Indian culture and society. Is it possible to uphold secularism in a religious society? This essay explores the nature of secularism in India. Is it only a black and white word enshrined in the Constitution in order to adorn it with elements of modern polity? Or is it a promise of a truly secular state which gives voice to every religion without letting any particular one sit in the driver's seat? Despite distancing the State from "religion" the Constitution itself provides for religious rights as fundamental rights. Does that not defeat the whole "secular" agenda?

To answer the above questions, it is important however to dwell on what secularism means. Secularism was coined by G. J. Halyoake in the year 1851 to mean a social order separate from religion[vii]. A secular State is a State that "purports to be officially neutral in matters of religion, supporting neither religion nor irreligion"[viii]. A secular State therefore is to treat all its citizens equally regardless of religion. Going by this definition, a uniform civil code seems a pre-requisite of a secular state. In fact, the Indian Constitution pens a uniform civil code as one of the directive principles of state policy[ix]. But the uniform code remains in the pages of our sanctified Constituted. As Granville Austin very sharply points out that the pressure of religious communities against the legislation and enforcement of a uniform civil code poses serious problems to India as a secular nation[x]. According to Justice R. M. Sahai, "Ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest of deviation shakes the social fibre. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms are not autonomy but

oppression. Therefore, a unified code is imperative, both, for protection of the oppressed and for promotion of national unity and solidarity.”[xi]But of the many obstacles that implementing the Universal Civil Code is faced with, perhaps the greatest is drafting. It would obviously be extremely difficult to resolve whether the Uniform Code be a blend of all personal laws or should it be a completely new one though abiding by the constitutional mandate. The minorities argue that under the guise of a Uniform Civil Code, Hindu Law would be imposed on them. Does the lack of a Uniform Civil Code therefore make India “ less secular”? This question cannot be answered conclusively but can only be deliberated upon.

It is generally argued by scholars that the concept of secularism in India as embodied in the Constitution of India is very different from the way it is viewed in the West. We have already established how “ secularism” implies the separation between State and religion. Such implication is clear in the reading of the Universal Declaration of Human Rights which offers, “ the right to freedom of thought, conscience and religion which includes the freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, manifest his religion or belief in teaching, practice, worship and observance.”[xii]However Article 25 of the Indian Constitution confers the right to “ freely profess, practice and propagate religion” but such freedom is subject to Public order, morality and health. Union Government and State Governments retain the right to make legislation in order to restrict/control religious expressions to uphold public order. Thus the freedom of religion guaranteed is not absolute. The Constitution of India creates a right for religious minorities to establish and

administer educational institutions of their choice and to conserve their script, language and culture[xiii]. The nature of the provisions in the Constitution of India clearly indicates its endeavour to build up in India the philosophy of secularism on freedom, equality and tolerance in the field of religion and not building a wall of separation between state and religion[xiv]. The nature of the Indian secularism is possibly best described in the famous Ayodhya Case which runs as follows:

“ It is clear from the constitutional scheme that it guarantees equality in the matter of all individuals and groups irrespective of their faith emphasizing that there is no religion of state itself The Preamble of the Constitution read in particular with Article 25 to 28 emphasizes this aspect and indicates that it is in this manner the concept of secularism is embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional validity of any legislation. The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our constitution.”[xv]

Secularism in India renders it a mosaic of all religions- each maintaining its own distinctiveness and at the same time practicing tolerance towards the “ other”. Indian secularism is not less secular than the western secularism, it just has a colour of its own. India has seen its socio-political arena blooded by the communal violence- there are both dividing as well as eliminatory traits. In the wake of the 9/11 attack, religious fanaticism has seen a rise- effecting not just the Muslims but also other religions. The Indian State has been secular only in theory. The reality is a whole new ball game. When <https://assignbuster.com/examining-the-religious-freedom-in-india-religion-essay/>

comes to communal clashes and when the extreme forms of transgressions occur, more often than not, the Government looks the other way, adopting a “ pushing it under the rug” approach. However, the role of the Press and the Judiciary has been extremely positive. There still is a long way to go and secularism must play a more decisive role in the present Indian democracy and that obviously cannot be brought about by law alone but would need what we call the “ collective consciousness”.