

Freedom Of Religion & Secularism: India V/S France a Comparative Study

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Abstract

Secularism, as a guiding principle in the governance of nations, manifests differently in diverse cultural and historical contexts. This abstract provides a comparative overview of secularism in India and France, shedding light on their distinctive approaches and challenges. In India, secularism is enshrined in its Constitution, emphasizing religious neutrality and the coexistence of diverse faiths. The Indian model of secularism leans towards a policy of "equal respect for all religions," ensuring the government's non-interference in religious matters. However, this approach has faced criticism for its perceived appeasement of religious groups and communal tensions. On the other hand, France boasts a staunch form of secularism known as *laïcité*. Rooted in the French Revolution, *laïcité* separates religion and state with absolute rigor. Public institutions, including schools, are strictly secular, prohibiting religious symbols and practices. While *laïcité* aims to protect individual liberties and maintain social cohesion, it has been critiqued for potential discrimination against religious minorities, particularly Muslims. This aspect is under constant attack in India thus needs careful consideration. The paper shall be discussing this aspect in detail and provide a probable solution.

Keyword: Secularism, India, France, Judicial Approach.

Introduction

The right to freedom of religion has been the most integral right to any man's existence and finds an important place in world history. It was first universally recognised under Article 18 of UDHR, 1947 and later in ICCPR, 1966. The concept of freedom of religion and of secularism has been varying from place to place, and from time to time.

The Indian Constitution provides for the "*right to freedom of religion*" as a fundamental right to all persons under Articles 25-28. Moreover, the idea envisaged was expressed with the word 'SECULAR' under the Preamble as added by the Constitution (Forty-fourth Amendment) Act, 1978. "*Every person has the right to practice, profess and propagate one's religion subject to public order, morality and health.*" All religious denominations have the right to manage their own affairs subject to regulation by the state. The public order of the state has always been in chaos due to the religious interests of the people. Since the late 20th-century, various riots completely shook the rule of law. Surprisingly, all these riots hold their attribute to some religious upsurge. The principle of tolerance is yet to be adopted by religious denominations. Secularism means equal respect for all religion where the state cannot intervene in religious affairs. It can interfere on a constitutional basis.

Whereas, the French Constitution recognises the separation between state and church since 1905 and it doesn't define religion, nor it has any right to interfere in matters of belief as it is considered

incompetent. “*The application of French law is supreme without any consideration to religion, race or wealth.*” The French law recognises freedom of conscience not the freedom of religion. It recognises the right to believe but objects to special status for religious freedom. Thus, French secularism finds itself subordinate to French law and can any time be intervened by the state if found inconsistent with the French law.

What is Secularism?

Secularism is the product of the renaissance in Europe, though the term was not used at that time. The word was first traced in the 19th Century when George Holyoake used this term to the definitely professed belief. The word ‘secular’ is derived from the Latin term ‘saecularis’, which means not concerned with religion, not monastic.¹ It is the result of the conflict between the state and church in 1851 in Europe. It was supposed to be a principle which rejected religion or religious denominations in religious activities, but with time, it developed from political context to independence of religion.

Secularism And Freedom Of Religion – Indian Perspective

Secularism in India entered through Benthamic Radicalism², which in context, means the equal status for all religions. No religion shall be given any special status, recognition, or primacy over others. The words secular and religion are the richest words in terms of their meaning. “On the water, what is your colour? The colour of whatever you mix in me.”³ This stands to be very true to the meaning of secularism and religion. Most of the credit for the origin of the concept of secularism goes to European countries, but India, from time immemorial has embraced the notion of equal respect for all religions. The First Prime Minister of India, Jawaharlal Nehru, visualized that in order to make India strong and united, secular nature is the medium to embrace people of different religion, caste, creed, etc.⁴ He demonstrated the secular nature of India thorough his character and actions. While attending the 2500th anniversary of Lord Buddha, he termed his presence as an Indian and not as a Buddhist follower. The law provide for “*freedom of religion subject to public order, health, and morality*”. Dr Ambedkar debated that the constitution shall strive to limit religion to beliefs and rituals or ceremonies that may constitute “*essential religious practices*”.⁵ Article 25 and 26 provides for “*freedom of religion*”.⁶ Article

¹ The little Oxfords Dictionary, Oxford University Press, New Delhi, 1994.

² Ranbir Singh and Karamvir Singh, Secularism in India: Challenges and its Future, The Indian Journal of Political Science, Vol 72, No. 2 (April- June 2011), pp. 509-511.

³ Justice K. Ramaswami, Seminar on Secularism and Constitutions of India, Indian Law Institute in New Delhi, the Inconclusive debate, p 17.

⁴ Jawaharlal Nehru, The Discovery of India, John Day, 1946.

⁵ Dr. Ambedkar speeches, Constituent Assembly Debates, Vol 7, p 781.

⁶ Article 25 of the Constitution of India: “*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) *Provided for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes or sections of Hindu.*
Explanation I. The wearing of carrying of kirpans shall be deemed to be included in the profession of Sikh religion.
Explanation II. In sub-clause (b) of clause reference to Hindus shall be construed as including a reference to the person possessing the Sikh, Jaina, or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.”

Article 26 of the Constitution of India: “*Freedom to manage religious affairs*”

25 provides for the “right to practice, profess and propagate one’s religion limited by certain conditions”. The state can regulate the observance of religious practice if found contrary to the *public order, health, or morality*. Article 26 grants, “Liberty to all citizens to establish and maintain institutions of religious and charitable nature”.

Among other conceptual interpretations, the interpretation of the term “Free” under “freedom of religion” has brought much attention. Privy Council explains it (free) with reference to the Australian Constitution⁷ as very vague and indeterminate in itself.⁸ It must be construed as per free speech, free love, and etc., allowing to certain restrictions. The High Court of Australia took the same stand and expressed that, “the state shall refrain from making any law for establishing any religion, imposing any religious observance or prohibiting the free exercise of any religion”.⁹ Similarly, in the USA, the Court declared that religious freedom involves freedom of acts and practices. It is subject to regulations by the state for the protection of society.¹⁰

Secularism is not against religion. It supports “full freedom of worship and promotes the observance of essential religious practices”. The State has no religion and is prohibited from any kind of discrimination on religious ground. There are a few questions regarding India being a secular state because it takes active participation in religious activities. In fact, secularism incorporates two features: religious freedom and equality before the law, which Indian constitution provides for and makes it a truly secular state.¹¹ Secularism means freedom of religion and conscience. It also extends to those who have no faith or does not practise any religion. It promotes the idea of social and political equality, eliminating the notion of caste-ridden society.¹²

French Perspective Of Secularism And Freedom Of Religion

The present French Constitution also called the **Constitution of the Fifth Republic** was adopted on October 4, 1958. Article 1 openly conveys that France is a secular state, and puts an obligation on it “to ensure the equality of all citizens before the law, without distinction of origin, race or religion”. The said provision further makes it mandatory for its people to respect all beliefs.

Laïcité (Secular): The French document uses the word ‘Laïcité’ meaning secular. The English word Secular stands for different meaning than its French counterpart. Laïcité has been defined as “the neutrality of the state towards religious beliefs, and the complete isolation of religious and public spheres.” The concept of laïcité finds its precise definition from the French Dictionary¹³ which identifies

Subject to public order, morality or 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 matter of religion;*
- (c) *To own and acquire movable and immovable property;*
- (d) *To administer such property in accordance with law.”*

⁷Article 116 of the Constitution of Australia

“The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious text shall be required as a qualification for any office in public trust under the commonwealth.”

⁸James v. The Commonwealth, (1936) 55, C.L.R.

⁹Adelaide Company of Jehovah’s Witness Incorporated vs. Commonwealth, (1943) 67, C.L.R.

¹⁰Cantwell vs. Connecticut, (1940) 310, U.S.

¹¹Dr. B. L. Fadia, Indian Govt. and Politics, S.B. Publications, 2003, p. 25.

¹²Ranbir Singh and Karamvir Singh, Secularism in India: Challenges and its Future, The Indian Journal of Political Science, Vol 72, No. 2 (April- June 2011), pp. 501-509.

¹³Larousse Dictionnaire Francais, <https://www.larousse.fr/dictionnaires/francais/laicite/>

it as “the establishing and organizing of a community based on the division of Church and State excluding churches from the practice of any political or administrative authority and, in specific, from the organization of education.”¹⁴ To elaborate on this further, France has no religion of its own, nor does it incline itself towards any religion. It excepts the states intervention in practical implications of the religion.

Two significant concepts characterize the French secularism: (1) freedom of conscience and decision, that is, it is the choice of the individual to have their faith independent of any interference, and, (2) the neutrality of the state which distinguishes it from any religious interpretation.¹⁵

Freedom of Religion: Elaborately, the French state and government are neutral on any religion or religious beliefs. It has no stand on religious beliefs. The state only gives its opinion when the practical implication of religious views impacts the lives of its people. In this situation, the state interferes into the religious affairs of an individual. The French law recognized religious freedom even before the present Constitution of the Fifth Republic. Article 10 of the Declaration of the Rights of Man and of the Citizen, 1789 states as:

“No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.”

Theoretically, it also implies that no religion can interfere in the government's workings. And likewise, the government cannot interfere in its residents' spiritual lives or in the social types to which they conform. But, practically speaking, all this can, in fact, discourage someone from practicing their religion.

The historical study of the French religious and political status reveals that although France claims that it is a secular state, it has traces of what happened before 1910. The predominant area of religion before 1910 happens to be Churches, which remains to be the central part of the French state. This notion establishes how much influence the churches enjoy in France and how much secular the state is.¹⁶ In the year 1958, protests were carried on and subsequently, the Protestants were allowed to practice their religion freely. The Edict of Nantes exhibit the same, which remained in force till 1685. It was during the Enlightenment¹⁷ or the Age of Reason when secularism associated itself with pluralism and took hold of its real form. The year 1882 was essential because it signalled the start of the school-state split. The statutes of Jules Ferry created free compulsory public education and religious schooling. The issue of secularism has stayed strongly linked to the field of education since this moment. The Jules Ferry Laws created compulsory, free and private schooling for all French learners under the era of 15 between 1850 and 1880. French legislation was enacted on the division of religion and government on December 9, 1905.¹⁸

¹⁴ Article 1 of the French Constitution, 1958 establishes the principle of state secularism.

¹⁵ Anne Bruzy, On the Sources of Secularism in France (August 13, 2018), <https://news.cnrs.fr/articles/on-the-sources-of-secularism-in-france>.

¹⁶ Koshy Mammen, Is The Freedom Of Religion Truly An Absolute Right? (July, 2019), <https://www.youthkiwaaz.com/2019/07/religious-freedom-an-absolute-right/>

¹⁷ A philosophical movement that took place primarily in Europe during the late 17th century.

¹⁸ Anne Bruzy, On the Sources of Secularism in France (August 13, 2018), <https://news.cnrs.fr/articles/on-the-sources-of-secularism-in-france>

Judicial Interpretation: Secularism And Freedom Of Religion

Position in India

Interestingly, the constitution provides a secular character and the freedom of religion without defining it. The Judiciary is entrusted with the task to define religion and secularism. In these circumstances, the pronouncements of the Supreme Court of India and its interpretation are of prime importance. M C Setalvad opined that “*the Constitution is living and organic in nature*”; he was of the opinion that the Court should interpret the Constitution in a way that it allows progressiveness in the society. It should be used as an instrument for ordering the life of a progressive people.¹⁹ The Supreme Court in the activist role has been setting policy and playing an executive role. It needs to give such interpretation to secularism which promotes the plurality of the country.²⁰

The court has not restricted the definition of religion to one’s relation with its creator. The court equates it with faith and belief and refuses to accept God as an essence of religion.²¹ It has been described as personal matter and revolves around faith and belief.²² Law recognizes and protects only essential religious practices and differentiates it with non-essential religious practices.²³ Matters of religious falling outside essentiality bracket can be secularised. In the same line, the Court differentiated between the performance of religious service and person who performs it, thereby allowing the state to make the appointment of the priest as a secular activity.²⁴ The Supreme Court has held that “*the state, in the exercise of the sovereign power, can acquire places of worship like mosque, churches, temples for the maintenance of law and order.*”²⁵ The slaughter of cows can be a classical example of understanding the essential practice of religions and the principle of tolerance.²⁶

The Court has also defined a religious denomination from time to time. The followers of philosophy of Aurobindo were not considered a religion²⁷, but recognized the followers of Rama Krishna, as the religious denominations under Hind religion.²⁸

Judicial interpretations have maintained that secularism is the “*basic features of law of the land*”. The judiciary has taken three different stands while interpreting the secularism. In a strict sense, it declares it as the unamendable feature of the Constitution, whereas in a liberal sense, it tilts towards the interests of the majority and sometimes it towards the minority. This makes the secularism being an instrument of use in politics.

The spirit of the constitution envisaged the secular and plural character based on state neutrality towards all religion. Mr. K.T.Shah, a member of the Constituent Assembly, argued that a separate article is added describing the secular character of the constitution, but could not be successful.²⁹ State Intervention was allowed to bring social reform while maintaining equilibrium in society. 42nd Amendment was a mere

¹⁹ Austin Granville, Working a Democratic Constitution: The Indian Experience, Oxford, 1999, p 123.

²⁰ Snaghamitra Padhy, Secularism and Justice: A review of Indian Supreme Court Judgments, Economic and Political Weekly, Vol 39, No. 46/47 (Nov 20-26, 2004), pp. 5027-5032.

²¹ S P Mittal v Union of India, AIR 1983, SC 1.

²² A S Narayan Deekshitulu v. State of Andhra Pradesh, AIR 1996 SC 1765.

²³ *Ibid.*

²⁴ Vaishnodevi Shrine Case; Rajeev Dhawan, ‘The Temple at Vaishnodevi’, Hindu, January 18, 1997.

²⁵ Ismail Faruqui v Union of India, (1994) 6 SCC 360: 399-400.

²⁶ M H Quereshi v State of Bihar, AIR 1958 SC 731; State of West Bengal v. Ashutosh Lahiri, AIR 1995 464.

²⁷ *Supra* 22.

²⁸ Brahmachari Sidheswar Shai v . State of W.B., (1995) 4 SCC 646.

²⁹ Dr. K. K. Wadhwa, Minority Safeguards in India (Thomas) 1975, p.2.

addition of the term and remained undefined. The task to define it was left upon Judiciary. The Constitution sets it as a goal to achieve without providing for its possible interpretation.

While drafting of the Constitution, the Constitutional Framers had three different views on secularism:

- a. “no concern theory of secularism”, state and religion are different;
- b. “no link theory between the state and religion”, which prevents any action which can demean any religion; and
- c. “the equal respect theory of secularism”, all religions are equal.³⁰

The very first time when Hon’ble Supreme Court recognized secularism was in 1962³¹ where Justice Ayenger propounded the principle of tolerance and declared it to be the very basis of our constitution.³² In 1974, the Hon’ble Supreme Court held that the constitution doesn’t strictly separate the state and church.³³ Justice Beg observes that “the secular state is the one which remains impartial and neutral while extending its benefits irrespective of the religion one follows.”³⁴

Justice Kuldeep Singh indicates that the “secularism projects a cohesive, undivided and society without distinction of caste or religion.”³⁵ In another landmark case³⁶ Justice B P Jeevan Reddy observed that “religion was irrelevant in matters of state and secularism demarcates a line of separation between religion and politics.” Mobilizing the public on the basis of religion and caste for winning the election shall be discouraged. It would amount to unfair, corrupt practises and election can be held unconstitutional. It was reiterated that Secularism attributes to tolerance. On these lines, the dismissal of the Bharatiya Janta Party-led state governments after the demolition of Babri masjid was justified. Religious devoutness is a part of secularism when coupled with tolerance. Justice Ahmedi opined that “secularism is based on the principle of accommodation and tolerance”.³⁷ In NCERT textbook case³⁸, the Supreme Court asserted the equality of faith, commonness in the essence of every religion, with difference only in practice.

Principle of Secularism envisages the freedom of religion, but the later falls in the domain of the state. Thus, Secularism promotes equal respects for all religion and also maintains a certain degree of distinction between state and religion. It allows the state to legislate on religious matters, in order to bring about equilibrium in society. The state can even legislate upon personal laws and secular affairs of temple and mosque.

Religion is not to be mixed with secularism. Religion shall not be used for political ends. The election of Ziyauddin Bukhari³⁹ was set aside because he had asked Muslim voters to vote for him, on communal lines.⁴⁰ Similarly, asking people to vote to Shiv Sena for protection of Hindutva was also a corrupt practice.⁴¹

³⁰ Shefali Jha, *Secularism in the Constitutional Assembly Debate, 1946-1950*, Economic and Political Weekly, July 27, 2002

³¹ *Sardar Taheruddin Syedna Saheb v. State of Bombay*, AIR 1962 SC 853, 871.

³² *Keesavanada Bharti v. State of Kerala*, (1973) 4 SCC 225.

³³ *Ahmedabad St Xavier’s College v. State of Guarat*, AIR 1974 SC 1389.

³⁴ *Ziyauddin Burhanuddin Bukhari v. Briujmohan Ram Das Mehra* (1976) 2 SCC 17.

³⁵ *Indra Sawhney & others v. Union of India*, AIR 1993 SC 477.

³⁶ *S R Bomnai v. Union of India*, AIR 1994 SC, December p 232.

³⁷ *Ibid*, p 29.

³⁸ Pratap Bhanu Mehta, *Living with Differences*, Hindu, September 14, 2002.

³⁹ *Supra* 35.

⁴⁰ *Ramesh Yashwant Prabhu v. Prabhakar K Khuntes*, (1996) 1 SCC 130: “An appeal to promote a candidate on the fact that he belonged to Hindu religion amounted to corrupt practice and would infringe the secular spirit of the Constitution”.

⁴¹ *Ibid*.

This reasoning subsequently got changed with coming judgments. The promise to establish a Hindu state during the elections was denied to be a corrupt practise.⁴² This creates a huge gap between theory and practice. States on many occasions have appropriated religious symbols. This all weakens the secular character.

In the Ram Janmabhoomi Case⁴³, the Court opted for majoritarian opinion. It seems to have equated the existence of with the tolerance of Hindu people who forms for the majority of the population. The coining of Hindutva as the way of living or a state mind has led to a lot of confusion. It has been understood as synonymous to the Hindu religion. “*The ideology of Hindutva amounts to a principle of rule by Hindu Majoritarianism; it is a peculiar co-articulation of Brahmanical ideologies of purity, characteristics of RSS and other affiliated organizations*”.⁴⁴ Austin used some strict terms over the comparison of Hinduness and Indianess.⁴⁵ He asserts that Nationalism is not to be equated with the religion of the majority population.

Therefore, only essential practices are granted protection under freedom of religion. Interestingly, it is the court that defines what the religion is, nor the religious group or individual. Secularism shall not interfere with the religious denominations and its interference shall be supervisory on nature only⁴⁶, yet social reform necessitates state intervention.

Position in France

In France, a certain level of disgust or distrust is seen in the public expression of religious belief. Religion is some behind the curtain thing which is not shown to the public. Thus, laïcité practically means that religion cannot be in your everyday routine list because you are barred from demonstrating it in public places.⁴⁷

For instance, Muslim women are restricted from wearing full-face coverings in France. Another instance comes from a 2009 French case law where two women who refused to remove their headscarf during the PT period were expelled from the school. It was reasoned that wearing a headscarf would hamper the physical education classes. The European Court of Human Rights held that there was no infringement of their right to practice their religion, the interference being a justified one. The court accepted that expulsion was proportionate and good in eyes of French laws.⁴⁸ The headscarf again became the point of dispute when it was banned in a public pool of the city of Lorette in 2017.⁴⁹

Conclusion

The future of secularism doesn't seem to be any better in India. The late 20th century saw the rise of communal forces. The incidents of Delhi Sikh Riots, Mumbai Massacre, Babri Masjid Demolition, Gujarat Riots, etc. have pushed the secular character to its brink. The rise of the communal line of

⁴² Manohar Joshi v Nitin Rao Bhau Pate, 1996 1 SCC 169.

⁴³ *Supra* 26.

⁴⁴ T B Hansen, ‘Globalisation and Nationalist Imaginations: Hindutva’s Promise of Equality through Difference’, Economic and Political Weekly, March 9, 1996, p 608.

⁴⁵ Austin Granville, ‘Comparative Frames’, Seminar, 521.

⁴⁶ V Francis, ‘Concept of Secular State and Administration of Religious Institutions’, The Academy Law Review, Center for Advanced Legal Studies, June-December, 1978.

⁴⁷ The concept of Laïcité, The concept of Laïcité in France, <http://www.normandyvision.org/article12030701.php>

⁴⁸ *Dogruv. France*, [2009] ELR 77

⁴⁹ A Closer Look at How Religious Restrictions Have Risen Around the World, available at <https://www.pewforum.org/2019/07/15/a-closer-look-at-how-religious-restrictions-have-risen-around-the-world/#fn-31606-27>

thinking is proving to be very dangerous for the social equilibrium of the country. The people are completely caught among the lines of Saffronization, Chrstianzation, Islamzation, and Hinduization, ignorant of what truly lies ahead of the nations. Nearly all the elections are fought on communal lines and voters are lobbied on purely religious issues.

Today in France, there is higher ethnic variety than in the past, which is why the nation now requires secularism more than ever, for it makes it possible for every citizen, regardless of their philosophical and religious belief, to be alive, free to practice or not, fair liberties and duties and republican brotherhood.⁵⁰ What kind of freedom are they talking about when people are barred from practicing those sides of their religion which, otherwise would've been part of their core routine. Take for instance, the recent urge from the local authorities of France on banning burqa wearing by Muslim women which does not suggest any healthy characteristics of French secularism. If people cannot carry their religion with them in public, is that even a freedom of their religion. Secularism needs to be evolved and freely regulated without any communal orientation, granting freedom of conscience and belief to all.

⁵⁰ Secularism and Religious Freedom, available at <https://www.diplomatie.gouv.fr/en/coming-to-france/france-facts/secularism-and-religious-freedom-in-france/article/secularism-and-religious-freedom-in-france> (last accessed 27th February 2023).