

SC ON SECULARISM IN INDIA

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SC on Secularism in India

"Secularism in India is not a just a point of view, it is a question of survival"
- **Salman Rushdie**

Religious tolerance combined with an unbiased and neutral attitude is an indispensable requirement for peaceful existence of mankind in a country as diverse such as India. Secularism is based on the concept of separation of state affairs from religion or religious beliefs pertaining to any particular community.

India was declared as a 'Secular State' in the year 1976 by amending the Preamble to the Constitution of India. The notion of secularism and its essentials have been upheld by the Indian judiciary in numerous cases where it is emphasized that India being a greatly diverse country must observe an attitude of neutrality and impartiality towards all religions. Secularism is conceived as a system where the mechanism by which the government (Central or State) conducts the affairs of the State is independent of any religious beliefs. In other words, the State must function without discriminating people or dividing them on basis of religion and/ or religious beliefs.

In a recent case being Prafull Goradia vs. The Union of India, once again, the secular functioning of India was called in question. While deciding the case, the Division Bench of the Hon'ble Supreme Court observed that,

"India is democratic country of tremendous diversity, which is due to the fact that it is broadly a country of immigrants, it is absolutely essential if we wish to keep our country united to have tolerance and equal respect for all communities and sects".

Background of the case

In this case, a Writ Petition bearing No. 1 of 2007 was filed by the Mr. Prafull Goradia ('**Petitioner**') before the Hon'ble Supreme Court of India under Article 32 of the Constitution of India ('**Constitution**') challenging the constitutional validity of the Haj Committee Act 2002 ('**said Act**') on the ground that the same is violative of Articles 14, 15 and 27 of the Constitution.

It was the Petitioner's contention that he being a Hindu had to pay direct and

indirect taxes, part of whose proceeds are utilized for the purpose of Haj pilgrimage, which is only done by Muslims. The Indian Government inter alia grants a subsidy in the air fare of the pilgrims for the Haj pilgrimage. The Petitioner argued that his fundamental rights being - 'Right to Equality before the law' (Article 14); 'Prohibition of discrimination' (Article 15); and 'Freedom as to payment of taxes for promotion of any particular religion' (Article 27) were violated.

The Petitioner emphasized upon the violation of Article 27 of the Constitution which provides that *"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."* In this case, the Hon'ble Supreme Court interpreted Article 27 of the Constitution.

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Division Bench of their Lordships the Hon'ble Justice Markandey Katju and Justice Gyan Sudha Misra

Date of the Judgment

28 January 2011

Reasoning of the Division Bench of Hon'ble Supreme Court

- The Division Bench observed that there can be two views in respect of Article 27.
 - One view being that Article 27 is attracted only when the statute by which the tax is levied specifically states that the proceeds of the tax will be utilized for a particular religion.
 - The other view being that Article 27 will be attracted even when the statute is a general statute, such as the Income Tax Act or the Central Excise Act or the State Sales Tax Acts (which do not specify the purpose for which the proceeds will be utilized) provided that a substantial part of such proceeds are in fact utilized for a particular religion.
- In the opinion of the Division Bench, Article 27 will be attracted in both these eventualities as Article 27 is a provision in the Constitution, and not an ordinary statute. It was held that the principles of interpreting the Constitution are to some extent different from those of interpreting an ordinary statute.
- Past judgments were considered where it was held that the Constitution cannot be interpreted in a narrow and pedantic manner. The Division Bench also regarded the views of Chief Justice Marshall of U.S Supreme Court in the case *McCulloch vs. Maryland*¹ and Mr. Justice Holmes in *Missourie vs. Holland*² stating that *"While a statute must ordinarily be construed as on the day it was enacted, a Constitution cannot be construed in that manner, for it is intended to endure for ages to come."*
- Hence, it was held that a strict construction cannot be given to the Constitution.
- Article 27 would be violated if a substantial part of the entire income tax collected in India, or a substantial part of the entire central excise or the customs duties or sales tax, or a substantial part of any other tax collected in India, were to be utilized for promotion or maintenance of any particular religion or religious denomination.
- The Division Bench observed that, for instance, 25 per cent of the entire income tax collected in India was utilized for promoting or maintaining any particular religion or religious denomination; then the same would be

violative of Article 27 of the Constitution. However, in this case the Petitioner had not made any averment in the Writ Petition filed by him stating that a substantial part of any tax collected in India was utilized for the purpose of Haj.

- The object of Article 27 is to maintain secularism, and hence the same must be construed from that angle. If only a relatively small proportion of any tax collected in India, is utilized for providing some conveniences/ facilities/ concessions to any religious denomination, the same would not be violate Article 27 of the Constitution. However, if a *substantial* part of the tax collected is utilized for any particular religion, then there is a violation.
- The Central and State Governments incur certain expenditure for the Kumbh Mela, for providing facilities to Indian citizens to go on pilgrimage to Mansarover. Similarly, the State Government's also provide certain facilities to Hindu and Sikh pilgrims to visit Temples and Gurudwaras in Pakistan. These are very small expenditures in proportion the entire tax collected.
- In the opinion of the Division Bench, a rigid view must not be taken in these matters, and one must give some free play to the joints of the State machinery. A balanced view has to be taken here, and one cannot say that even if one paisa of Government money is spent for a particular religion there is violation of Article 27.
- In light of the same, the judgment of Mr. Justice Holmes of U.S. Supreme Court in *Bain Peanut Co. vs. Pinson*³ was considered where it was held that "*The interpretation of constitutional principles must not be too literal. We must remember that the machinery of the government would not work if it were not allowed a little play in its joints*". Hence, it was held that there is no violation of Article 27 of the Constitution
- As far as Articles 14 and 15 are concerned, it was held that there was no violation of these Articles because there is certain expenditure and facilities provided by the Central and State Governments for other religions. Thus there is no discrimination.
- While concluding the judgment, the Division Bench observed that when India became independent in 1947 there were partition riots in many parts of the sub-continent, and a large number of people were killed, injured and displaced. Religious passions were inflamed at that time, and when passions are inflamed it is difficult to keep a cool head. It is the greatness of our founding fathers that they decided to declare India a secular country instead of a Hindu country. This was a very difficult decision at that time because Pakistan had declared itself an Islamic State and, hence, there must have been tremendous pressure on our leaders to declare India as a Hindu State. It is their greatness that they resisted this pressure and kept a cool head and rightly declared India to be a secular state. The only policy which can work and provide for stability and progress is secularism and giving equality respect to all communities, sects and denomination.
- Further, it was held that the Parliament has the authority to enact the said Act in view of Entry 20 to List 1 of the Seventh Schedule to the Constitution which deals with "Pilgrimages to places outside India."
- Thus, in view of the above, the Hon'ble Supreme Court accordingly dismissed the above mentioned Writ Petition.

[Click here](#) for a full copy of the judgment dated 28 January 2011

By - Anosh Sequeira

2. 252 U.S. 416(1920)

3. 282 U.S. 499, 501 (1931)

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