

## AN OUTCRY OF INTOLERANCE: FROM CONSTITUTIONAL VIEW

**Adv. Ratna Sisodiya** - Practicing Advocate at District and Session court, Udaipur, Rajasthan, India.

**Email :** [ratnasurendrasingh@gmail.com](mailto:ratnasurendrasingh@gmail.com)

**Abstract:** The debate over tolerance and intolerance burning in society now days considered one of the issues, bringing attention of people. Judiciary has already, by its decisions in many cases, declared India as one of the most TOLERANT nation. Hence, bringing peace and harmony was the sole motive to declare India a ‘secular’ nation. The country prescribes ‘Right to Equality’, as a fundamental right. It is a concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual, and also the equal subject of all individuals and classes to the ordinary law of land.

**Key words:** Intolerance, Preamble, Uniform Civil Code, Minorities.

### INTRODUCTION:

The fumes of *intolerance* spread across the nation when over 50 artists and authors returned government awards, saying not enough was being done to control intolerance.....

India is a nation which establishes ‘*a government of law and not of man*’ a government system where the tyranny of majority does not oppress the minority. In short, the object is to establish RULE OF LAW and it would not be wrong to say that the Indian Constitution in this respect goes much ahead than any other constitution of the world. The clamour over banning beef, the disruption of Valentine’s Day celebration, unfortunate dadri mess, banning of works of Taslima Nasreen and Salman Rushdie are few isolated, regrettable incidents and are not indicator of a nation’s intolerance.

### CRITICAL ANALYSIS:

A nation is considered intolerant when its constitution and institution are intolerant. The preamble of our constitution declares India to be a *secular republic*. Article 25-28 of constitution confers to all persons, including non-citizens, a fundamental right to freely profess, practice and propagate religion and gives a concrete shape to the concept of **secularism**. However, it is to be noted that freedom of religion is not absolute freedom, but subject to the regulatory power of state. In the name of religion nothing can be done which is against public order, morality and health of the public. Religious freedom cannot, therefore, be used to practice economic exploitation. In *Aruna Roy VS. Union of India* (2002) and *S.R. Bommai VS. Union of India* (1994), Hon’ble Supreme court declared secularism to be part of basic structure of constitution.

It denotes equal treatment and equal respect to all i.e. ‘*sarva dharma sambhav*’. Nothing manifest India’s tolerance for minority community more than the famous *Shah bano case*, where the court awarded maintenance to her according to sec.125 Cr.p.c, as she was thrown out of her house after 43years of marriage. Court considered her a woman, apart from Hindu or a Muslim.

It ultimately triggered the storm of protest from Muslim community and considered an interference with their religion. Both the houses of parliament then passed the ironically titled “Muslim women (protection of rights on divorce) Act, 1989, which took away her rights to claim maintenance under cr.p.c and curtailed her other rights too. It is only the tolerance in favour of minorities, particularly

Muslims, that has restrained our law makers from enacting UNIFORM CIVIL CODE despite a mandate under article 44 of constitution. Are we anywhere near to Pakistan or Saudi Arabia where you can profess just one religion?

### **CONSTITUTIONAL ASPECT:**

Intolerance arises where inequality exists. But as far Indian constitution is concern, Article 14-18 guarantee the right to equality to every citizen of India. Article 14 embodies the general principles of equality before law and prohibits unreasonable discrimination between persons. The succeeding Article 15, 16, 17 and 18 lay down specific application of general rules laid down in Article 14. Article 15 relates to prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Article 16 guarantees equality of opportunity in matters of public employment. Article 17 abolishes 'untouchability'. Article 18 abolishes 'titles'. The constitution provides all possible approaches to treat all equally and our other legislations depict the same.

The Right of Children to free and compulsory Education Act, 2009, requires schools to block 25% of seats, free of cost, in favour of economically and socially backward students, including scheduled caste and scheduled tribes. But, this mandatory requirement does not apply to schools run by a minority community. Thus, a Ramakrishna Mission School has to allocate 25% seats to poorer students free of cost but a St. Anthony's School or Al- Akbar matriculation school need not to do so. Such exception can be made only in favour of minority educational institution under Article 15(5) of our constitution. Hence, the outcry against 'Rising Intolerance' is wholly unjustified.

### **42<sup>nd</sup> AMENDMENT, 1976:**

The amendment has inserted three new words in preamble, i.e., Secularism, Socialism and Integrity. These concepts were already implicit in the constitution. The amendment merely spells out clearly these concepts in preamble of our constitution. The word 'socialism' has however, no definite meaning. Generally the term implies a system of government in which the means of production wholly or partially controlled by the state. India's socialism is, however, a democratic socialism and not a 'communitistic socialism'. It is thus, marriage of democracy and socialism which has been embedded in Indian Constitution.

### **CONCLUSION:**

India has had an unfortunate track record of communal riots before and after independence but efforts of government to protect interest of minorities cannot be denied. Our constitution framers dreamt of a free, united India ..... So, Sir Krishnaswami said "what we had thought or dreamt for so long". What else could express more clearly than our constitution framers, who provided in Article 1 of constitution that "India, that is Bharat, shall be union of states".... just to declare the Integrity. The feeling of being united is above all discriminations, as Supreme Court in *transgender case* proved it. The court has held that Article 14 does not restrict the word 'person' and its application to only male or female. Hijras/transgender persons who are neither male nor female also fall within the expression person. They are also entitled to legal protection of laws in all spheres of state activity including employment, health care, education, as well as equal civil citizenship rights.

The killing of Kashmiri pundits, burning Godhara, Sikh riots, disruptive Ayodhya etc. are mere unfortunate incidents and have no influence over the integrity of nation. India is still known for its

‘unity in diversity’. The existence of few intolerant Indians does not make India intolerant – a distinction that our highly sensitive media and artists choose to ignore.

#### REFERENCE:

1. *Aruna Roy vs. Union of India*, AIR 2003 SC 3176.
2. *S.R. Bommai vs. Union of India*, (1994) SCC 1.
3. *Mohd. Ahmad Khan vs. Shah Bano Begum*, AIR 1985 SC 945: (1985) 2 SCC 556: (1985) 3 SCR 844: 1985 Cr.LJ 875.
4. Sir Alladi Krishnaswami – Constituent Assembly Debate. Vol 10, 417.
5. V.S. Deshpande – *Right and Duties under the Indian Constitution*, (15 JILI 1973, P. 94)
6. Dr. J.N. Pandey, “*Constitutional Law of India*”, 52<sup>nd</sup> Edition.
7. *National Legal Services Authority vs. Union of India*, AIR 2014 SC 1863.
8. H.M. Seervai – *Constitutional Law of India*, vol.1 , 294 (3<sup>rd</sup> ed. ,1983).
9. Arvind P. Datar , The Indian Express – “*The Myth of Intolerant India*”. (December 4, 2015).

#### AUTHOR’S BIOGRAPHY:



Adv. Ratna Sisodiya a Bachelor in Commerce, possess another Bachelor Degree in Law, a Post graduate Diploma in Taxation and also a Master Degree in Law from MLS University,Udaipur.