

On the State in India

Dharma is the Power

Beloved-of-the-Gods, King Piyadasi, speaks thus:
Dhamma is good, but what constitutes Dhamma? (It
includes) little evil, much good, kindness, generosity,
truthfulness and purity.

And it consists of this: proper behavior towards
servants and employees, respect for mother and father,
generosity to friends, companions, relations, Brahmans
and ascetics, and not killing living beings. Therefore a
father, a son, a brother, a master, a friend, a companion
or a neighbor should say: "This is good, this should be
done." One benefits in this world and gains great merit
in the next by giving the gift of the Dhamma.

2nd and 11th ROCK EDICT AT GIRNAR (300 BC)

Definition of the State

Article 12 “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Citizen's Fundamental Rights

Equal protection under law (Art.14) – **[for all persons]**

No discrimination on grounds only of religion, race, caste, sex, place of birth (Art.15)

Equality of opportunity (Art.16)

Freedom of speech and expression (Art.19-A)

Freedom to assemble peaceably (Art.19-B)

To form associations or unions (Art.19-C)

To move freely throughout the territory of India (Art.19-D)

Freedom to practice any profession, occupation, trade or business (Art.19-E)

Protection of life and personal liberty (Art.21) **[for all persons]**

Right to education (Art.21-A)

Protection against arbitrary arrest and detention (Art.22) **[for all persons]**

Freedom of profession, practice and propagation of religion (Art.25) **[for all persons]**

Right of minorities to establish and administer educational institutions (Art.30)

Right to acquire and hold property (first Art 31 then omitted and Art.300 A only by law)

[for all persons]

Saving Fundamental Rights

Article 13. Laws inconsistent with or in derogation of the fundamental rights.—(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

Nullifying all Fundamental Rights

Article 31C. Notwithstanding anything contained in **Article 13**, no law giving effect to the policy of the State towards securing all or any of the principles laid down in **Part IV** shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by **Article 14 or Article 19**; and no law containing a declaration that it is for giving effect to such policy **shall be called in question in any court** on the ground that **it does not give effect to such policy**

- In the landmark case of *Lautsi v. Italy*, which came before the European Court of Human Rights in 2009 and 2011. The Court argued that key elements of the Enlightenment like the secular state, freedom, and equal rights derive from Christian teachings. There is a clear affinity between the ‘hard core’ of Christianity and the ‘hard core’ of the republican Constitution.
- Consequently, the crucifix is ‘a symbol of a value system: liberty, equality, human dignity and religious toleration, and accordingly also of the secular nature of the State – principles which underpin our Constitution’.

- Confusion about the term ‘secularism’ surfaced in the 1994 Supreme Court *Bommai* judgment, where seven judges explained their views on secularism, each giving a different account.
- Whether Muslim or Hindu, rightist or leftist, all agree that the term ‘secularism’ has acquired so many different meanings in India that it appears to have lost all meaning.

- The 'majority religion' of India is supposed to be Hinduism, but there is no clarity as to what Hinduism is, whether it is a religion or not, or even whether it exists or not.
- In 1946, Nehru noted the following: 'Hinduism, as a faith, is vague, amorphous, many-sided, all things to all men. It is hardly possible to define it, or indeed to say whether it is a religion or not in the usual sense of the word'.
- It must be extremely difficult, if not impossible, to identify something that is indefinable, vague, amorphous, many-sided, and all things to all men. But when one does not succeed in identifying Hindu religion, how can one even dream of separating it from the state?

यस्तु सर्वाणि भूतानि आत्मन्येवानुपश्यति ।
सर्वभूतेषु चात्मानं ततो न विजुगुप्सते ॥ ६ ॥

Yastu = That is

Sarvani = Every

Bhootani = Beings with and without souls

Aatmaanyeva = Not different from his own Self (aathman)

Anupasyati = Realizes

Sarva = Every

Bhootescu = All the beings

Aatmanam = In his own Self (aatman)

Tato = Thereby

Na = Does not

Vijupsate = Hate

“The wise One, who realizes all being as not different from his/her own Self; and his own self as the Self of all beings – thereby does not hate anyone.”

Verse 6, Isa Upanishad