

THE QUESTION OF SECULARISM

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Abstract:

This research paper aims to explore and discuss the idea of secularism and its components. India is a country with many different faiths and traditions. Hinduism, Islam, Christianity, Jainism, Sikhism, and Buddhism are among the different faiths. While India is recognised as a religious nation, the principle of secularism was introduced to prevent any tensions between religious groups.

Secularism is described in greater detail in this article, but in basic terms, a secular state does not have its faith and treats all religions equally. Indian secularism is not anti-religion, as certain socialist or democratic constitutions are, nor does it build a wall between the State and religion, as the United States does. It is founded on the principle of fair respect for all religions. This paper would define secularism and provide a brief historical overview of secularism in India. The paper would also go into in detail the different Articles of the Indian Constitution that contain Secularist ideals with the help of various landmark judgement.

The relationship between secularism and politics will also be discussed in the article. It describes how political parties have used religion as a foundation to accomplish their political aims and improve voter participation. In the conclusion, the paper would briefly discuss how secularism in India can be preserved by a concerted initiative by the government and people, as well as how a peaceful environment can be restored in the region.

Keywords: *Secularism, Secular, Indian Constitution and Politics*

Introduction

“I do not expect India of my dreams to develop one religion, i.e., to be wholly Hindu or wholly Christian or wholly Mussulmen, but I want it to be wholly tolerant, with its religions working side by side with one another.” – By Mahatma Gandhi

In India multiculturalism has been passed down through the ages. India is home to a diverse range of faiths and cultures. India has a distinct identity in the world because of its multiculturalism. To form a country, there must be a common language, culture, and history one religion and one history. However, India is an exception. In India, people of various religions and cultures coexist but still, India continues to exist as a nation. The religious diversity of India is well-known around the world. The reason for the existence of multiculturalism in India is due to the birthplace of many religions, including Hinduism, Buddhism, Islam, Christianity, Sikhism, and Jainism. Religion is important in a country like India because it is the most important aspect of our cultural community and customs. Diversity in religion forces us to introduce such a platform in which people of various religions can coexist peacefully and also ensures fairness among all religious groups, that's why the concept of secularism has been added in the constitution.

Earlier the term “secular” was not expressly mentioned in the Indian constitution but after the enactment of the 42nd amendment now India becomes officially a secular nation because the preamble of India proclaims it. In India, all individuals, regardless of their religion, have the right to use public services such as hospitals, schools, police, fire, and transportation. No one has the right to be denied access to these services because of their religious beliefs or practices. The state is also unable to levy a tax on any individual or any specific religious groups and cannot promote any particular religious' ideologies in educational institutions. The state also grants people the right to conversion, allowing them to convert to any religion of their choosing.

Secularism is founded on the separation of religion with state matters. It guarantees the religious groups' that there will be no interference by the state in the religious matter and it also requires the state to refrain from adopting any particular religious views. But in recent time Secularism has fallen into disruptive. Justice Virkamjit Sen said, “India is a secular country but I don't know till how much time it will be”¹. In today's time, secularism is only in the books now it has become a vote-bank politics, in which religious minorities, especially Muslims, were "appeased" at the expense of and against the Hindu majority's interests.

¹ Amit Choudhary, *Wonder how long India will remain a secular country: SC*, The Times of India (Feb. 10, 2015, 6:42PM), <https://timesofindia.indiatimes.com/india/wonder-how-long-india-will-remain-a-secular-country-sc/articleshow/46179587.cms>

This paper emphasises the principle of secularism, which is prevalent in India's religiously pluralistic society and ensures neutrality or impartiality among the country's diverse religious faiths. The Indian constitution guarantees religious freedom, but this guarantee is largely theoretical, and it still needs to be implemented.

Historical Background

In 1517 a reform is known as Protestant Reformation disrupted because of the religious and political order in countries like Europe because of the religious and political order. Further, in the 16th, 17th, and 18th centuries there was a series of religious war but the most important was the Thirty Years War.

Thirty Years Wars (1618-1648) was a civil religious war between the Protestant and Roman Catholics in Germany. This war was started when the Holy Roman Emperor, Ferdinand II who tries to impose religious uniformity, forcing Roman Catholicism on its people. This war was started as a religious civil war but it soon developed as a struggle for the balance of power. This war becomes one of the bloodiest war and this war end by establishing a new system which is based on the peaceful coexistence of the sovereign states, a norm was also established to check interference in another state domestic affairs, this all termed as a *Peace of Westphalia*. Some scholars have also stated that This *Westphalian* becomes the basis of the International system, which we follow today.

A thought started to come to the mind of a philosopher and most important was *John Locke*, commonly known as "*Father of Liberalism*". He was aware of the fact that one of the consequences of state-sponsored religion is that states would go to war over religion, it was just a thought. After this, all this western concept of secularism starts evolving but secularism as a term has not yet come into use. Western concept of secularism crystalized by the effort of "*Thomason Jefferson*", it is also termed as Jeffersonians secularism because he plays a major role in implementing secularism via the first amendment in the US. Some of the tenets of western secularism are total separation of the religious institution from the institution of the state and also the freedom of conscience for all individual circumscribed only by the need for public order and the respect of rights for other individuals, there will be no discrimination by the state against individuals on their beliefs.

Till now still, the word "*secularism*" has not yet come into the existence, but finally in the 19th century the term secularism coined by the "*George Jacob Holyoke*". As per him, secularism is social order separated from religion, without actively criticizing religious belief. As Jacob was a British reformer so through

colonialism the concept of secularism also flows in India. India was a multicultural, multi-religion country. So to operate India more precisely and the debate of secularism arises in India.

When the debate of secularism was going on two broad ideology

First was the *Multiculturalist view* of Gandhi, Nehru and Tagore. This view was based on the *Sarva Dharma Sama Bhavna* that means all religion should be treated equally because of two major reasons India is a highly religious society so we cannot separate public life and religion, there will be some element of religion in the state and another one was every person's religion is important to him so he will respect another person's religion. Nehru was of the point Dharma Nirpeshka, it means religion should be the private matter and should not play a role in guiding public life.

Another ideology was the *Particularistic view of Hindu*, in this view, there is a difference between Indian and Western society and due to this difference, we can't adopt the Western concept entirely. The difference is that western society is an individual society and they are capable of an Individualistic society, but Indian people have a sense of common identity and this marker can be attained from the religion, not from the caste.

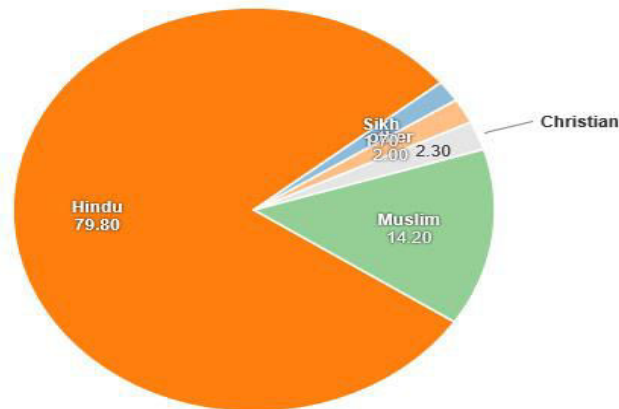
In post-independence Congress was the dominant party so by default the view of Gandhi and Nehru was much influential than other views. As per Indian secularism, the state is not permitted to practise any religion and the state will not honour any particular religion.

The western and Indian concept of secularism have similarities but have some difference, in the Western concept there is the total wall of separation between the church and government, but in the Indian concept we have adopted the concept of Equal treatment of all.

Why Indian Should be a Secular Country

WORDS SPEAK

Religions as percentage of India's population



Source: Registrar General and Census Commissioner, India [Get the data](#)

India is often known as unity in diversity, just because there is the existence of various ethnic groups living together in the same country. As per census 2011, "India is the birthplace of four major religions: Hinduism, Buddhism, Sikhism, and Jainism have all originated from India."

As we can see the demographic condition of India that Hindu community has a majority of the population and other community has a minority. Thus Secularism becomes a tool to check whether one community is dominating or trying to suppress another community. The conflict amongst this religion is normal, this conflict is mainly related to the who has a higher status in society, thus to solve it and also to create a peaceful and harmonious society- secularism has played a crucial role in solving all inter-religious conflicts.

India is a democratic country, and the separation of religion from the law has been the hallmark of every democratic country. This phenomenon is known as Secularism. Secularism means the state should not have its official religion but treats all religions equally. Secularism entails the state treating all religions equally. The western concept of secularism is based on atheism but the Indian secularism means that the state will have no official religion. Furthermore, religion will not regulate the political system.

Andrew Copson used the definition given by French scholar Jean Bauberot in his short book "Secularism,". In this, he said to describe secularism there is a sine qua non which should be there

- a) "The separation of religious institutions from the institutions of the State"
- b) "Freedom of conscience for all individuals, circumscribed only by the need for public disorder and the respect for the rights of other individuals"

c) “No discrimination by the State against any individual based on their beliefs”².

Secularism Through Lenses of Constitution

The term secular was not in the constitution but inserted in 1976 by the 42nd amendment, but that does not mean India was not secular before this, The concept of secularism or secular state was always present in the minds of the framers of the Constitution, that’s why the freedom of religion has been kept as a fundamental right, so by this amendment what was implicit made explicit.

The Preamble of the Indian constitution, “We the people of India ...”. This sentence encapsulates the essence of secularism. In this sentence, no specific religion is mentioned. The State also prohibited from discriminating against anyone based on religion, class, race, sex, or place of birth under Articles 15³ and 16⁴. The right to freedom of religion was enshrined in Articles 25-28, which applies not only to citizens but also to all people living in India's territory. These articles focus on religious freedoms along with some reasonable restrictions. Every Indian citizen has the full right to practise his or her religion, as well as to encourage and spread it. However, discrimination between people cannot be made based on religion in public life. Article 30 grants all minorities the right to create educational institutions of their choice based on religious and linguistic standards.

Even though people from various religion live in India, the above-mentioned provision of the Constitution prohibits any religion from interfering with the rule of the people. The Supreme Court has affirmed on several occasions that secularism is the most important thing and it is an inalienable part of the Indian constitution that cannot be altered in any way.

In “Sardar Syedna Taher Saifuddin Saheb v. the State of Bombay”⁵, the Supreme Court for the first time expressed its views on the Constitution's secular nature, holding that: "Article 25⁶, and 26⁷ embody the principle of religious freedom." In Mohd. Hanif Qureshi v. the State of Bihar⁸ this case is known as the “Qureshi Cow-Slaughter case”, the Supreme Court held that “the State ban of cow slaughter did not violate the religious rights of Muslims”.

² Andrew Copson, *Secularism, Past and Future*, Origins (Jul. 2018), <https://origins.osu.edu/review/secularism-past-and-future>

³ INDIA CONST. art. 15

⁴ INDIA CONST. art. 16

⁵ Sardar Syedna Taher Saifuddin Saheb v the State of Bombay, (1962) AIR 853 (India)

⁶ INDIA CONST. art. 25

⁷ INDIA CONST. art. 26

⁸ Mohd. Hanif Qureshi v the State of Bihar, (1958) AIR 731 (India)

In *Kesavananda Bharati v. the State of Kerala*⁹ reaffirmed that secularism was a part of the fundamental structure, his viewpoint was enshrined in the case of “*S.R. Bommai vs Union of India*”.¹⁰ The judges in the *S.R. Bommaies* case goes on to explain “that the Indian Constitution's principle of secularism is broadly compatible with the First Amendment of the United States Constitution”.

Threat to Indian Secularism

Secularism, which has been affirmed by the Supreme Court in several cases as an essential component of the Constitution's basic foundation, seems to be in jeopardy. Secularism, which is one of India's most defining features, seems to be in peril these days. There are a variety of reasons that cause one to consider this.

Every individual is entitled to become an Indian citizen under Article 5 of the Constitution, regardless of their religion. Article 11¹¹ of the Constitution, on the other hand, specifies that citizenship provisions are subject to any legislation passed by Parliament. However, under Article 15 of the Constitution, Parliament cannot pass any legislation that discriminates based on religion. Article 15 of the Constitution “forbids the state from discrimination against anybody on the grounds of caste, class, sex, faith, or place of birth”. However, this pattern has recently weakened. The Citizenship Amendment Bill, Act provides citizenship to undocumented immigrants from “Afghanistan, Bangladesh, and Pakistan who are Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians”. One of the conditions for citizenship by naturalisation under the Act is that the claimant must have lived in India for at least 12 of the previous 14 years. However, this amendment relaxes this clause for the above-mentioned individuals, requiring them to serve for six years. This Bill means that undocumented migrants from these three countries who are Muslims, other religions that do not fall under this group, and atheists (those that do not affiliate with any religion) would not be qualified for citizenship. The concern is whether this amendment, by treating illegal migrants differently based on their religion, contradicts the right to the freedom provided by Article 14¹² of the Constitution. The Bill's stated subjects and explanations do not clarify the reasoning for distinguishing between the religions they belong to and the large rallies against the Bill in the north-eastern states speak for themselves. Though the demonstration was held because awarding citizenship to illegal migrants would have the effect of granting them citizenship, original residents of the North-eastern states would suffer socio-economic difficulties. The critique becomes deeper and more

⁹ *Kesavananda Bharati v the State of Kerala*, (1973) 4 SCC 225 (India)

¹⁰ *S.R. Bommai v Union of India*, (1994) 3 SCC 1 (India)

¹¹ INDIA CONST. art. 11

¹² INDIA CONST. art. 14

vehement. Furthermore, such nationalist adventurism tarnishes India's reputation on the global stage, where it retains the "golden" identity of "unity in plurality" and "secular state." The Amendment Bill expressly discriminates on religious grounds and is incompatible with secularism's values. according to Apurva Thakur¹³, the draught Citizenship Amendment Act has many gaps. "The undocumented aliens who will reap from this act will be able to apply for citizenship solely on the grounds of their religion, a condition that goes against one of the Indian Constitution's fundamental tenets, secularism.

Through their sweat and blood, our Constitution makers cultivated the idea of secularism. Unfortunately, we were unable to receive sweet fruits from it. Even after so much development, we are still segregated along religious and caste lines. Despite multiple attempts, the divide between different sects has not been bridged. Communal hate also exists, and racial animosity continues to paint a bleak picture of a dreadful situation. The main explanation behind this is an attitude that has been exacerbated by political leaders. The main explanation behind this is an attitude that has been exacerbated by political leaders. They sow seeds of mutual hate among people for their gain, which eventually bear poisonous fruit that ruins civilization and embarrasses mankind. The Babri Masjid event is an excellent example of this. Both political masters are attempting to win elections on the hotbed of the Babri Masjid case, ignoring the fact that they are oblivious of how important this topic is to the general public.

Although upholding the role of personal laws in the Indian Constitution, the Supreme Court held in the Shayara Bano case¹⁴ that they have a status equal to fundamental rights due to Article, which guarantees an individual's freedom of faith and conscience. However, it must be recalled that this right is subject to limits set out in Article 25 and is not unlimited. What the statute still covers is religion's fundamental values and a little more. In this case, the court determined that Triple Talaq is not only sinful and contrary to the Quran's teachings but also that it is not an appropriate religious ritual. When giving divorce is not illegal under other religions such as Hinduism, Christianity, or Islam, why is it tried to make such a rule under Muslim law? Criminal law is perhaps the clearest manifestation of the state-citizen partnership. It is only used where the behaviour does not affect or harm a person, but rather the community as a whole. The offence has been rendered so severe that it carries a maximum sentence of three years in prison and is not subject to bail. "However, under public pressure, the Union cabinet recently approved an Ordinance proposing three changes"

¹³ Apurva Thakur, *Why the Citizenship Amendment Bill Goes Against the Basic Tenets of the Constitution*, Economic and Political Weekly (Mar. 31, 2018), <https://www.epw.in/engage/article/why-the-citizenship-amendment-goes-against-the-basic-tenets-of-the-constitution>

¹⁴ Shayara Bano v. Union of India, (2017) 9 SCC 1 (India)

to the “Muslim Women (Protection of Rights on Marriage) Bill, 2017”, by which the offence has been made compoundable, the complaint can be filed by the wife or her blood relative or her relative under marriage, and the offence is also non-bailable, but bail can be sought before the court.

The Sabarimala temple entry controversy is another trend in the field of secularism. In yet another historic ruling, the court stressed the value of equal treatment under the law and the right to freedom. On September 28, 2018, the Supreme Court opened the gates of Sabarimala temple to all — men and women — paving the way for women to enter Lord Ayyappa's temple. The tradition of banning women from the age of menarche to menopause from entering the temple was deemed "hegemonic sexism" by the court, which stated that patriarchy cannot overshadow religious freedom.

On one hand, we honour goddesses, and on the other, we regard women of a certain age as impure. The court also stated that this dualistic stance is nothing more than religious patriarchy and that this 'ban' demands more purity from women than from men. The tradition of not allowing women to join temples, according to Chandrachud, J., is similar to untouchability. He went on to claim that the pretext for denying women entry is that the Lord would break his vow of celibacy. As a result, women face the brunt of men's celibacy, stigmatising and stereotyping them. Specific liberty of women is not immune to the whims of a crowd.

Just Indu Malhotra, J. took a backseat, arguing that judges should not be allowed to decide people's religious traditions based on their own beliefs. She warned everyone that if this path is taken, it would open up Pandora's box with cases along these lines. She also claimed that deciding what constitutes an important religious activity should be left to the religious community in question and that the judiciary should not be involved.

The situation gets even more pitiful as we address the beef ban and see how news headlines are rife with barbaric acts such as mob lynching and field faith. When a couple of politicians dress up as mob lynchers, it gets really bad. Then there's the dilemma of where we're going, which keeps popping up in my brain. A nation that welcomed the bloody partition to maintain its secular status. A nation that, amid its diversity, remained firm and battled colonial rulers valiantly.

How can a nation that has been so established, after seeing and even becoming capable of realising the dream of being a world powerhouse and global leader, a country renowned for its vibrancy and rainbow-like cultural colours, march towards religious fundamentalism? How will the world's biggest and most popular democracy

abandon its secular hue? It is not that India is heading for a stalemate, but these problems have strained ties between various cultural groups.

Conclusion

“We have just enough religion to make us hate, but not enough to make us love one another”- Jonathan swift

Secularism is a part of the Constitution's constitutional framework, as previously said. As a Secular State, it is not only the State's duty but also the people, to respect the religious rights of other residents. If we are not capable of maintaining the spirit of secularism, we should not declare ourselves a secular country, in my view. A state does not become secular just by using the word "secular" in its constitution. In practice, the state must adhere to the ideals of secularism. It is also the duty of any person residing in India's territory to adhere to those values and lawfully exercise their right to religious freedom.

India has a diverse culture and is renowned around the world for its ethnic diversity. Hinduism, Islam, Buddhism, Jainism, Zoroastrianism, and Sikhism are all portrayed. While Ashoka's initial religion was Buddhism, he granted all religions equal rights and opportunities. During the Mughal period, Akbar did not regard other faiths as less important than Islam, and he regarded all religions with equal reverence, believing that no one should be treated differently based on their faith.

We the People of India have solemnly agreed to constitute India into a Secular nation,” says the Indian Constitution's Preamble. As a result, it is the responsibility of every single citizen living in India to make efforts to transform India into a secular nation where everyone is treated with equal dignity, freedom, and opportunities regardless of their faith.

We can't have absolute distinction, but we can make sure that the state, in the interests of security, isn't walking on the wrong side of the rules. In an Indian society where faith is a way of life, there must be a check on the state's intervention in people's religious affairs. On the pretext of religion, the Indian state has seen dark days of tribal riots in which brothers were greedy for their brother's blood. especially when it is said that it was done for political reasons. We recently passed through the general election process, and one can see the tantrums hurled by political parties to gain mass support. In such delicate circumstances, tight supervision on the state's intervention in religious affairs must be kept to ensure that the encroachment is made for the benefit of the people and not for any other reason. Secular culture is necessary for the life of a secular state. A culture

like this would be casteless, classless, and inclusive. Law is an important instrument in the hands of the administration, but it cannot do anything.

The Indian state should be continually mindful that the vicious encroachment should not be cloaked in the guise of security. India's secularism is going through a complicated, if not testing, time. In such a case, the government should behave maturely, putting their political agendas aside. India as a country has faced various challenges, and it has always risen to the occasion and emerged stronger. However, this is only feasible if the state fulfils its duties with caution and prudence.

India has always been and will continue to be a secular society. Not because of the statute, but because of the nature of culture. It may be going through a dark period of turbulent religious tensions for the time being, but the day will come when civilization and the state will triumph over this darkness and lead the way to the sunlight of secularism, whose origins will be so strong that no storm of controversy will ever be able to uproot it.

What is expected of the state and community is a more responsible and realistic approach to dispute resolution. Religious denominations should not be led astray by their tenets, and the intelligence of the state should not be obscured by the need to achieve political benefit.

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