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# Secularism in India: A Constitutional Perspective on Religious Freedom and The Places of Worship Act, 1991

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## ABSTRACT

*This research essentially addresses the complex interplay between secularism and religious freedom within the conceptual framework afforded by the Constitution of India by analyzing the conditions under which these principles have been conceived, inscribed, and contested within the contemporary society of India. It is neither the form of hardy church-state separation found in the West nor the principle of principled engagement under which the state does not favour or disadvantage any religion but retains the authority to endorse intervention in matters to safeguard constitutional values such as equality, dignity, and social justice, by which Indian secularism may be described.*

*It will doctrinally and comparatively study the constitutional provisions, constitutive principles, as well as landmark judicial pronouncements, and evolving legislative frameworks. It scrutinizes Articles 14, 15, 19, 21, and 25-28 of the Constitution, like the cases of S.R. Bommai, Shayara Bano, and certain ongoing debates like that of the Places of Worship Act, hijab controversy, and Uniform Civil Code.*

*Findings indicate that the Indian constitutional design; while externally facilitating plurality and internals of religious coexistence, judges have created inconsistencies in interpretation-most importantly concerning the "Essential Religious Practices" doctrine well as inserted and politicized identities into non-religious matters, which threaten the very strength of secularism. The dissertation concludes with recommendations which include codification of secular principles, revisiting contentious laws such as the Places of Worship Act, and ensuring that all segments are included in consultation while implementing UCC. Through a constitutional and socio-legal lens, this research affirms that India must be secular in dealing with modern-day challenges but must not let go of its traditional virtues of equality, justice, and fraternity among men today: a diverse democratic society.*

**Keywords:** Secularism, Places of Worship Act, 1991.

## I. INTRODUCTION

Just a principle inscribed in the Constitution, the idea of secularism in India has always lived as

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a reality, a political weapon, an object of hot debate, and a pillar of identity for the Republic. Unlike its Western counterpart, where secularism implies a clear cut disjoint between religion and state, it is an evolving doctrine in India, the art of balancing between diverse religious pluralism and constitutional democracy. Since independence, each government has faced its challenges of ensuring neutrality of the state while representing the diverse religious landscape of India.

A general question of this discourse is the question: Has Indian secularism really guaranteed equal religious freedom to all or is it merely a selective political instrument? The branches of the state, namely judiciary, legislature, and executive have an important role in interpretation and definition of secularism, their actions, however, have primarily depended on the politics prevalent at that time.

In recent times, landmark court cases starting from the Sabarimala temple entry case to Hijab ban controversy have again raised the issue of secularism; sometimes placing it on a collision course with other fundamental rights such as gender equality or freedom of expression. The disaster with entangling polity with religion, the rising religious nationalism, and the legal tussle over historical sites have forced one to think: Is India's secular fabric intact or has it been fray after the rabble of competing religious and political interests?

This Research attempts to unravel these complex issues by looking at secularism both as a constitutional principle and a socio-political reality. A bridging of the gap between constitutional theory and its meaningful application in today's governance would make an insightful and holistic analysis of secularism in India.

## **II. CONCEPT & EVOLUTION OF SECULARISM**

Secularism, as a concept, has undergone metamorphoses for centuries under different religious movements, political upheavals, and constitutional developments. It is not merely a political doctrine but a kind of social contract, a delicate balancing act between state power and individual liberty. While the Western world has observed secularism with an eye on a rigid separation of religions and state, India appears to take a more accommodating view.

The very word 'secularism' was said, in the 19th century, to be coined by the British thinker George Jacob Holyoake and was supposed to mean a doctrine that feels the necessity for the separation of religion from civic affairs and government. However, the very seeds of secular thought had been sown long before, going back to the age of Enlightenment, which praised the use of reason, the individual rights, and the government free from religious interference. Proponents like John Locke and Voltaire cropped up with favor for a state free from interference

in religious affairs; while ensuring the free exercise of religion for all-these thoughts directly influenced the rise of constitutional democracies in the West.<sup>2</sup>

On the other hand, Indian secularism emerged in a distinctly different historical-cultural milieu. Unlike the West, which sought separation of church and state as a reaction to religious conflicts, India's secularism developed as a reaction to the pluralistic nature of its society. The overriding need for a mechanism to integrate many faiths under a single national Islam, given the centuries-old tradition of coexistence with frequent interruptions of sectarian struggle.

During the colonial time, the British institutionalized the divisions between the religion communities, yet paradoxically, it laid the foundations for the modern secular state. The British rule provided for some measure of the rule of law and equality before law in relation to all communities, yet it retained personal laws based on the religious customs of different groups. The dual system was maintained after independence, making the definition and practice of secularism even more challenging in newly independent India.

The Conference for drafting the Indian Constitution made its founders acutely aware of religious diversity in the country. Leaders such as Jawaharlal Nehru and Dr. B.R. Ambedkar advocated for a model of secularism that was neutral toward all religions but has provisions for state intervention in religious practices that violated human rights or public welfare. This was in direct contrast to the Western design of strict separation. Instead, India used what can be termed 'principled distance', which allows for state engagement in the practice of religion to further social justice.<sup>34</sup>

Hence the adoption of secularism in the Indian Constitution was, as it were, an elaborate situational scheme to keep the different religious communities in the country in harmony rather than mechanical borrowing or a ritualistic operation in the Indian context. The 42nd Amendment in 1976 of the word 'secularism' in the Preamble was more of a reaffirmation than a new declaration. The Indian secularism envisaged by the Constitution is not opposition to religion; it is neutrality toward all religions, where the state does not favor or discriminate against any.<sup>5</sup>

Secularism in India has faced several challenges over the decades. It has been, at times,

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<sup>2</sup> Austin Cline, *Defining Secularists: George Jacob Holyoake Coined the Term Secularism*, (June 25, 2019), <https://www.learnreligions.com/george-jacob-holyoake-coined-the-term-secularism-250853>.

<sup>3</sup> *Just a moment...*, <https://indiankanoon.org/doc/1933556/>.

<sup>4</sup> Anand Ranganathan, *The Great Secularism Debate*, (Jan. 30, 2015), <https://www.newslaundry.com/2015/01/30/the-great-secularism-debate>.

<sup>5</sup> *Human Verification*, <https://visionias.in/current-affairs/monthly-magazine/2024-12-17/polity-and-governance/socialist-secular-in-the-preamble>.

relationship-specific and politically expedient, especially to appease vote banks or to kill dissent. Secularism was upheld in the Shah Bano case, wherein personal laws were preferred over gender justice; but, in the Ayodhya case, religious sentiments were razed to the ground for political gain.

Increasing religious polarization, the assertions of the majoritarian communities, and the politics of identity thus put under severe stress the basis of India as a modern state: secularism. The discourse is no longer about the philosophical validity of secularism but about its practical application in the spheres of governance and public life. While an important counterbalancing factor remains the jurisprudential interpretation of secularism through landmark judgments, the evolving interpretation of secularism by the high court's reflects the recasting of the political and social currents over time.<sup>6</sup>

Secularism has followed a spiral path of evolution. The history, legal development, and polity intertwine so adamantly in its formative phase that disruption in any one aspect can upset the whole dogma itself. If Western secularism emerged to constrain the intervention of religious forces in governance, Indian secularism seeks to manage religious diversity through fostering communal harmony in a democratic setting. Whether secularism will bear fruit as a guiding principle or be sacrificed on political grounds will solely depend on how much its institutions and civil society representatives stay committed in spirit and letter to the principles enshrined in the very foundation of secularism.

### III. SECULARISM AS A CONSTITUTIONAL AND POLITICAL PRINCIPLE

Judging secularism in India in terms of politics, or the Constitution alone, is to invite an incomplete diagnosis of today's challenges to our democracy. Therefore, the present approach to this discourse is both with the dual clarity of a student's observation and jurist's precision.

The term 'secularism' does not find an explicit place in the original text of the Indian Constitution. It was only with the 42nd Constitutional Amendment of 1976 that the Preamble was amended to insert the word "secular." Yet, long before this insertion, secularism was embedded in the fabric of the Constitution- implicit in the fundamental rights, reflected in the Directive Principles, and reiterated through judicial pronouncements.<sup>7</sup>

The political aspects of secularism are more complex, indeed, for some very volatile reasons. The major political parties have always used the brand secularism for their conflicting purposes-

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<sup>6</sup> *Graph of the Week – V-Dem*, [https://v-dem.net/weekly\\_graph/india-s-polarized-society-and-the-role-of-rel](https://v-dem.net/weekly_graph/india-s-polarized-society-and-the-role-of-rel).

<sup>7</sup> *The Evolution of Secularism in India's Constitutional Bedrock*, (Mar. 11, 2024), <https://www.tscltd.com/the-evolution-of-secularism-in-india>.

protecting minority rights at one end or mobilizing vote banks at the other. This misuse of secularism has led to a considerable degradation of this important ideal in popular imagination. It has made secularism a much-contested battlefield around whose drama, sacrifices of the ideals of pluralism become a routine attestation to political expedience.<sup>8</sup>

The Supreme Court has said again and again that secularism is not a passive principle; it is an active commitment to constitutional morality. Most times, the judgments of the courts have reiterated this proposition. In the S.R. Bommai case (1994)<sup>9</sup>, the Supreme Court declared secularism to be a basic feature of the Constitution, unalterable even by amendment of the Constitution. In the Shayara Bano case (2017), the Court struck instant triple talaq, stating that no personal law can claim immunity from constitutional scrutiny.<sup>1011</sup>

However, the secular principle cannot be invoked to accredit any action, however obnoxious. Judicial respect for custom and availing legislative silence gives a gap to intervene and curb the full-fledged practice of secularism. Such dilution is dangerous because it will take away constitutional protection and delegitimize secularism in political discourse.

Thus, we have to wed the political principle of secularism with the behests of the Constitution and not interest calculations for elections or seats. Preamble jurisprudence has advanced to such a level that whenever we speak of secularism, it must be understood along with other foundational values like justice, liberty, and equality. It is not an isolated value; rather, it supports and enforces the path of other values co-existing in a plural society.

On the other hand, while qualifying every element- secular in a country like India, where religion intermingles with every part of society the law needs to walk a tightrope. The law must not encourage any religion or denounce religion except in an extreme situation to protect other constitutional rights. Thus, it must find an equilibrium that weighs the rights of an individual against the collective conscience of a multicultural society.

#### **IV. SECULARISM IN INDIAN CONSTITUTION: PREAMBLE, FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES**

The Indian Constitution bears witness to an unprecedented commitment to the cause of equality,

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<sup>8</sup> *Graph of the Week – V-Dem*, [https://v-dem.net/weekly\\_graph/india-s-polarized-society-and-the-role-of-rel](https://v-dem.net/weekly_graph/india-s-polarized-society-and-the-role-of-rel).

<sup>9</sup> *When the Supreme Court Firmly De-linked Religion from Politics*, (Dec. 20, 2017), <https://cjp.org.in/sr-bommai-vs-union-of-india/>.

<sup>10</sup> *The Evolution of Secularism in India's Constitutional Bedrock*, (Mar. 11, 2024), <https://www.tsclcd.com/the-evolution-of-secularism-in-india>.

<sup>11</sup> Jeff, *Microsoft Word - Communalism and Sectarianism in Shayara Bano - Version 3 - CLEAN - Jeff Redding (references edited 100919)*, (Oct. 23, 2019), [https://download.ssrn.com/19/10/23/ssrn\\_id3474315\\_code354473.pdf](https://download.ssrn.com/19/10/23/ssrn_id3474315_code354473.pdf)

justice, and freedom, which finds expression in the term 'secularism' whose very supposition is that all religions should enjoy equal rights and opportunities. Through the Preamble, Fundamental Rights, and Directive Principles, it is revealed that the makers of our Constitution had among their aims the establishment of a body of law under which all religious faiths would enjoy equal rights in sustaining their national identity. This exposition carries an intent in the manner of Senior Advocate Fali S. Nariman, way announcing how far secularism, an important part of the Indian Constitution, is embedded into its fabric.

The Preamble, the introduction to the Constitution, reflects the lofty ideals on which the Indian polity is based: to call India a "Sovereign Socialist Secular Democratic Republic"—a label introduced not in 1950 but later to emphasize that the nation's foundation is as much about balancing various faiths as it is about justice and social equity. In this context, it is important to keep in mind that the word "secular" does not mean that religion should be excluded from public life but does assure that the state shall maintain an equal distance from all religions. The Preamble thus foresees a scenario where the individual can follow one's faith while the State remains neutral in the affair and create an environment where mutual respect exists, and peace prevails.<sup>12</sup>

Beyond the Preamble, Fundamental Rights grant essential civil liberties protecting individual autonomy. Chief among them would be Article 25, enshrining the right to freedom of conscience and free profession, practice, and propagation of religion. However, this right is not absolute since the Constitution permits the imposition of reasonable restrictions in the interest of public order, morality, and health. This facet shows that while the right to the individual's belief is an ultimate one, its exercise still needs to be reconciled with the greater public welfare. This reconciliation is of utmost importance in a diverse country like India, within which the exercise of religious freedom by any one community ought not to adversely impact another's rights. The judiciary has intervened frequently to temper the boundaries of this freedom so that religious observances conform to values that speak in favor of equality and non-discrimination-values that sustain our constitutional order.

The Directive Principles of State Policy in Part IV of the Constitution are to be followed as guidelines for running the State. Although these are non-justiciable, these principles provide a sort of moral guide that the authors of the Constitution had towards the working of the government. The Directive Principles emphasize meditation of an ideal society.

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<sup>12</sup> *Law & Justice2.pmd*, (Jan. 7, 2009), [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf).

A remarkable feature in the Indian context, then, is the dynamic interplay between these constitutional components. The Preamble sets the aspirational tone; the Fundamental Rights secure individual liberties--including the freedom to practice and propagate one's religion. The Directive Principles provide a blueprint for an inclusive social order. It is this tripartite structure that ensures that secularism is not some static concept confined within abstract deliberation, but a concrete lived reality, continually reinterpreted through legislative, executive, and judicial interventions.<sup>13</sup>

Unfortunately, the Indian model of secularism stands quite as opposed to the Western theory of iron wall separation between church and state. The latter insists on completely extricating religion from the entire public square, while the former requires a more complicated coexistence. It suggests that in a society historically permeated by the spirit of religiosity, the role of the state is not to prescribe or proscript any allegiance but to see to it that that allegiance does not turn into an oppressive apparatus or a source of disunion among members of society. Thus, secularism in this part of the world will not be the exclusion of religion but the assurance that all religions will be given the same respect and protection under the law.<sup>14</sup>

In a nutshell, weaving secularism into the Indian Constitution through the Preamble, Fundamental Rights, and Directive Principles was a well-thought-out and intensely serious endeavor to build a society that would assure individual liberty and collective harmony. Such a state could be envisioned by the framers of the Constitution where secularism could be a shield and sword simultaneously protecting citizens from sectarian excesses and getting them into an environment of tolerance and understanding towards other religions. This vision, continually refined by judicial interpretation and policy adjustments, provides the foundation for the constitutional promise of a secular, inclusive, progressive India.

This fact here establishes human being through such an elaborate legal framework, even alive indirectly, a coming-into-day living document in a sense that balances the country with its striving journey for social justice while also ensuring that the colorful and diverse yet most vibrant cultures and religions of the country coordinate as celebrated, rather than repudiated. These constitutional provisions remind our thinking process that, in its fuller sense, secularism is not merely as an abstract principle but as an imperative in practice for the maintenance of democratic values in a pluralistic society.

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<sup>13</sup> <https://www.jetir.org/papers/JETIREW06075.pdf>.

<sup>14</sup> <https://www.jetir.org/papers/JETIREW06075.pdf>.



**V. ARTICLE 14,15,19,21,25-28: LEGAL FOUNDATIONS OF RELIGIOUS FREEDOMS**

It is more than a legal document; it is the Constitution of India that stands witness to the basic values that keep a democracy alive. One of those values, practically the soul of the Indian Constitution, is freedom with respect to religion itself. Articles 14, 15, 19, 21, and 25-28 elucidate all the other values, giving a holistic emphasis on liberty, dignity, equality, and pluralism, which upholds the human dignity of all those multiplicities residing in a constitutionally sanctioned society.

**Article 14: Rights Against Discrimination**

Article 14 guarantees the principle of equality, the most treasured judicial assurance. It states that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. This Article stands out significantly, especially with a communally pluralistic society, as it should uphold, that if the State supports one religion, then it would ensure that no one else shall be discriminated against simply because he was born into that religion.<sup>15</sup>

This equality contemplated under Article 14 is no longer majoritarily negative; it ought to be evolved on a reasonable classification and rational connection to the object which the law seeks to achieve. Herein rest the interpretation for the location of burden for this provision on the intervention of the judiciary that, even when an action of State is neutral and has justified under the law, is made to work severely as regards some communities concerning their religion. Therefore, this justifies the amplification of the above ethos because, indeed, that strengthens the concept of secularism in both the negative and positive aspects of Indian thought and action.

**Article 15: Discrimination Against Religion**

Article 15 further extends the concept of equality-prohibition of religion, race, caste, sex, or place of birth discrimination. It therefore supports the constitutional concept of citizenship inclusive of all. These provisions are crucial for examining the Government since their actions or policies sometimes run counter to the interests of some religious communities; either it may happen by accident or intentionally.

The peculiar importance of Article 15 becomes tremendously pronounced when viewed in context to Article 14. While Article 14 envisages general equality, discrimination of citizens' rights against religion will come into the purview concerning admissions into educational

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<sup>15</sup> *Law & Justice2.pmd*, (Jan. 7, 2009), [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf).

institutions, public employment, or other services provided by the State.<sup>16</sup>

Article 19 represents the rights to freedom of speech, assembly, and association' and imposes several guarantees under this universal provision. It bestows upon every citizen the freedoms together with that of free movement within the territory of India. Such freedoms are a sine qua non for the sustenance of a liberal democracy. The said freedoms allow religious communities to codify communal beliefs, conduct congregational activities, and agitate against any state action perceived to deny religious rights.

However, these are not absolute rights. Article 19(2) provides that this freedom may be restricted in the interests of sovereignty, public order, morality, and security of the locality. In this divine setting, it will be for the courts to maintain equilibrium between the interests of religious expression and the interests of public order and to see that neither side is allowed to dominate in its own favor.<sup>17</sup>

### **Article 21—The Right to Life and Personal Liberty**

Article 21 has been a steppingstone in the Indian Constitution, saying, "No person shall be deprived of his life or personal liberty except by a law established by procedure." In diverse ways, the Supreme Court has interpreted this provision over the years, defining "life" and "liberty" largely in contrasting terms—right to privacy, dignity, autonomy, or simply to live with some measure of respect—thus directly linking the exercise of these rights to a person's religious identity and convictions.

Thus, religion is one of the largest determinants of individual identity. It runs matters of conscience concerning how one ought to act concerning that religion—from the practice of that religion to the profession of that religion to the renouncement of that religion. Article 21 has been such that it has always acted as a shield against unreasonable interference by society or the state in respect of matters pertaining to conversion from one religion to another, clothing, food habits, and funeral rites upon changing religion.<sup>18</sup>

### **Articles 25 to 28: The Direct Guarantee of Religious Freedom**

The essence of religious liberty is contained in Articles 25 to 28. Article 25 provides for the freedom of conscience to all persons, i.e., the right freely to profess, practice, and propagate

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<sup>16</sup> *Law & Justice2.pmd*, (Jan. 7, 2009), [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf).

<sup>17</sup> *Law & Justice2.pmd*, (Jan. 7, 2009), [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf).

<sup>18</sup> *Law & Justice2.pmd*, (Jan. 7, 2009), [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf).

religion. Like any other freedom, this too is not absolute. It is subject to public order, morality, health, and the other fundamental rights. The phrase "subject to other fundamental rights" is very significant, strong enough to denote that religious freedom must yield to the balancing principles of equality and dignity. The doctrine of "essential practices" is a means devised and developed by the judiciary to mediate conflicts between religious practices and constitutional morality. The judiciary has, at times, been accused of stepping into matters of faith, but the reverence for the fact that religious freedom is inherently limited and should yield to constitutional supremacy sets it apart.<sup>19</sup>

Article 26 grants religious denominations the right to manage all matters of religion, the establishment of institutions, and ownership of property. It protects the collective aspects of religion against random interference by the state.<sup>20</sup>

Article 27 prohibits any use of state money for the promotion of one or the other religion so that the state is not secular only in theory but also in action.<sup>21</sup>

Article 28 completes the picture by providing for a ban on religious instruction in institutions wholly aided by the state, and public education should remain neutral in the matter of religion. By virtue of these articles, a constitutional vision is ushered in to mediate the spirit of religion with the democratic values of equality, liberty, and fraternity. Indian secularism is not the exclusion of religion from the public sphere; rather, it is the principle that religious differences do not become the basis of exclusion and division. The interpretive journey taken by courts, wherein constitutional morality is assumed to be above mere creed and a dignity-oriented way of life above ritualism, offers new interpretations to these provisions.<sup>22</sup>

For a country that is diverse and vibrant like India, freedom of religion promised by the Constitution is a promise and a liability that experiences its regeneration constantly through rational adjudication, inclusive policy-making, and moral courage on the part of our institutions. The Indian Constitution, in the end, stands guard for pluralism. And Articles 14, 15, 19, 21, and 25-28 speak with one voice: the right to be different in this republic is not a concession—it is a guarantee.

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<sup>19</sup> *Law & Justice2.pmd*, (Jan. 7, 2009), [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf).

<sup>20</sup> *Law & Justice2.pmd*, (Jan. 7, 2009), [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf).

<sup>21</sup> *Law & Justice2.pmd*, (Jan. 7, 2009), [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf).

<sup>22</sup> *Law & Justice2.pmd*, (Jan. 7, 2009), [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf).

## VI. JUDICIARY'S ROLE IN DEFINING SECULARISM

The judiciary stands as the last line of interpreter of the Constitution, and it has taken a dynamic stance for balance by being the pivot of secularism in India. It has gone beyond law and provision enforcement and has trudged the nuanced terrains of religion, individual liberty, and state neutrality. Through an amalgamation of legal reasoning and moral clarity, the Indian judiciary has ensured that secularism is alive and throbbing within the fabric of India's democracy and not merely a constitutional aspiration.

To most Indians, secularism does not imply the absence of religion from public life; it means that all religions are, equally, without discrimination, handled by the state. Such an exclusive specimen of secularism would require extremely ingenious balancing efforts by the judiciary: the independence of the religious practice on the one hand and the values of equality, liberty, and justice as enshrined in the Constitution on the other.

One of the major challenges in arriving at a solution has been for the courts to define the space that the law has left open for the state to interact with the religion. One of the most used tools that has arisen in this context is the essential religious practices doctrine. This doctrine, articulated for the first time in the *Shirur Mutt* case (1954), permitted the judiciary to determine which religious practices form the core of a faith and, thus, merit constitutional protection under Article 25. It provided courts with an understanding through which core religious freedoms could be safeguarded but also brought scathing criticism by placing the judiciary in a role of arbiter of theological authenticity, which lies outside its turf.<sup>23</sup>

However, the test of essential practices has also been used as a mode for reconciling opposing constitutional values.

In *Sabarimala* (2018), the Court held that the exclusion of women from the temple violated Article 14, the right to equality, and was not an essential part of Hindu religion. The judgment emphasized that religion cannot be a mantle for discrimination, which should bring to the fore the values of gender equality and human dignity within the court, thereby reaffirming that secularism does not radiate in benign acceptance of all religious practices but in principled scrutiny according to constitutional morality. One of the other very significant changes in the recently evolving judicial interpretation of secularism is that of constitutional morality. This principle has been brought to the forefront in the Supreme Court's jurisprudence, particularly in

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<sup>23</sup> *Sabarimala #5: Respondents Argue Every Instance of Exclusion Not Akin to Discrimination*, Supreme Court Observer (July 26, 2018), <https://www.scobserver.in/reports/indian-young-lawyers-association-v-state-of-kerala-sabarimala-temple-entry-day-5-arguments/>.

progressive benches, very recently. The stress here is that justice must ultimately measure up to the Constitution and not to majoritarian sentiment or historical custom.<sup>24</sup>

The divide between religion propagation and state power has remained a strong constitutional issue cemented by the judiciary especially in public educational and funding matters.

*Aruna Roy v. Union of India* (2002) saw the Court accept the National Curriculum Framework for School Education, part of which included a value education component, stating that 'education about religions must be clearly distinguished from religious instruction'. The Court also stressed that while a secular state may have to encourage a nuanced understanding of religion, it should, however, neither endorse nor denigrate any faith—a fine distinction pivotal to securing pluralism yet not infringing neutralism.<sup>25</sup>

This makes even more conspicuous the judicial role during communal flashpoints. Post-Gujarat riots (2002), the Supreme Court actively monitored investigations aimed at bringing justice to the riot victims and such strong signals implied that judicial intervention could serve as an important corrective to the executive's inaction or political indifference. The intervention was through *Zahira Habibullah Sheikh v. State of Gujarat and others*, wherein the Court reaffirmed its obligation to safeguard the state's secular credentials by ensuring justice without fear or favor.

Yet the judiciary's role remained ambiguous. According to *Ismail Faruqui vs Union of India* (1994), mosque is not essential in Islamic practice as namaz could be performed at any place. Such a decision, in view of the Babri Masjid demolition, was opined by some critics to have closed their eyes towards the acquisition of the disputed site by the state. The Court emphasized law and public order and questioned the perception of judicial neutrality viewed in such polarized socio-religious contexts.<sup>26</sup>

Unlike this, the Ayodhya Verdict delivered in 2019 assumed a reconciliatory judicial posture. Therefore, it is not justifiable to call the verdict an Ayodhyan judgment, as it apparently recognizes the fraudulent act in the demolition of the Babri Masjid, while awarding to Hindu claimants above all things disputed land: unbroken possession and faith. The Court also ordered into alternate land for construction of a mosque by Muslims. The verdict can also be considered in iterative fashion as addressing the historical grievance with a forward-looking resolution of

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<sup>24</sup> *Sabarimala Temple Entry*, Supreme Court Observer (Nov. 14, 2019), <https://www.scobserver.in/cases/indian-young-lawyers-association-v-state-of-kerala-sabarimala-temple-entry-background/>.

<sup>25</sup>

[https://digiscr.sci.gov.in/admin/judgement\\_file/judgement\\_pdf/2002/Supp.%20\(2\)/Part%20I/ms.%20aruna%20roy%20and%20others\\_union%20of%20india%20and%20others\\_1698992092.pdf](https://digiscr.sci.gov.in/admin/judgement_file/judgement_pdf/2002/Supp.%20(2)/Part%20I/ms.%20aruna%20roy%20and%20others_union%20of%20india%20and%20others_1698992092.pdf).

<sup>26</sup> *Ismail Faruqui v/s. Union of India*, ProBono India <http://probono-india.in/research-paper-detail.php?id=723>.

the issue that the Constitution poses. Thus, while understandably controversial, it exhibited, in the Court's view, an attempt to cure communal blisters through legally backed fair play.<sup>2728</sup>

## VII. PLACES OF WORSHIP ACT, 1991- A CRITICAL EXAMINATION

India was beset by a confusion of crossroads in the early 1990s; it sought to preserve its secular character amidst the rising tide of communalism. That year saw the demolition of Babri Masjid, and before the events of the kind, a tremendous onslaught of mobilization of religion and politics started beating on India. The worst conditions set in when Parliament rushed through the Places of Worship (Special Provisions) Act, 1991, into an urgent act.

### Socio-political Climate of the Early 1990s

The last quarter of the eighties and the early part of the next decade experienced rapid bursts of identity politics, which palpably hit the sentiments through religious channels. The Ram Janmabhoomi mobilized an unprecedented level of mass mobilization across the lands by hurling a dormant population into religious awareness. The governments were also signaling to all that very soon, one or more legislations would be in place to pave the way for settling disputes concerning religious sites.<sup>29</sup>

#### (A) Objectives of the Act

The objectives under the Places of Worship Act were:

Preservation of Religious Character: To maintain the religious character of places of worship as it was on August 15, 1947; Prohibition of Conversion: Preventing any conversions of a place of worship wholly or partly from one religious denomination to another.

Communal Harmony: Meaning that freezing of status quo is made by This Act prevents any such eventualities on account of communal tension or disturbances that may arise following conflict related to places of worship.<sup>30</sup>

### Important Provisions

Section 3: No conversion of a place of worship from one religious denomination to another or even sects of the same religion get facilitated.

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<sup>27</sup> *Timeline: Key Events in the Babri Masjid – Ram Mandir Controversy*, Supreme Court Observer (Oct. 22, 2018), <https://www.scobserver.in/journal/timeline-key-events-in-the-babri-masjid-ram-mandir-controversy/>.

<sup>28</sup> Seema Chishti, *A to Z of Ayodhya verdict*, The Indian Express (Nov. 10, 2019), <https://indianexpress.com/article/explained/supreme-court-ayodhya-verdict-ram-mandir-construction-ram-temple-babri-masjid-demolition-rss-bjp-6112368/>.

<sup>29</sup> *The Places of Worship Act, 1991*, (July 14, 2023), <https://www.drishtiiias.com/daily-updates/daily-news-analysis/the-places-of-worship-act-1991>.

<sup>30</sup> *The Places of Worship Act, 1991*, (July 14, 2023), <https://www.drishtiiias.com/daily-updates/daily-news-analysis/the-places-of-worship-act-1991>.

Section 4(1): The religious character of a place of worship is preserved as in existence on August 15, 1947.

Section 4(2): This section shall wipe off the entire suits and other proceedings, including any conversions of the religious character of any place of worship that existed on 15 August 1947, that might have been initiated after that date.

Section 5: The Act shall have no application in respect of the controversy surrounding Ram Janmabhoomi-Babri Masjid because it has a long-standing and peculiar history.

Section 6: Prescribes penal provisions for a term of three years and fines upon conviction for violations of the Act.

### **(B) Legislative Intent**

It sought to reaffirm India's commitment towards secularism through the Act:

**Prevent Historical Revisionism:** The Act fixed a date, at which point it would no longer be possible to resuscitate historical grievances that would call into question the communal harmony of contemporaneous days.

**Uphold the Constitutional Values:** Reinforce the secular ethos, as enshrined in the Constitution, through equal respect and protection for all religions.

**Legal Certainty:** Create clarity in law regarding religious site disputes and, thus, reduce the avenues for litigation and unrest.<sup>31</sup>

### **(C) Judicial Interpretation**

The Act was, accordingly, understood as providing a non-derogable duty in 2019 by the Supreme Court about the Places of Worship Act, which read,

"Place of Worship Act makes an obligation not to be derogated towards the enforcement of our commitment to secularism under the Indian Constitution."

It asserted that the Act is solely a legislative tool to ensure parity of all religions and to give its force against utilizing historical injustices to prop up present evildoings.<sup>32</sup>

### **(D) Contemporary Relevance**

There are indeed a few things the Act has staunchly been up against, but it has a lot of critics

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<sup>31</sup> Ira Kamat, *Reforming the Places of Worship Act*, (Jan. 12, 2025), <https://www.tsld.com/places-of-worship-act-constitutional-challenges>.

<sup>32</sup> Roshni Yadav, *Knowledge nugget of the day: Places of Worship Act*, (Dec. 24, 2024), <https://indianexpress.com/article/upsc-current-affairs/upsc-essentials/knowledge-nugget-of-the-day-places-of-worship-act-upsc-basic-structure-doctrine-9724406/>.

coming its way:

**Arbitrary Cut-off Dates:** Alleged that date, August 15, 1947, is arbitrary as the selection for a cut-off condition and ignores historical wrongs before independence.

**Exemption for Ayodhya Dispute:** To many people, the exclusion from the ambit of the Act of the Ram Janmabhoomi-Babri Masjid case was an absolute inconsistency with the aim for which the Act was enacted.

**Limitations on Judicial Review:** As previously mentioned, the Act stays the pending cases and prohibits new suits, thus reducing the ways for judicial intervention: apprehension of access to justice.

**Right to Religious Freedom:** The Act has been claimed by some religious communities to infringe on their prerogative to repossess and restore places of worship that they feel were illegally taken.<sup>33</sup>

### **(E) Overall Impact**

The Act has, in essence, become a bastion against the communalization of law. In this spirit, its importance was reiterated in the Ayodhya judgment (2019) by the Supreme Court when it dubbed it a crucial guarantee of secularism. By legislating respect for the status quo, the Act has served to protect the religious mosaic that India is all about. And yet, it is now being challenged by emerging political narratives that counter the very spirit of its neutrality.<sup>34</sup>

## **VIII. JUDICIAL REVIEW AND THE CHALLENGES TO THE PLACES OF WORSHIP ACT, 1991**

Even after thirty-three years of passing the Act, one of the most modern-day significant constitutional confrontations in India stands hovering over the Act, which was once viewed as legislative fire-prevention aimed at preserving the secular character of the republic from the flames of historical revisionism. But the Act is now under test, from the courtrooms to political sites. All of this comes amid staggering numbers of legal cases suddenly engulfing prominent religious sites: Gyanvapi in Varanasi, Krishna Janmabhoomi in Mathura, and, lastly, the Shahi Jama Masjid in Sambhal.<sup>35</sup>

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<sup>33</sup> Ira Kamat, *Reforming the Places of Worship Act*, (Jan. 12, 2025), <https://www.tscltd.com/places-of-worship-act-constitutional-challenges>.

<sup>34</sup> Roshni Yadav, *Knowledge nugget of the day: Places of Worship Act*, (Dec. 24, 2024), <https://indianexpress.com/article/upsc-current-affairs/upsc-essentials/knowledge-nugget-of-the-day-places-of-worship-act-upsc-basic-structure-doctrine-9724406/>.

<sup>35</sup> BBC News, *Explained: India's controversial Places of Worship Act*, (Dec. 13, 2024), <https://www.bbc.com/news/articles/cwypgp8gnjjo>.



### **(A) A Brief Background on the Constitutional Stakes**

This Act forbids converting any places of worship while specifying that the religious character of a place of worship will continue in the same state as it was on August 15, 1947. The exception applies only to the Ram Janmabhoomi-Babri Masjid case that was sub judice when the Act was passed. By upholding the constitutional sanctity of the Act as a legislative instrument of secularism, a core component of the Constitution's basic structure, the Supreme Court affirmed the purpose of the Act on Ayodhya in 2019.<sup>36</sup>

Judicial proceedings involving several civil courts from across India have seen the filing of petitions seeking access or title claims over mosques on allegations that they were built on razed temples. These have gained currency given the shifting political and religious environment, simultaneously putting into scrutiny the legal teeth and the philosophical bases of the Act itself.

### **(B) The Gyanvapi Mosque: Determining the Character or Changing It?**

The Gyanvapi dispute in Varanasi, located beside the Kashi Vishwanath Temple, has arguably been the most conspicuous legal contest under the shade of the 1991 Act. A slew of suits, ranging from rights of worship in the mosque premises filed as early as 1991 to as late as 2021, All insist that the mosque stands over temple ruins.

In 2022, the local court ordered a videographic survey of the mosque. During the same time, an object was shown to have been found, which the Hindu petitioners say was a 'Shivling'; the management of the mosque asserts it to be a fountain. Scientific surveys were further undertaken by the Archaeological Survey of India with the silent consent of the Supreme Court, permitting the Allahabad High Court to hold that the Act does not obstruct religious character being ascertained even though it forbids its alteration.<sup>37</sup>

This interpretation stemming from oral comments from Justice D.Y. Chandrachud has since opened the floodgates to what are now perceived as an end-around of the Act. The conclusion being in this case: the Act forbids changing the character of the place but allows an inquiry to determine what the character is. This results in civil courts proceeding with surveys, whereas the Supreme Court has not explicitly closed the door.<sup>3839</sup>

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<sup>36</sup> *Timeline: Key Events in the Babri Masjid – Ram Mandir Controversy*, Supreme Court Observer (Oct. 22, 2018), <https://www.scobserver.in/journal/timeline-key-events-in-the-babri-masjid-ram-mandir-controversy/>.

<sup>37</sup> *Explained: Gyanvapi Row And The Places Of Worship Act, 1991*, (May 19, 2022), <https://indianexpress.com/videos/explained-video/explained-gyanvapi-row-and-the-places-of-worship-act-1991/>.

<sup>38</sup> Aarathi Ganesan, *Varanasi District Dismisses Challenges to Gyanvapi Plea*, Supreme Court Observer (Sept. 20, 2022), <https://www.scobserver.in/journal/varanasi-district-dismisses-challenges-to-gyanvapi-plea/>.

<sup>39</sup> Apurva Vishwanath, *Places of Worship Act: How SC undid what then CJI Chandrachud allowed two years ago*, The Indian Express (Dec. 13, 2024), <https://indianexpress.com/article/explained/explained-law/places-of-worship-act-supreme-court-chandrachud-9721610/>.

### **(C) Krishna Janmabhoomi at Mathura: Legal Gaps and Historical Memory**

In Mathura, Hindu petitioners have challenged a 1968 agreement between the Shahi Idgah mosque and the Sri Krishna Janmabhoomi Trust. The petitioners want to remove the mosque that they claim stands over the birthplace of Lord Krishna. Such suits have been permitted to carry on even with the 1991 Act in place by district courts of the country.

In 2023, Allahabad High Court declined to stay the proceedings, and like in Gyanvapi, implicitly accepted the distinction between ascertainment and alteration. The key legal Faultline lies whether courts can entertain petitions that claim rights to worship or surveys of premises without explicitly seeking to change the status of a religious place.<sup>40</sup>

This interpretative gap is, in fact, exactly what has given rise to these hundreds of thousands of suits, surveys, and tensions we see today.<sup>41</sup>

### **(D) Sambhal: The Tipping Point**

Happening nowhere elsewhere, perhaps, is the judicial and constitutional tension manifest in the case that is just a little less than the Shahi Jama Masjid in Sambhal, Uttar Pradesh. In November 2024, a civil judge allowed the filing of a petition that was meant to grant access to the mosque, immediately followed by a directive ordering a survey, all without notice to the management of the mosque itself. The ex parte survey was performed the same day the petition was filed. Days later, a second survey was held, which incited violent protests and led to police firing deaths of at least five persons.<sup>42</sup>

This mosque, declared as a 'protected monument' under the Ancient Monuments Preservation Act, 1904, is one of the many oldest Mughal buildings in South Asia. The Supreme Court stepped in very quickly in December 2024, wherein all civil suits under The Places of Worship Act were stayed and barred from any further survey or judicial proceeding until those questions were themselves resolved on the constitutional validity of the Act.<sup>43</sup>

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<sup>40</sup> Express News Service, 'Krishna Janmabhoomi 'dispute: HC appears correct to implead Centre, ASI in suits, Supreme Court tells mosque panel, The Indian Express (Apr. 4, 2025), <https://indianexpress.com/article/india/krishna-janmabhoomi-dispute-hc-appears-correct-to-implead-centre-asi-in-suits-supreme-court-tells-mosque-panel-9924960/>.

<sup>41</sup> Express News Service, 'Krishna Janmabhoomi 'dispute: HC appears correct to implead Centre, ASI in suits, Supreme Court tells mosque panel, The Indian Express (Apr. 4, 2025), <https://indianexpress.com/article/india/krishna-janmabhoomi-dispute-hc-appears-correct-to-implead-centre-asi-in-suits-supreme-court-tells-mosque-panel-9924960/>.

<sup>42</sup> Asad Rehman, *UP Sambhal violence: what is the row around the Shahi Jama Masjid*, The Indian Express (Nov. 25, 2024), <https://indianexpress.com/article/explained/explained-law/sambhal-plea-shahi-jama-masjid-chandausi-9687602/>.

<sup>43</sup> Sushim Mukul, *Was centuries-old Kalki temple in Sambhal razed? What 1879 ASI report, historians say*, India Today (Nov. 25, 2024), <https://www.indiatoday.in/india/story/sambhal-violence-riot-up-court-plea-shahi-jama-masjid-kalki-temple-history-explained-asi-report-2639611-2024-11-25>.

Chief Justice Sanjiv Khanna, heading a bench that also has Justices Sanjay Kumar and K.V. Viswanathan, cautioned civil courts "cannot go for a race with the Supreme Court" and warned against further destabilization in sensitive communal matters. The apex court has since kept the Sambhal matter on hold and asked the petitioners to approach the Allahabad High Court, keeping the Special Leave Petition alive in its docket.<sup>44</sup>

### **(E) Constitutional Challenge Against Pending: The Greater War**

So now there is a plethora of petitions against the constitutionality of the Act in the Supreme Court. The petitioners have alleged:

Violation of Article 14 – Classification without any basis in protecting Ayodhya and not Mathura or Kashi.

Violation of Articles 25 and 26 – Denying religious communities the right to reclaim historical sites.

Bar to judicial review and remedies under Article 32, with the abatement of pending suits and bar for new suits.

Union Government has still not clarified its position, but Solicitor General Tushar Mehta has been heard opposing the blanket freeze on proceedings and advocating for a more nuanced approach, despite direction by a bench led by then CJI U.U. Lalit to file an affidavit in 2022.

In the meantime, contestation applications have been flooding in, with the Jamiat Ulema-i-Hind, several opposition parties, civil society groups, and eminent legal luminaries calling upon the Court to uphold the Act on the grounds of its role in sustaining a secular order and protecting minority rights.<sup>45</sup>

### **(F) The Court's Dilemma and the Way Forward**

What is happening is not simply a legal tug-of-war over some sites; it is a test of the judiciary's resolve to protect secular constitutionalism from the rising tide of populist reclamation. While the 2019 Ayodhya verdict reiterated that the Act was part of the basic structure, the recent hesitancy of the Court casts a cloud over whether that principle stands firm even today.

Presently, a complete freeze on all suits, surveys, and registration of new claims (as ordered in December 2024) exists, while the long-term viability of this Act will depend upon the final

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<sup>44</sup> *Challenges to Places of Worship Act, 1991 / Day 3: SC says "enough is enough" amidst flood of new pleas*, Supreme Court Observer (Feb. 19, 2025), <https://www.scobserver.in/reports/challenges-to-places-of-worship-act-1991-day-3-sc-says-enough-is-enough-amidst-flood-of-new-pleas/>.

<sup>45</sup> *Constitutionality of the Places of Worship Act*, Supreme Court Observer (Dec. 12, 2024), <https://www.scobserver.in/cases/ashwini-kumar-upadhyay-union-of-india-constitutionality-of-the-places-of-worship-act-case-background/>.

verdict of the Court on the constitutional challenge. With surveys done, violence incited, and politics swirling, the window for a peaceful judicial course correction is thin.<sup>46</sup>

More than just a piece of legislation, the Places of Worship Act, 1991, was a civilizational truce agreement that would now bind India not to bend to the pull of religious revanchism. That truce is now under attack. The courts that stood as bastions of protection against majoritarian assertion now find themselves cuttingly reluctant referees to a contest that is now more political than legal. At stake are not simply the three mosques-or ten-or twenty. It is also about the sanctity of the secular Constitution and the promise made to the minority communities, along with the memory of a republic that attempted to right the wrongs of the past by safeguarding its present. The Supreme Court's word will not just determine the law. It will determine the conscience of the Indian state.<sup>47</sup>

## IX. CONCLUSION

This documented secularism in India shows the visionaries who created it, for, it conceives secularism in a constitutionally guaranteed and culturally unique manner. The present study has traced the constitutional moorings of secularism, the interpretation made by the judiciary in the domain of religious freedoms and the role of the state in managing religious diversity. One of the most striking findings has been the continued reliance of the Indian judiciary on the doctrine of "Essential Religious Practice" (ERP)-a doctrine which was introduced in the Shirur Mutt case (1954), refined over decades, but remains fraught with inconsistencies.

We also found that secularism, in India, is subjected once again to the recurring waves of legislative measures and judicial responses to issues like religious conversions, The Places of Worship Act, 1991, and the germs of the Uniform Civil Code, which recently have borne the Uttarakhand government's passage of the UCC in February 2024. While it was touted as something that would bring about uniformity and gender justice, minority community members criticized it as a largely hidden method of bringing a kind of majoritarianism into keeping. The same was recently challenged by the repeal of the Places of Worship Act, originally enacted to preserve communal harmony through freezing the status of religious places as they stood on August 15, 1947. To these former cases, the Supreme Court has put on hold further litigation and suspended ongoing surveys pertaining to the disputed religious sites. The establishment of

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<sup>46</sup> *Challenges to Places of Worship Act, 1991 | Day 3: SC says "enough is enough" amidst flood of new pleas*, Supreme Court Observer (Feb. 19, 2025), <https://www.scobserver.in/reports/challenges-to-places-of-worship-act-1991-day-3-sc-says-enough-is-enough-amidst-flood-of-new-pleas/>.

<sup>47</sup> Roshni Yadav, *Knowledge nugget of the day: Places of Worship Act*, (Dec. 24, 2024), <https://indianexpress.com/article/upsc-current-affairs/upsc-essentials/knowledge-nugget-of-the-day-places-of-worship-act-upsc-basic-structure-doctrine-9724406/>.

a special bench and the Union's affiliate have successfully signaled how sensitive this legislation is and the near certainty of judicial reinterpretation of it soon.

Apart from legal reforms, secularism will require positive educational and institutional support. Schools and universities must consciously impart values of pluralism, tolerance, and mutual respect. Civic education must not merely be textbook based but integrated into the lived experiences of young citizens. There are institutional mechanisms such as the National Commission for Minorities and State Minority Commissions that should be immediately empowered to respond to incidents of communal violence or discrimination. Picture also a scenario wherein there exists a statutory commission on secularism, just like the Election Commission or the Human Rights Commission, which will monitor and report on the extent to which the state observes the principle of secularism in its governance and public policy.

A pluralistic society such as India requires continuous dialogue. Interfaith dialogue-whether formal or informal-can go a long way in reducing distrust and misinformation. Likewise, representation of minorities should be ensured in legislatures, administrative services, and in appointments to the judiciary. In a secular democracy, there are equal rights given, and therefore an equal share in decision-making. The constitution should be the guidelines for the state during disturbances induced by populism. Secularism in India cannot be put into question when it comes to electoral considerations.

Only through principled legal reform, inclusive policymaking, and robust civic engagement can India secure its secular future. The road might be long and arduous, but the Constitution charts the way, and it is still one that promises liberty, equality, and fraternity to all Indians, regardless of faith.

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