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Evaluating Judicial Activism in Energizing Secularism in India

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ABSTRACT

This research investigates the interplay between judicial activism and secularism in India, contextualizing within various theories of secularism and outlines intricate relationship between judicial activism and secularism in India, a country known for its diverse religious landscape and robust judicial system. Judicial activism in India has often played a pivotal role in upholding the principles of secularism enshrined in the Indian Constitution. This research illustrates how the judiciary has navigated complex religious and secular tensions and judgments where judicial activism has significantly influenced the interpretation and application of the secularism. By analyzing land mark cases, the research highlights how the judiciary has navigated the delicate balance between protecting religious freedoms and ensuring the secular character of the state. The findings underscore the judiciary's role in advancing secularism by striking down discriminatory practices, promoting religious harmony, and reinforcing constitutional mandates. Through a comprehensive review of legal precedents, this research contributes to the understanding of judicial activism's impact on secularism in India, offering insights into its implications for the broader democratic framework.

Keywords*: Secularism, India, Judiciary, Activism, Evaluation.*

I. INTRODUCTION

Constitutional philosophy urges states and legal systems to uphold the Rule of Law**,** ensuring that every democratic system operates in accordance with its principles.[2] In fact, it acts as prime instrument in protection of human rights and dignity, fundamental rights and freedoms of the people. In the case of *R v Sussex Justices, Ex parte McCarthy*,[3] Lord Hewart, CJ, who is famous for saying, "It is not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done." This statement clearly indicates the immense role to be played by the judiciary in ensuring justice and rule of Law. The state is under prime responsibility to ensure Justice, Liberty, Equality and

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[2] Rangaswamy D. Judicial Accountability: A Comparative Note on India and Malaysia, Asian Journal of Law and Policy Vol 4 No 1 (January 2024), p.26
[3] [1924]1KB 256.

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fraternity, and to protect the individual's fundamental rights, and also to balance these rights with the directive principles of state policy. This kind of watchdog role of the judiciary *sine quo non* for the system for the reason that "A State being a sovereign has every authority possible to curtail and restrict the liberty of the individual by virtue of its sovereign power."[4]

In order to restrain State from escaping its responsibilities, the Indian Constitution has conferred inherent powers to the Court to review validity of State action. With this judicial review power, today's courts are proactive, issuing orders and decrees for remedial actions rather than merely striking down laws. When the legislature and executive fail in their cherished duties, the public often turns towards the judiciary for redress, prompting a more activist approach. This approach has gained legitimacy in India, although it naturally creates sort of tension amongst State organs. Judicial activism in India has a humane aspect, particularly through public interest litigation (PIL), which has improved access to justice for disadvantaged groups. Judicial activism applies to the judiciary's proactive role in interpreting and modifying law, particularly in constitutional matters. In India, judicial activism has had a considerable impact on formation of constitutional law. In fact, the scheme of the Constitution is structured and organized in line with this exceptional characteristic of the judiciary.[5]

The courts, especially the Supreme Court of India, has actively participated in interpreting the Constitution, so as to uphold rights and ensure justice.[6] Secularism being one the core constitutional values are immensely polished by the judiciary. The pluralistic nature of the society and secular character of the nation resulted in cautious intervention of the judiciary in sustaining and nurturing these principles for the greater democratic country like India. As religion is a deliciated and sensitive component of the society, Courts have rarely exhibited their restrained role.[7] In this context, the present paper is an attempt to explore the leading role played by the judiciary in cementing secular principles with pluralistic nature of the society.

II. HISTORICAL BACKGROUND

The label "Judicial Activism" was introduced by Arthur Schlesinger Jr., in an article, the

[4] Dr. D. Rangaswamy, Judicial Accountability in India: Issues and Challenges, International Journal of Governance and Public Policy Analysis (IJGPPA) 2020, Volume 02 Issue 01, p.67.
[5] Rangaswamy Nayak, Judicial Appointments in India and Sri Lanka: A Comparative Constitutional Matrix, KDU Law Journal, Volume 03 Issue II September, 2023, p.44
[6] Mamta devi, "The role of judicial activism in shaping constitutional law of India" 10(2), EPRA International Journal of Multidisciplinary Research (IJMR) (2024), available at, https://eprajournals.com/ (visited on 12/6/2024 at 5:30pm).
[7] Dr. Rangaswamy D., "Assessing Contribution of Indian Judiciary for the Reformation of Muslim Personal Law in India." Annual International Journal on Analysis of Contemporary Legal Affairs (2022), Vol.02, (ISSN NO: 2756-9225), pp.7-27, p.19

Supreme Court :1947, in January 1947 fortune Maxine.[8] The postulation of judicial activism found its roots in the English concepts of "EQUITY" & "NATURAL RIGHTS". On American soil, the first landmark case in this regard was the case of Marbury v. Madison.[9] In this case, the U.S Supreme Court manifested the principle of judicial review by which the federal courts can declare the unsavory Acts legislated by the legislature and executive unconstitutional. This is a pioneer case of judicial activism at the transnational level.

Initially, more of a technocratic, the Supreme Court of India has started to become increasingly involved in constitutional interpretation. The court transformed into activist by its involvement and interpretation of law and legislation, but the process took years and was slow. The evidence of judicial activism in India can be traced back to 1893. Allahabad high court judge, S. Mohammad held that, the precondition for hearing a case would be accomplished only when someone speaks. In this case, the undertrial was not in position to afford a lawyer.[10] In his dissenting opinion, he criticized the rule that appeals should be dismissed solely on the basis that the appellant is unable to pay for the translation and printing of the record in English. This amounted to some form of activism meant to defend the severely harmed under trials. Although it didn't sit well with the English judges on the bench, Justice Mohammed was forced to resign for using these tactics in court.

For the first ten years following the independence, the judicial activism virtually disappeared as the executive and legislative branches of the government actively controlled and meddled with the judiciary's operation. The period between 1969 to 1973 marks the historic advent of judicial activism in India. It is during this period that the Supreme Court developed a new practice of judicial harmony over the symbol politics concerning the power to amend the constitution.[11] The Apex Court began to examine the judicial and structural views of the constitution during 1970s. The observation of Supreme Court in *I.C. Golaknath v. State of Punjab*[12] sowed the seed of judicial activism in which it was ruled that the Parliament cannot exercise its power to amend constitution so as to abrogate the fundamental rights of the citizen.

Soon after that *Kesavananda Barathi v. State of Kerala*[13] came before the Supreme Court right

[8] Nitu Mittal & Tarang Aggarwal, "Judicial activism in India" 1.1, IJLPP (2014- 15), available at, www.manupatra.com. p.86 (visited on 12/6/2024 at 5:36 pm.)
[9] 5 U.S (1 cranch) 137 177-79[(1802) feudal law]
[10] Pratyusha Kar, "Judicial activism in India" 3(3), Journal on Contemporary Issue of Law (JCIL) 2020, https://www.researchgate.net/publication/343999855. (visited on 12/6/2024 at 5:45 pm)
[11] Vishal Guleria, "Judicial Activism: A ray of hope for the marginalized masses" in Lokendra Malik (Ed.) Judicial Activism in India, A Festschrift in the honor of Justice, V. R. Krishna Iyer (Universal law publication Co. PVT. LTD. Delhi, 2013edn., 2013), p.294.
[12] (1967 AIR 1643,1967 SCR (2) 762)
[13] AIR 1973 SC 1461; 1973 4 SCC 225

before the Declaration of the emergency wherein Supreme Court evolved the basic structure doctrine, which highlights the instances of judicial activism and lays down that , the Parliament's power to amend the Constitution is plenary, but always subject to the limitations of basic structure of the Constitution and ruled that, the executive branch lacks the authority to interfere with or alter the constitution's fundamental principles or basic structure. Although the judiciary was unable to stop the urgency imposed by the then-prime minister Indira Gandhi, the idea of judicial activism began to gain more traction as a result.

The spirit of Indian Constitution is based on secularism. Originally the word secular did not occur in the Constitution. The Constitutional (42nd Amendment) Act, 1976[14] added the term secular to the Preamble. Accordingly, now India is a Sovereign, Socialist, Secular, and Democratic Republic. The Indian state does not recognize or endow any religion. Article 15(1)[15] & 15(2)[16] prohibit discrimination on grounds of religion. Articles 25(1)[17] guarantees freedom of conscience and the right to profess, practice & propagate religion. Article 27[18] bars compelling anybody to pay taxes, the proceeds of which are specifically appropriated in payment of expense for the promotion or maintenance of any particular religion or religious denominations. Thus, the spirit of Indian Constitution is the absolute separation of religion from political car and administrative affairs, non-interference of religion in political affairs and of administration in religion. However, it may be noted that the constitution gives special privileges to religious minorities. Article 30(1)[19] lays down that all minorities whether based on religion or language, shall have the rights to establish educational institutional setups of their choices. Thus, the spirit of Indian constitution is secular.

III. CONCEPTUAL ANALYSIS

Judicial activism means and involves judges using precedents and considering the spirit of laws and changing times to rectify unfairness, especially when other bodies are weak. It refers to court rulings influenced by political and personal factors of the judges rather than strictly adhering to existing legislation. In fact, the concepts such as the judicial activism and public interest litigations have remarkably shaped the potentiality of judiciary in performing corrective justice role in the society.[20]

[14] The Constitutional (Forty -second Amendment) Act, 1976.
[15] The Constitution of India 1950. Art.15
[16] Ibid
[17] The Constitution of India,1950 Art.25(1).
[18] The Constitution of India, 1950 Art. 27.
[19] The Constitution of India, 1950 Art. 30(1)
[20] Dr. Rangaswamy D. Climate change: Reformative role of Judiciary, International Journal of Social and Economic Research Year: 2015, Volume: 5, Issue: 3, p.142.

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According to S. P. Sathe, Judicial activism is not an aberration. It is an essential aspect of dynamics of constitutional court. It is a counter-majoritarian check on democracy. Judicial activism, however, does not mean governance by judiciary. It also must function within the limits of judicial process. Within those limits, it performs the functions of legitimizing or, more rarely, stigmatizing the actions of organs of the government. The Judiciary is the weakest organ of the state. It becomes strong only when people repose faith in it. Such faith of the people constitutes the legitimacy of the court and of judicial action. Courts have to continuously strive to sustain their legitimacy. They do not have to bow to public pressure; rather, they have to stand firm against any pressure.[21]

Judicial activism is a tool of social engineering and an example of legal realism. In America, it has played an important role in protecting the unalienable and sacred civil rights and civil liberties of the citizens and often acts as an alternative policy maker. In India, the unique constitutional scheme and societal constitutional conditions prevailing have prompted the judiciary to be active in the past two decades. The Supreme Court led this unique movement and is still in the process of giving it a proper shape and direction. The judiciary of the young Indian democracy has made it clear beyond doubt that the judiciary is co-equal with the organs of the government, and that it may create not only law but also constitutional law in order to maintain constitutional discipline and avoid the claim of supremacy of any organ over the constitution. An eminent jurist has summed up the result of judicial statesmanship as under; "Judges of Indian Supreme Court have demonstrated this truth (that judges make law) not merely by creating the law, but also by creating constitution. They have not just amply exercised their legislative powers, but they have also exercised constituent powers"[22]

Whereas, the term 'Judicial Activism' has not been defined neither under the Indian Constitution nor under any statute. In Black's Law Dictionary, Judicial Activism is defined as "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedents." V. D. Kulshresta defines it as follows "Judiciary is accused of actually participation in the law-making process, and so as to say becomes a key player in the law-making process, then such move on the part of judiciary is termed as judicial activism."[23] Upendra Baxi defines judicial

[21]V.R. Krishna Iyer, From the Bench To The Bar (Lexis Nexis, Haryana, 1st edn., 2016).,151.
[22] G.B. Reddy "Supreme Court and judicial activism" An overview of its impact on constitutionalism in K.N. Chandrasekharan Pillai (Ed.), P. Eshwar Bhatt (Ed.), C. Rajshekhar (Ed.) Indian Judiciary: An Audit (Karnataka University Dharwad, Dharwad 2000).,210-211.
[23] Supra note 8

activism as ,"In a sense, the power to interpret law is the power to make them ; and the power to manipulate the interpretation process is also the power to make law.[24] According to S.P. Sathe, "Although courts in England cannot declare an act of Parliament ultra vires, they have subjected the administrative actions to searching judicial vigilance. This is also judicial activism."[25]

Whereas, the term "Secularism" was first used by the British writer George Jacob Holyoake in 1851. Holyoake invented the term "Secularism" and defined in the following words - "secularism is that which seeks the development of physical, moral, and intellectual nature of man to the highest possible point, as the immediate duty of life which inculcates the practical sufficiency of natural morality apart from atheism, theism or the bible – which selects as its methods of procedure the promotion if human improvements would materials means, and proposes these positive arguments as the common bond of union, to all who would regulate by reasons and enable it by its services." He further says "secularism is a code of duty pertaining to this life founded on considerations purely human, and intended mainly for those for who find theology indefinite or inadequate, unreliable or unbelievable.[26]

In its linguistic sense, the word secularism is derived from the Latin word *saeculum*, meaning a generation of this age and corresponds to Greek Aeon. Its meaning extends to connote also this worldly. Thus, its lower Latin form Secularism means worldly. The law, state and religion are three vast concepts of law. Secularism is the word which shows the relationship between these three concepts of law. It is generally understood that secularism implies religious tolerance.[27]

IV. SIGNIFICANCE OF JUDICIAL ACTIVISM

In India, the law-making power primarily rests with the legislature, and the judiciary is generally not supposed to interfere in this domain. However, there have been instances where the legislature has failed to enact necessary laws in a timely manner. In numerous situations, the legislature has deliberately left certain issues to be resolved at the discretion of judges, allowing them to create rules based on the specific demands of the situation. In such cases, the judiciary can invoke the principle of judicial activism to ensure justice is secured, as demonstrated in the Vishakha case.

[24] Ibid
[25] S.P. Sathe, Judicial Activism in India, Trangressing Borders and Enforcing limits (Oxford University Press, New Delhi, 2nd edn., 2002)., 4
[26]Sumbul Fatima, "Secularism in India: A Myth or Reality" 22(7) ISOR Journal of Humanities and Social Science (2017), available at, www.iosrjournals.org. (Visited on 10/7/2024 at 5:30pm).
[27] Ibid

Moreover, there are certain instances known as "hard cases" where the law cannot be straightforwardly applied as written. In these situations, judges must employ creativity and judicial discretion to deliver justice. If judges fail to do so, their effectiveness and the legitimacy of the judiciary may be called into question. Thus, judicial activism becomes a crucial tool for the judiciary to adapt to evolving societal needs and uphold justice when the legislature is unable or unwilling to act.

The basic principle of criminal law that an accused person shall be presumed to be innocent until the charge against him is proved beyond all reasonable doubt is not a statutory rule but owes its origin to what may be called Judicial Activism.[28] Neither the Indian Penal Code nor the Criminal Procedure Code indicates the reason when a sentence of death may be imposed and not a sentence of imprisonment for life. Here again, the courts intervened and introduced the rule that a sentence of death may not be awarded except in the 'Rarest of Rare' cases. This again may rightly be called Judicial Activism.[29]

In situations where the aggrieved parties are unable to reach the court to seek judicial help, the SC or the HC is surely entitled to take up the matter suo moto. This is not only proper and may be even considered to be a pious obligation of the court. It is nothing more than the exercise of a power vested in the Supreme Court and the High Court to discharge their function in the manner appropriate to the great trust placed in them by the authors of the Constitution by vesting the writ jurisdiction in them. It may rightly be called Judicial Activism.[30]

V. THEORIES OF SECULARISMS

Melting Pot Theory: The melting pot theory of multiculturalism assumes that various immigrant groups will tend to "melt together", abandoning their individual cultures & eventually becoming fully assimilated into the predominant society. In a sense, the melting pot is a monocultural metaphor for a heterogeneous society becoming more homogeneous. The different elements “melting together” with a common culture or vice versa for a homogeneous. The different elements of society becoming more heterogeneous through the influx of foreign elements with different cultural backgrounds possessing the potential to create disharmony within the previous culture. Historically, it is often used to describe the cultural integration and even assimilation of immigrants into the U.S.

The Melting pot Theory was first rose to prominence in 1782 when J. Hector St. John de

[28] O. Chinnappa Reddy, The Court & The Constitution of India (Oxford University Press, New Delhi, 2008), 258.
[29] Ibid
[30] Ibid

Crevecoeur, a French immigrant, described the demographic homogeneity of United States as comprising "individuals of all nations melted into a new race of men, whose labors and posterity will one day cause great challenging changes in the world." (St. John de Crevecoeur, 1782 para 5).

He viewed Americans as "western pilgrims," carrying industrial skills from the eastern countries, completing their pilgrimage in the United States. According to Laubova (2005), St. John de Crevecoeur envisioned a prosperous American labor force made up of new races with significant influence on the U.S.'s global standing. Almost a century later, in 1845, Ralph Waldo Emerson, a poet and leader of the American transcendentalist's movement, expanded on St. J.D. Crevecoeur's theory by describing America as "the utopian product of a culturally and racially mixed smelting pot." In 1875, Titus Munson Coan further elaborated on his theory, depicting the process of becoming an American as the fusing by individualities including traits of the emigrant religion and race, in a democratic alembic like chips of brass in a melting pot.

Salad Bowl Theory: Starting in the 1960's a new vision of American pluralism arose metaphorically similar to the salad bowl. Compared to the melting pot, the salad bowl theory maintains the unique identities of individuals that would otherwise be lost to assimilation.[31] As more liberal theory of multiculturalism than the melting pot, the salad bowl theory describes a heterogeneous society in which people co-exist but retain at least some of the unique characteristics of their traditional culture, writes Robert Longley in an article. According to Longley, like a salad's ingredients, different cultures are brought together, but rather than coalescing into a single homogeneous culture, retain their own distinct flavors. In the U.S., New York City, with its many unique ethnic communities like "Little India", "Little Italy", "Little Odessa", and "Chinatown", is considered as an example of a Salad Bowl society. The salad bowl theory asserts that "it is not necessary for people to give up their cultural heritage in order to be considered

Assimilation Theory: The term "assimilation" describes, a process whereby members of an ethnic group take on the cultural and structural characteristics of another ethnic or national community. It's an Anglo-conformist classic assimilation theory (Brown & Bean, 2006, online) that expects minority cultures to morph into a society with norms, values & behaviors that reflect the dominant culture. In other words, people of different cultures combine so as to lose their discrete identities & yield a final product of uniform consistency and flavor, different from

[31] Ibid

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the original inputs.[32]

Integration Theory: Integration, on the other hand, occurs when there is an emphasis in both maintaining the original culture and simultaneously seeking to participate as an integral part of the dominant culture. Integration therefore refers to the processes, the system & structures in place to allow minorities (immigrant groups) to attain opportunities afforded long-term citizens and other societal goals such as improved socioeconomic positions & inclusion in a broad range of societal institutions.[33]

This theory focuses on the incorporations of minority groups into the mainstream culture while still allowing them to retain their unique cultural identities. This would mean that a secular society encourages the integration of diverse religious and cultural groups into the broader societal framework without forcing them to abandon their distinct identities. Each of these theories offer a different perspective on how societies can manage cultural and religious diversity and can be applied in various ways to the concept of secularism.

VI. JUDICIAL ACTIVISM AND SECULARISM – LEADING CASES

The subject of secularism is multifaceted, encompassing political, philosophical, and legal perspectives. The inclusion of the term "secular" in the Indian Constitution is aimed to explicitly emphasize the high ideals of secularism and national integrity. Broadly defined, secular means "worldly" as distinguished from spiritual or religious affiliation. However, its political interpretation varies across countries, shaped by historical and social contexts.

In India, secularism means the state has no official religion, distinguished it from a theocratic state. Article 15(1)[34] of the Constitution prohibits the state from discriminating against any citizen based on religion, race, caste, sex, or place of birth. Secularism in India is not merely a passive attitude of religious tolerance but a positive concept of equal treatment of all religions. It implies that the state should have no religion of its own and cannot become a theocratic state. However, this does not mean that the state remains entirely aloof from religion. The Constitution allows for state involvement in religious matters, institutions and practices. For instance, Art 16(5)[35] acknowledges the validity of laws related to the management of religious and denominational institutions by the state, while the Article 28(2)[36] allows the state to manage educational institutions where religious instruction is imparted.

[32] Ibid
[33] Ibid
[34] supra., Note 15.
[35] The Constitution of India, 1950. Art. 16(5).
[36] The Constitution of India, 1950. Art. 28(2).

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Thus, the essential conditions of secularism as provided by our constitution through the articles 14[37] 15[38] 16[39]17[40], 25[41]29[42]are as follows: (a) The state shall have no religion; (b) There shall be no discrimination on the ground of religion; (c) The individual shall have freedom to practice, profess & propagate religion.[43]

The Constitution of India guarantees freedom of religion to Every individual has freedom of conscience, including the right to freedom of religion, freedom of conscience, and freedom to propagate religion. The freedom to practice religion is absolute. One may be a believer or a non-believer, or may believe in one religion or the other. Freedom to practice however is subject to restriction.[44] The state has power to regulate or restrict any economic, financial, political, or other secular activity associated with religious practice. An activity will be treated as religious if it is regarded as an essential and integral part of religion, and will be secular if it is not considered a necessary part of religion. As a result, the court has upheld laws which may regulate or restrict matters associated with religious practice. If such a practice does not form an integral part of a particular religion, the decision of question as to whether a certain practice is a religious practice or not, may present difficulties because sometimes practices, religious and secular, are inextricably mixed up, and what is religion to one is superstition to another. But the courts have decided the issue raised, irrespective of this religion in question. In India secularism has now been pronounced by the Supreme Court to be a part of the basic structure doctrine of the Constitution and cannot be done away with even by a constitutional amendment. Supreme Court of India has been known to be an extremely activist court in most respects. The power of judicial review of legislation is provided for explicitly in the constitution, even though it has been observed time and again that this is merely abundant caution.

Sharaya Bano v. Union of India.[45] - In this case, the petitioner challenged the validity of talaq-e-biddat, arguing that it wasn't part of "shariat" and is also violative of her fundamental rights under Articles 14, 15, and 21 of the Constitution. She also argued that many Muslim countries themselves have banned triple talaq. A five-judge bench ruled against triple talaq by declaring it as illegal and not protected under Article 25 as an essential religious practice. This

[37] The Constitution of India, 1950. Art.14
[38] The Constitution of India, 1950. Art.15
[39] The Constitution of India, 1950. Art.16
[40] The Constitution of India, 1950. Art.17
[41] The Constitution of India, 1950. Art. 25
[42] The Constitution of India, 1950. Art. 29
[43] supra., Note 24.,161.
[44] Ibid, 167
[45] IR 2017 9 SCC 1(SC)

case highlights the connection between judicial activism and secularism because, for the first time, the court interfered in a civil matter, made an act punishable under civil law as a crime, and criminalized triple talaq.

In the case of State of Bombay v. Narasu Appa Malli[46] the validity of Bombay Prevention of Hindu bigamous Marriage Act, 1946[47] was challenged, claiming it violated article 14[48], 15[49] ,25[50], of Indian constitution. The petitioner argued that Hindu marriage is a Sacramental Union for procreation and the act infringed on their religious freedom. The court ruled that religious practices against public morality or policy must yield to public welfare. It upheld the act, stating that the reasonable discrimination for social reforms does not violate article 14 or 15. The court also noted that article 44[51], advocating for uniform civil code cannot be enforced as directive principles of state policy are non-justiciable.

In **Indira Nehru Gandhi v. Shri Rajnarain & Anr[52],** the basic feature of the secularism was explained by the hon'ble supreme court which held that, secularism means' that state shall have no religion of its own and all persons of the country shall be equally entitled to the freedom of their conscience and have the right freely to profess, practice and have the right freely to profess, practice and propagate any religion''

In **S.R. Bommai v. Union of India[53]** the Supreme Court upheld the dismissal of four BJP-led state governments for engaging in religious conduct. The court stated that secularism means the state should have no religion and must treat all religions equally. It emphasized that secularism is a positive concept of equal treatment, not just passive tolerance. Secularism is a basic feature of the constitution, ensuring that the state remains neutral towards religion. Political parties cannot mix politics with religion. A state government pursuing unsecular pro-policies acts against the constitutional mandate and is subject to action under Article 356.[54].

In **Aruna Roy v. Union of India[55]**, the Supreme Court upheld that secularism means no state discrimination based on religion. The New Education Policy 2002, promoting value-based education across religions, was challenged for violating Article 28 and being anti-secular. The court disagreed, stating that it promotes tolerance, counters extremism, and fights corruption

[46] State of Bombay v. Narasu Appa Malli AIR 1952 BOM 84 (1952)
[47] The Bombay Prevention of Hindu bigamous Marriage Act, 1946 (Act No. 25 of 194
[48] The Constitution of India, 1950. Art.14.
[49]The Constitution of India, 1950. Art.15.
[50] The Constitution of India, 1950. Art.25.
[51] The Constitution of India, 1950. Art.44.
[52] Indira Nehru Gandhi v. Shri Rajnarain & Anr 1975 AIR, S.C 2299
[53] S.R. Bommai v. Union of India, 1994 AIR SC 1981.
[54] The Constitution of India, 1950. Art. 356
[55] Aruna Roy v. Union of India (2002) & SCC 368

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without undermining secularism by fostering open-mindedness and rejecting blind faith.

In **Abhiram Singh v. C.D. Commachem,**[56], the Supreme Court observed whether secularism means complete separation of religion from politics. Referring to Dr. Radhakrishnan, the court clarified that secularism does not reject the relevance of religion but ensures equal treatment for all religions. The court noted that religion and caste are integral to Indian society and cannot be entirely separated from politics. It reaffirmed that secularism is a basic structure of the constitution, rooted in tolerance and ensuring equality for all religions. The court emphasized the link between secularism and democracy, stating that a secular state is essential for democracy to function properly and benefit the marginalized groups.

M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors (Ayodhya case)[57] - Ayodhya is believed to be the birthplace of Lord Ram According to the Ramayana. Hindus believe an ancient Ram temple at the site was demolished by the first Mughal Emperor Babur in 1528 to build the Babri Masjid. In 1992, the Babri Masjid was demolished by kar sevaks, leading to a dispute between Hindus and Muslims over the site. The court noted that the Hindu community's claims had been historically acknowledged & supported by the British government, by setting up of Lord Ram Sculptures in 1873. Evidence from the archaeological survey of India indicated that the Babri Masjid was built on a pre-existing structure from the 12th century. The Court also emphasized that Indian secularism ensures the equality of all Religions, not just passive tolerance. Hence The destruction of the Babri Masjid violated the rule of law and needed to be remedied (compensated). In order to support the religious dedication of the country to its people and make up for the Muslim community's loss due to the unlawful destruction of the mosque, The court decided to award the Hindus the contested 2.77 acres of property while simultaneously awarding the Muslims 5 acres of land.

Aishat shifa v. State of Karnataka & others[58] Muslim women students at a Government Pre-University College in Udupi, Karnataka, were barred from wearing hijabs following a Government Order (GO) issued on February 5, 2022, mandating a uniform without religious head coverings. The students challenged this in court, arguing it violated their right to religious expression and freedom. The Karnataka High Court upheld the ban on March 15, 2022, stating hijab wearing wasn't an essential religious practice and didn't infringe on freedom Of speech.

The All-India Muslim Personal Law Board appealed in the Supreme Court. On October 13,

[56] Abhiram Singh v. C.D. Commachem (2017) 10 SCC 1
[57] M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors AIR ONLINE 2019,SC 1420, 2020(1) SCC1, (2019) 15 SCALE 1 (2019) 4 CURCC 182, (2019) 6 ALLMR
482, (2019), 6ALLWC 5535(2019)8 MAD LJ 117.
[58] Aishat shifa v. State of Karnataka & others 2020 SCC ONLINE SC 1394

2022, the Supreme Court delivered a split verdict. Justice Hemant Gupta upheld the ban, while Justice Dhulia favored those opposing it. The case now awaits a decision by Chief Justice U.U. Lalit on further steps.

Waman Rao & Others v. Union of India & Others[59], decided by the Supreme Court on November 13, 1980, is a significant judgment that further elaborates on the principle established in the landmark judgment of Kesavananda Bharati Case (1973)[60]. This case focuses on the interpretation and application of the Basic Structure doctrine, particularly in relation to the laws placed in the Ninth Schedule of the Indian Constitution.[61]

The Kesavananda Bharati case[62] had established that while parliament could amend the constitution, it could not alter its basic structure. However, the Application of this doctrine to laws included in the 9th schedule (intended to protect certain laws from judicial review) remained somewhat ambiguous. The Waman Rao case clarified this ambiguity. A 5-judge bench of the SC held that the laws placed in the 9th schedule before April 24, 1973, would be valid, whereas, those included after this date could be subjected to judicial review, to ensure that they do not violate the Basic Structure of the Constitution. The SC also held that the laws placed in the 9th schedule after April 24, 1973, are not beyond judicial scrutiny. If these laws are found to infringe upon the basic structure of the Constitution, they can be struck down by the judiciary. This shows the activism of the judiciary in protecting the rights of the citizens.

This Waman Rao case[63] was further referred to a 9-judge bench of SC in the case of **I.R. Coelho v. State of Tamil Nadu & Others**[64]. This is a landmark of the Constitution of India & the fundamental rights enshrined in Part III of the Constitution of India.

The Ninth Schedule was added to the Constitution of India by First Amendment in 1951[65] to protect certain laws from being challenged in courts on the grounds of violating fundamental rights over time, several laws, particularly land reform laws, were added to this schedule. However, concerns arose in India about whether laws placed in the 9th schedule would indeed escape judicial review, especially if they were manifestly unjust or violative of the basic structure of the Constitution. The Supreme Court unanimously held that any law inserted into the 9th Schedule after April 24, 1973, is subject to judicial review. If such a law violated

[59] Waman Rao & Others v. Union of India & Others (1981) 2 SCC 362 [1981] 2 SCR1
[60] AIR 1973 SC 1461; 1973 4 SCC 225.
[61] Ninth schedule of The Constitution of India, 1950.
[62] AIR 1973 SC 1461; 1973 4 SCC 225
[63] (1981) 2 SCC 362 [1981] 2 SCR1.
[64] I.R. Coelho v. State of Tamil Nadu & Others AIR 2007 SUPREEM COURT 861, 2007 (2) SCC 1.
[65] The Constitutional (First Amendment) Act, 1951

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fundamental rights, which form part of the basic structure of the Constitution, it can be struck down. The I.R. Coelho case is a milestone in Indian Constitutional law, reinforcing the doctrine of Basic Structure and ensuring the protection of fundamental rights against legislative overreach. This case again highlights the proactive role of the judiciary in protecting individuals' rights.

VII. CONCLUSION

The judiciary, though often perceived as the weakest branch of the state due to its lack of direct control over the sword in law making authority, derives its strength from the public confidence and faith and this trust establishes the constitutionality of the court and fuels judicial activism. Judicial activism is not about judicial governance but about operating within constitutional boundaries to evaluate reasonableness or unreasonableness of actions taken by other governmental branches.[66] The ultimate goal is to provide justice to the common people.

In this context, the judiciary must embody fairness, impartiality, and humility as it interprets the law. This is where judicial activism intersects with the principle of secularism. Judicial activism plays a crucial role in promoting and safeguarding secularism within a legal framework. By proactively interpreting and enforcing constitutional principles, the judiciary ensures that the state maintains neutral stance in religious matters, upholding the rights of individuals to freedom of religion and belief. Judicial interventions have been pivotal in striking down discriminatory practices, protecting minority rights and maintaining the separation of religion from state affairs. However, it is essential for the judiciary to balance activism with judicial restraint to preserve its legitimacy and avoid encroaching upon the domains of the legislature and executive. Ultimately, judicial activism, when exercised judiciously, reinforces secularism and strengthens democratic values by ensuring that, the laws and policies adhere to the constitutional mandates of equality and non- discrimination.

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[66] see, supra., Note 21., 151

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