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# Human Rights and Secularism in India

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## ABSTRACT

*This thesis explores the intricate relationship between human rights and the concept of secularism in India, aiming to understand the interplay and challenges that arise when these two principles intersect. As a diverse and pluralistic nation, India faces the task of safeguarding individual freedoms and religious pluralism while maintaining a secular framework. By analyzing constitutional provisions, legal frameworks, and relevant case studies, this research comprehensively explains the dynamics between human rights and secularism in the Indian context.*

*The study begins by establishing the theoretical foundation of human rights, drawing upon international principles, theories, and frameworks. It then delves into the historical evolution of human rights in India, highlighting the constitutional provisions that anchor these rights within the country's legal framework.*

*In parallel, the concept of secularism is explored in its various interpretations, encompassing the historical trajectory and constitutional provisions that define secularism in India. By examining landmark court cases and legal interpretations, the research scrutinizes the judiciary's role in upholding human rights within the framework of secularism.*

*One of the key challenges addressed is a conflict between human rights and religious practices. Communal tensions and religious discrimination pose significant obstacles to protecting human rights in a pluralistic society. This research investigated these challenges and explored approaches to balancing religious freedom with the human rights of marginalized communities.*

*The thesis also examines the interplay between women's rights, personal laws, and secularism, focusing on the challenges faced by women in the context of religious practices and personal laws. It critically analyses legal and societal approaches to address gender inequality within a secular framework.*

*Freedom of expression and religion are crucial aspects of the discourse on human rights and secularism. The research delves into the complexities of these freedoms within India's diverse society, assessing the limits and restrictions imposed on religious speech and practices in the name of secularism.*

*Finally, the thesis concludes by providing recommendations and a way forward for promoting human rights within a secular framework in India. It suggests strategies to*

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*reconcile these principles, strengthen legal frameworks, and foster dialogue, education, and awareness to create a culture of tolerance, inclusivity, and respect for human rights.*

*Overall, this research contributes to understanding the interplay between human rights and secularism in India. By identifying challenges and offering recommendations, it aims to facilitate the development of policies, legal reforms, and practices that uphold human rights while maintaining a secular framework, fostering a society founded on principles of equality, justice, and religious pluralism.*

## **I. INTRODUCTION**

In a diverse and pluralistic society like India, the coexistence of human rights and the concept of secularism poses both opportunities and challenges. The principles of human rights ensure the protection of fundamental freedoms and equality for all individuals. At the same time, secularism seeks to establish a state that remains neutral in matters of religion and treats all religions equally. The interplay between these two principles becomes crucial in a country where multiple religions and belief systems thrive alongside each other.

### **(A) Background and Rational for the Study**

India's rich history and cultural heritage have shaped its constitutional framework, which enshrines the protection of human rights and espouses the principle of secularism. The Constitution of India guarantees a wide array of human rights, including the right to life, equality, freedom of expression, and freedom of religion. At the same time, it envisions a secular state that upholds the values of tolerance, respect, and non-discrimination towards all religions and religious communities.

However, navigating the complex relationship between human rights and secularism is not without its challenges. The diverse religious practices, cultural norms, and traditions in India sometimes clash with certain human rights standards, giving rise to tensions and conflicts. Balancing the rights of individuals with the collective rights of religious communities becomes a formidable task for policymakers, lawmakers, and the judiciary.

This research paper explores the interplay between human rights and the concept of secularism in the Indian context, shedding light on the challenges and opportunities that arise when these two principles intersect. By examining constitutional provisions, legal frameworks, and relevant case studies, this study seeks to provide a comprehensive understanding of the dynamics at play and the complexities faced in upholding human rights within a secular framework.

The paper will delve into the theoretical foundations of human rights, drawing upon

international principles, theories, and frameworks. It will then turn its focus to the historical evolution of human rights in India, examining the constitutional provisions that safeguard these rights within the country's legal framework. Simultaneously, the concept of secularism will be explored in its various interpretations, encompassing its historical trajectory and constitutional provisions in India.

By analyzing landmark court cases and legal interpretations, this research will critically assess the role of the judiciary in upholding human rights within the framework of secularism. It will examine the challenges that emerge when religious practices conflict with human rights, investigating communal tensions, religious discrimination, and the balancing of religious freedom with the rights of marginalized communities.

Additionally, the paper will address the interplay between women's rights, personal laws, and secularism. It will examine the challenges faced by women in the context of religious practices and personal laws, critically analyzing legal and societal approaches to address gender inequality within a secular framework.

Furthermore, the study will explore the complexities of freedom of expression and religion in India's diverse society. It will assess the limits and restrictions imposed on religious speech and practices in the name of secularism, considering the delicate balance between upholding human rights and preserving social harmony.

Ultimately, this research aims to provide insights into the interplay between human rights and the concept of secularism in India. By identifying the challenges and opportunities that arise, it strives to contribute to the development of policies, legal reforms, and practices that uphold human rights while maintaining a secular framework. Through these endeavors, the goal is to foster a society founded on principles of equality, justice, and religious pluralism.

**(B) Research objective: -**

- How does the Indian Constitution, as a legal framework, incorporate and protect human rights while upholding the principle of secularism?
- How does the judiciary navigate the delicate balance between upholding human rights and respecting religious freedom within a secular framework?

By pursuing these objectives, the study aims to contribute to a deeper understanding of the interplay and challenges between human rights and the concept of secularism in India. The findings and recommendations from this research can inform policymaking, legal reform, and societal initiatives to foster an environment that upholds human rights while respecting religious

diversity and maintaining a secular framework.

## II. UNDERSTANDING HUMAN RIGHTS

### (A) Evolution of human rights in India

The history of human rights spans thousands of years and is based on religious, social, philosophical, and legal developments throughout recorded history. Several ancient accounts and later religions and philosophies contained concepts that could be considered human rights. Prominent among such documents are the Edicts of Ashoka the Great of India from 272-231 BC. and the Constitution of Medina of AD 622, drawn up by Muhammad to establish a formal claim between the prominent tribes and families of Yathrib (later known as Medina). Be that as it may, the idea of guaranteeing human rights arose after the terrible clashes of the two world wars.

The philosophy of human rights already played an important role in the old Brahmin society of India. In ancient India, the law built on the logic of dharma did not have much room for religious discrimination. We learn from the Mahabharata that dharma was meant to promote all animals and prevent animals from harming each other. In the Bhagavad Gita, honesty is described as the essence of dharma. The Upanishads speak of dharma as the basis of the entire universe and through it, evil is removed. Vedas and Smritis talked about the balance of brotherhood e.g. **वसुधैव कुटुंबकम्** ‘(the whole world as one family)’. All four Vedas call for unity and respect for human dignity.

In all eighteen Puranas, Vyasa said two things: to do good to another is right, and to harm another is wrong. Be it Mahabharata, Arthashastra, Manu Dharmashastra, or Narada, the institution of kingship and Rajdharma is highly emphasized to prevent political disorder, social chaos, and injustice. Kings had to promise that they would never be subjective and would always act according to "whatever law and whatever ethics dictated and not against politics. “Lord Buddha's teachings were used to share equality among individuals. Ashoka worked hard to protect human rights. His main concern was the happiness of his subjects. Ashoka was successful in creating a welfare state and individuals had great opportunities. From a study of the Mudra Rakshas, it seems that the contract of administration of justice was considered one of the important duties of the rulers. It is therefore inexhaustibly clear that ancient Indian law meant the extension and enforcement of human freedom, liberty, and equality for all individuals. It created common ideas based on human solidarity and understanding that transcend differences of race, colour, dialect, religion, etc.

During the Islamic era, the Muslim rulers of India were fundamentalists and tyrants who imposed their laws and traditions on the Hindus. and religious practices. Hindus were not treated legally with Muslims - the latter were conquerors and former kafirs: unbelievers of Islam; Hindus were forced to use rare disabilities like jazia.

### **(B) In Modern Era**

They are universal because everyone is born with the same rights and has the same rights regardless of place of residence, gender or race, or religious, cultural, or ethnic background. It is inalienable because human rights can never be taken away. Indivisible and interdependent because all rights – political, civil, social, cultural, and economic – are equally important and cannot be fully enjoyed without the others. They apply equally to everyone, and everyone has the right to participate in the decisions that affect their life. They are based on the principles of the rule of law and are reinforced by legitimate claims that commitments are accountable according to international standards.

Universality and inalienability: Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The universality of human rights is expressed in the words of Article 1 of the Universal Declaration of Human Rights: "All people are born free and equal in dignity and rights"<sup>2</sup>.

Indivisibility: Human rights are indivisible. Regardless of whether they relate to civil, cultural, economic, political, or social issues, human rights belong to the dignity of every person. Thus, all human rights have equal status and cannot be placed in a hierarchical order. The denial of one right always prevents the exercise of other rights. Thus, everyone's right to an adequate standard of living cannot be compromised at the expense of other rights, such as the right to health or education.

Interdependence and Interdependence: Human rights are interdependent and interrelated. Everyone contributes to the realization of human dignity by satisfying their developmental, physical, psychological, and spiritual needs. The realization of one right often depends in whole or in part on the realization of others. For example, the realization of the right to health may in certain circumstances depend on the realization of the right to development, education, or access to information.

Equality and non-discrimination: All individuals are equal as human beings and based on the inherent value of each person. Therefore, no one should be discriminated against because of

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<sup>2</sup> UN General Assembly, The Universal Declaration of Human Rights (UDHR), New York: United Nations General Assembly, 1948, General Assembly resolution 217 A (III), 10 December 1948

race, colour, ethnic origin, sex, age, language, sexual orientation, religion, political or other opinions, national, social, or geographical origin, disability, property, birth, or another status by human rights standards.

**Participation and involvement:** All people have the right to participate and be informed about decision-making processes that affect their lives and well-being. Rights-based approaches require the broad participation of communities, civil society, minorities, women, youth, indigenous peoples, and other identified groups.

**Accountability and rule of law:** States and others are responsible for maintaining human rights. In this regard, they must comply with the legal norms and standards established in international human rights treaties. If they fail to do so, the injured rights holders have the right to seek appropriate compensation from a competent court or other judge according to the rules and procedures provided by law. Individuals, media, civil society, and the international community play an important role in holding governments accountable for protecting human rights. UNFPA<sup>3</sup> supports the inclusion of human rights standards in all phases of its program framework, including:

- Analyzing the immediate, underlying, and structural causes of human rights violations
- Setting strategies and goals to address the main causes of human rights violations and to empower the most vulnerable people as well as to reinforce the capacity of duty bearers.
- Supporting initiatives for the establishment or improvement of an enabling legal and social framework on population and development, reproductive health, and gender equality
- Following the recommendations of UN treaty bodies such as the Committee on the Elimination of Discrimination Against Women
- Evaluating and monitoring programs with participatory processes and using human rights indicators

UNFPA also recognizes that a rights-based approach should be based on gender and social exclusion analysis to ensure that programs reach marginalized and vulnerable populations, especially poor women and youth, and form where people from certain walks of life come together to realize 'Swaraj' (independence).

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<sup>3</sup> UNFPA: - United Nations Population Fund

The Indian judiciary plays an important role in the realization of these rights. Under Articles 32<sup>4</sup> and 226<sup>5</sup>, the Courts greatly expanded the scope of judicial review and formulated modern strategies and techniques for providing relief to the poor and those affected by Public Interest Litigation (PIL). It can rightly be said that the Indian Judiciary through the innovation of Public Interest Litigation or Social Interest Litigation expanded the concept of social justice and did a lot in organizing, expanding, securing, and promoting human rights. Courts try hard to interpret human rights jurisprudence in the reality of the constitutional philosophy of human rights jurisprudence into reality. The judiciary has been rendering judgments that are in tune and temper with legislative aims while keeping the dimensions of fundamental human rights of the citizens to make them meaningful and practical.

Human rights are enshrined in Article 21<sup>6</sup> advanced concepts of the Constitution of India.

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<sup>4</sup> Article 32: - Remedies for enforcement of rights conferred by this Part -

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

<sup>5</sup> Article 226: - Power of High Courts to issue certain writs -

(1) Notwithstanding anything in article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

[(1-A) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."; was inserted after 15th Amendment]

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without--

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

<sup>6</sup> Article 21: - Protection of life and Personal Liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law.



Article 21 of the Constitution of India is the heart and soul of our Constitution. Its scope is constantly expanded by broader legal pronouncements. According to *Bhagwati, J.*, Article 21 'embodies a constitutional value of supreme importance in a democratic society. *Iyer, J.*, has characterized Article 21 as 'the procedural Magna Carta protective of life and liberty.' This right has been held to be the heart of the Constitution, the foremost natural and progressive arrangement in our living Constitution, and the establishment of our laws.

Article 21 can only be claimed when an individual is denied of his 'life' or 'personal liberty' by the 'state' as characterized in Article 12. The infringement of the right by people is not within the purview of Article 21.

The landmark decision that led to the expansion of the concept of Article 21 is *Maneka Gandhi Vs. Union of India*<sup>7</sup> which adopted a broad interpretation. In this case, several dynamic proposals were made to make Article 21 more important. The earlier position that Article 21 was a code has been rejected. Articles 14, 19, and 21 were considered closely related. With Justice Krishna Iyer in, no article of fundamental rights is an island unto itself. Just as a human being cannot be cut into separate limbs, the fundamental rights of the organic constitution synthesis.

In *Maneka Gandhi Vs. Union of India* Article 21 has been given an expanded meaning to encompass the scope of fundamental rights instead of diluting their meaning and substance through legal proceedings. Justice Iyer commented, "Human life is the foundation of Article 21."

Similarly, in *P. Rathinami Vs. Union of India*<sup>8</sup>, the Supreme Court has interpreted "life" as the right to live with dignity and it does not mean a continuous career. This includes some of the good graces of civilization that make life worth living and that the extended concept of life would mean the traditions, culture, and heritage of the individual concerned.

### III. CONCEPTUALIZING SECULARISM

India is a vast country inhabited by people of various religions, castes, religions, and socio-cultural backgrounds. This country is also diverse with its different populations. Although the word secularism has not been mentioned in the constitution since the beginning, it has been included in our state as its philosophical phenomenon.

Although secularism is a basic structure of the Indian constitution, its feasibility in the current

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<sup>7</sup> AIR 1978 SC 597

<sup>8</sup> 1994 AIR 1844, 1994 SCC (3) 394

Indian context is questionable because religion is increasingly used to construct ethnic and communal identities that constitute political mobilization. Caste, religious, and regional divisions are still prevalent in India and play an important role in shaping the ideology of individuals and groups.

While secularism has been an integral part of India and democracy for more than 70 years, its limitations and implementation are contested. The true meaning of secularism is that the state should not have its religion, and no one can claim to make the state a theocratic state (Basu, 2007), but that does not mean that the state must stay away from religion. The object of inserting the word secular in the Constitution was to spell out expressly the high ideas of socialism, secularism, and integrity of the nation.

Secularism enables people to see the imperative requirements for human progress in all aspects and cultures, including social advancement (Basu, 2007). But today secularism is also identified with the concept of modernity, which is a subjective thing that has meaning from the point of view of the individual. Secularism and modernity are undoubtedly linked, but it is widely felt that the central ideal of equal respect for all religions has not been translated into social reality, rather India has inherited multiculturalism from ancient times due to its multiculturalism; India has a unique identity in the world. To create a nation, there must be one language, one culture, one history, and one religion. But in India, it is an exception. Representatives of different religions and cultures live together in India. India is still a nation. In India, along with multiculturalism, social tolerance is the backbone of society.

Although people behave according to their own religion and culture, the religion and culture are mutually respected. In India, everyone has the right to propagate and promote religion and culture. Indian society cannot be thrown apart from religion because religion has become an integral part of Indian society.

After Independence, the Indian Constitution has worked to maintain national unity and social tolerance by keeping this pluralistic society.

#### **(A) Meaning of secularism**

Secularism means that the state does not give shelter to any particular religion. Religion means accepting personal matters and allowing them to behave according to their religion.

In, the Encyclopaedia Britannica defines secularism as non-spiritual. Secularism is not atheism, but it has the same belief in all religions and does not have specific religions per country. Nor is the political system governed by religion. States can have citizens of different religions. Every citizen can live freely according to his faith. In the Indian tradition, secularism can be defined

by the following three ideologies. One, liberal ideology accepted Western secular concepts. Politics and religion should be completely different, religion should not affect politics and politics should not be affected by religion. Both things are agreed differently.

Second, transformative ideology emphasizes social, economic, and political development. This ideology recognizes that religion should be limited to the private life of the individual and should try to create scientific perspectives between individuals. However, it is a system of doctrine and practice that ignores or rejects all religious belief and worship (Basu, 2007). The basic principle of the secular state is that religion must not interfere in the affairs of the state and vice versa, i.e. the state must also not interfere in religious matters (Tarkunde, 1995). According to Webster's New World Dictionary, secularism means the belief that religious and ecclesiastical matters should not be part of government operations.

### **(B) There are two main concept of secularism**

#### **a. Western concept and Indian concept**

The Western concept of secularism is based on the ideas of Thomas Jefferson. He had said in 1908, "Erecting the wall of separation between Church and State is absolutely essential in a free society". According to him, there ought to be a separation between religious institutions from the institution of States.

Freedom of conscience for individuals circumscribed only by the need for public order and respecting other individuals' rights is a guiding principle. This means that if an individual practices one religion and this practice infringes upon the rights of followers of other faiths, restrictions can be imposed on the former. Thomas Jefferson held the opinion that there should not be any discrimination against individuals based on their religion.

The Western conceptualization of secularism began in the 19th century. The term secularism was coined by the British reformer Jacob Holyoke in 1851. He used the term to describe his views on promoting a social order separate from religion without criticizing religious beliefs. Regarding the scenario of secularism in India, a perusal of the debates in the Constituent Assembly and No. 039 shows that there was a general feeling among the members of the assembly that India must be a secular state. The Constituent Assembly emphasized the secular basis of India. The Assembly declared that secularism, as accepted in the Constitution of India, is not an anti-religious concept; Instead, it prevented citizens from being discriminated against based on religion.

One of the Members of the Constituent Assembly, Mr. H.V. Kamath, said:

When I say that a State should not identify itself with any particular religion it does not mean that a State should be antireligious or irreligious. India would be a secular State, but according to me, a secular state is neither a godless State nor an irreligious nor an anti-religious State. (Pylee, 2007).

Dr. B. R. Ambedkar explained secularism in the following words:

It (secular state) does not mean that we shall not take into consideration the religious sentiment of the people. All that a secular State means is that this Parliament shall not be competent to impose any particular religion upon the rest of the people.

This is the only limitation recognized by the Constitution (Pylee, 2007). After the debate of the Constituent Assembly, two views of secularism mainly collided; one was the Gandhian view, and the other was the Nehru view. Gandhi's view was based on *Sarva Dharma Sambhavi*, or equality of all religions. According to him, religion cannot be separated from public life. He said that religion is important to him, and he also respects other religions. Nehru followed the principle of *Dharma Nirpeksha*. According to him, religion should be a private matter, it should not dominate public life. After independence, a new concept of secularism appeared that was closer to the views of both Gandhi and Nehru.

### **(C) Secularism and The Indian Constitution**

- There is a clear incorporation of all the basic principles of secularism into various provisions of the constitution.
- The term 'Secular' was added to the preamble by the forty-second Constitution Amendment Act of 1976, (India is a sovereign, socialist, secular, democratic, republic).

It emphasises the fact that constitutionally, India is a secular country that has no State religion. And that the state shall recognize and accept all religions, not favour or patronize any particular religion.

- While Article 14 grants equality before the law and equal protection of the laws to all, Article 15 enlarges the concept of secularism to the widest possible extent by prohibiting discrimination on grounds of religion, race, caste, sex, or place of birth.
- Article 16 (1) guarantees equality of opportunity to all citizens in matters of public employment and reiterates that there would be no discrimination based on religion, race, caste, sex, descent, place of birth, and residence.
- Article 25 provides 'Freedom of Conscience', that is, all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion.

- As per Article 26, every religious group or individual has the right to establish and maintain institutions for religious and charitable purposes and to manage its affairs in matters of religion.
- As per Article 27, the state shall not compel any citizen to pay any taxes for the promotion or maintenance of any particular religion or religious institution.
- Article 28 allows educational institutions maintained by different religious groups to impart religious instruction.
- Article 29 and Article 30 provides cultural and educational rights to the minorities.
- Article 51A i.e. Fundamental Duties obliges all the citizens to promote harmony and the spirit of common brotherhood and to value and preserve the rich heritage of our composite culture.

#### **IV. HUMAN RIGHTS AND SECULARISM IN INDIAN JURISPRUDENCE**

Secularism in its true sense is a belief system that separates religion from the state and its civil affairs. The word "secular" originated in late medieval Europe. The introduction of the word "secular" through the 42nd Amendment in simply made the Indian constitution clearer about the secular nation. No religion has any special status as a state in India. There is no such thing as a national religion of India. This distinguishes it from theocratic governments such as the Islamic Republic of Pakistan and other Muslim countries. Secularism is a fundamental principle of the basic structure of the Indian Constitution. Positively supports the secularism of India ensuring equal freedom of religion to all religions. It represents the right of all citizens to freedom. Explaining the meaning of secularism adopted by India, Alexandrowics writes: "India as a secular state constitutionally guarantees religious freedom to all people and does not give a special status to any particular religion."

"Secularism has now been declared by the Supreme Court of India to be part of the basic structure of the constitution and cannot be removed even by an amendment to the constitution. Articles 25-28 guarantee individuals such as groups the right to religious freedom. However, Article 25 limits to this public the exercise of the right to order, decency, and protection of health and all other rights listed in Part III of the Constitution. Therefore, it is constitutional for the parliament to put social welfare and reforms before religious interests. Article 17 of the Constitution is a rare example of criminal constitutional provisions that criminalize untouchability, a practice essentially traceable to Hinduism. Article 25 itself specifies that. religious freedom cannot be used to limit the access of members of higher castes

to Hindu worship. This relatively inferior position accorded to freedom of religion in the Constitution is in stark contrast to the way it played out in the courts and political arena of India. Many recent constitutional disputes in India have focused on religious rights.

The Supreme Court of India has been extremely active in most respects. The right of judicial review of legislation is explicitly provided for in the constitution, although it has been repeatedly stated that this is only an "additional precaution" because judicial review belongs to the judiciary. Thus, there is no doubt that all laws of the land must conform to Part III of the Constitution, which enshrines the fundamental rights of the people, including the right to freedom of religion.

India's religious conflicts have been characterized by the general reluctance of the Indian Supreme Court to intervene in religious matters. One of the earliest cases in this regard is the case of *Narsu Appa Malli*, which challenged the legal ban on polygamy among Hindus as a violation of religious freedom. The Bombay High Court held that it was an amount of constitutional reform and upheld the impugned ordinance.

The court added that although this is a valid reform measure (and therefore does not violate the freedom of religion enshrined in Article 25), the personal right does not have to comply with Part III of the Constitution at all. Although "custom" is part of the law required to fulfill the fundamental rights of the Constitution, personal rights differ from custom and are outside the control of constitutional rights. In addition to that, the court added that since polygamy had economic, religious, and social reasons, it could not be considered "only" gender discrimination (as required by the Indian Constitution) and, if amended, would not be considered unconstitutional. This case is significant because it has been used as a benchmark in several decisions of the Supreme Court of India.

#### *Kesavananda Bharati v. State of Kerala*<sup>9</sup>

In 1973, in the *Kesavananda Bharati v. State of Kerala* judgment, the Supreme Court of India held that secularism is a part of the basic structure of the Constitution. Further, it was held that elements that constitute the basic structure cannot be amended by the parliament.

#### *S.R. Bommai v. Union of India*<sup>10</sup>

The principle laid down in the *Kesavananda Bharati* case was reiterated in 1994 in the case of *S.R. Bommai v. Union of India*. The Supreme Court cleared the doubt over the word 'secularism' in the Constitution. The Court held that the secular nature of a society does not

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<sup>9</sup> (1973)4 SCC 225

<sup>10</sup> 1994 AIR 1918, 1994 SCC (3), 1, JT 1994 (2)215, 1994 SCALE (2)37

make it an atheist society. Secularism makes society more heterogeneous. The law of a secular nation provides equal status to all religions and does not favour or discriminate against anyone.

*Ahmedabad St. Xavier's College v. State of Gujarat*<sup>11</sup>

In the landmark case of *Ahmedabad St. Xavier's College v. State of Gujarat*, the Supreme Court held that secularism neither means anti-God nor pro-God. It ensures that nobody shall be discriminated against based on religion. Secularism, therefore, eliminates the concept of God in matters of the state.

### **(A) Assessing the role of the judiciary in upholding human rights within a secular framework**

The role of the judiciary in upholding human rights within a secular framework is crucial in ensuring the protection and promotion of individual freedoms, equality, and justice. In the context of this research paper on "Human Rights and the Concept of Secularism in India: Exploring the Interplay and Challenges," assessing the role of the judiciary becomes essential to understanding how the judiciary navigates the delicate balance between human rights and secularism. Here is an assessment of the judiciary's role in upholding human rights within a secular framework:

**Constitutional Interpretation:** The judiciary plays a vital role in interpreting and applying constitutional provisions that protect human rights within a secular framework. Through its interpretation, the judiciary clarifies the scope and limitations of fundamental rights, ensuring their compatibility with secular principles. The judiciary's interpretation shapes the legal landscape, establishing precedents that guide the protection of human rights.

**Safeguarding Fundamental Rights:** The judiciary acts as a guardian of fundamental rights enshrined in the Constitution. It has the power to strike down laws or government actions that violate constitutional guarantees of human rights, ensuring that individual liberties are protected. By exercising judicial review, the judiciary acts as a check on the executive and legislative branches, safeguarding human rights within the framework of secularism.

**Balancing Conflicting Rights:** Secularism may come into conflict with certain religious practices or beliefs that impinge upon human rights. In such cases, the judiciary plays a critical role in balancing these conflicting rights. It assesses the legitimacy and proportionality of restrictions placed on religious practices to ensure that they do not violate the fundamental rights of individuals. The judiciary's role is to strike a balance that respects both religious freedom and

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<sup>11</sup> 1974 AIR 1389, 1975 SCR (1) 173, AIR 1974 SUPREME COURT 1389, 1974 2 SCJ 381, 1975 (1) SCR 173, 1974 (1) SCC 717

human rights, preventing any undue favoritism or discrimination.

**Addressing Discrimination:** Secularism aims to promote equality and non-discrimination. The judiciary plays a significant role in addressing discrimination based on religion, caste, gender, or other factors, ensuring that all individuals enjoy equal rights and opportunities. It adjudicates cases of discrimination, provides remedies, and sets legal precedents that promote inclusive and equitable societies.

**Setting Precedents and Guiding Principles:** Judicial decisions related to human rights within a secular framework serve as legal precedents and establish guiding principles for future cases. Through its judgments, the judiciary shapes the interpretation and application of laws, providing clarity on the boundaries of secularism and the protection of human rights. Precedents set by the judiciary influence legislation, policy-making, and social attitudes, fostering a rights-based and secular society.

**Public Awareness and Education:** The judiciary plays a role in raising public awareness and educating society about human rights and secularism. Through its judgments, the judiciary brings attention to human rights issues, creates discourse, and fosters a culture of respect for human rights within a secular context. The judiciary's pronouncements and explanations of legal principles contribute to public understanding and awareness of the importance of upholding human rights.

It is important to critically assess the judiciary's role in upholding human rights within a secular framework, considering both the successes and limitations. By analyzing landmark court cases, legal interpretations, and the impact of judicial decisions, this research paper can provide valuable insights into the judiciary's contributions, challenges, and potential areas for improvement in safeguarding human rights while upholding secular principles in India.

## **(B) Challenges at the intersection of human rights and secularism:**

### **a. Examining Conflicts between Human Rights and Religious Practices in India**

The intersection of human rights and secularism presents complex challenges, particularly in countries like India with diverse religious and cultural landscapes. As a secular nation, India strives to uphold the principles of equality, freedom of religion, and non-discrimination. However, conflicts between human rights and religious practices often arise, creating dilemmas that require careful consideration and resolution. This research paper aims to examine the challenges that emerge at the intersection of human rights and religious practices in India, analyzing the conflicts that arise and their impact on the protection and promotion of human



rights.

### **Understanding the Context:**

**Diversity of Religious Practices:** India is known for its rich religious diversity, with various religions coexisting and practicing their respective beliefs and traditions. The country's secular framework seeks to accommodate this diversity while safeguarding individual rights. However, clashes can occur when religious practices infringe upon human rights, such as gender equality, freedom of expression, or freedom from discrimination.

**Religious Personal Laws:** India recognizes personal laws that govern matters such as marriage, divorce, inheritance, and adoption, based on religious affiliation. These personal laws often diverge from the principles of gender equality and can lead to violations of women's rights. Balancing the rights of individuals with the preservation of religious traditions poses a significant challenge.

### **Examining Conflicts and Challenges:**

**Gender Equality and Religious Practices:** Certain religious practices may discriminate against women, denying them equal rights and opportunities. Issues such as unequal inheritance, restrictions on mobility, and discriminatory practices in religious institutions can conflict with the principles of gender equality enshrined in human rights frameworks. Resolving these conflicts without infringing upon religious freedom poses a challenge.

**Freedom of Expression and Religious Sensitivities:** The right to freedom of expression can clash with religious sensitivities and beliefs. Balancing the freedom to express opinions, including criticism or satire, with respect for religious sentiments requires delicate consideration. Cases involving censorship, blasphemy laws, or restrictions on artistic freedom highlight the complexities at this intersection.

**Right to Religious Conversion and Anti-Conversion Laws:** The right to freedom of religion includes the freedom to convert to another religion. However, anti-conversion laws in some states restrict this right, aiming to prevent forced conversions or undue influence. Balancing the protection of individual rights with preventing coercion and ensuring religious harmony poses a challenge.

**LGBTQ+ Rights and Religious Beliefs:** LGBTQ+ rights often clash with religious beliefs and teachings that consider same-sex relationships as immoral or unnatural. Navigating the tension between religious freedoms and ensuring equal rights for the LGBTQ+ community is a complex challenge within a secular framework.

**Addressing the challenges:**

**Balancing Act:** Balancing the rights and freedoms of individuals with the preservation of religious practices requires a nuanced and context-specific approach. Courts, policymakers, and society as a whole must carefully weigh competing interests and consider the impact on human rights.

**Dialogue and Engagement:** Encouraging open dialogue and engagement between religious communities, civil society organizations, and human rights advocates is essential. Promoting understanding, respect, and cooperation can help mitigate conflicts and find common ground.

**Legal Reforms:** Regular review and reform of personal laws to align them with principles of gender equality and human rights are crucial. Ensuring that religious practices do not infringe upon the fundamental rights of individuals is a key aspect of upholding human rights within a secular framework.

Examining conflicts between human rights and religious practices in India provides insights into the challenges faced at the intersection of human rights and secularism. Recognizing and addressing these challenges is essential for upholding the principles of equality, non-discrimination, and freedom within a diverse society. By analyzing specific conflicts, engaging in meaningful dialogue, and implementing legal reforms, India can strive towards a more harmonious coexistence of religious practices and human rights, ensuring the protection and promotion of fundamental freedoms for all individuals.

**b. Addressing Communal Tensions and Religious Discrimination:**

**Promoting Interfaith Dialogue and Understanding:** Encouraging interfaith dialogue, fostering understanding, and promoting empathy among different religious communities can help mitigate communal tensions. This can be achieved through community engagement programs, educational initiatives, and cultural exchanges.

**Strengthening Legal Protections:** Enhancing legal protections against religious discrimination and communal violence is essential. This includes enforcing existing laws, establishing specialized agencies or commissions to address religious hate crimes, and providing legal aid and support to victims.

**Empowering Marginalized Communities:** Empowering marginalized communities through socio-economic development, inclusive policies, and affirmative action can help address the root causes of communal tensions and religious discrimination. This involves ensuring equal access to education, employment, opportunities, and social welfare programs.

Promoting Awareness and Education: Promoting awareness of human rights, religious pluralism, and secular values through education and public campaigns can foster a culture of tolerance, respect, and acceptance. This includes promoting religious literacy, encouraging critical thinking, and challenging stereotypes and prejudices.

Addressing communal tensions and religious discrimination is essential for upholding human rights within a secular framework. By promoting interfaith dialogue, strengthening legal protections, empowering marginalized communities, and promoting awareness and education, societies can work towards creating an environment where all individuals can exercise their rights freely, regardless of their religious beliefs or backgrounds. It requires a multi-faceted approach involving the government, civil society organizations, religious leaders, and communities at large to foster harmony, respect diversity, and create an inclusive society that upholds human rights and secular values.

**Understanding the Context:** Balancing religious freedom and human rights of marginalized communities

**Religious Freedom:** Religious freedom is a fundamental human right that allows individuals to practice, change, or manifest their religion or belief. It encompasses the right to worship, observe religious practices, and express religious beliefs without discrimination or coercion.

**Human Rights of Marginalized Communities:** Marginalized communities, such as ethnic or religious minorities, indigenous peoples, or LGBTQ+ individuals, often face systemic discrimination, exclusion, and violations of their human rights. These rights include equality, non-discrimination, freedom of expression, and access to education, healthcare, and social services.

### **Examining Challenges and Impacts:**

**Conflicting Rights:** Balancing the exercise of religious freedom with the human rights of marginalized communities can be complex. Religious practices or beliefs may conflict with principles of equality, non-discrimination, and the rights of marginalized groups, leading to tension and potential violations of human rights.

**Discrimination and Exclusion:** Marginalized communities may face discrimination or exclusion based on religious beliefs, practices, or norms. This can result in limited access to resources, unequal treatment under the law, social stigmatization, and barriers to participation in political, economic, and social spheres.

**Harmful Traditional Practices:** In some cases, religious or cultural practices may perpetuate

harmful traditions or norms that infringe upon the human rights of marginalized communities. Examples include child marriage, female genital mutilation, or discriminatory inheritance practices, which may be justified on religious grounds but violate fundamental human rights.

### **(C) Balancing Religious Freedom and Human Rights:**

**Legislative Framework:** Establishing a robust legislative framework that protects both religious freedom and the human rights of marginalized communities is essential. Laws should be enacted or strengthened to address discrimination, hate crimes, and harmful traditional practices, ensuring that religious freedom is exercised within the boundaries of human rights.

**Judicial Interpretation:** Courts play a critical role in interpreting and applying laws related to religious freedom and human rights. They can strike a balance by adopting an inclusive approach, considering the specific context and impact on marginalized communities, and applying proportionality tests to resolve conflicts between rights.

**Dialogue and Engagement:** Facilitating dialogue and engagement between religious communities, civil society organizations, and marginalized communities can foster mutual understanding and respect. This can promote awareness, challenge discriminatory attitudes, and find common ground to protect human rights while respecting religious freedom.

**Education and Awareness:** Promoting education and awareness about human rights, religious diversity, and the rights of marginalized communities can contribute to a more inclusive and tolerant society. This includes integrating human rights education into school curricula, training religious leaders on human rights principles, and fostering interfaith dialogue.

Balancing religious freedom and the human rights of marginalized communities at the intersection of human rights and secularism requires careful consideration and proactive measures. By establishing a robust legislative framework, ensuring judicial interpretation that considers the rights of marginalized communities, promoting dialogue and engagement, and fostering education and awareness, societies can strive to achieve a harmonious balance. It is crucial to recognize that religious freedom is not absolute and should not infringe upon the human rights of marginalized communities. Through a rights-based approach and inclusive dialogue, we can create a society that respects.

## **V. PROMOTING HUMAN RIGHTS AND SECULARISM: RECOMMENDATIONS AND WAY FORWARD**

Reconciling human rights and secularism is a complex task, particularly in countries like India with diverse religious and cultural backgrounds. While secularism seeks to ensure the

separation of religion and state, it is essential to protect and promote human rights for all individuals, irrespective of their religious beliefs. This section presents recommendations and strategies to promote the compatibility of human rights and secularism in India, ensuring the protection and realization of fundamental freedoms.

**(A) Strengthening Legal Framework:**

**Enact comprehensive legislation:** Develop comprehensive legislation that explicitly safeguards human rights, including provisions to protect religious minorities, promote equality, and prevent discrimination based on religious beliefs.

**Review and reform personal laws:** Regularly review and reform personal laws to align them with principles of gender equality and human rights, ensuring that religious practices do not infringe upon the fundamental rights of individuals.

**(B) Ensures Effective Implementation and Enforcement:**

**Enhance awareness and training:** Conduct training programs for judiciary, law enforcement officials, and government officials to enhance their understanding of human rights and religious freedom, ensuring effective implementation of laws and policies.

**Establish dedicated commissions:** Create specialized commissions or bodies tasked with addressing human rights violations, religious discrimination, and communal tensions. These entities can investigate complaints, provide legal assistance, and promote dialogue among different religious communities.

**(C) Promoting Dialogue and Interfaith Harmony:**

**Encourage interfaith dialogue:** Facilitate platforms for interfaith dialogue, bringing together representatives of different religious communities, civil society organizations, and government bodies to foster understanding, respect, and cooperation.

**Promote religious literacy:** Integrate religious literacy programs into educational curricula, promoting understanding and appreciation of diverse religious traditions and values. This can help reduce stereotypes, prejudices, and misconceptions among different religious communities.

**(D) Combating Discrimination and Exclusion:**

**Ensure equal access to opportunities:** Implement policies and affirmative action programs that address historical disadvantages faced by marginalized communities, ensuring equal access to education, employment, healthcare, and social services.

Combat hate speech and incitement: Enforce laws and regulations against hate speech, incitement of violence, and discrimination, creating a conducive environment for religious harmony and protecting the rights of all individuals.

**(E) Strengthening International Cooperation:**

Engage with international human rights bodies: Collaborate with international human rights organizations and mechanisms to enhance knowledge sharing, capacity building, and monitoring of human rights situations in India. This can help ensure compliance with international human rights standards and promote accountability.

Promoting the compatibility of human rights and secularism in India requires a multi-faceted approach that balances religious freedom with the protection of fundamental rights. By strengthening the legal framework, ensuring effective implementation, promoting dialogue and interfaith harmony, combating discrimination, and engaging in international cooperation, India can move closer to achieving a society where human rights are respected and protected for all individuals, regardless of their religious beliefs. This comprehensive approach fosters an inclusive and tolerant society, upholding the principles of secularism while ensuring the full realization of human rights.

## **VI. CONCLUSION**

In conclusion, the topic of human rights and secularism in India is of paramount importance in the context of a diverse and pluralistic society. Throughout this thesis, we have explored the interplay and challenges that arise at the intersection of these two concepts. India, as a secular democracy, faces the task of balancing religious freedom with the protection and promotion of human rights for all individuals, particularly marginalized communities.

We have delved into the challenges faced by India in upholding human rights within a secular framework, including communal tensions, religious discrimination, and conflicts between religious practices and human rights. These challenges highlight the need for careful consideration and proactive measures to address them effectively.

The research objective was to examine the interplay between human rights and secularism in India and explore strategies for reconciling them. Through a comprehensive analysis of the literature, legal frameworks, and international frameworks, we have identified key recommendations for promoting human rights and secularism in India.

The significance of this study lies in its potential to contribute to the ongoing dialogue and efforts to create a society that respects religious diversity, upholds human rights, and ensures

equal treatment and opportunities for all individuals. By implementing the recommendations put forth in this thesis, India can strive towards a more harmonious coexistence of religious practices and human rights, fostering an inclusive society that respects the rights and dignity of every individual.

The government, civil society organizations, religious leaders, and communities at large must work together in implementing these recommendations. This requires a collective commitment to promoting interfaith dialogue, strengthening the legal framework, combating discrimination and exclusion, and fostering awareness and education on human rights and religious pluralism.

While challenges may persist, the pursuit of human rights and secularism in India is not only a legal and moral imperative but also essential for the overall development and well-being of the nation. By embracing the principles of secularism and ensuring the protection of human rights, India can strengthen its democracy, foster social cohesion, and become a shining example of a society that respects and celebrates diversity while upholding the rights and freedoms of all its citizens.

In conclusion, the journey towards a harmonious integration of human rights and secularism in India requires sustained efforts, continuous dialogue, and a commitment to upholding the principles of equality, justice, and inclusivity. Through the implementation of the recommendations outlined in this thesis, India can pave the way for a future where religious freedom and human rights coexist in harmony, fostering a society that celebrates its diversity while ensuring the well-being and dignity of all individuals.

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