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# Unravelling the Indian Conception of Secularism: An Analytical Study regarding the Theory and Practice of Secularism in India

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## ABSTRACT

*It is evident that the concept of secularism has important and significant place in the subject matter like political science and constitutional law. Since the term secular was not added in the original text of the Constitution of India drafted by the Constituent Assembly, the essence of secularism has always been practised in India. Today, in the light of experiencing division of the citizen among different religious group across the country, a debate on secularism appears to be extremely important. It should be noted that the concept of secularism has different meaning in different countries. For instance, in many western countries the secularism is understood as a separation of state from the church. On the other hand, in the United Kingdom, secularism is viewed as religious tolerance. By safeguarding countrywide harmony, unity and dignity, the concept of secularism is integrated into the advancement of democracy. The constitution of India clearly declares that India is a secular country. For instance, under part III of the constitution, Article 14 safeguards equality before law, Article 15 deals with the prohibition of discrimination on the ground of religion, race, caste, sex and place of birth. Article 16 ensures equality of opportunities in matters of public employment. Further, Article 25-28 of the Constitution guarantees the right to freedom of religion to both citizens as well as non-citizens. Even, secularism is considered to be the basic structure of the Constitution. India's religious diversity is widely famous all over the world. This research article mainly focuses on the origin and nature of secularism, opinion of some eminent persons regarding secularism. The author has also attempted to discuss the secular provisions enshrined under the Constitution of India, the landmark judicial pronouncements regarding secularism. Finally, this article endeavours to provide some fruitful suggestions to implement the concept of secularism properly.*

**Keywords:** Secularism, Secular, Constitution, Political Science, Constituent Assembly.

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## I. INTRODUCTION

Secularism is an ideology that emphasizes the separation of religion and the state and the neutrality of the government with respect to religious beliefs. A state is characterised as “Secular” when it has no officially established religion and it does not discriminate among its citizens on the basis of religion. Secularism as a concept has its origin in western countries and relates to the separation of the church from the state, giving the state a position of neutrality between different religions, amounting to even while at indifference of state toward religions, while at the same time guaranteeing all citizen the right to profess any religion. India since its independence in 1947 has been a secular state. The secular values were enshrined in the constitution of India. With the **42<sup>nd</sup> amendment act of 1976** the word “**SECULAR**” has been added to the preamble of the constitution of India. India’s first prime minister **Jawaharlal Nehru** is credited with the formation of secular values in the modern history of the country. Officially, secularism has always inspired modern India. Secularism means indifference towards religion. A pluralist country like India needs secularism like life-blood. India is multi-religious country. A multi-religious society cannot function democratically without secularism. It is a great need for democratic pluralism. From the philosophical perspective, secularism is the belief that one’s own life can be best lived and the universe best understood with little or no reference to a god or gods or other supernatural concepts. The key to India’s success as a federal democracy is the recognition of its diversities. Acceptance of all religions and different ways of life is the cornerstone of the Indian culture, heritage and culture.<sup>2</sup> India is a country which is a host to all conceivable religions and ways of life. A secular state as defined scientifically, means a state which recognises every citizen as equal and does not recognise any social or religious stratification as vehicles for exercising political rights. But what is generally projected as secularism is *‘tolerance of all religions with special emphasis on the protection of minorities and preservation of communal harmony’*. This commonly understood meaning of secularism, falls far short of the scientific meaning of it. However, the expression ‘secular’ has special significance in the context of the historical development of Indian polity. Indeed it is of pivotal importance particularly in the context of political realities on the grounds as they exist now. The political parties should help build a new political culture, which is based on tolerance and respect for human values. Today, our political culture is thoroughly infected with casteism and communalism. Religion plays a great role in the Indian society. Religion has mixed in the blood of people. As late **Smt. Indira Gandhi** put in: *“Secularism and democracy are the twin*

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<sup>2</sup> Secularism,(October 22, 2023, 10:00 AM), <https://pwnlyias.com/upsc-notes/secularism/>.

*pillars of our state, the very foundation of our society.”*

## II. ORIGIN AND NATURE OF SECULARISM: INDIA AND WEST

Secularism is a word which has its origin in Western countries and relates to the separation of the church from the state, giving the state a position of neutrality between different religions. The word “**Secularism**” was first used by the British Writer **George Jacob Holyoake** in 1851. Initially, there were two views on secularism. First was **Holyoake** and the other was **Bradlaugh**. Holyoake claimed that secularism is simply based on the study of nature and has nothing to do with religion. On the other hand, Bradlaugh stated that secularism should start with the disproof of religion. Secularism in practice has existed since ancient times. In ancient **Greece**, a limited secularism was practised in which religion was not involved in governance. In 1936, **ROGER WILLIAMS** founded the **Providence Plantations** as a settlement with total freedom of religion, in present-day **RHODE ISLAND**. Secular traditions are very deep rooted in the history of India. Indian culture is based on the blending of various spiritual traditions and social movements. The development of four **Vedas** and the various interpretations of the **Upanishads** and the **Puranas** clearly highlight the religious plurality of Hinduism. In ancient India, The **Sanatan Dharma** (Hinduism) was basically allowed to develop as a holistic religion by welcoming different spiritual traditions and trying to integrate them into a common mainstream. In medieval India, the **Sufi and Bhakti** movements bond the people of various communities together with love and peace. Some leaders of these movements were **Baba Farid, Sant Kabir Das, Guru Nanak Dev, Saint Tukaram, Mira Bai, Mukta Bai** and so on. **Emperor Ashoka** was the first great emperor to announce that the state would not prosecute any religious sect. In his **12<sup>th</sup> Rock Edict**, Ashoka made an appeal not only for the toleration of all religion sects but also to develop a spirit of great respect toward them. <sup>3</sup>

In India, the word ‘**Secularism**’ has been used not in anti-religious sense, but making treatment of all religions in an equal fashion and rulling out any discrimination of any Indian on the ground of his religion. In the Indian context, secularism means equal status to all religions. As pointed out by **Dr. Radhakrishnan**, “*Secularism does not mean irreligion or atheism or even stress on material comforts. It proclaims that it lays stress on the universality of spiritual values which may be attained by a variety of ways.*” Further, **Donald Eugene Smith**, whose book ‘**India as a Secular State**’ is a notable work, suggests a working definition thus, “*The secular state is a state which guarantees individual and corporate freedom of religion, deals with the individual as a citizen irrespective of his religion, is not constitutionally connected to a*

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<sup>3</sup> Secularism, (October 21, 2023, 09:00 AM), <https://www.drishtias.com/to-the-points/paper1/secularism-1>.

*particular religion nor does it seek either to promote or interfere with religion.”* The western concept of secularism implying anti-religious ideology cannot be applied to India which is a multi-religious society. In the words of **Smt. Indira Gandhi**, *“Secularism is neither a religion nor indifference to religion but equal respect for all religions, not mere tolerance but positive respect—without it, there is no future for the nation.”*

Secularism in *western society* refers to the complete separation of state and religion, as well as universal religious freedom. Modern western welfare states are among the most secularised societies in history. In the west, the word ‘Secular’ implies three things:

1. Freedom of religion
2. Equal citizenship to each citizen regardless of his or her religion
3. The separation of religion and state.

According to the western model of secularism, the state and the religion have their separate spheres and neither the state nor the religion shall intervene in each other’s affairs. Similarly, the state cannot aid any religious institution. It cannot give financial support to educational institutions run by religious communities. Even, it cannot hinder the activities of religious communities, as long as they are within the broad limits set by the law of the land. This form of mainstream secularism has no place for the idea of state supported religious reform. This feature follows directly from its understanding that the separation of state from religion entails a relationship of mutual exclusion. The United States and France both have formed secular governments. However, in France, this was accomplished through the mobilisation of violent anti-religious forces, but in the United States, it was accomplished without such mobilisation. Similarly, both the United Kingdom and France have predominantly secular civilisations.<sup>4</sup> However, in France, secularisation was accompanied by enormous clashes between church and state. Only Australia has a secular state as well as a secular society. **Jacob Holyoke**, a British reformer nicely defined the term ‘Secular’ in Nineteenth century. According to him, *“Secularism is a social order distinct from religion that does not overtly condemn religious belief.”* In the words of **Voltaire**, *“God gave us the gift of life, it is up to us to give ourselves the gift of living well.”*

### III. SECULARISM: THE HERITAGE OF INDIAN CULTURE AND TRADITION

Secular traditions are very deep rooted in the history of India. Indian culture is based on the

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<sup>4</sup> Raghav, Western Secularism VS Indian Secularism, (October 22, 2023, 09:00 PM), <https://juriscentre.com?2021/06/22/western-secularism-vs-indian-secularism/>.

blending of various spiritual traditions and social movements. It has also to be borne in mind that secularism is not an exotic concept planted in India from the west. It grew out of its past history of a wide and general movement in thoughts and feelings which emerges gradually from the intermingling of different groups and communities in consequence of the impetus given to it by chances in social, economic and political life. It has made Indian culture a 'composite' one which means blending of various separate elements into a single whole. Secularism in India can be divided into three phrase.<sup>5</sup>

- **In Ancient India:** Indian religions are known to have co-existed and evolved together for many centuries before the arrival of Islam in the 12<sup>th</sup> century, followed by Mughal and Colonial. In India, secularism is as old as the *Indus Valley Civilization*. The cities of *lower Mesopotamia* and *Harappa* were not ruled by the priests. Dance and music were also secular in these urban civilizations. Consequently, religion was very accommodative and without a rigid structure it was *polytheistic*, as well as *agnostic*, *atheistic*, *henotheistic* at the same time. This tolerance and acceptance of other religious beliefs persisted in the Dharmic Religions that followed. In ancient India, people had *freedom of religion* and the *state granted citizenship to each individual regardless of whether someone's religion was Hinduism, Buddhism, Jainism or anything else*. **Ellora cave** temples were built next to each other between the 5<sup>th</sup> and 10<sup>th</sup> centuries. It shows co-existence of religions and a spirit of acceptance of different faiths.
- **In Medieval India:** Basically in medieval India, the **Sufi and Bhakti** movements restored the secular character of Indian society. The torchbearers of these movements like *Moinuddin Chisti, Mira Bai, Mukta Bai, Guru Nanak Dev and others* spread the different facet of secularism like tolerance, a sense of brotherhood, universalism, harmony and peace in the society. In medieval India, religious toleration and freedom of worship marked the state under *Akbar*. He had many Hindus as his *ministers, forbade forcible conversions and abolished Jizya*. The most notable example of his tolerance policy was his promulgation of '*DIN-I-ILAHI*' which had elements of both Hindu and Muslim faith. It was a religious path suggested by Akbar. It was a code of moral conduct which reflected Akbar's secular ideas to achieve peace, unity, tolerance in his empire. *Din-i-ilahi* was based on the '*oneness of God*.' Furthermore, the construction of **IBADAT KHANA** which means *House Of Worship* in **Fatehpur Sikri** was done to nurture religious harmony by allowing different religious leaders to express their

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<sup>5</sup> S.M.A.W. Chisti, Secularism in India: An Overview, ( October 24, 2023, 08:20 PM), <https://www.jstor.org/stable/41855808>.

opinions in the same place.

- **In Modern India:** After Aurangzeb, India came into control of *East India Company and the British Raj*. Although the British Administration provided India with common law, it's "***DIVIDE AND RULE***" policy contributed in promoting communal discord between various communities. During British time, separate electorates were provided for Muslims through the "***INDIAN COUNCILS ACT, 1909.***" However, the Indian freedom movement was marked by secular tradition and ethos right from the beginning. The formation of Indian National Congress (INC) in 1885 with secular values united the people from all sects and took freedom movement on a constructive and successful path. **Motilal Nehru** gave a detailed report in 1928 (**NEHRU REPORT**) which called for the abolition of the separate electorate to found a secular state. It eventually became the foundation for the Constitution of India and had a specific provision regarding secularism in these terms:

***"4.(XI) There shall be no state religion for the commonwealth of India or for any province in the commonwealth, nor shall the state, either directly or indirectly, endow any religion or given each religion any preference or impose any disability on account of religious beliefs or religious status....."***

The principal advocates of secular ideology in modern India were *Jawahar Lal Nehru and Mahatma Gandhi*. Nehru's secularism was based on a commitment to scientific humanism tinged with a progressive view of historical change. On the other hand, Gandhi's secularism was based on a commitment to the brotherhood of religious communities based on their respect for and pursuit of truth.

In the words of Mahatma Gandhi, ***"I do not accept any dreams to develop one religion i.e. to be wholly Hindu or wholly Christian or wholly Muslim but I want it to be wholly tolerant, with its religious working side by side with one another."*** Gandhiji said that religion is both a private and personnel affair. He added that religion has a set of moral principles that lead the men on the correct path of living. He regarded all religions equally and popularised the concept of "**SARVA DHARMA SAMBHABA**" (Equality of all religions). Primarily, Ramkrishna and Vivekananda observed this concept. He strongly opposed any religious practices that let down the lower caste in the society (an outcome of Hinduism sanctioned Varna system) and those that demeaned women. Even he did not accept all the practices of Hinduism blindfolded rather he looked at it in the prism of liberal thoughts and modernism so that the secular value of Indian culture would be sustained. In a famous passage in his autobiography Gandhi wrote: ***"I can say***

*without the slightest hesitation and yet in all humanity that those who say that religion has nothing to do with politics do not know what religion means.*” Gandhi, a deeply religious man, saw merit and truth in all religions and he felt that any form of political association based exclusively on adherence to a particular religion was worse than undemocratic. Gandhiji’s vision of the secular state is a place where religious values and discourse are cherished and respected in all spheres of life, the public as well as the private but in which no single religion is allowed to dominate the others.

**Jawahar Lal Nehru** has been leading champion of the concept of the secular state. He has a great aversion to the intrusion of religious factors into politics and he is especially concerned with transforming India from a “Caste-ridden society” in which communalism constitutes a major threat to all the values that he cherishes to a national state which includes people of all religions and shades of opinion and is essentially secular as a state. He has said: **“Religion is all right when applied to ethics and morals but it is not good when mixed up with politics.”** This statement seems to be in direct contrast to the views of Mahatma Gandhi whom Nehru himself once described as *“essentially a man of religion, a Hindu to the innermost depths of his being.”* Nehru insisted that free India should be a non-communal, secular state. He boasts of the fact that “our Constitution is based on secular conception and gives freedom to all religions.” Nehru who professes himself to be an agnostic desired a state which protects all religions but does not favour one at the expense of others and does not itself adopt any religion as the state religion. Hence it is easy to understand why both Gandhi and Nehru, though perhaps for different reasons, were strongly opposed to the whole idea of partition and why Nehru referred to the decision of the Constituent Assembly in Karachi, in November 1953, to make Pakistan an Islamic Republic as “medieval conception totally opposed to any democratic conception. Nehru’s secularism is based on scientific humanism. His emphasis on the development of scientific temperament is a great contribution to India because it initiated the fight against religious obscurantism and superstition which the whole country was steeped in. However, Gandhi and Nehru, the master and disciple, approached the problem of the relation between religion and politics from very different angles, but essentially their positions were not so far apart as far as the nature of the Indian state was concerned.

**Further, Sardar Patel** was fully committed to secularism and opponent of communalism. He said that state must exist for all people irrespective of caste and creed. In 1947, when he was suggested that India should be declared a Hindu state, with its official religions as Hinduism, he rejected the suggestion and said that **“we must not forget that there are other minorities whose protection is our primary responsibility.”**

Even as a home minister of India, he is known to have taken ruthless actions against the rioters. The 1947 communal massacres were declared by him as the “Blackest chapter in the history of India.”

According to *Swami Vivekananda*, “The distinction between man and woman, between the rich and poor, the literate and illiterate, Brahmanas and Chandalas—he tried to root out all and he was the harbinger of peace—the separation between Hindus and Christians, all are now things of past. That fight about distinctions that there was belonged to another era. In this Satya-Yuga the tidal wave of Shri Ramakrishna’s love has unified all.”

#### IV. CONCEPT OF SECULARISM: THE SOUL OF THE CONSTITUTION OF INDIA

Our Constitution has adopted a system of political philosophy that rejects all forms of religious faith and worship and has accepted the view that public education and other matters of public policy should be conducted without the introduction of religious elements. The preamble of our Constitution clearly declares that “*India is a sovereign, secular, socialist, democratic, republic country.*” The term ‘secular’ was not there in the original Constitution. It has been added by the **42<sup>nd</sup> Constitutional amendment act of 1976**. The whole constitution is summarised in the preamble.<sup>6</sup> The preamble itself is the mirror to the spirit of the Constitution. Under the principle of secularism, the state is neither religious nor anti-religious. The state does not have any religion and it does not promote any religious activity of any particular community. The concept of secularism is considered to be one of the basic structures of the Constitution of India. In the landmark case of *S.R Bommai vs. U.O.I*<sup>7</sup> it was held that secularism is a basic structure of the Constitution of India.

Further, in *Aruna Roy vs. U.O.I*<sup>8</sup> it was held that the New Education Policy, 2002 was not violative of Article 28 of the Constitution of India. In this landmark case, the Supreme Court stated that the constitution of India should be understood with a positive meaning that is developing, understanding and respect towards different religions.

##### **Secular provisions under the constitution:**

**Article 14** ensures “Equality before law” which states the following:

**“The state shall not deny to any person equality before law or the equal protection of law within the territory of India.”**

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<sup>6</sup> Mohd Aqib Aslam, Concept of Secularism, ( October 23, 2023, 10:30 PM), <https://www.legalserviceindia.com/legal/article-8742-concept-of-secularism.html>.

<sup>7</sup> S. R Bommai vs. Union of India, AIR 1994 SC 1918

<sup>8</sup> Aruna Roy vs. Union of India, AIR 2002, 7 SCC368

Here, the term 'Person' has been used which means it protects both the citizens as well as non-citizens.

1. In the case of *Indira Sawhney vs. U.O.I.*,<sup>9</sup> the Supreme Court interpreted the relation between Article 14 and Article 16. It was held that Article 16(1) is a facet of Article 14. The principle aim of Article 14 and Article 16 is equality and equality of opportunity. Both the provisions have to be harmonised keeping in mind the fact that both are the restatements of the principle of equality enshrined under Article 14.
2. In *National Legal Service Authority (NALSA) vs. U.O.I*<sup>10</sup> the Supreme Court held that the equality before law under Article 14 of the Constitution was framed in gender neutral terms. Hence, it can be extended to transgender persons also.
3. In *Navtej Singh Johar vs. U.O.I*<sup>11</sup> a five- judge bench of the Supreme Court struck down Sec- 377 of IPC stating that it was in contravention to right to equality enshrined under Article 14 which is equally applicable to the same sex couples.

Further, **Article 15(1)** specifically bars the state from discriminating against any citizen of India on the grounds of religion, race, caste, sex and place of birth.

**Article 15(2)** states that no citizen shall, in the ground of religion, race, caste, sex and place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to –

- a. Access to shops, public restaurants, hotels and places of public entertainment
- b. The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.

In the case of *Arumugha vs. Narayana*<sup>12</sup> it was decided that if a section of public puts forward a claim for an exclusive use of a public well, it must be established that the well was dedicated to the use of that particular section of public and not to the other people.

**Article 16(1)** is a facet of Article 14 and they both are interconnected. **Article 16(1)** guarantees equality of opportunities to all citizens in matters related to employment or appointment to any office under the state.

**Article 16 (2)** states that no citizen can be discriminated against or be ineligible for any

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<sup>9</sup> India Sawhney vs. Union of India, AIR 1992,SC 477

<sup>10</sup> National Legal Service Authority vs. Union of India, AIR 2014, SCC 438

<sup>11</sup> Navtej Singh Johar vs. Union of India, AIR 2018 SC 4321

<sup>12</sup> Arumugha vs. Narayana, AIR 2001, 1 MLJ 15

employment or office under the state, on the grounds only of religion, race, caste, sex and place of birth or any of them. This clause is an elaboration facet of Article 16(1).

In the case of *State of Kerala vs. Thomas*<sup>13</sup> it was held that the expression “Matters relating to employment” must include all matters relating to employment, whether prior or subsequent to the employment or whether these are either incidental to such employment or form part of its terms and conditions.

One landmark case under this Article is the “*Mandal Commission case*” namely, *Indira Sawhney vs. U.O.I.*<sup>14</sup> in this case the Supreme Court ruled that the OBCs will be given 27% preference in the Government position and the total amount of reservation must not surpass 50%.

Article 25-28 of the Constitution of India guarantees “**FREEDOM OF RELIGION**” to all persons in India.

**Article 25** of the Constitution of India ensures Freedom of conscience and free profession, practice and propagation of religion. It provides that all persons in India, subject to public order, morality, health and other provisions:

- Are equally entitled to freedom of conscience and
- Have the right to freely profess, practice and propagate religion.

Further, it provides that this article shall not affect any existing law and shall not prevent the state from making any law relating to:

- Regulation or restriction of any economic, financial, political or any secular activity associated with religious practice.
- Providing social welfare and reform
- Opening of Hindu religious institutions of public character for all the classes and sections of the Hindus.

Explanation I: The wearing and carrying of *Kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II: The reference of ‘Hindus’ shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion and the reference to Hindu religious institutions shall be construed accordingly.

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<sup>13</sup> State of Kerala vs. Thomas, AIR 1976 SCR (1) 906

<sup>14</sup> India Sawhney vs. Union of India, AIR 1992, SC 477

1. In the case of *Acharya Jagadishwarananda Avadhuta vs. Commissioner of police, Calcutta*<sup>15</sup> it was held that Ananda Margis have a right to perform “*Tandava*” under Article 25 of the Constitution of India.
2. In *Young India Lawyers Association vs. State of Kerala*<sup>16</sup> the Supreme Court held that the custom of Sabrimala temple that is denial of menstruating women entering into the temple premise violates their right to freely practice their religion. Hence, such denial is invalid.
3. In the case of *Dilwar Singh vs. State of Haryana*<sup>17</sup> it was held that Sikhs are exempted from the provision of Arms act as the kirpans are the part of the profession of Sikh religion. Hence, a witness professing Sikh religion can appear in the court wearing or carrying kirpan subject to the restrictions of the size and length.
4. In *Dara Singh vs. Republic of India*<sup>18</sup> it was decided that there is no justification for state interfering in someone’s religious belief by any means.
5. In *Bhuri Nath vs. State of Jammu & Kashmir*<sup>19</sup> it was held that service of a priest is a secular activity and can be regulated by the state under Article 25 of the Constitution of India.
6. In the case of *Church of God (Full Gospel) in India vs. K.K.R. Majestic Colony Welfare Association*<sup>20</sup> it was held that no religion prescribes that prayers should be performed by disturbing the peace of the others nor does it preach that they should be through voice-amplifiers or beating of drums. In any case, if there is such practice, it should not have adverse effect over the rights of others including that of being not disturbed in their activities.

**Article 26** safeguards Freedom to manage religious affairs. According to this article –

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right –

- a. To establish and maintain institutions for religious and charitable purposes,
- b. To manage its own affairs in matters of religion,

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<sup>15</sup> Acharya Jagadishwarananda Avadhuta vs. Commissioner of police, Calcutta, AIR 1984 SC 51: (1983) 4 SCC 522: 1984 SCC (Cri) 1.

<sup>16</sup> Young India Lawyers Association vs. State of Kerala, AIR 2018 SC 243.

<sup>17</sup> Dilwar Singh vs. State of Haryana, AIR 2016 PUNJ 149

<sup>18</sup> Dara Singh vs. Republic of India, AIR 2011 SC 1436

<sup>19</sup> Bhuri Nath vs. State of Jammu & Kashmir, AIR 1997 SC 1711

<sup>20</sup> Church of God (Full Gospel) in India vs. K.K.R. Majestic Colony Welfare Association, AIR 2000 SC 2773

- c. To own and acquire movable and immovable property
- d. To administer such property in accordance with law.

**Pseudo Secularism:** The term pseudo-secularism is used to describe individuals who claim to be secular but may display biases towards a particular religion. This term has become very popular in recent times in Indian politics. This term sometimes is used to criticize individuals who identify themselves as secular but advocate for minority rights. But at the same time, they remain silent in case of majority religions. This term was first used by **Anthony Elenjmittam** in the book ***Philosophy and Action for the R.S.S*** in 1951. For example, in 1998, Rashtriya Swayamsevak Sangh accused BJP of playing along with pseudo secular parties for compromising on issues like *Article 370, Ram temple and Uniform Civil Code*.

1. In the case of ***Mahant Ram Kishan Dass vs. State of Punjab***<sup>21</sup> it was held that the broad principle is that a state made law can regulate the administration of property of religious endowment, but the law cannot take away the right of administration altogether.
2. In ***Sri Adi Visheshwara of Kashi Viswanath Temple, Vanarasi vs. State of UP***<sup>22</sup> it was decided that Article 25 and Article 26 also extend to rituals and are not confined to doctrine. But the Court has to be pragmatic. Right to manage a temple is not an integral part of religion. It can be regulated by law.
3. In the case of ***Narendra vs. State of Gujarat***<sup>23</sup> it was held that the right to own and administer property is not an absolute right. It is subject to reasonable regulation by the state, the important condition being that such regulation should not affect the survival of the religious institution itself.

**Article 27** talks about the freedom as to payment of taxes for promotion of any particular religion. This Article states that No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

In the case of ***Mahant Moti Das vs. S.P. Sahi***<sup>24</sup> it was held that the imposition of fee under sec-70 of the Bihar Hindu Religious Trusts Act is not tax and such imposition does not violate Article 27 of the Constitution of India.

**Article 28** safeguards Freedom as to attendance at religious instruction or religious worship in

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<sup>21</sup> Mahant Ram Kishan Dass vs. State of Punjab, AIR 1981 SC 1576

<sup>22</sup> Sri Adi Visheshwara of Kashi Viswanath Temple, Vanarasi vs. State of UP, AIR 1997(4) 124

<sup>23</sup> Narendra vs. State of Gujarat, AIR 1974 SC 2092

<sup>24</sup> Mahant Moti Das vs. S.P. Sahi, AIR 1959 SC 942 (949)

certain educational institutions. It states the following –

1. No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
2. Nothing in clause (1) shall apply to an educational institution which is administered by the state but has been established under any endowment or trust which requires that religious that religious instruction shall be imparted in such institution.
3. No person attending any educational institution recognised by the state or receiving aid out of state funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

In the case of the *T.M.A. Pai Foundation vs. State of Karnataka*<sup>25</sup> it was held that the admission cannot be denied on ground race, religion, language or caste. Article 28 and 29 relate to any institutions receiving aid. On receipt of aid, both Articles would apply to minority institutions.

**Article 29 and Article 30** deal with the rights of minorities. Article 29 talks about the protection of interests of minorities. **Article 29(2)** clearly states that no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them. In the landmark case of *State of Bombay vs. Bombay Educational Society*<sup>26</sup> it was held that minority institutions have the right to give admissions to the students of their choice even if they receive government aid. The government aid provided to the institutions does not give the right to the government to violate the rights of minorities.

**Article 30** states the rights of minorities to establish and administer educational institutions. **Article 30(1)** states that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. **Article 30(2)** says that the state, shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

In the landmark case of *Kerala Education Bill*<sup>27</sup> (in re: ) it was held that as a condition of granting aid or recognition to an institution coming under Article 30 (1), the state may impose

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<sup>25</sup> T.M.A. Pai Foundation vs. State of Karnataka, AIR 2003 SC 355(440)

<sup>26</sup> State of Bombay vs. Bombay Educational Society, AIR 1954 SC 561

<sup>27</sup> Kerala Education Bill (in re:), AIR 1958 SC 956

reasonable regulations for the purpose of ensuring sanitation, competence of teachers, maintenance of discipline and the like.

Further, in the case of *St. Xavier's College vs. State of Gujarat*<sup>28</sup> it was decided that the state cannot prescribe a condition that if an institution, including one entitled to the protection of Article 30(1), seeks to receive state aid, it must submit to the condition that the state may take over the management of the institution or acquire it, under certain conditions,. Such a condition would completely destroy the right of the community to "Administer" the institution.

The Supreme Court of India has developed the concept of secularism from time to time. For instance –

1. In the case of *Sardar Taheruddin Syedna Saheb vs. State of Bombay*<sup>29</sup> the Hon'ble Supreme Court discussed the concept of secularism for the first time. The Ld. J. Ayyangar while discussing the secular nature of the Constitution elucidated that the traditional view of secularism incorporating principle of religious toleration has been enshrined under Article 25 and 26 of the Constitution.
2. Again, in the case of *Keshavananda Bharati vs. State of Kerala*<sup>30</sup> the court held that secularism is the basic structure of the Constitution of India. Highlighting the nature of the Constitution J Sikri ruled that the Constitution of India is secular in its character.
3. In the case of *Shayara Bano vs. Union Of India*<sup>31</sup> which is popularly known as the "Triple Talaq Case", the majority bench of the Supreme Court described triple talaq as 'Arbitrary', 'bad in law', not integral to religious practice and violative of constitutional morality. It led to the ban of the Muslim practice of Triple Talaq. According to the judgement of Justice Kurian Joseph, "*Triple talaq is against the basic tenets of Quran, it is not an integral part of religion.*"

## V. CHALLENGES OF SECULARISM IN INDIA

The following are some challenges and threats towards secularism in India:

1. *Communal politics* the politicians play with the religious sentiments of the masses. It leads to religious polarization of society by forming political parties, trade unions and student unions on religion lines. All these would result in hatred and create rivalry towards the people of other religions.

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<sup>28</sup> St. Xavier's College vs. State of Gujarat, AIR 1974 SC 1389

<sup>29</sup> Sardar Taheruddin Syedna Saheb vs. State of Bombay, AIR 1962

<sup>30</sup> Keshavananda Bharati vs. State of Kerala, AIR 1973 SC 1461

<sup>31</sup> Shayara Bano vs. Union of India, AIR (2017) 9 SCC 1

2. **Non separation of religion from politics** in few events in the past like the demolition of Babri masjid, anti-sikh riots in 1984, Mumbai riots in 1992 and 1993, godhra riots in 2002 etc. have shown the well established problem of communalism raising its head continuously.
3. Practice of **pseudo secularism** is another threat to secularism in India. For example, the lack of political will to implement UCC or the abolition of regressive triple talaq fearing the loss of muslim votes.
4. **Substandard educational system** which has encouraged the people to think in terms of groups and communities, has also failed to inculcate secular ideas in the minds of young students and promote feelings of mutual give and take.
5. **The misrepresentation of the Constitutional and Democratic institutions** has also contributed to the weakening of secularism in India. The Constitutions and the political institutions have not worked the way they were envisaged by the framers of the Constitution. This has hampered the growth of a true secular polity in the country.

## VI. CONCLUSION AND SUGGESTIONS

After a long history of communal incident in India, still now, secularism is seen as the only possible option that would be able to provide harmonious and peaceful survival for the different religions and casts of Indian society. India is known for its cultural heterogeneity with respect to language and religion. Hindus constitute the majority, while the Muslims constitute the largest minority.<sup>32</sup> The culture, tradition and festivals of any particular religion should not be over- projected. The sacrifices and hardships of all religious communities and their contribution towards freedom and development of the country need to be focused in the books of the history at school and college level. The importance of various culture and traditions of different religions in the peculiarity of the country should have to be discussed properly. India is known as a secular nation across the world. Secularism per se means a mode of governance in which the state remains neutral in religious matters and is not supposed to tilt in favour of a particular religion. In practice, we have followed the path of secular polity. In a culturally diverse nation like India, secularism has no substitute choice. So it has been incorporated by the Constitution of India. People living in India comes from various traditions, culture or languages. To hold them united, India needed secularism. India is not related to any single religious practices. Religion, however, was adopted, along with freedom of religion and secularism, as an integral

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<sup>32</sup> V.M. Tarkunde, Secularism and the Indian Constitution, (October 25, 2023, 09:44 PM), <https://www.jstor.org/stable/23003717>.

part of Indian social life. A major problem facing the secular state is the increasing intervention of religion with politics. A secular society is not possible until all the cultures of the country come together more closely with a national spirit. The following are some recommendations in order to create a proper secular state:

1. Fostering religious concord and universal brotherhood by reflecting the thoughts of great leaders.
2. In a pluralistic society, the best approach to nurture secularism is to expand religious freedom rather than strictly practicing state neutrality.
3. Learning more about various religions is the first step to respect and accept other people and their belief.
4. Put an end to communal politics and make principle based secular politics more popular.
5. Recalibrate the contradictions in the Constitution and ensure conformity between various statutes and laws in the light of secular ethos.
6. There should be a definition of the term “Minority”. The concept of secularism is based on recognition and protection of protection of minorities. These two cannot be separated.
7. There should be a periodical convention of the National Integration Council with the true spirit of secularism.
8. Education is an important means to change the mind-set of the people. Education should be spread among the people specially in the rural area so that they can be able to understand the actual meaning and aim of secularism.
9. Movements for social reform will have to be organized and public opinion mobilized-minorities should be encouraged to participate in the mainstream of national life. Social reform is a spirit of social justice and equality that must pervade all sections of the population.

An important part of secularism is the scientific point of view. This concerns the premise of one’s directive and the essential duties of the people. Religion and politics both must be different and the real sense of secularism is that religion should be removed from public life. The state does not formally have a religion. In India, the majority of the people believe that the basis of all scriptures is faith and charitable preaching. In establishing a secular culture, all the ideals of religions books introduced into the curriculum of schools will become supportive. The

political system does not differentiate between religions, it supports all religions in the same way and welfare services can be enforced at a strategic level for all religions. The preamble of the Constitution states “we, the people of India have solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic.....” Therefore, it is the duty of every single individual residing in India to make efforts and made India into a secular nation that every person irrespective of his/her religion is given equal respect, rights and opportunities.

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