

# LEGALFOXES LAW TIMES

## PORTRAIT OF SECULARISM IN INDIA

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### 1. INTRODUCTION

The word 'secular' is derived from the Latin word 'saeculum' which means a generation or an age or span of a century. The term arose from the European context of politics and derived from the attempt to prohibit the State and its property from the control of Church. A religious element was embedded in the meaning of the word secular. In the Europe and other regions, secularism was closely related to the theory of progress. Over time the meaning of secularism has evolved and now the term secular means being 'separate' from religion, or having no religious bias. For many years the word 'secular' or 'secularism' was nowhere to be found in India (even though all the religions co-existed in harmony since ancient times). The foundation of Indian morality has been core unity, forbearance and even inter-weaving of religion. It is a definite fact that large population of Indians is associated with diverse religion lived in compassion. Slogans like - "*Hindu Muslim Sikh Isai, aapas mein hai bhai*" (Hindus Muslims Sikhs and Christians all are brothers) are resonated down on the streets of India and binds us to moments of fraternity. This slogan expresses the essence of 'secularism'. In year 1976(after independence) the word 'secular' was added in the Preamble of the Constitution by 42<sup>nd</sup> Amendment Act. When the hon'ble Supreme Court declared the preamble as the basic structure of the Constitution of India, the word 'secularism' acquired a whole new status. Hence the Indian constitution stands for a secular state (no official religion).

### What is Secularism?

Secularism is a normative doctrine which seeks to realise a secular society. It is free from inter-religious and intra religious domination. It promotes freedom to practice their religion and equality between religions as well as within religions. As secularism is opposed to all forms of

institutionalised religious domination, it challenges not merely inter-religious but also intra-religious domination. The idea of secularism possesses a normative doctrine which seeks to realise a secular society, i.e., one devoid of either inter-religious or intra-religious domination. Put positively, it promotes freedom within religions, and equality between, as well as within, religions.<sup>1</sup>

## 2. THE EVOLUTION OF SECULARISM IN INDIA

In ancient India the term secularism or secular was nowhere to be found. However, during the Ashoka's rule there was tolerance towards faith which was different from Buddhism for instance Hinduism (State Religion). After Ashoka the only ruler who practiced religious tolerance was Akbar. But in neither case, the State was secular. After the fall of the Mughal Empire, India had many Hindu and Muslim rulers and they all had their own state religion. When the British and other colonist countries established themselves as the rulers of India the situation did not changed. The British introduced English language and Christianity to the Indians.

Pandit Jawaharlal Nehru imported the concept of secularism from Europe. Although the term secularism was not included in the Constitution (originally passed in 1949), the creators of the Indian constitution were aware of the term secularism and had it in their mind. Dr. B.R. Ambedkar, Chairman of the Drafting Committee, while participating in the debate in parliament on the Hindu Code Bill in 1951, explained the secular concept as follows:

“It (Secular State) does not mean that we shall not take into consideration the religious sentiments 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 that the Constitution recognises.” In the Constituent Assembly itself several members had expressed similar ideas in more elaborate terms<sup>2</sup>.

Secularism in India has strayed from the stipulated path. Nehru did not define secularism properly and politicians took advantage of his failure to elucidate the concept. Instead of

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<sup>1</sup>available at, <https://www.dhyeyaias.com/current-affairs/perfect-7-magazine/indian-model-of-secularism>.

<sup>2</sup>M.V.Pylee, *OUR CONSTITUTION, GOVERNMENT AND POLITICS*, Universal Law Books, Delhi, (2000) , Pg.52.

shedding religious partisanship, the pseudo- secularists fomented it in order to capture vote banks<sup>3</sup>.

M.N. Roy highly criticised the character of Indian state. According to him, it was far from being secular as it was associated with Hindu religion. At least persons like Sarvepalli Radhakrishnan and Jawaharlal Nehru did not visit temples and other places of religion. But now the Prime Ministers and Presidents intentionally visit such places for the attention of media and the public. But once, Rajiv Gandhi during his election campaign of 1989 visited Deoraha Baba who blessed him by putting his foot on his head.

Nehru undoubtedly was the architect of the concept of secularism as far as India is concerned. Mahatma Gandhi also stood for secularism in his own way. But his concept of secularism was radically different from that of Nehru. Gandhi undoubtedly and unswervingly stood for equal respect for all religions<sup>4</sup>.

In a secular state all religions are, in one limited respect, subordinate to as well as separate from the state. As voluntary associations of individual citizens, religious groups are under the general laws of the state and responsible for the proper discharge of civil responsibilities (payment of taxes, maintenance of public order, etc.). In this respect, religions are viewed by the state in as much the same way as it views other voluntary associations based on common social, cultural, or economic interests.<sup>5</sup>

### **3. SECULARISM UNDER CONSTITUTIONAL FRAMEWORK OF INDIA**

India has been and is a country with elemental unity where all citizens enjoy full rights and are equally entitled to the protection of the State by following their responsibilities and duties.

Among the freedom struggle MK Gandhi brought his insight to unite different groups. He searched for a principle that could bind people of distinct faiths into a whole. Again, the Nehru's view of Secularism was '*Dharma Nirapekshta*'. Dr. Rajendra Prasad was once asked if religious

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<sup>3</sup>Pandya Anandshankar, *INDIAN SECULARISM: A TRAVESTY OF TRUTH AND JUSTICE*, Aswad Prakashan Pvt. Ltd., Mumbai, (1st Ed. 1998), Pg.10.

<sup>4</sup>Asghar Ali Engineer, *PRACTICE OF SECULARISM IN INDIA, SECULARISM IN INDIA*, Classic Publishing House, (1st Ed. 1995), Pg.89.

<sup>5</sup>Smith D.E., *INDIA AS A SECULAR STATE*, in Bhargava Rajeev, *SECULARISM AND ITS CRITICS*, Oxford University Press (6th Ed. 2006), Pg.181.

faith or spirituality could have any place in a secular state. He had replied 'secularism means that all citizens of the country are free to follow and propagate their faith. We respect all religions and we want them to grow without any let or hindrance.'<sup>6</sup>

An individual and society have a right to not be discriminated on any aspect which includes religion. Freedom of Religion is Constitutional guarantee but this conflict-free and calm co-existence of faith and cynic maybe and often overturned by priesthood clash, browbeating, assertive belief in god and religious fundamentalism.

The word 'Secular' was formally infused in Preamble to Constitution of India by the *42<sup>nd</sup> Amendment Act, 1976* on the recommendations of *The Swaran Singh Committee*. In practice, word secular means impartiality and non-discrimination by the Government in matter of faith and religion.

Thus, Indian Constitution guarantees both individual and cumulative of religion. Other provisions pertinent to proposed accord between religions and politics are:

- **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 on the basis of 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.
- **Article 26**, every religious group or individual has the right to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matters of religion.
- **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.

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<sup>6</sup> D. Sundar Ram, *INDIAN DEMOCRACY: PROSPECTS AND RETROSPECTS*, Kanishka Publishers, New Delhi, (1st ed. 1996), Pg.176.

- **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.<sup>7</sup>

Supreme Court of India has been ascertaining the concept of Secularism in the Indian Constitution in a different system through cases:

#### **Keshwananda Bharti v. The State of Kerala<sup>8</sup>**

The court is of the opinion that Secularism is a part of the Basic Structure of the Constitution. Enumerating the elementary features of the Constitution, Ld. J Sikri named "*secular character of the Constitution*" as one of them. Ld. J Shelat and Grover stated that "*secular and federal character of the Constitution*" was amongst the main ingredients of the basic structure enumerated therein. Jaganmohan Reddy Ld. J stated clearly that "*Liberty of thought, expression, belief, faith, and worship*" could not be amended at any cost as they are the part of elementary features of the Indian Constitution.

#### **S.R. Bommai v. Union of India<sup>9</sup>**

The Court in no uncertain terms declared that secularism is part of the basic structure. But the complication arose in formulating a definition. Ahmadi, Ld. J stated that secularism is based on the "principles of accommodation and tolerance". In other words, 'an espousal of a soft secularism'. He tended to agree with the broadened definition adopted by the Court in Indra Sawhney case. The Court in Bommai ruled that religion and temporal activities do not mix. Freedom and tolerance of religion is only to the extent of permitting pursuit of spiritual life that is different from the secular life. The latter falls within the domain of the affairs of the State. The Court further said that "the encroachment of religion into secular activities is strictly prohibited." Ramaswamy, Ld. J in his separate opinion declared that the State has the duty to ensure secularism by law or an executive order. He explained that programs or principles evolved by

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<sup>7</sup>available at, <https://www.drishtias.com/secularism-1>.

<sup>8</sup>Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr.(1973) 4 SCC 225: AIR 1973 SC 1461.

<sup>9</sup>S. R. Bommai v. Union of India 1994 SCC (3).

political parties based on religion amount to recognizing religion as a part of political governance which the Constitution expressly prohibited. According to him it is the duty of the court to bring every errant political party in line if it goes against the secular ethics like casteism and religious antagonisms. His opinion reiterates the view that secularism includes anti-casteism, and presents the rigid stance of the court. Jeevan Reddy and Agrawal, Ld. J broadly agreed with Ramaswamy, Ld. J. In fact, the Judges went on to say that the concept of secularism in the Indian Constitution is in broad agreement with the U.S. Constitution's First Amendment. They also expressed the view that the State has the power to legislate on religion including personal laws under Art. 44 and secular affairs of Temples, Mosques and other places of worship. They also went on to say that even if a political party indirectly espouses a religious cause it is acting in an unconstitutional manner. It may be noted that Verma, Ld. J (as he then was) and Dayal, Ld. J, though part of the bench expressed no opinion on secularism.<sup>10</sup>

### **Sardar TaheruddinSyedna Saheb v. State of Bombay<sup>11</sup>**

Wherein Ayyangar, J., explained: "Articles 25 and 26 embody the principle of religious toleration that has been the characteristic feature of Indian civilization from the start of history. The instances and periods when this feature were absent being merely temporary aberrations. Besides, they serve to emphasize the secular nature of the Indian democracy which the founding fathers considered to be the very basis of the Constitution."<sup>12</sup>

## **4. CONTEMPORARY SECULARISM**

Secularism is something which is argued since past and persist. Due to its direct relation with religion it is prevalent, pervasive and persuasive in community and human life.

### **Current Situation in India**

The idea of Secularism assumes an essential job in India. Secularism here binds every one of the nexuses following religion. Indian secularism remarks the connotation of godly and devout sentiment in life of human. It expects and hopes that no other religion has the confining or

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<sup>10</sup>H. M. Seervai, *CONSTITUTIONAL LAW OF INDIA (vol.1)*, Universal Book Traders, (4th Ed. 1997).

<sup>11</sup>*Sardar TaheruddinSyedna Saheb v. State of Bombay*AIR1962SC853; [1962]Supp(2)SCR496.

<sup>12</sup>available at, <https://www.ebc-india.com/lawyer/articles/9807a1.htm>.

constraining framework of reflective knowledge; it allows all religions to discharge their scope under their true words.

The Constitution of India explicitly recognized Hindus, Muslims, Christians, Sikhs, and Parsis as different societies each with individual and free culture, pious activities and special laws. Treating the acknowledged religious societies as equals meant that they would enjoy more or less the same level of religious liberty. While religious practices and activities of religious societies were subject to few limits, it was said that the religious liberty of each of these societies would be equally conserved and defended.

India is known for its multiculturalism as for its language and religion. The Indian subcontinent is the birthplace of four major world religions—Hinduism, Buddhism, Sikhism, and Jainism. According to reported 2011 census data, 79.80% of the population of India is Hindu, 14.23% Muslim, 2.30% Christian, 1.72% Sikh, 0.70% Buddhist, and 0.37% Jain.<sup>13</sup> Hereby, Hindus (inclusive of Sikhs, Jains and Buddhists) establish the majority and Muslims create a minority.

India has experienced a number of religious and communal riots both pre-independence and post-independence. A bizarre and noteworthy thing which should be brought into the sight is, almost entire rampages has taken place between Hindus and Muslims, apart from:

- 1933-1934 Riots, included Sikhs in dispute at the Shaheed Ganj Mosque in Lahore.
- Worli Riots (1974), between Shiv Sena and Buddhists for reservation issues.
- Anti-Sikh Riots (1984), Assassination of PM Indira Gandhi by her 2 Sikh bodyguards.
- And, 1991 Anti-Tamil violence of Karnataka, Tensions between Kannadigas and Tamils after Cauvery river dispute.

Hindu-Muslim fights has taken place during historic period in India and are still continuing (Communal riots due to Aurangzeb's religious policy in 17th Century and now the riots and protests against Citizenship Amendment Act). Some major ones such as Bombay riots of 1993 and Gujarat riots of 2002 has led to death of 1500+ people across the country. Extensive issue between both the religions has always been *Babri Masjid in Ayodhya*, in 1992 which was claimed by Hindus that the mosque was erected over the birthplace of the archaic god Rama (and

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<sup>13</sup>available at, <https://www.loc.gov/law/help/anti-conversion-laws/india.php>.

a 2010 Allahabad court ruled that the site was indeed a Hindu monument before the mosque was built there, based on evidence submitted by the Archaeological Survey of India).<sup>14</sup> Tens of Thousands people were evicted from their homes and there was tremendous annihilation of lives and casualties in the country due to this before the Supreme Court passed a neutral and satisfactory judgement in November 2019 in the case:

**M. Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors.**

In 1528, The Babri Masjid constructed on orders of Emperor Babur. As per local tradition, it was built after demolishing the temple at the birth spot of Rama. In 1859, the colonial British administration put a fence around the site, post a communal clash, denominating separate areas of worship for Hindus and Muslims. In 1949, Idols were placed inside the mosque. Both sides to the dispute filed civil suits. The government declared the area to be disputed and locked the gates of the building. The matter was held to be sub-judice. In 1984, the movement to build a temple at the site, gathered strength when Hindu groups formed a committee to spearhead the construction of a temple at the disputed site. In 1986, an order was passed by the district judge to open the gates of the mosque and allow the Hindus to worship inside the structure. 1989, in the month of November, the Vishwa Hindu Parishad laid foundations of a temple on land adjacent to the disputed structure. There were sporadic clashes in the country subsequent to this. In 1990, the then BJP president Lal Krishna Advani took out a cross-country rathayatra to garner support for the move to build a Ram temple at the site. In 1992, the then Chief Minister, Kalyan Singh took steps to support the movement such as making entry into area easier, promising no firing on Karsevaks, opposing decision of central government to send Central Police force in the area, etc. On 6th December, the mosque was demolished by nearly 2, 00,000 karsevaks. This led to communal riots in many parts of the country. In 2010, The Allahabad High Court pronounces its verdict on four title suits relating to the Ayodhya dispute on 30 September 2010. Ayodhya land to be divided into three parts. In 2019, the 5-judge Constitution bench, headed by Chief Justice of India Ranjan Gogoi, of Supreme Court declared final hearing on the case with the handing over of the disputed property to the Trust or body under, a suitable plot of land admeasuring 5 acres shall be handed over to the Sunni Central Waqf Board, the plaintiff. It was said that,

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<sup>14</sup>available at, [https://en.wikipedia.org/wiki/Religious\\_violence\\_in\\_India](https://en.wikipedia.org/wiki/Religious_violence_in_India).



‘Secularism is thus more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions.’<sup>15</sup>

Today, considerable controversy on secularism is *Anti CAA protests and riots* in several states of the country. This Act seeks to grant Indian Citizenship to persons affiliated to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities on the ground of religious minorities persecution in states of Pakistan, Afghanistan and Bangladesh. As these countries have Muslim majority, they weren't given citizenship under the Act. The enactment of such law of government was criticised by many and led to bisection of society on the basis of religion. Also, the protests have led to the deaths of quite a few rioters, casualty to protesters and police personnel, harm and loss to public and private property, the confinement of hundreds of people, and termination of local internet and phone connectivity in specified areas. The Central Government in a preliminary affidavit point-by-point replied to the criticism against the Citizenship Amendment Act (CAA) and pronounced India is constitutionally secular, and also notified the Supreme Court that the CAA does not infringe any fundamental right and provisions of the constitution and therefore, the query of infringement of constitutional morality does not have to originate.

Both of these religions have been and are engaged in a vicious cycle of gaining advantage or predominance over the other. In other words, both Hindus and Muslims have developed animosity and hostility against each other which is leading to antagonistic behaviour of people. Therefore, in order to maintain better circumstances in the religion-based society of ours, further steps are taken such as proscription of practices of both the religions (untouchability, triple talaq, beef ban, proselytization etc.) which is a hefty secular normative attack on both the religions.

Indian secularism has two distinct and conflicting aspects, one is complete detachment between government and religion and the other that strongly appeal government to treat each religion without discrimination. Rajeev Bhargava has explained what secularism in the Indian setting calls for is the maintenance of a “principled distance” between state and religion. This does not mean that the state cannot intervene in religion and its affairs, but that any intervention should be

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<sup>15</sup>available at, <https://lawbriefs.in/case-summary/ayodhya-verdict-m-siddiq-d-thr-lrs-v-s-mahant-suresh-das-ors-2019/>.

within the limitations prescribed by the Constitution. Sometimes this might even call for differential treatment across religions, which would be valid so long as such differentiation, as Mr. Bhargava explains, can be justified on the grounds that it “promotes freedom, equality, or any other value integral to secularism.”<sup>16</sup> But Indian state i.e. government has total intervention into the matters of religion through communal politics. In other words, vote bank politics is followed by the government and the political parties in the race to form the government. Even this has led to inundation of discrete political bodies for Hindu and Muslim community, be it Bhartiya Janta Party, Aam Aadmi Party, Indian National Congress etc. whoever is instigating the idea of ‘hindutva’ and so on.

## 5. CHALLENGES AND THREATS TO SECULARISM

The Indian Constitution declares the state being neutral and unbiased to all the religions in our country, i.e. the word secular is the part of the basic structure of the Constitution.

Secularism is an ideal principle however it is difficult to follow it. The main challenge or threat in India is that the citizens of India are quite sentimental when it comes to their religion. The ‘dharma gurus’ and ‘maulanas’ often manipulate people according to their own interests who have led to communal fights and clashes. Incidents like this tend to create differences amongst the communities which indeed are a threat to secularism. For instance, in recent years when beef was banned by the State, incidents of mob lynching (suspicion of beef consumption) and violence, forced conversions in the name of ‘ghar vapsi’ against Muslims increased rapidly. It is also very unfortunate that terrorist organisations like ISIS influenced the Muslim youth to join them by using Islam’s teachings in a wrong way. When one mixes Politics and Religion, the expected outcome is violence and hatred (Communal politics).

**Communal politics** operates through communalization of social space, by spreading fables and stereotypes against minorities, through attack on rational values and by practicing a divisive ideological propaganda and politics. Blending of religion and politics that is mobilisation of votes on basis of prehistoric personalities like religion, caste and ethnicity, have put Indian secularism in danger.<sup>17</sup>

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<sup>16</sup>available at, <https://www.thehindu.com/opinion/lead/the-secular-condition/article22347527.ece>.

<sup>17</sup>available at, <https://www.drishtiiias.com/to-the-points/paper1/secularism-1>.

Politicisation of any one religious group leads to the *competitive politicisation* of other groups, thereby resulting in inter-religious conflict.<sup>18</sup>

The fundamentalists of both communities (Hindus & Muslims) are adherent towards their respective faiths, most of them are either illiterate or semi-literate. Moreover, some of the important conditions laid down by the Constitution have not been fulfilled properly. Issues like poverty, population explosion, illiteracy and other issues still prevail in large proportions. India is known for its rich cultural heritage and history. This also means that there is cultural heterogeneity with respect to religion and languages. Communal politics is nothing new for India. The differences and hostility between Hindus and Muslims were created by the British rulers. In order to stay in power, they adopted the policy of 'divide and rule' and tried to promote hatred among the members of these two communities. After a long history of independence, at present times they still lack proper adjustment amongst themselves which have led to violent riots and communal clashes. E.g. Ram mandir dispute and now Anti CAA and Pro CAA clashes, which unfortunately become a serious threat to our country's secular identity.

## 6. CONCLUSION

We can conclude by saying that the word 'secular' and the concept of 'secularism' has come a long way, since its origin from a Latin word 'saeculum' to being included in the preamble of the Indian Constitution. The Supreme Court of India had passed many landmark judgments which defined secularism and its importance although the essence of secularism is much bigger than its literal meaning. Since ancient times, the people of the India co-existed in harmony, depicting religious tolerance to an extent, but in recent times religious tolerance had declined and there is a rapid growth in incidents of communal violence, riots and other religious clashes. These incidents impose a threat to the secular principles of India.

In fact, Indian secularism is the by-product of the whole civilization, as a senior literary figure, Nayantara Sahgal, remarked recently: "We are unique in the world that we are enriched by so many cultures, religions. Now they want to squash us into one culture. So, it is a dangerous time. We do not want to lose our richness. We do not want to lose anything . . . all that Islam has

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<sup>18</sup>*ibid.*

brought us, what Christianity has brought us, what Sikhism has brought us. Why should we lose all this? We are not all Hindus but we are all Hindustani.”<sup>19</sup>

As mentioned above it is important for us to understand that we all are Indians and not just only a Hindu, Muslim or Christian. A sense of brotherhood is important to ensure development and growth of our country. Otherwise if religious violence continues then for sure our country will be doomed.

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<sup>19</sup>available at, <https://indianexpress.com/article/cities/mumbai/nayantara-sahgal-we-should-not-lose-our-hindustaniyat-5560427/>.