

# Constitutional Secularism in India: Acritical Reappraisal

Dr Renuka Soni

*Assistant Professor in Law, RGNUL, Punjab, Patiala*

## I. INTRODUCTION

The Father of our nation, Mahatma Gandhi, famously stated, “*I do not envision the India of my dreams as a country dominated by one religion, whether wholly Hindu, wholly Christian, or wholly Muslim. Rather, I aspire for it to be fully tolerant, where various religions coexist harmoniously.*” Therefore, during the struggle for independence, secularism emerged as the foremost principle, and the leaders of the freedom movement were profoundly dedicated to the concept of secularism.

India is a nation that embraces all possible religions and lifestyles. The idea of “unity in diversity” is upheld by it. The secular character of the state, democracy, federalism, and tolerance are the pillars upon which this unity is based. Through Articles 25–28, which are a part of the Fundamental Rights protected in Part III of the Constitution, the Indian Constitution guarantees both individual and community freedom of religion. Despite safeguarding religious freedom, the Indian Constitution does not define the term “religion.” However, the esteemed Supreme Court of India, in the case of Commissioner HRE, Madras v. Sri Lakshmindra<sup>1</sup>, remarked that “religion is indeed a matter of faith for individuals or communities and is not exclusively theistic. There are well-known religions in India such as Buddhism and Jainism that do not subscribe to the belief in a god or any intelligent first cause.”

Nonetheless, the current situation poses a threat to the secular nature of Indian democracy, primarily due to a long-standing history of religion-based violence in the country. Additionally, the repercussions of the 9/11 attacks have, in fact, contributed to the rise of religious extremism worldwide, which has devolved into

religious fanaticism, likely because of the focus on one specific faith, despite the actions being carried out by only a few individuals. This biased approach of targeting a particular religion has resulted in widespread discontent among people from various backgrounds. As a part of the globalized community, India has been negatively impacted by this unrest.

## II. SECULARISM UNDER THE CONSTITUTION OF INDIA

When India achieved independence in 1947, it was rooted in a violent partition that led to the formation of two sovereign nations. India was a country starting on a daunting journey towards establishing an economically self-sufficient democracy that would treat all its citizens fairly. As part of this effort, India pledged to uphold ‘secularism’, which gained even greater importance given the two-nation theory and the establishment of Pakistan based on religion. The implication was that India would not base its citizenship and national identity on religious affiliation<sup>2</sup>. Although the term secularism was not explicitly included in the Preamble of the Constitution, the Constitution of India, through Article 25, recognizes the right to freely profess, practice, and propagate religion. Furthermore, Articles 26 to 28 contain detailed provisions that protect religious beliefs and practices from governmental interference. This indicates that the Indian state is secular in nature. Additionally, the 42nd Amendment to the Constitution of India included the term “Secularism” in the Preamble.

In the significant case of *Kesavananda Bharati v. State of Kerala*<sup>3</sup>, the Constitutional Bench of the Supreme Court of India affirmed that secularism is a

<sup>1</sup>AIR1954SC282.

<sup>2</sup> Vivek Salathia, “*Secularism and Indian Constitution- Is the Secular Character of Indian Democracy Under Threat*”, paper

presented at IALS Conference on Constitutional Law, American University Washington College of Law, Sep 2009.

<sup>3</sup> (1973) 4 SCC 225

fundamental aspect of the Constitution's basic structure<sup>4</sup>. This perspective was reinforced in the pivotal case of *S.R. Bommai v. Union of India*<sup>5</sup>. In fact, according to the Honourable Judges in the *S.R. Bommai* case, the Indian Constitution's definition of secularism substantially resembles the First Amendment of the US Constitution.

Furthermore, the Seventh Schedule of the Constitution of India categorizes religious institutions, charities, and trusts under the Concurrent List; consequently, both the Union government and state governments hold equal authority to legislate in this area. This also implies that both levels of government can establish their own regulations concerning religious and charitable bodies and trusts. In the event of a conflict, the legislation passed by the Centre takes precedence over any state laws. Several constitutional amendments, beginning with Article 290 in 1956 and ending with the inclusion of the word "secular" in the Preamble of the Indian Constitution in 1976, further recognized this idea of overlap rather than a distinct separation between religion and state in India. Because of the Concurrent List's structure, which overlaps religion and the state, various religions in India now receive governmental support for personal laws and religious schools. Though, in line with the teachings of each faith, this state intervention is frequently unfair and incongruous.

Secularism in India, therefore, does not imply a division between religion and state. Rather, secularism here signifies a state that maintains neutrality towards all religious communities. In terms of personal domain religious laws, particularly for Muslim Indians, these laws take precedence over parliamentary legislation in India; additionally, in certain scenarios such as religious indoctrination schools, the state partially funds specific religious educational institutions. These disparities have contributed to a widespread perception that India is not a secular country, as the term secularism is commonly understood in the West and beyond; instead, it functions as a political strategy in a nation with a complicated historical backdrop, often achieving results contrary to its professed objectives.

### III. SECULARISM IN INDIA: BETWEEN IDEALS AND REALITY

There is reason for alarm regarding the current state of "secularism" in India. It is believed that the secular nature of Indian democracy is in danger now. Both Muslims and Hindus killed each other after the Babri Mosque in Ayodhya, Uttar Pradesh, was destroyed. The recent killings of innocent Hindus in Godhra, Gujarat, which were likely sparked by simmering Muslim animosities towards the Hindutva advocates in Ayodhya, led to a larger massacre of equally innocent Muslims in tit-for-tat killings that further weakened the harmony that these religious communities had previously enjoyed in Gujarat State under a secular environment. In addition to these, a terrible picture of India is painted by the heinous crimes committed against the Sikhs in Delhi in 1984 following the murder of Prime Minister Indira Gandhi, as well as the sporadic murders of Christian missionaries who were evangelizing.

The precarious position of secularism in India is clearly illustrated by the stance of the Supreme Court in the case of *Ismael Faruqi v. Union of India*<sup>6</sup>, which began to water down the active, positive interpretation of secularism rooted in scientific reasoning promoted in the *S.R. Bommai*'s case. Subsequently, in the controversial *Ram Janmabhoomi* case, the Hon'ble Supreme Court supported its notion of secularism by extensively referencing Indian scriptures. Justice Verma (who was then serving) quoted from the Yajur Veda, Atharva Veda, and Rig Veda to affirm its interpretation of secularism, particularly the phrase 'Sarwa Dharma Sambhava,' meaning tolerance of all religions. This rationale appeared peculiar, as the Hon'ble Supreme Court seemed to validate secularism through religious texts. The Court appeared to have dismissed the Western notion of secularism, which is based on the separation of Church and State as stated in the earlier *S.R. Bommai* verdict, and reverted to equating secularism with tolerance. The Court further noted that the State possesses the authority to take control of any religious site, including mosques. Though dissenting, Justice Bharucha endorsed the idea of absolute, positive, and active secularism,

---

<sup>4</sup> The 42<sup>nd</sup> amendment to the Constitution of India was introduced vide The Constitution (Forty-second Amendment) Act 1976

<sup>5</sup> (1994) 3 SCC1

<sup>6</sup> (1994)6SCC 360

aligning more with what was expressed in S.R. Bommai's case. However, he acknowledged that secularism in India exists largely because of the tolerance exhibited by Hindus, the majority religion. Nonetheless, some of the recent judgments by the Hon'ble Supreme Court have indicated a shift from the ambiguous interpretation of Secularism. This again underlines a crucial point that the secular identity of India has indeed faced a setback, and the matter of Secularism in India today is complex, particularly in view of the rising religious fundamentalism that has emerged due to governmental failure in managing societal violence. More recently, in February 2015, a Division Bench of the Hon'ble Supreme Court, comprising Justices Vikramjit Sen and C. Nagappan, while examining a Public Interest Litigation, remarked, "India remains a secular nation... we cannot predict how much longer it will maintain its secular identity<sup>7</sup>. It is essential to eliminate religion from civil laws. There are already too many issues."

Another likely reason for the threat to "Secularism" can be linked to widespread religious unrest on an international scale. The aftermath of 9/11 has, in fact, contributed to the emergence of religious fundamentalism worldwide, which has escalated into religious extremism, largely due to the focus on one specific religion, even though the act was perpetrated by a small group of individuals. This careless tendency to target one religion has resulted in significant resentment among people from diverse backgrounds. As part of the globalized world, India has been negatively impacted by this turmoil<sup>8</sup>.

A critical disjuncture between the constitutional ideal and the lived reality of secularism is evident in the state's differential treatment of religious personal laws. The constitutional promise of equality (Article 14) is routinely compromised by the state's acquiescence to uncoded and often patriarchal personal laws that govern matters of marriage, divorce, inheritance, and adoption for various communities. This legal pluralism, while intended to protect minority identity, often results in the systemic disadvantage of women and challenges the very core

of a uniform civic citizenship. The state's reluctance to enact a Uniform Civil Code, as envisioned in Article 44, citing political expediency, underscores a pragmatic surrender of the secular ideal to majoritarian and minoritarian identity politics alike. Furthermore, the operationalization of secularism is frequently undermined by the weaponization of laws ostensibly designed to preserve public order. The arbitrary application of statutes like the Unlawful Activities (Prevention) Act (UAPA) or sedition laws against individuals from specific religious minorities, often based on tenuous evidence, fosters a perception of state-sanctioned majoritarianism. This creates a chilling effect on dissent and religious expression, eroding the "principled distance" the state is constitutionally mandated to maintain. The gap between the ideal of equal protection and the reality of discriminatory enforcement reveals a secularism that is not merely passive but selectively active, often aligning with majoritarian impulses rather than acting as a neutral arbiter.

#### IV. CONCLUSION

The principles of a secular state are clearly reflected in the Indian Constitution; however, the circumstances following independence have presented challenges to the secular nature of our nation. It's critical to keep in mind that India is home to a wide variety of peoples, cultures, languages, and faiths. The juxtaposition of sensuality and austerity, carelessness and efficiency, kindness and violence, exemplifies India's diversity. India is essentially like a kaleidoscope, with a fresh combination of colours and patterns revealed with every touch.

In conclusion, it can be stated that this paper does not aim to cover the implications of the theoretical shortcomings of secularism in India; however, it is crucial to raise issues and questions that warrant further examination of this matter. Undoubtedly, the judiciary in India has become an important arena where debates around secularism have occurred over the past fifty years<sup>9</sup>. While the judiciary is attempting to maintain harmony, the citizens of India must not

7

Utkarsh Anand, "Not Sure for How Long India Will Stay Secular: Supreme Court", *The Indian Express*, 10 Feb, 2015 (accessed on 23-02-20219)

<sup>8</sup>Supra Note 2.

<sup>9</sup>Tanu Arora, "Secularism Under the Constitutional Framework in India" (For Complete paper please visit,

lose sight of the vision set forth by the Constitution's framers and the ancient philosophy of 'Sarva Dharma Sambhavah.'

If we look at a few pieces of Indian history, we can say that, despite many obstacles, India has always been able to find a middle ground to maintain its rich socio-religious culture. India still maintains its secular identity, but as a democratic and secular state, it is crucial that it does not identify with any one religion. It must also make sure that, while defending everyone's right to freedom of religion, it does not pass laws that are based on any one religion.

---

<http://www.legalserviceindia.com/articles/ct.htm>(accessed on 09-03-2019).