

## Myth and Reality of Secularism in India: An Analysis

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### Abstract

*Secularism is the way by which everybody enjoys religious freedom. India is a country of diverse religions which has the concept of equality of faith enshrined in its Constitution. Although the term 'secular' was not incorporated in the Indian Constitution upon its inception, it was included in 1976 through the 42<sup>nd</sup> Amendment. However, in spirit, the values of secular character were interwoven in the constitutional fabric of India from the very beginning. This aspect has time and again also been emphasised by the Judiciary. It can safely be asserted that secularism is indeed one of the fundamental ideals of the Constitution and can never be changed. However, sometimes it has been found that State indirectly favours a particular religion against the concept of secularism. This paper attempts to understand the meaning and concept of secularism in India and its challenges.*

**Keywords:** Secularism, Democracy, Discrimination, Constituent Assembly, Constitution, Supreme Court.

### Introduction

India is a vast country where people of various religions, castes, creeds, and socio-cultural backgrounds live. This country is diverse also concerning its diverse population. Although, the word secularism was not mentioned in the Constitution since the beginning, it was embedded in our polity as its philosophical phenomenon. Though secularism is the basic structure of the Indian Constitution, its practicability in contemporary Indian conditions is questionable because there is increasing use of religion in the social construction of ethnic and communal identity, consequently forming political mobilization. The caste, religion, and regional divisions are still prevalent in India and play a significant role in shaping the ideologies of individuals and groups. While secularism has been integral to India's democracy for more than seventy years, its limitations and implementations are still debatable. The actual meaning of secularism is that the State should have no religion of its own, and no one could proclaim to make State a theocratic State (Basu, 2007) but it does not mean that the State should stay aloof 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

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the imperative requirements for human progress in all aspects and cultures, including social advancement (Basu, 2007). But, nowadays, secularism has also been equated to the concept of modernity which is a subjective thing that matters from an individual perspective. Undoubtedly, secularism and modernity are interlinked, but it is a general feeling that the central ideal of equal respect for all religions has not been translated into a social reality.

This paper aims to discuss the meaning and concept of secularism and its relevancy under the Constitution of India. How far the spirit of secularism is followed in India has also been addressed in the paper. Apart from the above, the Judiciary's role regarding the interpretation of secularism has been highlighted in the discussion. This paper also strives to figure out how the constitutional amendment changed the philosophy and practice of secularism in the country. The methodology that has been applied to complete this task is doctrinal. This paper is based on primary and secondary sources.

### Meaning and Concept of Secularism

Secularism has not been clearly defined in any document. However, it is a system of doctrine and practice that disregards or rejects any form of religious faith and worship (Basu, 2007). The basic principle of a secular state is that there should not be any interference by religion in the affairs of the State and *vice versa*, i.e., the State also should not interfere in the affairs of religion (Tarkunde, 1995). As per Webster's New World Dictionary, secularism signifies the belief that religious and ecclesiastical matters should not enter into the function of the State (<https://shodhganga.inflibnet.ac.in>). The concept of secularism is not merely a passive attitude of religious tolerance; it is also a positive concept of equal treatment of all religions (Jain, 2008). A secular State does not extend patronage to any particular religion. The State will not establish any State religion, nor will the State accord any preferential treatment to any citizen or discriminate against him/her on the ground that he/she professes a particular religion (Pylee, 2007). However, it does not mean that a State which does not have its own religion is a theocratic State. A secular State is neither pro nor anti any particular religion. It is neither religious nor irreligious. Also, a secular State maintains neutrality in matters of religion and provides equal protection to all religions (Jain, 2008). In other words, it can be said that secularism means that the status of all religions is equal.

There are two main concepts of secularism, (a) Western concept and (b) 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" (<https://www.newworldencyclopedia.org>). 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 (<https://www.newworldencyclopedia.org>). Meaning that if one religion is practiced by an individual 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 on the basis of their religion. The western conceptualization of secularism began in the 19<sup>th</sup> century. The term secularism was coined by British reformer Jakob Holyoke in 1851 (<https://books.google.co.in>). He used this term to describe his views of promoting a social order separate from religion without criticizing religious belief.

As far as the Indian scenario of secularism is concerned, a look into the records of the Constituent Assembly's debates reveals that the general understanding amongst members of the assembly was that India was to be a secular state. The Constituent Assembly emphasized the secular foundation of India. The Assembly declared that secularism, as adopted in the Indian Constitution, was not an anti-religious concept; instead, it prevented discrimination against the citizens 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 anti-religious 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 rest of the people. This is the only limitation that the Constitution recognizes"(Pylee, 2007).

After the Constituent Assembly debate, mainly two views of secularism emerged; one is Gandhi's view, and the other is Nehru's views. Gandhi's opinion was based on '*Sarva Dharma Sambhav*' i.e. equality for all religions. According to him, religion cannot be separated from public life. He said that religion is important for him, and he will respect other religions also. Nehru followed the principle '*Dharma Nirpeksha*'. According to him, religion should be a private matter and should not guide public life. After independence, a new concept of secularism emerged, which was closer to the views of both Gandhi and Nehru. Independent India adopted the following ideas of secularism;

- i. The State shall permit freedom of practicing any religion.
- ii. The State shall not associate with any religion.
- iii. The State shall honor all faiths of equality.

The first two are similar to the western concept, whereas the third one is the innovative idea for Indian secularism.

Justice P.B. Gajendragadkar, the former Chief Justice of India has said, "The State does not owe loyalty to any particular religion as such, it is not irreligious or anti-religious, it gives equal freedom to all religions"(Singh, 1952). He commented on the non-inclusion of the word secular in the Constitution from its inception, saying that the omission of the

word 'secular' or 'secularism' is not accidental but was deliberate ( <https://shodhganga.inflibnet.ac.in>).

## **Indian Constitution and Secularism**

The Indian concept of secularism is that the relations between State, society, and religion are not well defined. Personal laws vary from religion to religion. The precarious position of religious minorities and the affiliations of political formations with religious fundamentalists pose severe challenges to the success and future of secularism in India (<https://www.hindustantimes.com>). It can be conceded that secularism in India today is too politicized, and it is necessary to find ways to depoliticize secularism and to move it further into the domain of civil society. At the outset of the making of the Constitution, the concept of secularism was not expressly mentioned in the Indian Constitution. However, the Indian Constitution has spelled out several provisions in Part III (Articles 14, 15, 16, 25, 26, 27, 28, 29, 30), Part IV (Article 44), and IVA (clause (e)) that reflects the existence of secularism. The conjoint reading of all these Articles makes it evident that the intention of the Constitutional fathers was neither to oppose religion nor to promote rationalization of culture. Although the word 'secular' was first time inserted in the Preamble of the Constitution by the 42<sup>nd</sup>(Amendment) Act, 1976, which came into effect on January 3rd, 1977, secularism was part of the Constitution word secular was inserted in the Preamble (Singh, 2013). The 42<sup>nd</sup> Constitutional (Amendment) Act of 1976 stated that 'secular' means a republic in which there is equal respect for all religions. Despite the clear letters of the law, the Hon'ble Supreme Court has interpreted it on various occasions via various judgments. But one thing is apparent secularism, as mentioned in the Indian Constitution, does not mean anti-God or Atheist. Instead, it means the State should not have any religion. Supreme Court of India in the case of *Indira Nehru Gandhi v RajNarain* (AIR 1975 SC 2299) held that secularism means that State shall have no religion of its own and all persons of the country shall be equally entitled to the freedom of their conscience and have the right freely to profess, practice and propagate any religion.

Suppose we look into the situation even before 1976, people of all religions in India have equal rights and are free from discrimination. Article 14 of the Constitution provides equality before the law and equal protection of laws to all. However, reasonable classification can be made and should be treated alike. The Constitution of India prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them. Article 15(1) Article 15(2) emphasizes that no citizen shall, on any of the above grounds, be subject to any disability, liability, restriction or condition concerning access to shops, public restaurants, hotels and places of public entertainment or the use of wells, tanks, etc., which are wholly or partly maintained out of state funds or are dedicated to the general public. Article 16(1) lays down a general rule that there shall be equal opportunity for all citizens relating to employment in the office of the State (Singh, 2013). Article 16(2) of the Constitution, is an elaboration of Article 16(1) says that no citizen shall, on grounds only of religion, race etc., be ineligible for, or

discriminated against in respect of, any employment or office of the State (Article 16 (2)). These provisions adequately ensure the equality of citizens belonging to all religions.

India is a pluralistic society and multi-religious country; that is why the framers of the Constitution adopted the concept of religious neutrality and conferred religious freedom to various religious groups (Jain, 2008). The religious tolerance and equal treatment to all religious groups in the spirit of our secularism (Jain, 2008). Indian Constitution adopted the principle of non-interference in religious matter with certain exceptions (Jain, 2008). Articles 25 to 28 of the Indian Constitution make clear that everyone living in India should be entitled to profess his religion without hindrance, so long as the citizen obeyed the common law of the land. Article 25, a reservoir of religious and secularism in India, makes explicit provision, when and how religious freedom is available and curtail freedom? This Article guarantees to every person the right to freely profess, practice, and propagate his religion. In Article 25, the word 'any person' has been mentioned, reflecting that voluntary conversion from one religion to another religion is valid as a person is free to have faith in any religion (Rai, 2008). But conversion by force, fraud, or inducement is not valid because it may disturb the public order. Also, Article 25 empowers the State to impose restrictions in the interest of public order. Article 25(1) 'Public order' here means a thing disturbs the current of the community's life and does not affect merely individual. If the situation disturbs the current life of the community, it will amount to a disturbance of public order (*Stainslaus v State of MP, 1977*)

The State will not interfere in religious affairs, so the State cannot regulate religious activity. However, a secular activity that is associated with the religious matter may be regulated by the State (Article 25(2)). An activity will be treated as religious if it is regarded as an essential and integral part of the religion and will be secular if it is not considered a necessary part of religion. The practice of *Talaq-e-biddat* or Triple Talaq is declared illegal, holding that it is not protected under Article 25 of the Constitution as it is not an essential religious practice (*Shayra Bano v Union of India, 2017*). Also, under certain circumstances, the State can interfere in religious practices for social reform. The rationalization process should bring about this social reform. For such social reform, no coercive force of the law should be exercised. However, Sometimes situations compel the State to use legal coercion for urgent social reform. For instance, an Act that was enacted to prohibit polygamy among the Hindus was held valid because polygamy was not an essential and integral part of the Hindu religion. Similarly, Sati and *Devdasi* system in Hindus and 'triple talaq' in Muslims have been abolished as these were social evils and not the essential part of the religions. Polygamy, which is still permitted among Indian Muslims and is not permissible in many other Muslim countries, reflects that polygamy is not an essential part of such religion. Hence, for social welfare, social reform, and the nation's interest, the Uniform Civil Code can also be applied as it is permitted by the Constitution of India (Article 25(2)(b)).

## Role of Indian Judiciary in Shaping the Secularism

The word secular is not static; instead, it is dynamic. There cannot be any fixed view on this concept for all time. From time to time, the Court gives the different meaning of secularism and enforces it in practice. In *Sardar Taheruddin Syedna Sahib v. State of Bombay* (AIR 1962 SC 853), the apex court held that 'Art. 25 & 26 serve to emphasize the secular nature of the Indian democracy, which the founding fathers considered to be the very basis of the Constitution. In *Kesavananda Bharati v. State of Kerala* (AIR 1973 SC1461) the Supreme Court held that that secularism was a part of the basic structure of the Constitution. Chief Justice Sikri said that the secular character of the Constitution was the essence of it. Justice Shelatand and justice Grover stated that the secular and federal nature of the Constitution were the main ingredients of the basic structure. Justice Jaganmohan Reddy stated that "Liberty of thought, expression, belief, faith, and worship could not be amended at any cost because they were part of the basic features of the Constitution.

Similarly, the Supreme Court of India, in the case of *Bommai v Union of India* (1994), 3SCC 1 elaborated the meaning of secularism. The Court said that secularism means equal treatment of all religions. The Court held that the word 'secular which was inserted in the Preamble of the Constitution by the 42nd Amendment, highlights the fundamental rights guaranteed in Articles 25-28. The Court also said that the neutrality of the State would be violated if religion is used for political purposes and any political party is using religion to achieve a political goal. Religion and politics should not be mixed. Although a secular state does not interfere in religious matters, it does not mean that the State has no say in all matters of religion. The State can make a law to regulate secular affairs of religious places. The Court followed this view in the case of *Ismail Faruqi v Union of India* (1994) 6SCC 3176, and held that any property belonging to a religious community could be acquired by the State under the *eminent domain*. Again in the case of *Aruna Roy v Union of India* (2002) & SSC 368, Supreme Court of India held that the essence of secularism is non-discrimination of people by the State on the basis of religious differences.

In the case of *Abhiram Singh v. C D Commachem* (2017)10 SCC 1, there was a question before the Court whether secularism means complete separation of religion from politics? The Court held that secularism does not say that the State should stay aloof from religion; instead, it should give equal treatment to every religion. Religion and caste are vital aspects of our society, and it is not possible to separate them completely from politics. The Court held that secularism is the basic structure of the Constitution and therefore cannot be amended. Secularism is derived from the cultural principle of tolerance and ensures the equality of all religions. No religion will be at risk in India because the Government would not be aligned to any religion. The Court also said that there is an essential connection between secularism and democracy and if we need that democracy should work properly and the marginalized group can avail the benefit, then there must be a secular state.

## **Secularism and its Reality in India**

Secularism is meaningful in a democratic country only when there is a core principle of equality. If there is no commitment towards equality, then there will be no commitment towards democracy. India is a secular state, and a secular State will not favor any religion; instead, it protects and preserves innate pluralism. A question may arise as to why there are special provisions in Articles 29 (Articles 29(1) & 29(2)) and 30 (Article 30(1)) of the Constitution to protect the language, script and culture of minorities. And also, it is said that India has been a secular State even before 1976 (before adding the word secular in Preamble), as prescribed by Articles 25 to 28, then why was the necessity felt to bring the 42<sup>nd</sup> Constitutional (Amendment) Act, 1976 and insert the word 'secular' in Preamble? This and the way the 42<sup>nd</sup> Amendment of the Constitution took place is a matter of debate because, at that very time, many opposition leaders were either in jail or underground, and the strength of opposition members in the Parliament was very few because of national emergency. It would have been better to clarify the meaning of secularism rather than inserting the word secular in the Preamble through this Amendment. One more debatable thing is that if a secular State is completely separated from religion and the law of such a country is also secular, then why are there different personal laws in the country? Why is there not only one law or Uniform Civil Code? In a secular country, the State will not discriminate between religions then why is there control of Government on many temples but not on mosques and churches? The Constitution of India prohibits using taxes for religious purposes, (Article 27) but for looking after the welfare of minorities, the Ministry of Minority Affairs has been created, which brings various schemes to provide financial assistance for minority religions. Haj subsidy was provided to Muslims, but no such subsidy was available for other religions. Now, this subsidy is stopped; before stopping it, the State was doing discrimination which was against the concept of secularism. In a secular state, there should not have been the question of majority and minority because all are the citizens of the same country. So, secularism in India is not like in many European countries. Undoubtedly in India, there is no theocracy, but there is hypocrisy.

As far as Secularism and Citizenship (Amendment) Act, 2019 (CAA) is concerned, it is a matter of debate; one group argues that this Act violates the Constitution as it is against the concept of secularism, whereas the Indian Government is saying that the Act is Constitutional. The argument of the group who is against the CAA is that it violates the concept of secularism because the Act grants citizenship to migrants belonging to Hindu, Sikh, Buddhist, Christian, Jain, and Parsi communities who came to the country from Pakistan, Bangladesh, and Afghanistan on or before December 31, 2014 but does not include Muslims in its purview. And also, it is discriminatory in nature as it violates Article 14 as well as Article 15(1) of the Constitution of India. Article 14 of the Indian Constitution clearly states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It has been said that in this Article, the word person has been used, so it protects both citizens and non-citizens.

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Article 15(1) provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them. The Central Government's argument is that providing citizenship to anyone is a political matter and is neither against the concept of secularism nor discriminatory. As far as the question of the violation of Article 14 is concerned Supreme Court of India, in the case of *State of West Bengal v Anwar Ali Sarkar* (AIR 1952 SC 52) has held that Article 14 prohibits discrimination, but it permits reasonable classification. But the classification should be based on *intelligible differentia*, and the classification has nexus sought to be achieved. The CAA is an Act to protect people from religious persecution in three neighboring countries Pakistan, Bangladesh, and Afghanistan. All of them are Islamic states where radicalization is increasing day by day, and religious persecution is faced by Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians. So the discrimination between Muslims and other religions is based on *intelligible differentia*. It has also been argued by the Central Government that Article 15(1) of the Constitution prohibits discrimination among the citizens of India and the Muslims of Pakistan Afghanistan and Bangladesh are not the citizen of India, so they cannot get the protection of Article 15(1) of the Constitution. Indian Government also said that CAA does not impinge upon any existing right that may have existed prior to the enactment of the Amendment and further, and no legal, democratic, or secular rights of any of the Indian citizens will be affected. Although the constitutionality of CAA has been challenged before the Supreme Court of India, the case is still pending.

### Conclusion

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 favor of a particular religion. However, to protect the interest of minorities, specific provisions have been made in the Constitution, which indirectly reflects that specific discriminatory provisions have been made in the Constitution. In a secular state, majority and minority should be treated equally. Apart from the above, whenever the word minority was to be considered by the Government, the attention had been paid only to religious minority whereas the provision in the Constitution is 'religious and linguistic minority. So, if the interest of minorities is going to be protected by the Government, then the constitutional meaning of minority should be taken into consideration; otherwise, the spirit of the Constitution will be defeated. In 2019 the Central Government brought the Citizenship (Amendment) Act, 2019 to protect the interest of six religions facing religious persecution in three neighboring countries but was strongly opposed by various groups saying that non-inclusion of Muslims in its purview is discriminatory and also against the concept of secularism which is the basic structure of the Constitution of India. And also, the basic structure of India cannot be changed. But one thing must be kept in mind that the basic structure theory was developed by the Supreme Court of India as a limitation in the power of Parliament to amend the Constitution. Normally a law that came through enactment cannot be challenged as violating the basic structure. CAA, 2019 is



not part of the Constitution so, it should not be challenged as violating the basic structure of the Constitution. The Supreme Court of India is the guardian of the Constitution, and whenever any danger comes to affect the secular character of the country, it is always ready to protect the secular character of the nation.

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Article 15(1) of the Constitution of India says “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them”.

Article 16(2) of the Constitution of India provides, “No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State”.

Article 25(1) of the Constitution of India says; “Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion”.

Article 25(2) (a) of the Constitution of India says; “Nothing in this article shall affect the operation of any existing law or prevent the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice”

Article 25(2)(b) of the Constitution of India says; “Nothing in this article shall affect the operation of any existing law or prevent the State from making any law providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II In sub clause (b) of clause reference to 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”

Article 27 of the Constitution of India provides; “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.”

Article 29(1) of the Constitution says; “Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same”.

Article 29(2) provides “No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds

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only of religion, race, caste, language or any of them”.

Article 30 (1) of the Constitution of India states that the minorities in the country based on religion, languages have the right to establish educational institutions and also administer it according to their choice.

Article 30 (1) (A) of the Constitution states that the State has to keep in mind that the amount which is needed for the acquisition of the property does not exceed the budget of the community. Thus, it makes sure that the right which has been guaranteed under the clause is not restricted or abrogated.

Article 30 (2) of the Constitution the Government should not discriminate against any educational institution run by any minority group irrespective of religion or the language, while giving aid.

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