

## Secularism is the Essence of Constitution of India: An Analysis in the Light of Basic Structure Doctrine

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### Introduction

India is a unique state, distinguished by a multitude of cultures, languages, traditions, and religions. Major religions such as Buddhism, Jainism, Hinduism, Sikhism, Islam, and Christianity coexist here, creating a mosaic of Indian culture. This cultural richness is profoundly influenced by religious diversity, and, in response, the Constitution enshrines secularism through Articles 25 to 28, which guarantee freedom of religion. This paper explores the integration of "secularism" in the Constitution, and its applicability to the Indian landscape.

### Defining Secularism in the Indian context

At the time of independence, leaders had varying nuances of the word "Secular", which will be discussed in Section 2. Following independence, India adopted a secular model that balances Gandhi's "Sarva Dharma Sambhav" principle with Nehru's policy of "Dharam Nirpeksh". The Indian secular model holds that citizens are free to practise any religion, and the state honours all faiths equally without affiliating itself with any specific one.

### Distinction between the Western and Indian notion

This Indian concept contrasts with Western secularism, which calls for strict separation of religion and state. In the West, secularism focuses on individual rights and neutrality in public institutions. Indian secularism, however, promotes harmony and respects collective rights, recognizing the need for interreligious coexistence. This approach ensures that the state remains neutral in religious matters while fostering an environment of mutual respect and protection for diverse cultural and religious practices.

### Historical Evolution of Secularism in India

#### Constituent Assembly's views on Secularism

The Constituent Assembly engaged deeply with the idea of secularism, exploring its applicability within India's unique socio-religious landscape. Dr B. R. Ambedkar described secularism as "that Parliament shall not be competent to impose any particular religion upon the people." This sentiment reflects the Indian understanding of secularism as inclusive and respectful of religious sentiment without imposing any specific faith. Some members like Lokanath Misra argued against secularism, viewing religion as integral to life and suggesting that removing it from state matters would ignore India's inherent religious diversity.

H.C. Mookherjee also criticised the inclusion of the word secular. Dr. B.R. Ambedkar supported secularism in spirit without embedding it in the Preamble, arguing that the people must decide the state's religious policy over time. He was of the view that it cannot be laid down in the Constitution itself because that is destroying democracy altogether.<sup>5</sup> Instead, Articles 25, 26, and 27 ensured religious freedom without imposing any state religion.

### Nehru's Views

Nehru viewed secularism as a functional concept rather than a rigid institutional one, which is why he chose not to define it explicitly in the Constitution. He cautioned against the union of religion and politics, which he called "a dangerous alliance." Nehru's idea of secularism eclipsed around 3 principles: secularism through social welfare, secularism not being absolute i.e. free exercise of religion must align with norms that prevent the establishment of religion by the state as detailed in Articles 27 and 28, and secularism of dynamic nature.

In 1976, Indira Gandhi amended the Preamble during the Emergency, adding "secular" and "socialist" to define India's character explicitly. Critics argue that this altered the character rather than just the nature of the state, as it institutionalised secularism as part of India's identity rather than a guiding philosophy.

**Analysing The Basic Structure Doctrine**

The Basic Structure Doctrine asserts that certain core features of the Indian Constitution are so fundamental that they cannot be amended by Parliament. Established in the landmark *Kesavananda Bharati v. State of Kerala* (1973) case, the doctrine limits the power granted to Parliament under Article 368, ensuring that key principles, which form the essence of the Constitution, remain protected. These features, though not exhaustively defined by the judiciary, commonly include the supremacy of the Constitution, rule of law, separation of powers, judicial review, federalism, protection of fundamental rights, and secularism.

**Secularism through the lens of the Basic Structure Doctrine**

Secularism, in particular, has been upheld as a critical component of the Constitution's basic structure. Chief Justice Sikri, in the *Kesavananda Bharati* case, noted the "secular character of the Constitution" as foundational, with Justices Shelat and Grover emphasizing secularism and federalism as integral. Justice Jaganmohan Reddy further highlighted "Liberty of thought, expression, belief, faith, and worship" from the Preamble, underscoring the state's commitment to religious neutrality.

Time and time again, this doctrine was reinforced by the Supreme Court in various judgements as a core element of the Constitution's unchangeable basic structure. Prominent cases which reiterated secularism as the essence of the Indian constitution will be discussed in the subsequent sections.

**Judicial Perspective**

The judiciary has been paramount in advocating for cardinal principles such as secularism to be inviolable. The *Indira Sawhney* case emerged in a politically charged atmosphere. During Prime Minister V.P. Singh's tenure, the government issued an Office Memorandum implementing the Mandal Commission's recommendation of caste-based reservations in public employment, leading to substantial protests, legal disputes, and the eventual landmark verdict. Notably, Justice Kuldeep Singh, in his dissent, argued that secularism is a basic feature of the Indian Constitution and that caste-based policies threaten national unity.

Justice Singh's interpretation expanded secularism's scope to address caste issues, traditionally viewed in terms of State-religion relations. He condemned the caste system as antithetical to secularism and unity, asserting that reservations based on caste undermine constitutional principles. Although his dissent was non-binding, it displayed judicial activism by broadening secularism's legal scope beyond religion to address social stratification.

**Judicial expansion of "Secularism"**

Several judges have expressed their viewpoints on secularism. Sikri J., in addition to emphasising democracy and individual freedom, contended that 'secularism' constitutes one of India's foundational constitutional principles. In their joint verdict, Shelat and Grover J. highlighted that India is a secular state without an official religion, and the Constitution safeguards

citizens' rights to religious freedom, the practice of religion, the administration of religious affairs, and the protection of minority rights. Furthermore, H.R. Khanna J. emphasised the prohibition of religious discrimination, suggesting that actions not solely motivated by religion would not breach the principles of secularism or the Basic Structure.

Supreme Court 1461, 1973 4 SCC 225, *Waman Rao & Ors. v. Union of India & Ors.* (1981) 2 SCC 362, 2 SCR 1, *S.R. Bommai v. Union of India* (1994) AIR 1994 SC 1918)

**Notable Judgements**

The Indian judiciary has played a vital role in establishing secularism as a fundamental part of the Constitution. In *Kesavananda Bharati v. State of Kerala* (1973), while establishing the Basic Structure Doctrine, the Supreme Court asserted that secularism is an unamendable part of the Constitution. This set the foundation for later rulings on secular principles.

In *S.R. Bommai v. Union of India* (1994), the Court emphasized secularism as a core constitutional feature, holding that government actions must remain neutral toward religion. The case was significant because it formally recognized secularism as essential to the Constitution's basic structure. Several judges, including Justices Sawant, Ahmadi, Reddy, and Ramaswamy, contributed varying perspectives on secularism, from strict separation of religion and state to Positive Secularism, advocating religious freedom within a public sphere that upholds equal treatment for all religions.

In *Indira Nehru Gandhi v. Raj Narain* (1975), the Court reinforced secularism by ruling that using religion in electoral appeals is unconstitutional. It used the basic structure doctrine to strike down certain provisions in the 39<sup>th</sup> Amendment Act.

In *Bijoe Emmanuel v. State of Kerala* (1986), the Supreme Court protected the secular rights of Jehovah's Witnesses children who refused to sing the national anthem based on their religious beliefs. The Court upheld their right to religious freedom, consistent with the secular nature of the Constitution.

In *Abhiram Singh v. C.D. Commachen* (2017), the Supreme Court held that seeking votes in the name of religion, caste, race, community, or language was a corrupt practice. The Court emphasized that secularism is vital for free and fair elections.

In *T.M.A. Pai Foundation v. State of Karnataka* (2002), The Court upheld the secular nature of the Indian Constitution by ruling that the right to administer minority educational institutions, emphasizing that secularism promotes equal treatment of all religions.

These cases, along with many more such judgements affirm that secularism provides equal treatment and freedom from religious influence in governance. The judiciary thus safeguards India's secular character, ensuring that religion and state policies remain separate yet equitable to all beliefs.

### **Constitutional Provisions: the Principle of Noninterference with Exceptions**

India's pluralistic and multi-religious landscape led the framers of the Constitution to adopt religious neutrality, securing equal rights for diverse groups to practice their faith freely. This neutrality is enshrined in Articles 25-28, which guarantee religious freedom as long as individuals respect the common law of the land. Article 25 has been described as reservoir of religious and secularism in India. It provides each person the right to freely profess, practice, and propagate their religion, while safeguarding public order by preventing conversions driven by force or fraud.

### **Balancing Secularism and Social Welfare**

Article 25(1) clarifies that 'public order' refers to situations impacting communal life, allowing the State to impose restrictions if needed. Article 25(2) empowers the State to regulate secular activities related to religion. Non-essential practices, such as Triple Talaq in Islam, ruled unconstitutional demonstrate this approach, allowing intervention when practices lack religious necessity.

Certain laws promoting social reform have regulated religious customs. For example, laws prohibiting practices like polygamy, Sati, and the Devadasi system were upheld, as these customs were deemed non-essential. In pursuing social welfare, the Constitution permits introducing a Uniform Civil Code, ensuring a balanced approach between individual religious rights and broader societal interests. This constitutional vision of secularism and selective State intervention supports equality, while allowing space for reforms in India's religious and social practices.

### **Scope for religious funding**

Article 27 prevents the state from compelling citizens to pay taxes specifically for promoting any religion. Article 28 provides guidelines on religious instruction in state-funded educational institutions, ensuring participation remains voluntary. Together, these provisions form the constitutional foundation for India's secular character.

The Constitution ensures both individual and collective freedom of religion and prohibits the use of public funds to support any specific religion. No one can be forced to pay taxes<sup>24</sup> that fund the promotion or support of any specific religion.<sup>25</sup> However, this provision does allow fees to be levied for services, such as safeguarding the welfare of pilgrims at religious events. Fees can also be imposed on religious endowments to fund government oversight, provided the objective is secular and not to support the religious institution itself. The fundamental duties enshrined in the Constitution illustrate the spirit of Indian ideals and mutual respect for all religions. These provisions show the dynamic nature of the Constitutional interpretation of the word secular, as referenced in section 2.

### **Secularism as the Essence of Indian Polity**

India's multicultural society thrives on a secular ethos, rooted in a shared sense of "oneness" and the absence of "otherness." Secularism in India isn't just a political concept; it is integrated into the personal lives of the citizens, owing to the importance religion holds in the Indian community. It displays the unity

that strengthens India as the world's largest democracy. Recognized as a core constitutional value through the 42nd Amendment, secularism is integral to nation-building and national integrity, as illustrated by various landmark judgments, particularly those highlighted in Section 4.

India's Constitution reflects a form of polity where the State remains neutral in religious matters, treating all faiths with equal respect. However, it includes provisions for protecting minority interests, through principled distance to ensure equality. As the guardian of the Constitution, the Supreme Court of India remains vigilant in protecting secularism. The Court's role in defining the "basic structure" doctrine limits Parliament's power to amend core constitutional principles, ensuring that secularism, along with other cardinal principles, remains unaltered as a foundational value.

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1. *Equal respect for all religions.*
2. *Religion is a personal matter and should not influence public policy.*
3. *"Do we really believe that religion can be divorced from life, or is it our belief that in the midst of many religions we cannot decide which one to accept? If religion is beyond the ken of our State, let us clearly say so and delete all reference to rights relating to religion."*
4. *"Are we really honest when we say that we are seeking to establish a secular state? If your idea is to have a secular state it follows inevitably that we cannot afford to recognise minorities based upon religion."* 5 *"What should be the policy of the State, how the Society should be organised in its social and economic side are matters which must be decided by the people themselves according to time and circumstances. It cannot be laid down in the Constitution itself because that is destroying democracy altogether."*
5. M. Ghose "Nehru and Secularism" *Journal of the Indian Law Institute*, Vol. 20, No. 1 (1978)
6. *The alliances of religion and politics in the shape of communalism are a most dangerous alliance, and they yield the most abnormal kind of illegitimate brood...the combination of politics and of religion is a most dangerous combination...it is harmful to the majority... it is most harmful to any minority that seeks to have some advantage from it."*
7. S.K. Roy, "Indian Secularism – Distinctive Ideas of Jawaharlal Nehru" *Journal of Political Studies*, Vol. 11
8. (2015)
9. *"Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article."*
10. *Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr* AIR 1973 Supreme Court 1461, 1973 4 SCC 225
11. *Minerva Mills Ltd. & Ors. Vs. Union of India & Ors* AIR 1980 SC 1789, *Indira Nehru Gandhi v. Shri Raj*
12. *Narain & Anr. (1975) 2 SCC 159, Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr* AIR (1973)
13. *Indra Sawhney & Ors. v. Union of India* AIR 1993 SC 477; 1992 Supp 2 SCR 454

14. A proactive approach to secularism that involves the state acknowledging and respecting all religions equally, while also actively working to ensure religious harmony.
15. The 39th Amendment Act (1975) aimed to protect the Prime Minister and Speaker of the Lok Sabha from judicial scrutiny regarding election disputes, following a court verdict that invalidated then-Prime Minister Indira Gandhi's election. It amended Article 71 and added Article 329A, placing certain election matters beyond the jurisdiction of courts.
16. The Constitution of India, art. 25.
17. Representation of the People Act, 1951 (Act no. 43 of 1951)
18. The Constitution of India, art. 30.
19. Waman Rao v. Union of India (1981), Shayara Bano v. Union of India (2017), Indian Young Lawyers Association v. State of Kerala (2018)
20. Arun Kumar Singh "Myth and Reality of Secularism in India: An Analysis" The NEHU Journal Vol. XIX, No. 1 (2021)
21. Rev. Stanislaus v. State of Madhya Pradesh (1977) SCR (2) 611
22. Shayra Bano v Union of India (2017) AIR 2017 9 SCC 1 (SC)
23. Article 25(2)(b) of the Indian Constitution
24. The Uniform Civil Code (UCC) proposes a single set of laws governing personal matters like marriage, divorce, inheritance, and adoption for all citizens, irrespective of religion, to promote equality and secularism. 24 A state cannot levy a tax for the purpose, as there is no such entry in List II or List III. Only Parliament can levy such a tax. The states can only levy a fee. (The Constitution of India, art. 248.) 25 The Constitution of India, art 27.
25. The Constitution of India, art 25(1).
26. The Constitution of India, art. 51(A).

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