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**EXAMINING INDIAN SECULARISM IN THE WAKE OF THE HIJAB
CONTROVERSY**- Sanchli Sethi¹**ABSTRACT**

The idea of secularism taught to children in schools is that of ‘equal respect to all religions.’ It is somewhat ironic that the same schools, which constitute the foundational steps of one’s upbringing, are now barring students from education just because they dress according to their religion. The ban on *Hijabs* in educational institutions of Karnataka has led to protests and uprisings nationwide. While some call it discrimination, some support it under the pretext of Hindutva. The ideology of Hindutva is in stark contrast with that of Secularism. Propounded by the ruling party, the paper hopes to analyze this contrast by looking at the functioning of the BJP. In the wake of this ban, this paper aims to question the ban on secular grounds while critiquing India’s secular policy of the state maintaining a principled distance from religion.

Keywords: Secularism, Principled Distance, *Hijab*, State, Religion

INTRODUCTION

“When state and religion are one, religion becomes a means for the powerful to remain in power.”

-Walter Jon Williams

Religion and state are the two governing bodies in an individual’s life. They dictate what is right and wrong, ethical and non-ethical. Both control people through religious texts and laws with an overarching aim of maintaining peace. While religion is sought to solve internal conflicts, laws are usually sought to solve an individual’s external conflicts. But what happens when these two entities are in stark contrast to each other? History has had many examples of strife between the *church* and the *state*. The tussle between faith and science² or

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²John Baptist Scaladrini, *Conflict Between Church and State*, Italy, 1800-1900: Historical Milieu.

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natural and supernatural law between these temporal and spiritual authorities³ always existed to occupy prime political power. This conflict was particularly evident in the West during the Middle Ages. It was necessary to separate the two to achieve the common motive of peace. Thus, the ideology of “the state is responsible for recognizing and protecting the Church, and the Church is responsible for recognizing and advise the state”⁴ was adopted. Today, with globalization making the world closer, religions are not specific to boundaries. Over the years, many new faiths have cropped up, and the existing ones have expanded manifold. Even in single-religion societies, increased emigrants have made them religiously diverse. To avoid communal tensions, most states have also embraced the principles of secularism, wherein no religion is supreme or given importance by the government. While this looks attractive on paper, practically, it often becomes difficult for nations always to have their decisions in consonance with secularism.

In conflict between two communities, the state assumes the role of a mediator. Giving preference to one religion is bound to result in resentment by the others. The feelings of being neglected, overpowered, or discriminated against, are inevitable in this case. The risks of communal violence can only be avoided if the state remains neutral in religious cases. In this course, the Indian government adopted the scheme of keeping a *Principled Distance* from religion. This paper aims to examine this ideology and analyze whether the Indian state continues to maintain a principled distance from religion in the wake of recent happenings in the nation. It will also examine some judicial decisions and critique the court’s understanding of secularism.

INDIA’S SECULARISM

Amidst the rising tensions between Hindus and Muslims in the 1940s, the Congress quickly adopted secularism as its central ideology.⁵ Jawahar Lal Nehru wanted a secular India; whether to gain Muslim votes or not is still debatable. The constituent assembly, comprising mainly of upper-class, elite Hindus, added the term ‘secular’ to the constitution’s preamble. It meant that India had no national religion, even though the majority of the population followed Hinduism. People were supposed to be treated as equal citizens without

³The *Conflict Between Church And State History Essay*, UKEssays, May 2022.

⁴Rev. B. L. Dole, *The Relationship Between Church and State*, <https://www.pmc.gov.au/sites/default/files/religious-freedom-submissions/7779.pdf>

⁵ Anuradha Kumar, *Review of Partition, Congress Secularism and Hindu Communalism*, by Sucheta Mahajan, *Economic and Political Weekly* 35, no. 31 (2000): 2732.

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considering the faiths they followed. In a country as diverse as India, every religion was to be given equal status in the eyes of the government. In hindsight, it seems like the constitution makers were quite ambitious about their expectations of India.

When the status of religion in India was decided, the question about its relationship with the state emerged. In 1947, our leaders were aware of the strife between Church and State in the West and were confident that a separation of state and religion was necessary. Right after being free of foreign powers, India could not afford an internal political crisis. The aim was to unite the already divided nation. For this, lawmakers chose the policy of Principled Distance as opposed to Mutual Exclusion exercised by the Western countries.

According to the Western model, religion is private and not a state matter. Both should function *mutually exclusive* of one another. While this allows for and protects the individualistic expression of faith, at the same time, it bars the state from aiding religious institutions and interfere in resolving conflicts on religious grounds.⁶ Thus, in practice, a state cannot inhibit spiritual practices even if they go against the principles of equality. In 2010, American authorities were helpless when a Florida church decided to burn 200 *Qurans*⁷ because of their policy of functioning exclusively from religion.

According to Rajeev Bhargava, no connection between state and religion might instill hostility by portraying the condition to be anti-religious as it “actively discourages religion.”⁸ As opposed to having a “perfect separation”⁹ from religion, the Indian state adopted a “flexible approach on the question of intervention or abstention.”¹⁰ Being a democratic nation, they realized that some sort of link between the two entities was necessary to accommodate the variety of religions in India. Indians also believed that individuals need to interact with their faith in a social sphere outside the purview of the state’s laws.¹¹ Thus, the idea of principled distance was adopted. The Indian government can interact and interfere with religion “at the law and social policy level,”¹² and vice-versa. Secular principles decide

⁶ Rajeev Bhargava, *Reimagining Secularism: Respect, Domination and Principled Distance*, Economics and Political Weekly, 48, 79, December 14, 2013.

⁷ *Quran burning and US Law*, Sep. 9, 2010 <https://www.aljazeera.com/news/2010/9/9/quran-burning-and-us-law>.

⁸ Rajeev Bhargava, and T. N. Srinivasan. *The distinctiveness of Indian secularism, The Future of Secularism*, Oxford University Press, New York (2007).26.

⁹ Paul Weber, *James Madison and Religious Equality: The Perfect Separation*, The Review of Politics 44, no. 2 (1982) 163, 170.

¹⁰ Rajeev Bhargava, and T. N. Srinivasan. *The distinctiveness of Indian secularism, The Future of Secularism*, Oxford University Press, New York (2007).26.

¹¹ *Id.*, 27.

¹² *Id.*, 28.

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the extent of this interference. Following principled distance also means the state should aid or constrain all religions equally. “If it intervenes in one religion, it must do so with the others as well.”¹³

To protect and give space to the religious identities of its citizens, the constitution makers also included the Right to Freedom of Religion and the Right to Freedom of Speech and Expression¹⁴ under Part III of the Indian Constitution. These are considered fundamental to individuals’ lives, giving everybody the right to “profess, practice and propagate”¹⁵ the religion of their choice. However, in recent developments, these ‘fundamental’ rights seem to be fading away from the court’s decisions.

THE HIJAB CONTROVERSY

In 2022, state schools and colleges in Karnataka, India, denied entry to Muslim students wearing a *Hijab*.¹⁶ This follows an order passed by the Karnataka government mandating school uniforms to maintain uniformity. Access was not prohibited to others who donned religious symbols of any other religion (say a *janeyu* or a *kirpan*). The mere act of denying entry into educational institutions goes against the Right to Education of these students, guaranteed by the constitution under Article 21A. This decision was followed by Muslim students’ protests outside these institutions. Forgetting the ideals of secularism, the protests were soon opposed by right-wing Hindus who began wearing saffron scarves to schools as a means of support to their religion and the nation’s ruling party. One would assume that the aim of ‘maintaining uniformity’ would be upheld and those with saffron scarves would be denied entry too, but quite the opposite happened. Those “students wearing saffron scarves and headgear were allowed to enter the college as young women in the *hijab* stayed outside the gates...”¹⁷ thus, making it clear that it was not as much about students wearing a common uniform as it was about denying Muslim women education¹⁸ if they decided to express their religion in a ‘secular’ country like ours.

¹³Rajeev Bhargava, *Reimagining Secularism: Respect, Domination and Principled Distance*, Economics and Political Weekly, 48, 79, December 14, 2013.

¹⁴Article 19 (a), Constitution of India.

¹⁵ Article 25, Constitution of India.

¹⁶*Hijab Row Muslim Students Denied Entry*, Feb. 4, 2022. <https://www.hindustantimes.com/cities/bengaluru-news/hijab-row-muslim-students-denied-entry-for-third-day-stir-spreads-to-social-media-101643986274202.html>.

¹⁷ MS Sreeja, *Hijab vs Saffron Scarves*, Feb 8, 2022 <https://www.ndtv.com/india-news/karnataka-hijab-vs-saffron-scarves-row-in-karnataka-hijab-row-hindu-group-spotted-handing-out-saffron-scarves-2755464>.

¹⁸ (In state schools and colleges).

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The matter was taken to the Karnataka High Court, where petitioners demanded their right to wear the *Hijab*.¹⁹ The question before the court was whether wearing the *Hijab* was protected under Article 25 of the Indian Constitution. To resolve the issue, the court looked at the *essentiality test*. The court says that only ‘essential religious practices’ come within the ambit of Article 25,²⁰ and it is the court’s discretion to decide whether a practice is essential. The doctrine of essentiality lays down certain conditions which need to be fulfilled by a practice to be labeled as essential. First, it must be a part of the ‘core beliefs’ of the religion. Second, it cannot be added or removed from the faith. And third, the expression and practice of the faith must be altered if the practice in question is cleared.²¹

The court considered that the holy *Quran* does not mention the word, *Hijab* or mandate headgear for women. This indicates that the practice is not Islam’s ‘core belief’. The veil ordinarily worn by Muslim women is part of their culture, not religion. It is a means of “social security,” and the religious texts do not penalize women for not wearing the headcover. Thus, even if it is removed, their practice of Islam would not be hindered. Applying the doctrine of essentiality, the court believed that wearing a *Hijab* was not essential to the Islamic faith and thus is not protected under Article 25 of the Indian Constitution. Hence, Muslim students would not be allowed to wear their *Hijabs* inside state educational institutions.

ANALYZING THE COURT’S DECISION

The ban on *Hijab* stems from the court’s understanding that this practice is not essential to the Islamic faith. While it is true that the *Quran* does not use the word *Hijab*, the holy book does ask women to “wear a ‘scarf’ on the head, called a *khimar*, which would be tucked behind the ears and allowed to flow behind the back...(it asks women) to use this scarf, or any other garment, to cover the breasts.”²² Thus, even if *Hijab* is not mentioned, the *Quran* does talk about a ‘covering’ that Muslim women are expected to wear as a part of their faith. The *Quran* also mandates wearing this ‘covering’ for a woman while praying to *Allah*.

¹⁹ Reshma v. State of Karnataka 2022 LiveLaw (Kar) 75 (India).

²⁰Endowments Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt AIR 1954 SC 282(India).

²¹ Commissioner of Police v. Acharya Jagadisharananda Avadhuta (2004) 12 SCC 77 (India).

²²Samina Ali, *What does the Quran really say about a Muslim woman's hijab?* TEDxUniversityofNevada https://www.youtube.com/watch?v=_J5bDhMP9IQ.

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It is one of the conditions for their prayers to be ‘valid.’²³ Under these circumstances, some head cover can be interpreted as a core belief in Islam. Moreover, in the case of *Amnah Bint Basheer vs. Central Board Of Secondary*²⁴, where the question of mandating a dress code for candidates who followed Islam was raised, the court held that they could not be forced to adhere to the dress code as they are protected under Article 25 of the constitution. The court ignored this precedent in the present case.

While maintaining uniformity and promoting a sense of brotherhood in educational institutions is valid, the extent to which the courts are willing to exercise this can be questioned. If the aim was uniformity, why are Sikh students allowed to wear turbans in class? Why were people wearing saffron scarves permitted to go in? What if Muslim students had worn a saffron-colored *Hijab*? Would they be allowed to enter then? The court has now mandated “religion-neutral” uniforms within the schools’ premises. To what extent would these uniforms be “religion-neutral”? Would Brahmin students wearing a *Janeyu* be denied entry? “What about the *rakhis* on the wrist during Raksha Bandhan? The *mangal sutra* and *sindoor*? The *Kada*?”²⁵

A ban on wearing the *Hijab* in educational institutions means asking the students to choose between their education and religion. For those who are not old enough, their parents would make this decision. There is nothing wrong in assuming that in a vast country like ours, there would be at least one child whose education would be hampered just because they or their family would choose religion over education. Wearing a *Hijab* is not harming anybody. No aim of uniformity is reason enough to justify somebody losing out on education.

The ban also goes against Articles 25, 26, 19(a), and 21 of the Indian Constitution. The students are robbed of their right to profess their religion as they deem fit. Dictating the kind of clothing, they cannot wear also hinders their Right to Expression. In totality, this hampers their Right to Life and Liberty. If they feel that wearing a *Hijab* is necessary for their religious identity, the state has no power to curtail their fundamental right to do so. If *Hijabs* or *Burqas* are considered essential by the followers of Islam as a way of expressing and professing their religion, banning students from wearing them could not be considered a ‘reasonable restriction.’ *Explanation 1* under Article 25 allows the wearing and carrying of

²³ Narrated by Abu Dawood, al-Salaah, 546; classed as saheeh by al-Albaani in Saheeh Sunan Abi Dawood, 596. <https://islamqa.info/en/answers/12612/a-woman-has-to-cover-her-body-when-praying-even-when-she-is-behind-her-husband>.

²⁴WP(C).No. 6813 of 2016 (B).

²⁵Sanya Darakhshan Kishwar, *Does secularism mandate neutrality?— Comments on the Karnataka hijabophobia*, (2022).

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Kirpans by the Sikhs. How is a piece of clothing any different? It is, in fact, much safer than a *Kirpan*.

Thus, the ideals of Secularism are faded in the court ordering this ban. Clothing specific to other religions, as mentioned above, was not brought up in the court's decision. Their interpretation as being "religion-neutral" or not is left to the institutions' authorities, making the judgment vague.

SECULARISM TO HINDUISM

The hazed secularism in today's India is paving the way for a Hindu nation wherein accommodating diversity would become even more difficult. The idea of nationalism combines Hindu women's deities to make the image of the *Bharat Mata*. How can other religions be expected to relate to it?²⁶ The wave of Hindutva brought by the current ruling party has spread nationwide. Even as the opposition, the BJP was very open in its ideology of wanting a "*Hindu Rashtra*."²⁷ Salman Rushdie quotes, "There is no commonly used Hindustani word for 'secularism'; the importance of the secular ideal in India has been assumed, in a rather unexamined way... "And yet, if the secularist principle were abandoned, India could simply explode."²⁸ Developments under the Modi government could be seen as constructing a road from Secularism to Hinduism for India. The whole idea of separating the state and religion was thrown away when a Hindu Monk was elected as the Chief Minister of Uttar Pradesh. Holding the *Kumbh Mela* but banning *Muharram* processions during the pandemic²⁹ in his state shows how much the Indian state values Secularism. Years-old Ayodhya dispute settling in favor of the Hindus while giving a fraction of the land for constructing the Masjid makes one think whether the legislature overstepped its boundaries in influencing the judiciary's decision. Forming the Gau Raksha Dals that prevent Muslims from taking cows to slaughterhouses, to organising the *Ghar Waapsi* campaign to (re)convert Muslims and Christians to Hinduism,³⁰ does not show a principled distance between state and religion. Labeling all Muslims as 'terrorists' is another example that shows that India's

²⁶ Imtiaz Ahmad, *India's Secular Journey*, Sociological Bulletin 66, no. 3 (2017): 257.

²⁷ *BJPs Priority is not Development but to Create Hindu Rashtra*, <https://timesofindia.indiatimes.com/india/bjps-priority-is-not-development-but-to-create-hindu-rashtra-tharoor/articleshow/73521092.cms>

²⁸ Salman Rushdie, *Imaginary Homelands: Essays and Criticism 1981-1991*, United Kingdom: Random House, 2012.

²⁹ *UP Bans on Muharram in View of Covid Pandemic*, <https://www.ndtv.com/india-news/up-bans-processions-on-muharram-in-view-of-covid-pandemic-security-concerns-2510659>.

³⁰ Christophe Jaffrelot, *Fate of Secularism in India*, Apr. 4, 2019. <https://carnegieendowment.org/2019/04/04/fate-of-secularism-in-india-pub-78689>.

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secularism today is not what the constitution makers wanted it to be. “In many BJP-ruled states, minorities have felt threatened because of the slayings of Muslims accused of mistreating cows and, to a lesser extent, the harassment of Christian priests or nuns....The political dominance of the BJP’s brand of Hindu nationalism since the 2014 election has called into question the future viability of the country’s secularist tradition and commitment to diversity.”³¹ The misuse of Hindu majoritarianism is thus evident.

India’s secularism is seen when it caters to the traditions and customs of specific religions. Having separate codified laws pertaining to marriages, divorces, adoptions, etc., of various religions allow them to express their ideologies. Announcing nationwide holidays on Hindu festivals and others’ is another way of accommodating the multiple diversities. Allowing all citizens equal rights irrespective of their religion, as seen in declaring Triple Talaq unconstitutional³², is another example of India’s secularism. This, however, is slowly fading away.

CONCLUSION

Western countries helped us understand the importance of separating religion from the state. In a democratic country like ours, having no separation between these entities might result in communal tensions. Favoring of one religion by the state will marginalize minorities. It will also influence a nation’s legislature in its direction thus leaving no space for diversity. Keeping state and religion separate gives enough space for religious liberties of individuals as well as for developing a democratic legal framework free of influences. While the Indian government frames secular laws, it fails to provide a level playing field for all religions, thus resulting in not-so-secular results. Many political theorists recommend India’s model of keeping a principled distance from state. However, its practical adaptability has faced many criticisms. Looking at the policy in the background of the *Hijab* controversy, one can say that the judiciary is intervening with Muslims’ right to practice their religion without any restriction. As per Article 13 of the Indian constitution, any law inconsistent with the fundamental rights of the citizens will be considered void. Barring those who wear *Hijabs* from entering educational institutions also goes against their right to education. Also, fundamental rights can only be constrained if they hinder someone else’s enjoyment of their rights. In this case, wearing a *Hijab* in educational institutions is not interfering with

³¹Id.

³² *Shayara Bano v. Union of India*. Citation: AIR 2017 9 SCC 1 (India).

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anybody's enjoyment. It is just a means for followers of Islam to be closer to *Allah*. Even though fundamental rights are subjected to reasonable restriction, dictating how someone can dress does not amount to being 'reasonable.' In making this decision, the court seems to have crossed the policy of principled distance, thus undermining secularism. Today, (*Hindu*)stan is not as secular as India should be. The aim of the ruling party to consolidate a Hindu-dominated nation, while using the minorities as mere vote banks is hindering the core ideas of secularism. The fate of India's secularism is lined by the saffron color.



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