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**SECULARISM AS A CONSTITUTIONAL PRINCIPLE OF STATE POLICY: AN ANALYSIS OF CHALLENGES AND INCONSISTENCIES SURROUNDING THIS PRINCIPLE'S AIM IN INDIA AND BANGLADESH**

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**Abstract**

The widespread trend of not valuing religious practices and the ongoing erosion of ethics and morality have led this generation to a complicated way of life, which has narrowed our understanding of the true essence of Secularism. In our contemporary society, the concept of secularism as a guiding principle in state policy has not been understood in the same manner as the framers of the constitution imagined. While the constitution of India and Bangladesh have included secularism as a fundamental principle, the practical implication of this ideology is facing numerous obstacles and challenges in both countries due to its discriminatory religious practices along with existing legal inconsistencies. The influences behind this principle have existed for quite a while, which has led to this principle becoming distorted and a means of religious persecution. In this paper, the author aims to look for the existing legal inconsistencies and challenges which obstruct the actual goal of secularism. In addition to making appropriate recommendations, this study aims to identify the embodied respect for religion in the Constitution and its distorted versions that have led to religious discrimination under the pretext of secularism.

**Keywords** – Secularism, Distortion, Narrow Understanding, Challenges, Obstacles, Religious Persecution, Pretext.

**1 – Introduction**

**1.1 Introductory Statement (Background and Context)**

In diverse societies, the concept of secularism as a constitutional principle is of great significance, as it aims to protect religious liberty and ensure religious communities are treated impartially. Bangladesh and India, two neighboring countries in South Asia, have incorporated secularism as a fundamental principle into their respective constitutions. In spite of this, there have been controversies, conflicts, and challenges to the implementation and understanding of secularism in these nations.

This research aims to provide an overview of secularism as a constitutional principle, adopt the context for an examination of secularism practices, and identify the actual obstacles and present inconsistencies to religious freedom in India and Bangladesh.

**1.2 Research Question**

1. How the principle of secularism understood as embodying respect for religion in the Constitutions of India and Bangladesh?
2. How the notion of secularism has been distorted by discriminatory religious practices along with existing legal inconsistencies in India and Bangladesh?

**1.3 Research Methodology**

This study relies on a qualitative research methodology to explore the concept and practice of secularism in India and Bangladesh. The research will utilize both primary and secondary sources of data. To achieve the purpose of the dissertation, the analysis will be used to compile primary data on secularism and religious liberty, including constitutional provisions, legal decisions, and other key provisions along with ideas connected to Secularism. Secondary data will be collected from books, academic journals, newspaper articles, websites reports, and other appropriate sources. In addition, using the OSCOLA referencing system, the footnotes and bibliography have been properly cited. This research will evaluate constitutional provisions, examine case studies, and assess secularism's existing contradictions along with challenges and obstacles to the practical implementation between the two countries.

**1.4 Objective and Significance of Research**

This research aids substantially in both the academic and practical understanding of the complexities of secularism practice as a constitutional principle in India and Bangladesh. This research aims to contribute to the existing literature on secularism, religious freedom, and the challenges and obstacles to this principle's intended implementation by undertaking a critical analysis of the Constitution's provisions and their practical implications.

**1.5 Literature Review**

The principles of secularism have served as a source of inspiration for the people, who value freedom, in their struggles to oppose injustice, intolerance, communalism, as well as undemocratic practices.[[2]](#footnote-3) However, this concept of secularism has become blurred over time as a consequence of its unfair practices, legal inconsistencies and impacts, as well as the numerous challenges posed to it.

A study by Mohammad Golam Sarwar on ‘Secularism as a State Policy, State Religion, and Minority Rights in the Constitution: Bening or Maling for Communal Harmony in Bangladesh?’ carried out the unpleasant journey of secularism has witnessed over the years from its original position in the first constitution to present-day.[[3]](#footnote-4)

Another study by Muhammad Rezaur Rahman on ‘Secularism and Islam as the State Religion: Conflict or Coexistence?’examined whether the concept of secularism has retained its original meaning or whether the current constitution grants preferential treatment to a particular religion.[[4]](#footnote-5) In addition, a study by Dr. Iqtidar Karamat Cheema titled 'Constitutional and Legal Challenges Faced by Religious Minorities in India' attempted to demonstrate the visible legal inconsistencies that contradict India's secularism goals.[[5]](#footnote-6)

This section reviews the literature on secularism, freedom of religion, and contradictory provisions on secularism in Bangladesh and India. The literature review will examine secularism's conceptual frameworks, legal interpretations, and key debates in these two countries. In addition, the author will identify gaps in the existing literature as well as research gaps that this study seeks to address.

**1.6 Scope and Limitations**

This research explores the constitutional provisions and moves that are inconsistent against the aims of secularism in India and Bangladesh. While this research seeks to provide a comprehensive analysis, it admits its inherent limitations. The research will primarily rely on publicly accessible documents and academic literature. In addition, the scope of the research is limited to the discriminatory practices of secularism and its impact on religious liberty. Furthermore, it does not explore broader political, social, or economic dimensions.

**2 - Conceptual Framework of Secularism: Understanding, Origins and Evolution**

**2.1 Definition and Understanding of Secularism**

Secularism is compatible with the ideas of equality, freedom, and democracy.[[6]](#footnote-7) Secularism, wherever it exists, is an antidote to communalism, which is essential to slow the rise of religious fanaticism and inter-religious conflict.[[7]](#footnote-8) In addition to preventing the persecution of religious minorities, secularism promotes cultural pluralism, religious liberty, and social harmony.[[8]](#footnote-9) Typically, secularism refers to the separation of religion from civil affairs and the state, but it can also refer to a position that seeks to eliminate or minimize religion's influence in any public sphere.[[9]](#footnote-10) Political secularism or assertive secularism and contextual secularism or passive secularism are the two primary categories of secularism.[[10]](#footnote-11) Political secularism promotes religious and non-religious equality and freedom.[[11]](#footnote-12) Contextual secularism, also known as positive or passive secularism, is one in which government policies are deemed appropriate if their aim is to eliminate social injustices caused by religious practices.[[12]](#footnote-13)

**2.2 The Origins and Evolution of Secularism in India**

The idea of secularism, which indicates a separation between the state and religion, has arrived in India from the Western Continent.[[13]](#footnote-14) Secularism as an idea is deeply rooted in India's history. It has been around since ancient times, when people in India followed different religions and the rulers did not push anyone to follow a particular religion.[[14]](#footnote-15) However, it was not until the 18th century, when the British East India Company began building up complete control over India, that the concept of secularism began to have an effect on the Indian soul.[[15]](#footnote-16) Before that, it was believed that religion was separate from social and political life.[[16]](#footnote-17) In contrast, the British codified laws governing religious practices on subcontinents and they enact separate laws for Hindus, Muslims, Christians, Sikhs, and Parsis, among others, because of their divide and conquer strategy.[[17]](#footnote-18)

From then the movements to become secular nation has begun with a proclamation by Mahatma Gandhi that religion is something that is personal for each individual, and it is not subject to be mix up with politics or national affairs.[[18]](#footnote-19) Jawaharlal Nehru followed Gandhi's lead in believing that secularism was a powerful unifying factor for India's diverse population.[[19]](#footnote-20)

The journey of secularism in India begins with Equal protection by the state for all religions in order to establish a secular nation that protects all religions equally, does not favor one over the others, and does not adopt any religion as the state religion.[[20]](#footnote-21)

Prior to the 42nd Amendment to the Indian Constitution (1976), neither the preamble nor any article of the Constitution contained a direct reference to the term "secularism" to define the nature of the Indian nation.[[21]](#footnote-22) In the 27th year of the Republic, the term secularism was added for the first time to the Constitution during the 42nd Amendment (1976), it was inserted into the preamble.[[22]](#footnote-23) The preamble stated that “WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC] and to secure to all its citizens.”[[23]](#footnote-24) This was the way of the emergence and progression of secularism in the sovereign nation of India.

**2.3 The Origins and Evolution of Secularism in Bangladesh**

Bangladesh's path to secularism was never anticipated to be easy. In 1947, the Indian subcontinent was split along religious lines, with Muslim interest groups headed by the Muslim League capitalizing on Hindu-Muslim socio-political schisms in colonial India.[[24]](#footnote-25) The split cemented faith's primacy as the foundation of national identity.[[25]](#footnote-26) Despite the fact that religion has always been politicized in the subcontinent, Bangladesh began its path as an independent nation with the promise of protecting and promoting secularism.[[26]](#footnote-27) The 1971 Bangladeshi liberation war was a manifestation of the people's desire for a pluralistic society.[[27]](#footnote-28) As anticipated, Bangladesh, a nation for which people of all religions fought, was founded as a secular nation.[[28]](#footnote-29) Bangladesh's constitution was the first in South Asia to include the term "secularism" in its text.[[29]](#footnote-30) Sheikh Mujibur Rahman, the nation's founding leader, declared clearly that people in Bangladesh would have the freedom to practice their religion, but any political means or force would be prohibited to religion liberty.[[30]](#footnote-31)

However, secularism was removed from the constitution in 1977 by a directive issued under Martial Law during the military dictatorship of Ziaur Rahman.[[31]](#footnote-32) In 1988, during the presidency of Hussain Muhammad Ershad, the Bangladeshi parliament declared Islam as the state religion.[[32]](#footnote-33) In 2010, the Supreme Court of Bangladesh ruled that the 1977 abolition of secularism was unconstitutional because it was carried out by an unconstitutional military regime.[[33]](#footnote-34) In 2011, by the passed of 15th amendment of constitution, secularism was restored in the Constitution of the People’s Republic of Bangladesh.[[34]](#footnote-35) Now, the principle of secularism is co-exist with the presence of the state religion of Bangladesh in the constitution.[[35]](#footnote-36)

**3 - Legal Provisions Regarding Secularism in India and Bangladesh: A Constitutional Overview, Case Study, and Others**

**3.1 Overview of Constitutional Provisions on Secularism in India**

The secularism principle is clarified in great detail in the Indian constitution. It specifies that the state should not punish or favor any of its citizens based on their religious beliefs.[[36]](#footnote-37) India adopted secularism in order to promote religious tolerance and cultural coexistence.[[37]](#footnote-38) The word "secular" does not appear for the first time neither in any article nor in Preamble of the Constitution.[[38]](#footnote-39) The preamble underwent an amendment through the enactment of the 42nd Constitution Amendment Act in 1976.[[39]](#footnote-40) Since then, India has transformed into a sovereign, socialist, secular, and democratic republic.[[40]](#footnote-41) The specified objectives of the Preamble are to secure justice, liberty, and equality for all citizens and to foster fraternity in order to preserve the nation's unity and integrity.[[41]](#footnote-42)

Moreover, the Indian constitution states that there shall be no "state religion."[[42]](#footnote-43) The state will neither establish a religion of its own nor provide any religion with special favoritism.[[43]](#footnote-44) Following that, Article 25 of the Indian Constitution guarantees religious freedom for everybody.[[44]](#footnote-45) It states that all Indians, subject to public order, morality, health, and other provisions: Are equally entitled to freedom of conscience and the right to freely profess, practice, and spread religion.[[45]](#footnote-46)

It further states that this article does not impact any current legislation or prohibit the state from passing any law regarding: Economic, financial, political, or secular action related to religious practice. Reforming social welfare and opening public Hindu religious institutions for all Hindus.[[46]](#footnote-47)

Subject to the aforementioned limitations, a person in India has the right not only to hold any religious belief but also to follow the rituals prescribed by that belief.[[47]](#footnote-48)

Following article 26 of the Indian Constitution, each religious denomination has the right to establish and uphold religious institutions, manage their activities, hold and obtain property, and administer it, while being subject to considerations of public order, morality, and health.[[48]](#footnote-49)

Article 27 specifies that no citizen shall be compelled to pay taxes for the promotion or maintenance of any religion or religious institution.[[49]](#footnote-50)

According to Article 28(1), it is stated that educational institutions that are fully funded by the state are prohibited from offering any form of religious instruction.[[50]](#footnote-51)

**3.2 Role of Indian Judiciary in Shaping the Secularism in India**

The term "secular" is characterized by its dynamic nature rather than being static.[[51]](#footnote-52) It is not possible to establish a universally applicable perspective on this concept throughout all periods and occasionally, the Court ascribes varying interpretations to secularism and subsequently implements them in practical applications.[[52]](#footnote-53) From the beginning, India's secularism has been debated, and the Judiciary has tried to resolve the inconsistencies by demonstrating the Constitution's structure and defining secularism as a fundamental part of the Constitution through various decisions.[[53]](#footnote-54)

In the case of *Indira Nehru Gandhi v. Raj Narain*, the Supreme Court of India ruled that secularism implies that the state shall not have a religion of its own and that all citizens shall be equally entitled to freedom of conscience and the right to freely profess, practice, and propagate any religion.[[54]](#footnote-55)

The Supreme Court has established in several instances that secularism is a basic structure of the Constitution, with the “*Kesavananda Bharati &Ors. v. State of Kerala &Anr”* case being of particular significance.[[55]](#footnote-56)

In the very controversial *Ayodhya case*, the supreme court said that the constitution says that all religions are equal.[[56]](#footnote-57) The secular resolve of our country and its people can be fed by tolerance and living together and by fostering tolerance and mutual coexistence, in this way, we can safeguard the secular commitment of our nation and its citizens.[[57]](#footnote-58)

In this case of “*S. R. Bommai v. Union of India”*, the nine-judge bench ruled that Secularism is the basic feature of the Indian Constitution and directed that that religion and politics cannot coexist.[[58]](#footnote-59)

**3.3 Analysis of Freedom of Religion Clauses: A Case Study**

Specifically, the Indian constitution acknowledges the significance of religion in the lives of its citizens and accordingly guarantees the right to freedom of religion through Articles 25 to 28. However, there exist additional provisions that are directly or indirectly linked to religious liberty, either through explicit language or through interpretation.

Article 14 and 15(1) of the Indian Constitution states unambiguously that the state shall not deny any individual equality before the law or equal protection of the laws within the territory of India, and the term "person" is used in these articles, both citizens and noncitizens are protected.[[59]](#footnote-60) Article 15(1) states that the State shall not discriminate against any citizen on the basis of religion, race, caste, sex, or place of birth, or any of them.[[60]](#footnote-61)

The Supreme Court of India, in the case of *“**State of West Bengal v Anwar Ali Sarkar”*, has established that Article 14 of the Indian Constitution prohibits discrimination while allowing for reasonable classification.[[61]](#footnote-62) However, it is imperative that the classification is established on the basis of clear differences, and that the classification is aimed at achieving a meaningful connection.[[62]](#footnote-63) Moreover, the CAA, formally known as the Citizenship Amendment Act, 2019 is a legislative measure aimed at safeguarding individuals from religious persecution within the territories of India from states which are geographically adjacent to one another.[[63]](#footnote-64)

In the case of *“**A.S. Narayan v. State of Andhra Pradesh”* Justice Hansaria said that “our constitution makers had used the word ‘religion’ in these two articles (Articles 25 and 26) in the sense conveyed by the word ‘dharma’ and "Religion is enriched by visionary methodology and theology, whereas dharma blooms in the realm of direct experience."[[64]](#footnote-65) Religion contributes to society; dharma beautifies spirituality. Religion may inspire one to build a temporary home for God, but dharma reveals the eternal temple in the heart.”[[65]](#footnote-66)

In “*Commissioner, Hindu Religious Endowments, Madras v. Sri LakshmindarThirthSwamiar of Sri Shirur Mutt”*, the supreme court affirmed that no one is required to pay taxes for the promotion of a specific religion.[[66]](#footnote-67)

In “*D.A.V. College v. State of Punjab”* case, it was alleged that Section 4 of the Guru Nanak University (Amritsar) Act, 1969, which required the state to make provisions for the study of Guru Nanak Devji's life and teachings, violated Article 28 of the Indian Constitution.[[67]](#footnote-68) The issue that arose was that Guru Nanak University is entirely funded by the state and Section 4 violates Article 28 which prohibitsreligious instruction in the state-aided institutions.[[68]](#footnote-69)

Moreover, The Uniform Civil Code (UCC) is stated in the article 44 to establish uniform personal laws applicable to all individuals, regardless of their gender, sexual orientation, or religious affiliation.[[69]](#footnote-70)

**3.4 Overview of Constitutional Provisions on Secularism in Bangladesh**

The constitution of 1972 clearly acknowledged secularism as one of the four pillars of the State.[[70]](#footnote-71) In the preamble of the Constitution of Bangladesh, secularism is listed as one of the fundamental principles.[[71]](#footnote-72) Following that, in the constitution, Article 2A established Islam as the state religion of the Republic from the very beginning, the State shall accord all other religions the same status and rights.[[72]](#footnote-73) Article 8 ensured ‘Secularism’ as one of the fundamental principles of state policy where it shall serve as a guide for the interpretation of the Constitution and the other laws of Bangladesh, and shall be applied by the State in the making of laws.[[73]](#footnote-74) In addition, Article 12 specified the elimination of communalism, non-privilege of any religion, politicalized any religion and discrimination based on faith.[[74]](#footnote-75)

In particular, these articles guarantee the concept of secularism, as does Part – III of the Constitution of Bangladesh, which refers to fundamental rights and guarantees the equalities and liberty toward the all religions.

From those aspects most importantly, article 38 ensure regarding freedom of association regardless of religious belief and article 39 guarantees freedom of thought and conscience, as well as freedom of expression, regardless of religion.[[75]](#footnote-76) In addition, article 41 guarantees 'Freedom of Religion,' in which every citizen has the right to profess, practice, and promulgate any religion, and each religious community or denomination has the right to establish, maintain, and administer its religious institutions.[[76]](#footnote-77)

**3.5 Role of Bangladesh's Judiciary on the Development of Secularism**

The judiciary in Bangladesh shows considerable efforts in shaping the notion of secularism through its interpretation and protection of the fundamental principles enshrined in the Constitution which ensures the state's impartiality in matters related to religion.[[77]](#footnote-78)

In 2005, the High Court of Bangladesh regarded the Fifth Amendment of the constitution to be unlawful.[[78]](#footnote-79) Consequently, the government reinstated a constitution that embodied the spirit of the 1972 constitution, incorporating secularism as one of the fundamental principles of the state by the verdict of this case *“**Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh”*.[[79]](#footnote-80) However, the inclusion of the line "Bismillah-Ar-Rahman-Ar-Rahim” (In the name of Allah, the Beneficent, the Merciful) in the constitution, continues to exist.[[80]](#footnote-81) The Supreme Court of Bangladesh, in 2010, affirmed the legality of the 2005 High Court decision which declared the Fifth Amendment to the constitution as unlawful.[[81]](#footnote-82)

Following the Eighth Amendment to the Constitution on June 7, 1988, fifteen public figures filed a writ petition challenging the provision of state religion.[[82]](#footnote-83) Where a Supreme Court lawyer, Samendra Nath Goswami, in the High Court on August 1, 2015, challenging the constitutionality of the clause designating Islam as the state religion despite the 2011 Constitutional Amendment's restoration of "secularism" as a state policy.[[83]](#footnote-84) Following that, Islam remained the state religion when the high court dismissed the petition on 28 March 2016.[[84]](#footnote-85)

**3.5.1 Assessing Constitutional Secularism**

The principle of secularism is enshrined in the Constitution of Bangladesh, which warrants an interpretation where judiciary plays a vital role in the interpretation of secularism, providing guidance for the actions and policies of the state.[[85]](#footnote-86) Following that, In the legal case of “*Bangladesh v. Serajul Islam”,* the High Court Division of the Supreme Court of Bangladesh issued a ruling that upholds the notion that secularism incorporates the principle of state neutrality towards religion and the fair treatment of all religious convictions by the state.[[86]](#footnote-87)

**3.5.2 The Preservation of Religious Liberty**

In Bangladesh, secularism safeguards the right of all individuals to religious freedom, regardless of their respective beliefs, and the judiciary plays a key part in protecting the rights of religious minorities, ensuring that they are not subjected to discriminatory practices and that they are able to freely exercise their religious beliefs.[[87]](#footnote-88) In the notable legal case of “*Biplob Chandra Shil v. Bangladesh”,* the High Court Division upheld the rights of the Hindu community to engage in their religious festivals and required that the authorities take necessary precautions to guarantee adequate security arrangements during the celebration of Durga Puja.[[88]](#footnote-89)

**3.5.3 Defending Against Religious Abuse**

The judiciary serves as a safeguard against potential instances of discrimination that may occur under disguise of religious practices, and ensures that legislation remains impartial towards all religions, refraining from any form of favoritism or discrimination.[[89]](#footnote-90) The Supreme Court, in the legal matter of “*BHBCOP v. Bangladesh”*, rendered a decision declaring the unconstitutionality of the Vested Property Act, and this legislation, which granted the state the authority to seize assets owned by religious minority groups, was deemed to be in violation of the principle of secularism.[[90]](#footnote-91)

**3.5.4 Promoting a System of Secular Education**

A state’s responsibility should protect the secular system and impartiality in education, especially when promoting diverse religious perspectives. The education system in Bangladesh is largely secular as defined in ‘Bangladesh National Education Policy 2010’, where the aim was to developed a secular education system.[[91]](#footnote-92) In a broader sense, however, public education in Bangladesh is free of religious dominance, and the state strives to provide legal equality for all citizens as a right in terms of education.[[92]](#footnote-93)

**4 - Factors Influencing the Practice of Secularism**

**4.1 Political Factors**

The examination of the interplay between secularism and religion in the contexts of India and Bangladesh, as well as the manner in which the political government accommodates religion and secularism within the structure of the state, has revealed a noteworthy observation.[[93]](#footnote-94) It appears that the political government uses both religion and secularism as political instruments, either to regain power or to govern the nation.[[94]](#footnote-95)

The practice of secularism in India and Bangladesh has been significantly influenced by political factors. In India, the Bharatiya Janata Party (BJP), a conservative Hindu nationalist political party, has gained power and promoted a Hindu-centric view in India.[[95]](#footnote-96) Moreover, BJP has faced allegations of prioritizing religious nationalism over secularism.[[96]](#footnote-97) The political party advocates for Hindu nationalism, an approach that has raised apprehensions regarding the potential marginalization of religious minority groups, including Muslims, Christians, and Sikhs.[[97]](#footnote-98) Furthermore, the discriminatory nature of government policies, such as the Citizenship Amendment Act, has drawn criticism particularly due to its impact on the Muslim community.[[98]](#footnote-99)

However, religious nationalism's significant effect that could undermine secularism's core ideals, as protected by the Constitution.[[99]](#footnote-100) In 2021, Uttar Pradesh's legislature banned religious conversion for marriage.[[100]](#footnote-101) This law has been criticized for its potential violation of religious freedom and discrimination against Muslims and other religious minorities.[[101]](#footnote-102) In addition, the “Gujrat Riots” (2002), and the debates on UCC, have been politically influenced to oppose the notion of secularism in India. Notably, the phenomenon known as "Love Jihad" in India has been seen to include massive dominance and persecution which is an “Islamophobic Conspiracy Theory” propagated by followers of the extremist Hindutva ideology.[[102]](#footnote-103)

In spite of the official adoption of a secular constitution by the government of Bangladesh, there have been instances of discrimination against religious minorities.[[103]](#footnote-104) In 2016, a Hindu Priest was murdered by suspected Islamist militants, highlighting the difficulties religious minorities face in the country.[[104]](#footnote-105) Yet, there are numerous political realities demonstrating that the nation has singularly failed to protect its religious minorities from a new outbreak of targeted attacks and communal violence.[[105]](#footnote-106)

In the context of Bangladesh, the practice of secularism has encountered challenges due to political instability and the emergence of Islamic extremism.[[106]](#footnote-107) The current ruling party has faced allegations of advocating a secular agenda, while simultaneously raising apprehensions regarding the increasing move of political Islam.[[107]](#footnote-108) In recent years, the nation has witnessed a sharp increase in acts of violence targeting individuals who identify as secular bloggers, writers, and activists.[[108]](#footnote-109) Following that, On November 15, 2014, 'Ansar Al Islam Bangladesh', a hardline Islamist terrorist organization, killed a professor of Rajshahi University, writing on social media, "Our Mujahideen [fighters] executed a 'Murtad' [atheist] today in Rajshahi who had prohibited female students in his department to wear 'Burka'."[[109]](#footnote-110) On 6 April, 2016, Nazimuddin Samad, a Jagannath University law student, and liberal blogger, was murdered by suspected Islamic extremists in Dhaka for promoting secularism in Bangladesh.[[110]](#footnote-111)

Despite the fact that Bangladesh is officially secular, it is notable that the state has failed to address this politically motivated violence appropriately.[[111]](#footnote-112) Notably, the Bangladeshi parliament adopted the 8th constitutional amendment in 1988, which included Article 2A declaring Islam as the state religion.[[112]](#footnote-113) This ended up being seen as a political strategy to win over right-wing voters which was contradictory to the principles of secularism and religious liberty.[[113]](#footnote-114)

**4.2 Religion and Communalism Issues**

Communalism has emerged as a significant concern in both nations, preventing the actual promotion of secularism.[[114]](#footnote-115) Communalism is a broad and complicated social phenomenon.[[115]](#footnote-116) The emergence of communalism and communal violence can be related to a variety of factors including social, political, economic, cultural, and religious dimensions.[[116]](#footnote-117) It is commonly observed that the emergence of communalism is predominantly influenced by non-religious factors rather than religion itself.[[117]](#footnote-118) But inquiring into communal leaders' demands will reveal communal politics' underlying character and purpose, which has been hidden under the mask of religion, tradition, and culture.[[118]](#footnote-119)

In the case of India, the influence of communism on secularism has had an impact on religious tensions. For instance, Rashtriya Swayamsevak Sangh (RSS) is an organization that advocates a Hindutva ideology that opposes the goal of secular nations by promoting Hindu nationalism.[[119]](#footnote-120)

Among Indian community conflicts, the Ayodhya dispute stands out, lasting over 150 years, along with political influences and a hunger for communalism hiding under the mask of tolerance on religious practices, this dispute has become a significant one, destroying the secular approach with an immense amount of intolerance in the name of religious liberty.[[120]](#footnote-121) Following that, on 9 November, 2019, Indian supreme court order to build that ‘Ram Temple’ and directed the government to provide another place for building a mosque as a replacement for the demolished Babri Masjid.[[121]](#footnote-122) However, this verdict has led to a significant controversy that has been seen as religious persecution within a nation claims to be secular.

In regard of Bangladesh, the occurrence of ‘Hindu Temple Vandalism – 2013’ serves as a prominent illustration of communalism, which poses a hindrance to pursuing the goal of secularism.[[122]](#footnote-123)

**4.3 Social Discrimination and Cultural Oppression**

The utilization of social discrimination and oppression as a means to marginalize individuals, communities, and minority groups in the context of religious freedom, under the umbrella of secularism, has emerged as a prevalent issue in both India and Bangladesh.[[123]](#footnote-124)

Despite the advocacy for a secular society in these nations, irrespective of belief and religion, individuals and communities, particularly minorities, continue to experience mistreatment, discrimination, and prejudice.[[124]](#footnote-125) This unfortunate reality results in significant marginalization and undermines the principles of secularism, despite its establishment as a basic structure in the constitution of India and a fundamental principle of state policy in Bangladesh.[[125]](#footnote-126)

Nevertheless, it is worth mentioning that numerous incidents in both countries have demonstrated that the concept of secularism has been poisoned by the presence of social discrimination and oppression.[[126]](#footnote-127)

In the context of India, for example, ‘Gujrat Riots of 2002’ was the “hallmarks of ethnic cleansing”.[[127]](#footnote-128) ‘Violent Cow Protection in India - Vigilante Groups Attack Minorities’ etc.[[128]](#footnote-129) Moreover, "CCA, 2019" is an unconstitutional approach advocating for the citizenship of illegal immigrants, excluding Muslims.[[129]](#footnote-130)

In Bangladesh, the Blasphemy law has been used to suppress freedom of expression, leading to the 2015 murder of the secular blogger Avijit Roy by Islamist extremists.[[130]](#footnote-131) This attack shows how dangerous it is to support the idea of secularism in places where radical religious groups want to shut down such ideas.[[131]](#footnote-132)

**4.4 The Impacts of Legal Facts and Provisions in India**

In spite of the fact that secularism is a Constitutional principle in both India and Bangladesh, there have been debates over how it is actually carried out in terms of legal influences.

In the Indian context, Article 25 of the Constitution ensures the right to freedom of religion, while also granting the state the authority to impose limitations on the unrestricted exercise of religious practices in favor of public order, morality, and health. The aforementioned issue has the potential to bring about significant debate over religious doctrines, beliefs, religious freedom, and state intervention.

Moreover, ‘Hindu Undivided Families’ (HUFs) utilize their family and religious structure as a mechanism to get tax deductions, as specified by the Income-tax Act, 1961.[[132]](#footnote-133) The examination of the concept of the Hindu Undivided Family (HUF) within the framework of tax law, namely the Income-tax Act, raises questions about the preferential status afforded to Hindus within a secular society.[[133]](#footnote-134)

In addition, there is ongoing debate around the enactment of the "Triple Talaq Bill" in 2019.[[134]](#footnote-135) Certain critiques have been raised with regard to this legislation, mainly focusing on concerns of state interference in religious affairs and the prospective destruction of personal laws specifically as “Al-Shafi'I” deemed it permissible, while “Ahmad ibn Hanbal” deemed it valid, thus there might be disagreement between the followers and this decision made by court.[[135]](#footnote-136)

Notably, around eight states in India have implemented anti-conversion legislation.[[136]](#footnote-137) Where the compulsory implementation of this legislation abuses an individual's right to privacy and infringes on their rights to exercise their religious freedom.[[137]](#footnote-138)

However, there exist multiple ongoing debates in India relating to the impact of legal facts on the free exercise of religion, such as the presence of “Religious Symbols in Government Institutions” and the management of “Religious Endowments and Funds”. These matters continue to raise worries regarding the achievement of secular objectives and the establishment of a secular society.

**4.5 Legal Influences of Practices of Secularism in Bangladesh**

In the context of Bangladesh, there are certain factors that bear relevance to the influence of secularism, potentially giving rise to inconsistencies with the objectives of secularism due to their impacts. There exist ongoing disagreements about the appropriate implementation of secularism, with legal inconsistencies, vague interpretations, and preferred considerations playing a key part in its critique.

**4.5.1 Constitutional Ambiguity**

The Constitution of Bangladesh, under Article 2A, acknowledges 'Islam' as the designated religion of the state, while concurrently, Article 41 ensures the right to religious freedom for all citizens within the nation.[[138]](#footnote-139) The presence of a visible discrepancy within the Constitution remains, so presenting challenges to the effective realization of secularism and potentially conflicting with its objectives of safeguarding religious freedom.[[139]](#footnote-140) Furthermore, the presence of the line "Bismillah-Ar-Rahman-Ar-Rahim" within the constitution remains, giving rise to a potentially substantial discourse regarding religious beliefs.[[140]](#footnote-141)

In addition, article 7B stated that any basic provision of the Constitution shall not be amendable by the way of insertion, modification, substitution, repeal or by any other means.[[141]](#footnote-142) Thus, the inclusion of 'Islam' as the state religion and the line "Bismillah-Ar-Rahman-Ar-Rahim" in the constitution shall not be subject to amendment, which undoubtedly remains in question when it comes to the goal of secularism and claiming to be a secular state.

**4.5.2 Blasphemy Laws**

Bangladesh possesses anti-blasphemy and anti-religious sentimentalist legislation. For instance, Section 295A of the Penal Code sets punishments for intentional and malicious actions that are meant to offend the religious sentiments of any group by mocking one's faith along with religious beliefs.[[142]](#footnote-143) As the purpose of this law seems to safeguard social harmony, it may restrict “freedom of expression” and conflict with the goals secularism.

In addition, the “Digital Security Act” (DSA) substantially increased the inventory of weapons available for politically as well religiously hypersensitive individuals.[[143]](#footnote-144) With its generality along with an absence of clarity regarding what it means regarding "religious sentiments" under section 28, as well as what is meant by "hurt" or "offended," legal discrimination was added for public humiliation alongside physical attacks making it a safer and tempting tool through the promotion of thought, especially religious intolerance.[[144]](#footnote-145) When section 295A of the Penal Code and section 28 of the DSA advocate for punishment for offending any religious sentiment, this act merely takes into consideration the offending of 'Muslim religious sentiment,' and there is no limitation on the meaning of the word sentiment that will be considered as offensive.[[145]](#footnote-146)

**4.5.3 The Legal Status of Politics in Relation to Religious Identities**

The emergence of fundamentalist Islamic organizations in Bangladesh has raised concerns due to their potential to undermine the longstanding legacy of religious harmony and collaboration between religious communities.[[146]](#footnote-147) The longstanding dominance of secularism within Bengal's past, culture, and customs are facing danger due to the current dominance of Islamist party in Bangladesh.[[147]](#footnote-148) The inclusion of religious identity inside a political party's declaration of legality has the potential to undermine the principles of a secular nation.[[148]](#footnote-149)

**4.5.4 Rights of Minorities and Discrimination**

The issue of unequal treatment as well as discrimination under a legal system is a concern and dispute for minority groups within a secular society.[[149]](#footnote-150) There are existing critiques about how the application of a law might potentially bias against of secular principles.[[150]](#footnote-151) For instance, the Vested Property Act (Enemy Property Act) permitted the confiscation of property of religious minorities, which led to debate concerning the safety of minorities in a secular nation.[[151]](#footnote-152)

**4.5.5 The Impact of Religious Influence on the Education System**

Ongoing controversies persist about the presence of Islamic Education, the inclusion of specific religious contents in education systems, and the allocation of public funds towards religious education within a secular nation.[[152]](#footnote-153) The allocation of State funds for Madrasa Education brings questions about the morality of using public funds to endorse a certain religious standpoint inside a secular country.[[153]](#footnote-154)

**5 - Analysis of the Current Standing and Contradictions of Secularism**

**5.1 Unresolved Issues and Challenges Towards India's Secularism**

Religion was a significant factor contributing to contemporary social divisions. Since the adoption of the Constitution for India, several religious issues have been causing disruptions to reached the aim of a secular nation. Though few of these issues have been decided by the courts, yet they are still far from the logical conclusion with an overall resolution.

**5.1.1 Constitutional Nepotism**

The Constitution of Indian preamble prohibits the creation of a state based on theocracy and prohibits promoting a particular religion.[[154]](#footnote-155) Moreover, the Constitution guarantees legal equality for all people, regardless of faith or creed, and prohibits discrimination due to religion.[[155]](#footnote-156) But both laws nor practice separate religion as well as the state, since both regularly interfere with legal along with judicial bounds.[[156]](#footnote-157) Article 290A serves as one of the most notable illustrations of India's constitutional preference for a particular religion.[[157]](#footnote-158) The article highlights the allocation of funds by the government of Kerala and Tamil Nadu, for the purpose of maintaining Hindu temples located in the historical princely state of Travancore.[[158]](#footnote-159)

**5.1.2 The Draconical Prohibition on the Slaughter of Cows**

Despite the clear declaration of secularism in the Constitution and its adoption as a basic structure, notable inconsistencies persist throughout the Constitution that undermine the principle of secularism. According to Article 48, the act of slaughtering cows, calves, and other livestock used for milk production and labor is prohibited.”[[159]](#footnote-160)

From the very beginning, the prohibition on cow slaughter is being contested in several instances in India.[[160]](#footnote-161) The case of ‘*Mohammad Hanif Quareshi v. State of Bihar’* in 1958 included a collective of Muslim butchers who questioned the constitutional legitimacy of certain actions, claiming that these acts violated their basic rights as protected by Articles 14, 19(1)(g), and 25 of the Indian Constitution.[[161]](#footnote-162) However, the Court ruled “a total ban on slaughter” under article 48 directive principles.[[162]](#footnote-163) In 2004, BJP led “Lower House of the Indian Legislature:” passed a resolution prohibiting cow slaughter nationally. Moreover, PM Modi's 2014 election movement utilized the slogans "Modi Ko Matdan, Gai Ko Jeevan Dan" and "BJP Ka Sandesh, Bachegi Gai, BachegaDesh" widely.[[163]](#footnote-164) Following that, Cow Protection became a fundamental requirement for Hindu right-wing groups to support Modi as the BJP's PM candidacy.[[164]](#footnote-165)This is how, in the name of cow protection legislation, persecution against Muslims often becomes evident.

In September 2015, Hindu mobs killed Mohammad Akhlaq, highlighting Muslim persecution via cow protection legislation.[[165]](#footnote-166) Ministry of Health Affairs of India says the Border Security Force must ban cow transport as a top priority.[[166]](#footnote-167) For that, Indian Army is accused of abusing and lynching cow dealers where Muslim and Dalit traders frequently become disadvantaged.[[167]](#footnote-168) Hindu organizations throughout India formed their own radical right-wing militias known as "Gau Raksha Dal" for protection of cows who are often equipped with pistols, batons, and even swords.[[168]](#footnote-169)

Nevertheless, this phenomenon might be considered a kind of food fascism that poses a threat to religious freedom and undermines the principles of secularism. Notably, this article has been shown to have priority over fundamental rights, despite the fact that it is not a fundamental right.

**5.2 The Influence of Islam as a State Religion on Religious Minorities in Bangladesh**

The incorporation of Islam being the religion of the state was met with disapproval among religious minority groups.[[169]](#footnote-170) The Christian community leaders highlighted that all faiths' heritage should be respected and that a specific religion wouldn't belong in the Constitution since it gives power and motivation when apart from politics.[[170]](#footnote-171) Additionally, the Chairman of the “Bangladesh Hindu Oikya Front” voiced his concern.[[171]](#footnote-172) The modification made to Article 2A that established Islam to be the state religion had not been an outcome of positive intentions.[[172]](#footnote-173) Ershad wanted support and sympathy from the general public.[[173]](#footnote-174) Despite the Awami League and BNP opposing the state religion Islam portion in the Constitution, major pairs including Atrashi, Charmonai, and Sarsina cheered him.[[174]](#footnote-175) The Fifteenth Constitutional Amendment made Islam the official religion. Where PM Sheikh Hasina stated that majority's emotions would be honored and the government won't harm them, but Bangladesh remains a secular nation.[[175]](#footnote-176)

**5.3 Negative Consequences of Being a State Religion**

There are numerous instances in which freedom of religion and the concept of secularism as a constitutional foundation have been in conflict. Despite the fact that these incidents have persisted from the very beginning, discrimination against the goal of a secular nation remains at the top of the list of their consequences and by the current practices.

**5.3.1 Favoring A Certain Religion**

The constitution ensures equal rights for every citizen, irrespective of their religious beliefs, even if several states have established state religion. However, it is important to consider that the imposition of a state religion might potentially undermine the collective identity in Bangladesh, given its diverse religious landscape.[[176]](#footnote-177) It is argued that favoring a certain religion above another is not ethically justifiable.[[177]](#footnote-178)

**5.3.2 Against the Spirit of Liberation War**

The liberation war included several objectives, one of which was opposing communalism.[[178]](#footnote-179) Consequently, by the present standing of secularism, it may be claimed that the liberation war was initiated as a response to the establishment of a state religion and the implementation of religious-based politics.[[179]](#footnote-180) Which threatens the goal of liberation and is in violation of Article 27 of the Constitution.

**5.3.3 Alienation of Religious Minority**

The inclusion of Islam as the national religion within the Constitution of Bangladesh has the potential to alienate religious minority groups.[[180]](#footnote-181) It permits non-Muslims to have a distinct identity.[[181]](#footnote-182) Moreover, the organization BHBCOP (Bangladesh Hindu Buddhist Christian Unity Council) holds an occasion as "Black Day" for inclusion a specific religion as state religion in a secular country."[[182]](#footnote-183) The aforementioned observance was undertaken as a form of protest in response to the official designation of Islam being the national religion.[[183]](#footnote-184)

**5.3.4 Promote Religious Fanaticism**

The potential for religious fanatics to gain confidence exists if the inclusion of Islam as the state religion in the Constitution remains unchanged.[[184]](#footnote-185)Where constitutions naming Islam as the state religion may contribute to the spread of fanaticism ideologies.[[185]](#footnote-186)

**5.3.5 A Discrepancy with the Constitution's Basic Structure**

The adoption of Islam as a state religion had a profound impact on Constitution, resulting in the division of the country's citizens into two distinct groups, Muslims versus non-Muslims.[[186]](#footnote-187) A writ was filed challenging the 8th amendment that declared Islam as state religion, by which issued a rule that why declaration of Islam as state religion would not be illegal for discrepancy with the basic structure of the constitution.[[187]](#footnote-188) The HCD lacks an opinion regarding the constitutionality of the Islam as state-religion provision.[[188]](#footnote-189) In that writ the issue of whether Islam as a state religion conflict with the Constitution's fundamental structure or not? This question has not been examined properly and the writ has been dismissed carrying others observations consequently.[[189]](#footnote-190)

**6 - Conclusion**

**6.1 Findings**

Throughout the course of this research, a comprehensive analysis was carried out, leading to findings that are contrary to the objectives of secularism.  It is crucial to acknowledge the prevailing factors and legal discrepancies within the constitution, which pose a substantial obstacle to achieving the aim in relation to the concept of secularism.

1. In India, despite the adoption of secularism in the constitution, the state's role and support in administering religious institutions, the politicization of religious identity, and preferential taxation, education, funding and occupational opportunities have led to contention over the meaning and application of secularism.
2. Constitutional nepotism and preferential treatment of Hidnu Centric View, as well as debates on UCC, Cow Protection Laws, Anti-Conversion Laws, Selective Enforcement of Laws, and Hate Speech and Incitement, highlight the obstacles and challenges in maintaining a secular framework in India that ensures religious freedom and equality for all its citizens.
3. In Bangladesh, the four liberation war ideals of nationalism, socialism, democracy, and secularism have been included in the constitution, with secularism holding a prominent place, but the inclusion of "Bismillah-Ar-Rahaman-ArRahim" displayed an impression that Constitution takes a biased stance towards a specific religion which is in direct opposition to the concept of secularism.
4. Moreover, state-sponsored Islamization holds a discriminatory position in the name of freedom of religion within the constitution under the pretext of secularism in a state that claims to be secular.
5. It is notable that both the 15th Amendment and the amended Article 2A take steps to demonstrate the presence of two suns within the same sky.[[190]](#footnote-191)
6. Despite constitutional guarantees of equality, religious minorities in Bangladesh continue to be persecuted, harassed, and discriminated against in the name of religious freedom.
7. The functional democratic structure that demands religious neutrality is not present in Bangladesh's current constitutional framework because the existing constitutional provisions have distorted the principle of secularism.

**6.2 Recommendation**

The fact is now apparent that Secularism's aim and impartiality of religious activities seem rationally impossible in these countries. The prospect of religious discrimination due to multiple factors and especially duplicity with the constitutional ambit demonstrates that a balance of secular spirit on freedom of religion is logically impossible to imagine. However, freedom of religious practices may still be achievable with respect to some concerns.

1. **Constitutional Amendment:**

Constitutions require being amended in order to address provisions that are deemed inadequate, inconsistent, and problematic with regard to the principle of secularism, with the aim of effectively resisting discrimination in all aspects of religious practices.

1. **Abrogation or Modification of India's Anti-Conversion Laws:**

It is imperative for government to advocate for the repeal or amendment of anti-conversion legislations within Indian states, ensuring their compatibility with principles of secularism.

1. **An Overhaul of Constitution, Abrogation of the 15th Amendment of Bangladesh:**

The 15th Constitutional Amendment of Bangladesh, which has been argued to have significantly undermined the principle and objective of secularism in Bangladesh, should be considered for repeal in order to uphold the foundations of a secular framework. Additionally, a constitutional overhaul is of the utmost importance in order to clarify the inconsistencies surrounding the concept of secularism.

1. **Abolition of Eternal Provision of Constitution:**

In order to restore the secularism intended by the founding fathers, Article 7B must be repealed, as inconsistencies regarding secularism cannot be cured by existing this article.

1. **Elimination of State Religion from the Constitution:**

Specifically, only removing 'Islam' as a state religion from the Constitution may never resolve the existing inconsistencies surrounding secularism in Bangladesh. However, this step might be used as a first step towards achieving the goal of secularism.

1. **Anti-Discrimination Laws:**

A special statute on anti-discrimination against religious persecution is required to prevent all forms of discrimination in order to protect the right to religious freedom for all religions and beliefs, including those religious communities whose standing tends to be negligible.Though a proposed bill (The Anti-Discrimination Bill2022) is being consider. However, it also exhibits a lack of clarity in its appearance.[[191]](#footnote-192)

1. **Equitable Funding and Secular Education Reform:**

Regarding funding for religious activities, the government should uphold equality, and in terms of education, it should promote religious tolerance, respect, and secular values. Additionally, preferential treatment of a particular religion must be prohibited in all other respects.

1. **States Should Prioritize Religious Freedom in All Activities:**

It is imperative to prioritize the inclusion regarding religious freedom as a fundamental consideration throughout all dealings, and aid, including diplomatic engagements in both nations for maintain and respect secular framework.

1. **Implement a Secular Policy to Protect and Preserve Secular Structures:**

States may take a potential consideration to the adoption of an official secular policy by engaging in both micro and macro-level discussions with individuals from diverse religious as well as non-religious communities.

**6.3 Conclusion**

The essence of secularism doesn't seem to detach one from their own religious beliefs because doing so would also be considered a kind of communalism. Participating in one's own beliefs does not pose a hindrance to others unless it is carried out with the intention of causing disruption for anyone. While it is admirable to unite diverse religious communities, opposing the religion to which one conforms does not reflect the sort of secular mindset that our founding fathers of the Constitution would have intended. Nobody is exactly the same, and this uniqueness is humanity's greatest attractiveness. The spirit of secularism refers to "the principle of no harm," is being twisted into "do not follow your own," to a point where secularism is no longer a shield defending communal harmony, but rather a tool used to persecute religious minorities. Moreover, within the existing constitutional framework, the coexistence of secularism and favoritism towards a certain religion creates a potential for the manipulation of religious minority, hence posing a danger to the future of communal peace. In this manner, the intent of constitutional secularism has turned into a myth that may be explained logically but cannot be interpreted rationally.

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