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INDIAN SECULARISM: A LABYRINTHINE LANDSCAPE- Gouri C V¹**Abstract**

Secularism is a concept that has often been a source of political debate and controversy in India. Its origin, evolution and subsequent developments are always a matter of socio-political significance. Indian variant of secularism as opposed to the western notion, seems to put forward a unique perception which is argued to be more suitable to contemporary Indian scenario. Relying on the studies of Rajeev Bhargava, a renowned Indian political theorist, this paper suggests an analysis of Indian secularism as a distinct theoretical postulation. Ethical secularism and politico-moral secularism are differentiated in light of his studies. Further, depending on the arguments of Dr Shashi Tharoor and Shefali Jha, the idea of pluralism is weighed up with secularism, inferring the dynamicity and flexibility of the former. Defining Secularism and its nuances is equally a judicial exercise as it is a political practice. The debates of the Constituent Assembly reflect the views and intentions of the framers of the Indian Constitution regarding the concept of secularism and its significance for India. The intellectual deliberations they made help us comprehend the collective values we bear and the socio-political concerns that existed then, which made the original manuscript of our Constitution exclude the term secularism. Further, judiciary through its constant interpretations redefined the rationality behind the term in a creative manner. The landmark cases and judicial history is discussed in depth in order to give tangible evidence to the existence of Indian variant of secularism. In conclusion, the study asserts the significance of Indian secularism as a complex and intricate landscape. While the pathways may appear convoluted, they ultimately converge to a single point of existence.

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I. Introduction

Over the seven decades of independent India, had there been a word, that was constantly debated, dissected and often redefined, over which the demography was simultaneously divided and united, it would be the word "Secularism". Notwithstanding the fact that it was not present in the original manuscript of Indian Constitution, this term eventually turned out to be the epicentre of many historic cyclones that shivered our political landscape. Indian perspective towards the word secularism is quite unique in many aspects. It is an original concept in its entirety wherein mutual acceptance is the cornerstone, not tolerance. The notion of accepting diverse beliefs, rather than merely tolerating them, is central to the foundation of India's democratic culture.²

The effect of this word and its multiple readings are not just confined to the political scenario but it is equally a question of law. From the debates of constituent assembly onwards to the latest verdicts delivered by the hon'ble apex court we are constantly confronting the evolution and fluidity of this concept. Legislature is no different, the word is still in vogue in parliamentary debates and election campaigns. Every single aspect of the word, including its definition, scope and evolution seems to make a sudden reflex in Indian election diaspora. Remaining as a country that bears the wounds of a partition in terms of religion, it is not a matter of wonder, that the pain sustains generations and is turning eventually to a sense of fear.

This study is an attempt to analyse the nuances associated with the term secularism, its definition, judicial evolution and subsequent developments.

II. Secularism- Defining the Indefinable

The history of origin of the term Secularism can be traced back to the church-state conflict in West. The term "secularism" was coined by George Jacob Holyoake in the context of the conflict between Church and State.³ This dispute delineated the boundaries of the spiritual authorities' influence and contributed to the development of ideas associated with secularism, such as religious liberty, tolerance, and democratic principles.⁴ The term "secular" formed its roots from the Latin word saeculum, meaning "the spirit".⁵ The term is a Renaissance or Post-Renaissance product and has not always meant the same to all individuals. The philosophy of Secularism is the same as a hat that lost its initial size because it assumes size of the

² Shashi Tharoor, *Why I am a Hindu* (1st edn, Aleph Book Company 2018)

³ Upendra Baxi, *The Philosophy of Secularism*, (29thedn, Oxford University Press, Delhi 2002)

⁴ Vivek Singh Rajput, Usha Pandey, 'Analytical study on Secularism: Concept, Origin and its Importance in India', (2022) 6 Journal of Positive School Psychology 7698, 7715

⁵*ibid*

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head. Thus, understanding its full significance is challenging due to the variety of individual perspectives.⁶

Religious Knowledge's Encyclopaedia, defines the term 'Secularism' as an atheistic movement.⁷ The *Fontana Dictionary of Thought* defines secularism as the rejection of religion following secularization, describing it as an ideology rooted in rationalism and utilitarian-based morality.⁸ It defines secularism as a doctrine focused on humanity's wellbeing, excluding elements derived from religious faith. *The Social Science Encyclopaedia*⁹ also explains that the word secularism is related to the removal of religious values from societal morality.

According to Wilfred Smith, the term "secular state" is a form of state as to hold and deserve the warm allegiance of any citizen of the religion.¹⁰ Hackman defines secularism as a way of life marked by complete indifference to God and religious values.¹¹ According to Leslie, the term "secularism" refers to a belief system that dismisses the significance of aspects of reality that cannot be measured or understood through scientific methods.¹²

As per the studies of *Rajeev Bhargava*, a well renowned political scientist in India, Secularism is of two types- Ethical Secularism and Politico-moral secularism. Ethical secularism is a comprehensive normative viewpoint that guides the way individuals or groups live their lives. It offers a well-reasoned, though somewhat speculative, perspective on how to lead a meaningful life in the present world, based on the belief that all human pursuits and goals are confined to this world and this time. Politico- moral secularism or political secularism is a perspective on earthly restraints, coercive or non-coercive, that can be paved in the pursuit of a good life, regardless of whether or not one is an ethical secularist. Political secularism involves a consistent set of state policies that serve as the standard for judging the secularity of any state.¹³

⁶*ibid*

⁷*New 20th-Century Encyclopaedia of Religious Knowledge* (4thedn, 1991)

⁸ Alan Bullock, Stephen Trombley, *The New Fontana Dictionary of Modern Thought* (3rdedn, Harpercollins Pb 2000)

⁹ Adam Kuper, *The Social Science Encyclopaedia* (2ndedn, Taylor & Francis 1996)

¹⁰ Smith, Wilfred Cantwell, *The Meaning and End of Religion* (Minneapolis: First Fortress Press 1991)

¹¹ Rajeev Bhargava, 'The Religious State', (1998) 22 Economic and Political Weekly 11

¹² Rakesh Sinha, *Secular India: Politics of Minority*, (Vitasta Publishing Pvt. Ltd, New Delhi 2004)

¹³ Rajeev Bhargava, 'Reimagining Secularism- Respect, Domination and Principled Distance' (2013) 48 Economic and Political Weekly 79, 92

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According to *Bhargava*, there is no need for a secular state in a fully secularised society because, in some form it already has it. Political secularism is needed precisely in conditions where complete secularisation is impossible, unavailable as an option or undesirable.¹⁴

III. Indian Secularism

The global attempts to define Secularism has not properly addressed the Indian scenario yet. Indian secularism, is too complex in its structure that it simultaneously ensures religious neutrality and positive state interference.

Rajeev Bhargava, in his research paper underscores that the imminent threat to secularism in India is the internal threat caused by the failure to realise the distinctive character of Indian Secularism.¹⁵ According to him ideals rarely transfer unchanged across cultures. Indian secularism exemplifies this, differing from Western secularism's strict separation of religion and state. Instead, it maintains a "principled distance," balancing individual and communal religious rights without confining religion to the private sphere. This "contextual secularism" reflects a unique approach, shaped by India's diverse social and religious fabric.

Bhargava argues that Western theories of secularism often interpret it as a single-value doctrine. Typically, this involves the separation of state and organized religion to enhance individual liberties, including religious freedom, or to foster individual autonomy. In some cases, such as in France, the emphasis is on promoting equal citizenship. However, the historical development of the secular idea suggests that secularism is actually a multi-faceted doctrine encompassing a range of important values. Additionally, while Western states practice secularism in diverse ways, Western theories often interpret metaphor of separation of state and religion as either exclusion or neutrality.¹⁶ *Deendayal Upadhyaya*, spokesperson of the doctrine of 'Integral Humanism' also opposed this notion and raised his strong defiance to the strategy of treating the phrase 'secular state' as an antonym of a theocratic state.¹⁷

Interestingly, *Bhargava* notes that Indian secularism not only shares a common history with Western secularism but also possesses its own unique historic trajectory. Both Indian and Western secularisms have distinct pre-histories in addition to their shared history. However, the Indian version has advanced the idea of secularism further. From the outset, it had an intrinsic connection with nationalism and democracy. In doing so, it has never attempted to completely erase particular religious identities.¹⁸

¹⁴*ibid*

¹⁵ Rajeev Bhargava, 'The Distinctiveness of Indian Secularism' (2007) 35 Critique Internationale 121, 147

¹⁶ Rajeev Bhargava, 'The Distinctiveness of Indian Secularism' (2007) 35 Critique Internationale 121, 147

¹⁷ V N Deodhar, *Pandit Deendayal Upadhyaya, Ideology and Perception: A Profile* (1stedn, Suruchi Prakashan 2014)

¹⁸ Rajeev Bhargava, 'The Distinctiveness of Indian Secularism' (2007) 35 Critique Internationale 121, 147

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Articles 15, 16, 25, 29(2) and 325 support the interpretation that Indian secularism takes its roots from western notions. Articles 27 and 28(1) of the Indian Constitution imply a strict separation between religion and the state by prohibiting the use of public funds for religious activities and ensuring that no religious instruction is given in government-run educational institutions. By not giving the President of the Republic an option to take oath in the name of God, Article 60 confirms the strictly neutral character of the Indian Constitution. According to Smith¹⁹, secularism depends on two things: religious freedom and equality before law. These twin conditions are satisfied by the Constitution of India. In this perspective India is, undisputedly, a secular state. In that view, it can be considered that Secularism is a western concept and it entered India through the Benthamite Radicalism.²⁰

However, *Rajeev Bhargava*, made further dissections on secularism and inferred that Western conceptions of political secularism do not appear to have travelled well in other societies. Such conceptions of secularism, along with the secular states they support, are facing increasing challenges even in Europe. Critics argue that the conceptual and normative structure of secularism is itself terribly defective, that there is something wrong with the ideal itself, secularism has been linked to as flawed modernisation, the repressive structures of the nation state, to an indefensible conception of science and rationality and to an excessive individualism. It has been charged for trivialising faith and being insensitive to religious believers. Its defiance to be impartial and universal is often read in relation to its Christian biases.²¹ The criticism of secularism often appears indefensible because it primarily targets a limited set of doctrinal versions of Western secularism. *Bhargava* emphasises that it is time the focus is shifted away from doctrines and to the constitutional provisions and normative practices of non-western states such as India. Once this is done, we will see secularism through another lens and might realise that what is needed is not an alternative but rather an alternative conception of secularism.²²

To highlight a new strategy of reconceptualization, *Bhargava* drew on Marxist philosophy. He noted that Marx argued that for the production of material goods, humans must engage in production relations, often within structures of exploitation and dominance. *Bhargava* suggested that secularism could be seen as an effort to free the production of symbolic goods, values, and services from both inter- and intra-religious domination. He emphasized that rescuing secularism necessitates a deep rethinking of its meaning.²³ For

¹⁹ Donald Smith, *India as a Secular State* (Princeton University Press 1963)

²⁰ Rajeev Bhargava, 'The Distinctiveness of Indian Secularism' (2007) 35 *Critique Internationale* 121, 147

²¹ *ibid*

²² *ibid*

²³ Rajeev Bhargava, 'Reimagining Secularism- Respect, Domination and Principled Distance' (2013) 48 *Economic and Political Weekly* 79, 92

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the emancipation of symbolic goods, values and services, there must be attempts to redefine the concept in strict conformity with our collective experiences, history and values of the time being.

As *Bhargava* repeatedly emphasized, in Indian secularism, multiple religions are integral to its foundation, not merely additions made later. This form of secularism is not narrowly focused on individuals but is broadly interpreted to encompass the autonomy of religious communities, their equality in society, and fundamental values like peace, tolerance, and mutual respect among communities.

The Indian Constitution, unlike the stereotypical Western model, departs in two key ways: first, by empowering the state to intervene in religious matters rather than rendering it powerless; and second, by allowing state involvement in the affairs of particular religions, thus requiring a departure from strict neutrality or equidistance.²⁴

IV. Secularism v. Pluralism

Secularism is traditionally believed as an idea of separation of religion from the affairs of the world. It does not recognise any religion. An Indian version of it could most ideally be called pluralism.²⁵

Jean Bauberot understands the concept of secularism through three dimensions: the complete separation of state and religion, ensuring that the government does not interfere with religious affairs and vice versa; the freedom of religion, which allows individuals to change or express their beliefs as they choose; and the equal treatment of all individuals, regardless of their religious or non-religious viewpoints, ensuring that no one is favoured or discriminated against based on their beliefs.²⁶ Harvey Cox's perspective on secularism reflects the view that secularism, when interpreted in strict opposition to religion, takes on the characteristics of an ideology with a closed, absolute worldview.²⁷ Will Herberg humorously suggested that a secularized culture is one where the prevailing 'religion' no longer guides people's lives.²⁸ These thinkers clearly criticize secularism's tendency to act as a 'new religion'. According to Kelly James Clark and Kevin Corcoran, secularists face a dilemma: they often struggle to tolerate the substantive beliefs held by others.²⁹

²⁴ Rajeev Bhargava, 'The Distinctiveness of Indian Secularism' (2007) 35 *Critique Internationale* 121, 147

²⁵ Shashi Tharoor, 'Nurturing Democracy in India: the Nehruvian Roots', (2004) 31 *India International Centre Quarterly*, Summer 112, 116

²⁶ Andrew Copson, *Secularism-Politics, Religion and Freedom* (1stedn, Oxford University Press 2017)

²⁷ Harvey Cox, *The Secular City*, (The Macmillian Co., New York 1965)

²⁸ Will Herberg, 'Religion in a secularised society' (1962) *Review of Religious Research*, Spring 148

²⁹ Kelly James Clark and Kevin Corcoran, 'Pluralism, Secularism and Tolerance', (2000) 3 *Michigan state University Press Rhetoric and Public Affairs*, Winter 627, 639

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However, on the other hand, religious pluralism recognises the existence of multiple religions. That is, the central difference between the two is regarding the recognition of religion in the public sphere.³⁰ Pluralism is therefore, not an extension of secularism, rather a unique construction of the essence in a way that is more suitable for the contemporary scenario.

Pluralism is a type of social differentiation where diverse roles reflect functional divisions within a unified cultural system.³¹ A thriving pluralistic society depends on genuinely valuing others.³² In a pluralistic society, it's possible to move beyond mere tolerance to active cooperation, even with opposing views. While such cooperation can stem from timidity or a desire to please, it can also arise from principled compromise and moral conviction.³³

Shashi Tharoor in his book *Why I am a Hindu*,³⁴ in the chapter Political Hinduism states that Pluralism is the ideal word in Indian context. Indian experience of Pluralism has withstood the test of time. From the time immemorial onwards, our preaching for the essence of secularism can be better found in conformity with the ratio of pluralism.

As *Swami Vivekananda* commented in his historic speech delivered in the World Parliament of Religions, we are the land which taught the world both tolerance and universal acceptance and we believe not only in universal toleration, but we do accept all religions as true.³⁵ Hence pluralism seems to outweigh secularism as a conceptualization suitable and befitting in Indian context.

V. Deliberations in the Constituent Assembly

It was on the day of 17 October 1949, that the question of secularism first popped up in the session of Constituent Assembly.³⁶ The Matter on discussion was the preamble of our Constitution. H.V. Kamath initiated the discussions by proposing an amendment to begin the Preamble with the phrase "in the name of God," followed by similar amendments moved by Shibban Lal Saksena and Pandit Govind Malaviya. Pandit Kunzru contented this as an attempt to show a narrow sectarian spirit. As a remedy to this, Pandit Malaviya suggested another wording 'by the grace of the supreme being, lord of universe, called by different names by different peoples of the world'. The precedent of Irish Constitution was raised to

³⁰ Mark Silk, 'Defining Religious Pluralism In America, A Regional Analysis' (2007) 612 *The Annals of the American academy of Political and Social Sciences* 64, 71

³¹ J Milton Yinger, 'Pluralism, Religion, and Secularism' (1967) 6 *Journal for the Scientific Study of Religion*, Spring 17, 28

³² Kelly James Clark and Kevin Corcoran, 'Pluralism, Secularism and Tolerance', (2000) 3 *Michigan state University Press Rhetoric and Public Affairs*, Winter 627, 639

³³ Edward Langerak, 'Pluralism, Tolerance and Disagreement' (1994) 24 *Rhetoric Society Quarterly*, Winter-Spring 95, 106

³⁴ Shashi Tharoor, *Why I am a Hindu* (1st edn, Aleph Book Company 2018)

³⁵ Lesslie Newbigin, 'The Quest for Unity through Religion' (1955) 35 *The Journal of Religion* 17, 33

³⁶ Constituent Assembly Debates, 17 Oct 1949 (Archives) <https://www.Constitutionofindia.net/debates/17-oct-1949/> accessed 02 Aug 2024

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support the argument that a secular state could take the God's name in its Constitution. After fierce debates, Shibban Lal Saksena and Pandit Malaviya withdrew their proposals, However, Kamath struck to his guns. It went to an extent that the chair, Rajendra Prasad himself tried to persuade Kamath but he responded that "Here we are not individuals but, the people of India. There is much difference between two. Religion was the voice of our ancient civilization and the preamble, a document of people of India, by taking God's name only reflected the spirit and will of Indian people". Opponents adhered to the notion that religion was a matter of individual choice and in this matter collective will shall not be imposed. Purnima Banerji argued against including references to God in the Constitution, suggesting that it would reduce the sacred to the whims of democratic voting and humorously urged Kamath "not to put us to the embarrassment of having to vote upon God." In contrast, Guptanath Singh asserted that "The state is above all Gods and it is the God of Gods. I would say that a state, as it is the representative of the people, is God itself." Kamath's amendments were finally negated by 68 to 41.³⁷

This can be seen as a lenience to the no-concern theory of secularism, where there is a definite line of separation between religion and the state. Given the principles of freedom of expression and religious liberty, it was up to the individual to decide whether to be a believer or not, or to adhere to this religion or that. The argument that religion is an individual's private affair was further extended during the main sessions of the Constituent Assembly to include the more radical claim that religion should be confined to the private sphere, separate from public and state matters.³⁸

Many members emphasized that the priority was to strengthen the identity of Indians as citizens of the Indian state, rather than as members of specific communities or religious groups. Dr S Radhakrishnan, in his speech on Objective Resolution asserted that 'Nationalism, not religion, is the basis of modern life. The days of religious states are over. These are the days of nationalism'.³⁹ Later, G.B. Pant, addressing the Advisory Committee of the Constituent Assembly, remarked that the true foundation of the state lies in the individual citizen, who has been overshadowed by the broader concept of community. He expressed concern that society often neglects the notion of the citizen, instead focusing excessively on communities, which he described as an unhealthy and, to some extent, degrading mindset.⁴⁰ K T Shah even demanded

³⁷ Shefali Jha, 'Secularism in the Constituent Assembly Debates 1946-1950' (2002) 37 Economic and Political Weekly 3175, 3180

³⁸ *ibid*

³⁹ Constituent Assembly Debates, 20 Jan 1947 (Archives) <https://www.Constitutionofindia.net/debates/20-jan-1947/> accessed 02 Aug 2024

⁴⁰ Constituent Assembly Debates, 24 Jan 1947 (Archives) <https://www.Constitutionofindia.net/debates/24-jan-1947/> accessed 02 Aug 2024

to insert the an article that separates the state from any religious activities.⁴¹ Secularism on this view can be viewed as an inevitable weakening of the ties of religion and its replacement with nationalism. It was not merely a question of religious freedom but of the establishment of the paramountcy of the state. Religion was to be relegated to as narrow a sphere as possible so that the state could emerge as a modern Leviathan.⁴²

J B Kripalani was against the no concern theory since he believed that confining religion to private realm was based on a doctrine of intolerance, whereas a state which valued all religions was in fact educating its citizens regarding the principles of toleration.⁴³ Even though not a member of the assembly, Jaya Prakash Narayan, opined that it was only when religion was used to serve socio- economic and political interests, that there was communal violence. In the interest of secularism, it was deemed necessary to include an article in the Constitution that would prohibit the use of religious institutions for political purposes or the formation of political organizations based on religion. The issue was not religion itself, but its politicization, which led to violence within the modern state.⁴⁴ Lok Nath Misra even went far enough to declare that our 'secular state' is a slippery phase, a device to by-pass the ancient culture of the land.⁴⁵ He observed that religion in India serves no purpose other than fostering ignorance, poverty and ambition under the banner for fanaticism. The aim is political, for in the modern world all is power-politics and the inner man is lost in dust. Let everybody live as he thinks best but let him not try to sell his number to demand the spoils of political warfare. Let us no raise the question of communal minorities anymore. It is a tool to overshadow the majority in the long run. This is intolerable and unjust.⁴⁶

Second event of this discussion was on the matter as to inclusion of the word secularism in the preamble. Brajeshwar Prasad moved an amendment to alter the first sentence of preamble as a secular cooperative commonwealth to establish socialist order.⁴⁷ Because he believed that word, 'secular' was dear to India's national leaders and its inclusion in the preamble would tone up the morale of minorities as well as prevent disorderly activity. There was virtually no discussion on the addition of the term 'secular'. Most of

⁴¹ Constituent Assembly Debates, 06 Dec 1948 (Archives) <https://www.Constitutionofindia.net/debates/06-dec-1948/> accessed 02 Aug 2024

⁴² Shefali Jha, 'Secularism in the Constituent Assembly Debates 1946-1950' (2002) 37 Economic and Political Weekly 3175, 3180

⁴³ Constituent Assembly Debates, 17 Oct 1949 (Archives) <https://www.Constitutionofindia.net/debates/17-oct-1949/> accessed 02 Aug 2024

⁴⁴ B Shiva Rao, The Framing of India's Constitution - A Study, Government of India 2 Press, Nasik, 1968, p 266

⁴⁵ Constituent Assembly Debates, 06 Dec 1948 (Archives) <https://www.Constitutionofindia.net/debates/06-dec-1948/> accessed 02 Aug 2024

⁴⁶ *ibid*

⁴⁷ Constituent Assembly Debates, 17 Oct 1949 (Archives) <https://www.Constitutionofindia.net/debates/17-oct-1949/> accessed 02 Aug 2024

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the members ridiculed his attempt to make the Constitution a socialist instead of a liberal democratic document and his amendment was opposed for that reason.

Further K T Shah moved an amendment to substitute Article 1 as 'Secular, Federal, Socialist'.⁴⁸ In discussing the nature of the state, he emphasized the importance of asserting the secularity of the State, particularly in light of the recent communal violence and the potential for further excesses in the name of religion. He argued that the Constitution should reflect a commitment to ensuring that governance and interactions between citizens and the government would be driven by objective realities, focusing on material factors that shape human existence and actions.

In response, Dr. B.R. Ambedkar opposed this view, asserting that specifying a particular social organization for the State in the Constitution would restrict the people's freedom to choose the kind of society they wish to live in. He believed that the Constitution should not impose a fixed form of social organization, but rather leave it to the people themselves to determine how they wish to structure their society.⁴⁹

However, there was no question on the necessity to establish a secular state. All the members concurred on the necessity to establish a secular state. Most shared a view of history in which the movement for the separation of religion and state was seen as an inseparable element of the broader project for the democratization of the state.⁵⁰ Because it was essential for the proper functioning of democracy that communalism should be eliminated from Indian life.⁵¹ Jawaharlal Nehru pointed out that even after the consensus on this matter there still remains the question as to what kind of secularism is to be established, where the problem is creation of a secular state in a religious society.⁵²

We adopted the 'Respect theory' of secularism, where the state not only remains neutral towards all religions but also extends equal respect to all of them. In this approach, rather than distancing itself from religions or merely tolerating them as private superstitions, a secular state engages with religion by treating all faiths with equal respect.⁵³ K M Munshi proclaimed that the non-establishment clause of the US Constitution was inappropriate to Indian conditions and we have to mould a characteristically Indian

⁴⁸ Constituent Assembly Debates, 15 Nov 1948 (Archives) <https://www.Constitutionofindia.net/debates/15-nov-1948/> accessed 02 Aug 2024

⁴⁹ Constituent Assembly Debates, 15 Nov 1948 (Archives) <https://www.Constitutionofindia.net/debates/15-nov-1948/> accessed 02 Aug 2024

⁵⁰ Aijaz Ahmad, *Lineages of the Present* (Tulika, New Delhi. 1996)

⁵¹ B Shiva Rao, *The Framing of India's Constitution: Select Documents* – (4th Vol, Government of India Press, Nasik 1968).

⁵² T N M Madan, *Modern Myths, Locked Minds : Secularism and Fundamentalism in India* (2ndedn, Oxford University Press 1997)

⁵³ Shefali Jha, 'Secularism in the Constituent Assembly Debates 1946-1950' (2002) 37 Economic and Political Weekly 3175, 3180

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secularism.⁵⁴ He stated that India is a people with deep religious roots, yet also a long-standing tradition of religious tolerance, stemming from Hinduism's broad outlook that all religions ultimately lead to the same God. Given this context, he argued that India could not adopt a state religion, nor could it implement a strict separation between the state and religion, as seen in the United States.⁵⁵

In contrast, Lakshmi Kant Maitra and H V Kamath claimed that the Indian state should not disavow India's 'lofty religions and spiritual concepts and ideals'.⁵⁶ Tajamul Husain wanted to amend the right to religion as a right to "practise religion privately'. He also insisted that religious instruction was to be given only at home by one's parents and not in any educational institutions. He also wanted to include the a clause in the Constitution wherein no person shall have any visible sign, mark or name, and no person shall wear any dress whereby his religion may be recognised.⁵⁷ Notwithstanding the extension of visible support to individual's right to religious freedom, KT Shah and M Masani dissented from the inclusion among fundamental rights of any provision guaranteeing institutions belonging to any religious community.⁵⁸

Thus, the constituent assembly debates covered the philosophical understanding and social implications of secularism in a broader manner than ever before. However, even today, there remains widespread confusion about what secularism truly entails and the ultimate purpose of a secular state—whether it serves as a means to an end or is an end in itself, whether it is a compromise or a valuable goal to be pursued.⁵⁹

VI. Judicial Interpretations

The first constitutional document in India that explicitly addressed the "equal treatment of all religions" is Queen Victoria's Proclamation of 1858. This proclamation was issued when the British government assumed control of India from the British East India Company, which had previously exhibited a paternalistic attitude toward Indian religions and a distinctly Christian character in its administration.⁶⁰ In fact, until the Indian Church Act of 1927 and the Indian Church Measure of 1927, Indian bishops were

⁵⁴ K M Munshi, 'Indian Constitutional Documents', (1967) 1, Bharatiya Vidya Bhavan 309

⁵⁵ *ibid*

⁵⁶ Constituent Assembly Debates, 06 Dec 1948 (Archives) <https://www.Constitutionofindia.net/debates/06-dec-1948/> accessed 02 Aug 2024

⁵⁷ Constituent Assembly Debates, 03 Dec 1948 (Archives) <https://www.Constitutionofindia.net/debates/03-dec-1948/> accessed 02 Aug 2024

⁵⁸ Constituent Assembly Debates, 03 Dec 1948 (Archives) <https://www.Constitutionofindia.net/debates/03-dec-1948/> accessed 02 Aug 2024

⁵⁹ Shefali Jha, 'Secularism in the Constituent Assembly Debates 1946-1950' (2002) 37 Economic and Political Weekly 3175, 3180

⁶⁰ Anand, C.L.: *Constitutional Law and History of Government of India*, (8th Edn., Universal Law Publishing Co. 2008, p. 84)

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still appointed by the Crown. It is also notable that an Ecclesiastical Department existed throughout British rule in India, though the enthusiasm for a "Christian Rule" had significantly decreased after 1857.⁶¹

In the post independent era, a series of judicial interpretation laid down the cornerstones of Indian secularism. They reminded, refined and sometimes redefined what secularism means to this country.

Our Constitution is secular but never anti-religious.⁶² The Constitution of India does not provide a specific definition of religion, acknowledging that religion is not easily confined to a rigid definition.⁶³ However, it is all the way different from the first amendment to the US Constitution. In the case of *Narayanan Nambudripad v Madras*⁶⁴, the decisions of US Supreme Court were relied and *Justice Venkatarama Aiyar* had delivered the judgement suggesting a considerable comparison of First Amendment of US Constitution and Indian idea of secularism. He argued that the First Amendment to the United States Constitution comprises of two parts: the first part prohibits the establishment of any religion, while the second guarantees freedom of religion to all individuals. He rejected the argument that although the Indian Constitution does not explicitly forbid the establishment of a religion, it does so implicitly. He noted that this view is inconsistent with several express provisions in our Constitution. While Articles 27 and 28 include specific prohibitions, other provisions in the Constitution suggest that the idea of a strict separation between religion and State does not fully apply. The court referred to *Amulya Chandra v. Corporation of Calcutta*⁶⁵, where the Privy Council held that the acquisition of specific properties by the Corporation of Calcutta to build a *dharmasala* for accommodating pilgrims visiting a Hindu temple served a public purpose. The court concluded that the law, as it existed before the Constitution, remains unchanged.

In *Shirur Mutt* case⁶⁶, which is a landmark interpretation of Article 25 of the Constitution of India, the Hon'ble Supreme Court held that institutions or corporations could not practice or propagate religion. It can only be done by individuals. Article 25 of Indian Constitution secured to every person not only the freedom of religion, belief and conscience but also the right to propagate or disseminate his ideas for the edification of others.

⁶¹ *ibid*

⁶² H M Seervai, *Constitutional Law of India: A critical Commentary- Volume 2*, (4thEdn, Universal Law Publishing Co., 2015)

⁶³ *Narayana Namboothirippad v Madras* [1955] SCC OnLine Mad 271

⁶⁴ *ibid*

⁶⁵ [1950] AIR Cal 256

⁶⁶ *Commissioner Hindu religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* [1954] SCR 1005

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The court of law often relied upon philosophical writings of the forerunners to determine the intricacies of religion. In the *Auroville* case, the Supreme Court, in a 4:1 majority decision, held that the teachings of *Shri Aurobindo* represented his philosophy rather than a religion. Consequently, the Auroville Society was denied permission to claim exemption from income tax on the grounds of being a religious institution.⁶⁷ In the case of *Jagdishwar Anand v Police Commissioner, Calcutta*⁶⁸, the court settled that *Ananda Marga* is not a separate religion but a religious denomination under Hindu religion and the order of the commissioner prohibiting performance of *Tandava* Dance in public by carrying daggers, *trishuls* and skulls was upheld for the reason that writings of *Sri Ananda Murti* never justified this practice.

Secularism is an intrinsic part of basic structure doctrine. It was declared so in the landmark nine bench judgement in the case of *SR Bommai v Union of India*⁶⁹. In the case *Justice Sawant* comprehensively laid down the summary of provisions that upheld secularism impliedly in our Constitution as follows: “Our Constitution does not prohibit the practice of any religion, whether privately or publicly. It establishes India as a secular republic through its Preamble and guarantees religious freedom under Article 25, which allows individuals to profess, practice, and propagate religion, subject to public order, morality, and health. Article 26 grants religious denominations the right to establish and maintain religious and charitable institutions, manage their affairs, acquire property, and administer it according to law. Article 29 protects the distinct culture of every citizen and Article 30 allows minorities to establish and manage educational institutions of their choice without discrimination. Articles 14, 15, and 16 prohibit religious discrimination and ensure equal protection under the law and equal opportunity in public employment. Article 44 encourages a uniform civil code, and Article 51 outlines citizens' duties to promote harmony and respect the Constitution, thereby implicitly prohibiting a theocratic state and ensuring that the State treats all religions equally.”⁷⁰

Further, the court made a clear demarcation between religion and politics in the judgement. It observed that appealing to any religion or seeking votes in the name of any religion is prohibited by law.⁷¹ In a positively secular state, politics should transcend religion; in other words, political parties should neither invoke religion nor rely on it for support or sustenance.⁷² The verdict was an unbeatable proclamation of the secular values of our Constitution. They observed that a political party that seeks power through religious or caste-based policies undermines social cohesion and disrupts the Constitutional principles of

⁶⁷ *S P Mittal v Union* [1983] 1 SCR 729

⁶⁸ [1984] 1 SCR 447

⁶⁹ [1994] 3 SCC 1

⁷⁰ [1994] 3 SCC 1 [145]

⁷¹ [1994] 3 SCC 1 [149]

⁷² [1994] 3 SCC 1 [187]

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secular democracy. Such appeals are contrary to the fundamental values of the Constitution and divisive to the social fabric.⁷³

The precedence set forth in *SR Bommai* case is a bedrock reading in the history of judicial interpretations of secularism. It was later upheld in the case of *State of Karnataka v Dr. Praveen Bhai Thogadia*⁷⁴. The Hon'ble Apex Court observed that secularism has to be treated as a part of fundamental law, and an unalienable segment of the basic structure of the country's political system.

In *I.R. Coelho v State of Tamil Nadu*⁷⁵, the Court has further expanded the concept of secularism and stated that the Right to Life and the Right to Equality in the Constitution embody secularism by extending its meaning beyond mere religious rights to encompass broader principles of equity and equality in society. This seems to have been preceded by *M. Nagaraj v Union of India*⁷⁶ where the Court used secularism to balance the equality claims for reservation under Article 15.

Indian judiciary discussed the idea of secularism mostly in connection with the interpretation of Part III of the Constitution. In the judgment of *Bal Patil v Union of India*⁷⁷, while discussing claims for minority status of a religious group, speaking through Justice Dharmadhikari has observed that claims to minority status based on religion could lead to demands for special protections and privileges, potentially disrupting the secular structure of Constitutional democracy. Encouraging such divisive tendencies risks transforming our country into a theocratic state and undermining its secular principles.

One of the most controversial cases related to secularism was the *cow slaughter case*⁷⁸. In this case, the Supreme Court examined the nature of the Indian State and the rationale behind Article 48, which advocates for prohibition of cow slaughter. The petitioners challenged the Gujarat Government's legislation banning cow slaughter. Initially, a division bench of the Supreme Court deemed the Act ultra vires, but the matter was later reviewed by a Constitution bench, which upheld its Constitutional validity. The Court's discussion included agricultural benefits, genetic preferences for breeds, and religious considerations. Ultimately, the verdict determined that cow slaughter during Ba'krid is not an essential religious practice.

⁷³ [1994] 3 SCC 1 [190]

⁷⁴ [2004] 4 SCC 684

⁷⁵ [2007] 2 SCC 1

⁷⁶ [2010] 12 SCC 526

⁷⁷ [2005] 6 SCC 690

⁷⁸ *State of Gujrat v Mirzapur Moti Kureshi Kassab Jamat* [2005] 8 SCC 534

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The Court has thereafter consistently followed the conclusions of the case, and in the case of *HinsaVirodhak Sangh v Mirzapur Moti Kuresh Jamat*⁷⁹ casted the prohibition of animal and cow slaughter for certain periods in the year in respect of the sentiments of the Jains in the State of Gujarat, as a provision representing protection of minority sentiments.

In interpreting "secularism" within the Indian Constitution, the Court has recognized that it differs from the Western notion of secularism, which strictly separates church and state. This distinction is evident in cases concerning the prohibition of animal slaughter, particularly cow slaughter, where the Court has navigated the state's imposition of such bans due to religious sensibilities.⁸⁰ Unlike in a Western-style secular framework, where state intervention based on religious grounds is seen as inappropriate, the Indian context allows for a more nuanced approach.⁸¹ The Court's efforts to disentangle "secularism" from religious connotations and redefine it as a matter of equality and life should be understood as an attempt to establish "secularism" as a Constitutional standard for the actions of both state and non-state actors. This approach moves beyond treating secularism as merely an ideological slogan within the Constitution.

VII. Conclusion

In his book *Religion and Culture*⁸², Dr. S. Radhakrishnan, our former President emphasized that religion is not to be confused with magic, superstition, or outdated dogmas. He argued that intellectual and empirical approaches, rather than inherited authority, should guide our understanding of religion. Radhakrishnan suggested that all religions are grounded in experience, which extends beyond mere perception to include paranormal and spiritual phenomena.

In the peculiar context of India, secularism is not merely an ideological framework, but a persistent political exercise. Even after seven decades of independence we continue to cling to the word 'secularism', for it has the potential to rewrite the governance destiny of the country altogether. Notwithstanding the fact that secularism was included in the preamble through the 42nd Constitutional Amendment by *Smt. Indira Gandhi*, intellectuals still debate over the relevance of the term in the Constitution and its implications. Recently, *Justice Sanjiv Khanna* adjourned for hearing to the month of

⁷⁹ [2008] 5 SCC 33

⁸⁰ Vikramjeet Banerjee, 'Ten Years On: A Review of Secularism as defined by the Supreme Court from 1998 to the present date' (2009) 6 SCC (J)

⁸¹ *Municipal Corpn. of the City of Ahmedabad v Jan Mohd. Usmanbhai*, [1986] 3 SCC 20; *Akhil Bharat Goseva Sangh (3) v State of A.P.*, [2006] 4 SCC 162; Also see: *State of W.B. v Ashutosh Lahiri*, [1995] 1 SCC 189.

⁸² Dr S Radhakrishnan, *Religion and Culture* (16thedn Orient Paperbacks 1994)

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against the Public Interest Litigation filed by the former Member of Parliament *Subramaniya Swamy* to delete the words 'secular and socialist' from the preamble of our Constitution.⁸³

Although these ongoing deliberations and debates might appear as a continuous challenge to our secularism from a Western perspective, the truth is that they serve as introspections within our democracy. These discussions help shape our identity and reinforce our values. We inherit a heritage of constant *samvada* (dialogue) and our democracy is also continuing to exercise the same.



⁸³ Gyanvi Khanna, 'Challenge to Preamble Amendment: Secularism held to be basic structure of Constitution in many judgements, says Supreme Court' (LiveLaw.in, 10 July 2024) <https://www.livelaw.in/top-stories/challenge-to-preamble-amendment-secularism-held-to-be-basic-structure-of-Constitution-in-many-judgments-says-supreme-court-262896> last accessed on 04 Aug 2024

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