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THE ESSENCE OF 'SECULARISM': A COMPARATIVE STUDY IN THE INDIAN CONTEXT

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Abstract

Secularism in India represents a complex, context-dependent concept that cannot be reduced to a single universal definition. This paper examines the meaning and application of secularism in India through comparative constitutional analysis and historical examination of the Constituent Assembly debates. Drawing on Gary J. Jacobsohn's typology of secular constitutional designs—assimilative, visionary, and ameliorative—and Hanna Lerner's framework of permissive constitutions, this study argues that Indian secularism is best understood as an "ameliorative" model that balances religious pluralism with social reform. Through comparison with secular models in the United States, Israel, Indonesia, and Turkey, this paper demonstrates that secularism is not a monolithic concept but a contextually adaptable principle shaped by historical, social, and political factors. The paper concludes that while a universal definition of secularism remains elusive, the Indian model embodies a unique form of secularism that accommodates religious diversity while striving for national integration and social justice.

Keywords: *secularism, India, comparative constitutional law, Constituent Assembly, religious freedom, constitutional design*

INTRODUCTION

Secularism and its varied voices have been much debated in India and to truly understand its meaning and what it signifies to the nation, one must identify its history and how it compares

amongst nations. Although the term 'secular' was only introduced in 1976[2] to the Indian Constitution, the Constituent Assembly debates and the history of the nation has been in constant conversation with the concept of secularism. However, in the words of T N Madan, secularism can only be understood in the contextual sense, this essay will attempt to derive the meaning of the word 'secular' as it means to India.

Before diving into the meaning of the term 'secular', this essay refers back to the theory established by Gary J Jacobsohn, in his book *The Wheel of Law*[3], wherein he identifies three main models of secular constitutional design being (1) Assimilative; (2) Visionary and (3) Ameliorative. He identifies, India's constitution to have imbibed an ameliorative secularism as a projection of her multifaceted character yet maintaining a method of social reform. *Jacobsohn* interestingly highlights the caste system and the social evils of the society prevalent in the country and yet how it identifies with the deep-rooted cultural values imbibed historically. This elemental quality of the Indian nation cannot be uprooted and we can safely assume that although the state is secular the people are not[4]

To understand the 'meaning' of a concept, especially secularism in a country as diverse and complex as India, it would entail close inspection of the developments in a historical context and to assimilate the original intent of the Constitutional Framers. Hanna Lerner[5], has interestingly compared the constitutional debates of Turkey, Israel, Indonesia and India as countries having had extensive debates on the concept of secularism during the formation of their constitution. *Lerner's* method is an inspiration to the later part of this essay to dive deep into the Constitutional debates of India to truly understand the meaning of 'secularism'.

In fact, *Jacobson's* thoughts expressed in his book and subsequent works and the different approach adopted by *Lerner* laid the pathway and inspiration to this essay to identify the

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[2]The Constitution (Forty Second Amendment) Act, 1976.

[3]Gary J Jacobsohn, *The Wheel of Law, India's Secularism in Comparative Constitutional Context* (Princeton University Press, 2005).

[4]Nirad C Chaudhuri, *Hinduism: A Religion to Live* (OUP, 1997).

[5]Hanna Lerner, 'Permissive Constitutions, Democracy, and Religious Freedom in India, Indonesia, Israel, and Turkey' (2013) 65(4) World Politics 609

meaning of 'secularism'. Although both their works are exceptional in its own accord, the union of the two different approaches could aid in arriving at a better understanding of secularism in two aspects i.e. (1) to understand whether a universal application of the word secularism can be adopted across the varied nation-states and (2) to understand what 'secularism' means to India.

This essay attempts to understand and compare the kind of secularism that the Indian secularism falls under, through preliminarily analyses of opinions and observations of authors and thinkers and also by comparing the Indian Constitution to that of other countries. This essay also brings about a historical comparison of the concept of secularism in the Indian Constitution by skimming through the original intentions of the framers of the Constitution. The primary focus of this essay is to distinguish the type of secularism that India has and what secularism means to the nation and compare the original intent to that of the current scenario. I have limited myself to the countries mentioned in *Jacobsohn* and *Lerner's* works to merely corelate and compare the different approaches and to read them together.

This essay is divided into two distinct parts. The first part attempts to understand the different kinds of secularism with respect to different contextual backgrounds and identify if a universal meaning can be arrived at. In the process of achieving the same, the essay analyses the relevant literature and is influenced by the work of *Jacobson* and also compares the Constitutions of the countries in the West (US), the Middle East (Israel) and East (India). The second part attempts to identify the original intent of the Constitutional Assembly through its debates and compare with other similar countries as identified by *Lerner,* Turkey, Israel, Indonesia and India. The third part concludes the essay.

DERIVING A UNIVERSAL MEANING TO THE WORD 'SECULAR' IN A CONTEXTUAL SENSE

The word 'secular' in general parlance means and is understood as the disassociation with religious beliefs. However, the interpretation of the concept in a political sense has taken many forms and is heavily reliant on the religious identification of the people of the country. The concept of secularism is originally said to have been originated as a western concept evolving

from the political discourse between the church and the state[6]. For instance, considering a country such as the United States of America, the need for a secular constitution arose mainly from the need of inclusion of other religions as opposed to the overarching influence of the catholic church led government.[7]*Jacobsohn* classifies this as an Assimilative form of secularism. The judicial interpretation[8] of the Establishment Clause and the Free exercise clause[9] in the American Constitution has clarified that the secular state neither promotes atheism nor propagates an official religion[10]. By that interpretation it becomes clear that secularism as per the American Constitution separates the state from the religion while respectfully distancing itself from associating from any religion and at the same time accommodating the 'free exercise' of all religions and individual freedom.

America is one such nation which does not openly propagate any religion, although many scholars may pin point various associations to Christianity, the general perception is that the American Constitutional intent is to allow the free expression of all religions and avoid the inclination towards Christianity or any one particular religion. Now taking the example of Israel, a country, whose religious inclinations are clearly declared, also consider themselves a secular nation. Although Judaism is the nation's preferred religion, it is not legally established as so[11]. Israel was envisioned as a secular nation as can be seen in the Palestinian Mandate of 1922[12] and further through the Israeli Declaration of Independence[13] however their pre- independence experiences have led to the voluntary and conscious effort of protection and preservation of the Jewish citizens. Although the citizens of the nation are not strictly Jew and the state does not

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[6]Prahlad B Gajendragadkar, *Secularism and the Constitution of India* (University of Bombay, 1971) 5-10.

[7]SevalYildirim, 'Expanding Secularism's Scope: An Indian Case Study' (2004) 52 (4) Am J Comp Law 901.

[8]*Reynolds v. United States* 98 U.S. (8 Otto.) 145 (1878); *Scherbert v. Verner* 374 U.S. 398 (1963); *Employment Division v. Smith* 494 U.S. 872 (1990); *City of Boerne v. Flores*, 521 U.S. 507 (1997).

[9]Constitution of the United States, The U.S Bill of Rights First Amendment 1791

[10]*County of Allegheny v. ACLU U, Greater Pittsburgh Chapter,* 492 U.S. 573, 610 (1989).

[11]IzhakEnglard, 'Law and Religion in Israel' (1987) 35(1) Am J Comp Law 186

[12]League of Nations Mandate for Palestine 1922, Art 2

[13]Declaration of the Establishment of the State of Israel, 1948

belong to 'only' the Jews[14], the state provides certain benefits and preferences to the Jews[15]. *Jacobsohn* classifies Israel under the head of a Visionary form of secularism, although like the UK they do not have a written constitution, their codified laws are clear on the vision that they aspire to upkeep taking heed from their past experiences. Considering that Israel's vision is to ensure the overall preservation of Judaism in the global context[16], it is still a secular nation and allows the practice of all religions.

Reflecting on the American as well as Israeli contexts, it can be seen that secularism of a nation can be achieved through complete disassociation with religion or even by providing a preference to a particular religion. However, the common theme that runs across these two systems is that there is equitable consideration and freedom given to other religions and cultures. Now, trying to derive the meaning of secularism in India, *Jacobsohn* classifies the Indian constitution as embodying an Ameliorative form, wherein the state is cognizant of all the religions and religious consideration, but the Constitution itself is impartial towards any particular religion. India's stance on secularism does not sprout from the power struggle between the state and the religion, but arises from the need to maintain social order and rights of various communal groups[17].

The meaning of secularism in a western country like the US is more liberal and based on separatism, however countries such as Israel have a political and religious background that cannot be separated from itself. India on the other hand is a complex mixture of different cultures and religions that it cannot be seen separate from it, yet cannot be seen associated to it. The nature of secularity in India differs from that of American or Israeli definitions and takes a holistic and inclusive meaning to secularism where all religions are considered equal. However, multiple scholars believe that in practice the secularism is inclined towards the creation of a

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[14]Gary J Jacobsohn, *The Wheel of Law, India's Secularism in Comparative Constitutional Context* (Princeton University Press, 2005) 76.

[15]Ibid, Jacobsohn refers to it as the nation's favoured religion.

[16]*Streit v. Chief Rabbi*, 18(1) Piskei Din 598, 612; 5 H.C. 103/67, *American Orphan Beth El Mission v. Minister of Social Welfare*, 21(2) Piskei Din 325

[17]Ashgar Ali Engineer, 'Secularism in India' in Barry A. Kosmin and ArielaKeysar (eds), *Secularism & Secularity: Contemporary International Perspectives* (2007) 152

Hindu nation, however that is for a detailed discussion elsewhere, this essay will only be touching upon it on the periphery.[18]

To identify whether the word 'secular' in a universal sense can be delimited to a single holistic definition, is a Catch-22 situation. Each country has its own interpretation and meaning of what secularism means to itself based on the contextual sense and historical background. A single definition will not only be difficult to arrive at but it will also create a circle of chaos where various forms of secularism are excluded from each other.

LOOKING BACK TO RECOGNISE THE PRESENT

India known to be a vast country with rich history and diversity and in reference to this SevalYildrim[19] observes that secularism is not a new concept in India, the varied religions of past rulers and settlers have contributed to the rich diversity of the nation. *Yildrim* also brings out a rather interesting concept that between 'secularism' and 'democracy'; of which both concepts originated in the West and was adopted in India around the same time; secularism faced a stern resistance whereas democracy was welcomed with open hands. To understand this wide difference, it is important to understand the deep rootedness of religion and individual freedom. We will however not go back to the 5,000-year-old history but will understand this through the intentions of the constitutional framers through the Constituent Assembly Debates. In the wise words of Rajeev Bhargava, *"... to get a handle on current constitutional practices, to grasp their value and meaning, we may have no option but to go back in time to the Constituent Assembly Debates and perhaps even further back to the colonial era."[20]*

Original Intention

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[18]Pritam Singh, 'Hindu Bias in India's "Secular" Constitution: Probing Flaws in the Instruments of Governance' (2005) 26(6) Third World Quarterly 909; Vinay Sitapati, 'Doing a Rashomon on the Hindutva Cases' (2008) 43(10) EPW 72

[19]SevalYildirim, 'Expanding Secularism's Scope: An Indian Case Study' (2004) 52 (4) Am J Comp Law 901.

[20]Rajeev Bhargava, 'Outline of a Political Theory of the Indian Constitution' (eds) *Politics and Ethics of The Indian Constitution* (OUP, 2008).

We may now embark on a historical journey by looking through the Constituent Assembly Debates of India and identify a few limited areas on secularism.

Preamble- On discussions regarding the inclusion of the word '*in the name of God...*'[21] as part of the Preamble of the Constitution, there was a stern opposition to the same[22]. However, the inclusion of the word 'secular' was also not accepted[23] at the time due to the various ambiguities with respect to theoretical position of secularism in India and its applicability considering that a national identity was of prominence than the religious identity of the individuals. However, there was no doubt on the fact that the members wanted to establish a secular state[24]. KM Munshi also referred to the non-establishment clause of the American Constitution to observe that a similar structure would be inappropriate and a new form must be developed for India[25]. Nevertheless, the 42nd Amendment to the Constitution of India inserted the word 'secular'.

Right to worship vs right to practice - The intent of the framers was always to allow the individuals the freedom to worship and propagate their faiths to their own desire[26]. The Constituent Assembly debated whether to include the word 'worship' or 'practice' while granting the fundamental rights and it was voted in majority that 'worship' may not include all the symbolisms of an individual's identity to a religion and the social customs and 'practices' need to be included within the constitution[27]

Uniform Civil Code: The Constituent Assembly included the Uniform Civil Code under the Directive Principles of State Policy as the dichotomy was whether to include a uniform personal

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[21]This was initially proposed instead of the present-day statement which reads as *'We the people...'*.

[22]The concept of using the name of 'God' in the preamble was voted against with a majority of 68 to 41.

[23]Constituent Assembly Debates Vol 7 dated 15 November 1948.

[24]Constituent Assembly Debates Vol 10 dated 17 November 1949

[25]ShefaliJha, 'Secularism in the Constituent Assembly Debates, 1946-1950' (2002) 37(30) EPW 3175.

[26]Constituent Assembly Debates Vol 1 dated 18 December 1949; Report of the Sub-Committee on Fundamental Rights, s 6-8 & s 16-22 dated 16 April 1947

[27]Report of the Sub-Committee on Fundamental Rights, 16 April 1947.

law as it is a secular state as against the individual freedom to practice religion.[28] Hence the Uniform Civil Code had been postponed to be decided slowly and we are yet to strike a balance on the same.[29]

Protection of Religious minorities- Reservation for the religious minorities was strongly put forth by the Sub-committee of Minorities, the reservation in legislative bodies, ministries, civil, military and judicial services were added, however the requirement for a separate electorate was rejected on the grounds that it would go against the very principles of a secular state. However, the members were in agreement that the reservation in the long run would be better to do away with considering that India is to be portrayed as a single community instead of multiple separate communities.

Ban on religious instruction - Although there was opposition of propagating religious instruction and even to the extent of delimiting the instructions to the confines of one's homes, it was decided that the religious instruction of the individual and its spirit could be embodied by the state without violating the principle of secularism.[30]

The original intention of the majority of the Constituent Assembly has been clear that the state is to be recognized as a secular nation and yet the religious freedom of its individual citizen is to be protected and preserved[31]. This concept is what *Lerner* classifies as 'Formal Permissiveness' wherein the state does not separate itself from the religion[32] but distances itself so as to ensure that all the religions are viewed and protected equally. India's necessity was not to become secular but to develop a system of secularization which is unique to itself and away from the western meaning[33]. However, in the current socio-political scenario, the nation's inclination is

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[28] IBID

[29] Constituent Assembly Debates Vol 7 dated 24 November 1948

[30] Constituent Assembly Debates Vol 5 dated 30 August 1947

[31] Ibid

[32] Similar views have been quoted by Nandy and Madan as mentioned in Pantham (1997).

[33] SevalYildirim, 'Expanding Secularism's Scope: An Indian Case Study' (2004) 52 (4) Am J Comp Law 901.

towards a Hindu majority[34], although this may also seem to be a form of secularism similar to Israel, the marginalisation of minorities has disrupted the intended meaning of secularism in India.

Tracing back the intent of other countries

In India, the Constitutional debates revolved around the balance between all religions and as an appeasement of every individual's religious freedom, the main challenges in bringing about a national unity amongst various religious, linguistic and social differences[35]. Looking back at Israel once again, Judaism was favoured while at the same time tolerating other religions and faiths. *Lerner* differentiates the Israeli Constitution to have an 'informal permissiveness'. She says that the debates of the framers did not focus on the aspect of providing equality of all religions but was mainly concerned on whether the state must recognize itself as a Jewish state or not. Israel at the time was focused more on preserving its sovereignty and could not afford any internal disturbances, the safest option available was to include the immigrant population while protecting its own Jews[36]. Further, having established itself as a Jewish democratic state today, it does not take itself away from the principle of secularism and recognition of other religions.

Indonesia on the other hand had a large Muslim population and there was a stern push towards an Islamic state, however multiple nationalists were opposed to the idea internally. The country went through a series of restructuring of their Constitution changing from permissive to restrictive and again a permissive constitution during the leadership of Sukarno and Suharto[37] respectively. Although the state has a majority Muslim population, Indonesia has identified itself

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[34]Christophe Jaffrelot, 'The Fate of Secularism in India' in Milan Vaishnav (eds) *The BJP in Power: Indian Democracy and Religious Nationalism* (Carnegie Endowment for International Peace 2019).

[35]Hanna Lerner, 'Permissive Constitutions, Democracy, and Religious Freedom in India, Indonesia, Israel, and Turkey' (2013) 65(4) World Politics 623

[36]ibid

[37]Sukarno laid down the five principles in the doctrine of Pancasila by referring to God and maintaining a pan religious approach however the same was in constant opposition. Suharto attempted to maintain these principles through the New Order. However, the present Indonesian Constitution is based on Islamic principles.

as a secular state, yet the constitution has been widely influenced by Islamic principles and the state only recognizes certain official religions[38] , *Lerner* terms this as 'religious permissiveness'.

Contrary to all the previous countries assessed in this essay, Turkey follows a system wherein the state is completely separate from its religion and the tenets of Westernization, Turkish nationalism, and a scientific approach to religion[39] was viewed as the focus of the Constitution. Although the Constitution has been rewritten multiple times and in a short window the state had even recognized itself as Islamic, currently the Constitution is a secular irreligious one. Turkey even adopted from the Indian and Israeli Constitutions to include and accept other religions. *Lerner* terms this as 'restrictive permissiveness'. On a holistic understanding of all these countries it can be evidently concluded that secularism does not personify itself into a single form or structure, it is an amalgamation of various histories, religions, past experiences and cultures that brings about the meaning of secularism.

CONCLUSION

Looking at this from a preliminary bird's eye view, it maybe stated that the meaning of secularism cannot imbibe a universal meaning but can *Converge[40]* its meanings. What this essentially means is that looking at the classifications made by *Jacobson,* secularism does not need to adhere to a single form of secularism but can benefit from constitutional borrowing[41]. The concept of secularism within the Constitution may have migrated from the West to the East but the essence of the same is developed and adapted in a way that it is tailor made for the country by itself. If I were to attempt to provide a single universal definition, a secular constitution would mean one where there is equal tolerance to all religions[42] and each individual

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[38]The religions being Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism.

[39]Hanna Lerner, 'Permissive Constitutions, Democracy, and Religious Freedom in India, Indonesia, Israel, and Turkey' (2013) 65(4) World Politics 628

[40]Gary J Jacobsohn, *The Wheel of Law, India's Secularism in Comparative Constitutional Context* (Princeton University Press, 2005).

[41]Ibid, Jacobsohn (2005)

[42]Thomas Pantham, 'Secularism and its critics: A reflection' (1997) 59 (3) Non-Western Political Thought 523.

is free to practice their own religion or faith within the boundaries set by the state[43]. However, arriving at such a universal balance would be a herculean task and such a definition would have to be further interpreted to the minutest nuances to accommodate all tenets of the nation.

In India, it is well established that the Western definition does not fit the bill as it is, but the historical intent of the legislators of the Constitution are clear and specific towards the secularistic future of the nation. It was intended that in identifying the meaning of secularism in India, one must look at the influence of the religious minorities, religious policies of the colonial regime and the role of religion during the struggle against the colonizers[44]. The judicial interpretations have also emphasized that secularism is a vital element of the basic structure[45] of the Constitution and against discriminated based on religion[46]. However, the current socio-political situation is such that the original intentions of secularism seem to not hold water, but it is premature to conclude as such. India need not achieve a separation from its religion in the

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[43]Although this definition is trying to encapsulate a broad area of interpretation into a single profound sentence, the same cannot be taken for face value as the single universal definition. I content that a single universal definition is impossible to bring about the actual essence of secularism and only context and individual states can define its own secularism. Secularism is neither constant nor universal. John (2005) mentions three aspects that the states must respect towards secularism; (1) state must ensure personal liberty and freedom of religious exercise; (2) maintain equal treatment irrespective or religion; (3) deal with religions even handedly and neutrally. See: Mathew John, 'Decoding Secularism: Comparative Study of Legal Decisions in India and US' (2005) 40(18) EPW 1901.

[44]Donald E Smith, 'Secularism in India: A Rejoinder' (1965) 7(2) Comparative Studies in Society and History 166.

[45]*KesavanandaBharatiSripadgalvaru and Ors. Vs. State of Kerala and Anr.* (1973) 4 SCC 225: AIR 1973 SC 1461; *S.R Bommai v. Union of India*, [1994] 2 SCR 644: AIR 1994 SC 1918

[46]*The Ahmedabad St. Xavier's College Society and Another Vs. The State of Gujarat and Another*, (1974) AIR(SC) 1389: (1974) 1 SCC 717.

strict sense as long as a secular culture can be adopted while engaging with the religious common sense of our times[47]

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