

VI. REVISITING THE INDIAN IDEA OF A SECULAR DEMOCRACY

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Abstract

The word “Secular” has been a source of controversy numerous times. However, now more than ever, the displeasure is visible. The controversy stirred when former Rajya Sabha Member of Parliament filed a plea before the Supreme Court for deletion of the word and reverting the preamble to its original form. The most popular contention is that secularism should not be forced upon citizens. Secularism has been the core principle of the Constitution of India since its inception. It has many forms that are practised differently in every country including India. This paper discusses whether secularism was the idea of the founding fathers, or it came later. What is the relationship between democracy and secularism? It also examines the contemporary events in the light of our constitutional vision and what the challenge to ‘secularism’ really means.

Keywords: Secularism, Democracy, Constitution, Preamble, Secular

I. INTRODUCTION

Recently a former Rajya Sabha Member of Parliament, Dr Subramanian Swamy, has questioned the basic structure of the Constitution of India and the validity of the words “secular” and “socialist” in our Constitution. As if the ruling government’s disregard

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of the constitutional principles was not enough, this belief has been taken to the apex court. The preamble represents the ideals on which this country's Constitution is based. Democracy, justice, equality, fraternity, liberty, secularism, and socialism are the guiding light for laws and policies in our country. However, some people in position do not seem to agree with the secular character of the nation. The State not only seems to endorse a particular religion, but also participates very actively in ensuring its interests. In such state-of-affairs, how does one expect impartiality, non-discrimination, and 'democracy'?

This article explores the relationship between democracy and secularism. It seeks to find answers to some very important questions: whether the framers of the Constitution wanted a secular state. What relevance does it hold? And how does its existence or lack thereof influence democracy?

II. EVOLUTION OF DEMOCRACY

The idea of democracy is almost as old as human civilization. In primitive societies, democracy existed in the form of collective governance. It was made possible due to less complex societal structures. Small tribes and communities were bound by kinship rather than territorial or political ideals, and decisions were made collectively. However, as the societies grew larger and more complex, concepts such as military, age hierarchies, organised religion, power and sovereignty

emerged.¹ Modern Democracy can be traced back to the social contract theories which propose that democracy is based on the idea that people consented to be governed in exchange for the protection of their rights and well-being. The legitimacy of a government arises from a contract among individuals to form a society.

During the Middle Ages, the church was viewed as the only means to access the truth. It controlled education and science, with theology being the most important field of study. This norm was challenged by Protestantism, which promoted the idea that everyone is equal and has a direct connection to God. They opposed the idea of a mediator, like priests, between individuals and God, granting individuals greater autonomy to form their own opinions about religion and life. The Protestant Reformation challenged the church's authority, feudalism, and vocational guilds, while the simultaneous rise of individualism, reason, and secularism contributed to the development of classical natural law philosophy². The classical natural law philosophy was based on the separation of law and religion, rules derived from human reasoning, rationality, individual rights, and a scientific approach towards human behaviour. For the first time in history, this development traced the source of law to people rather than God. The natural law philosophy developed in three phases:

¹ Edgard Bodenheimer, *Jurisprudence- The philosophy and Method of Law* (7th edn, Universal Law Publishing Co 2011).

² *ibid.*

- 1) Enlightened Absolutism: The rise of Protestantism led to liberation from medieval theology and feudalism. Thinkers like Grotius, Hobbes, and Pufendorf believed that enforcement of natural law rests on the wisdom and self-restraint of rulers.
- 2) Free Capitalism and Liberalism: During this phase, thinkers like Locke and Montesquieu emphasized the idea of separation of powers to ensure no undue encroachment of the natural rights of individuals by the government.
- 3) Popular Sovereignty and Democracy: This phase, led by Rousseau strongly believed in general will and the majority decision of people.³

III. HUGO GROTIUS (1583-1645)

Hugo Grotius, often regarded as the father of international law, was a prominent author of natural law philosophy. He believed in keeping science and religion separate. According to his theory, humans possess a natural desire for society and social life, meaning a desire for an organized system with like-minded individuals. This desire encourages peaceful coexistence within a community. He defined natural law as rational, moral dictates that would apply even if God didn't exist. Grotius identified two ways to prove natural law: logical reasoning (a

³ *ibid.*

priori) and observation of common practices (a posteriori). He emphasized basic principles of natural law like respecting others' rights, keeping promises, and compensating for harm. For Grotius, the state was a contract for mutual protection, with rulers bound by natural law but typically immune from legal accountability unless they grossly abused their power.

Grotius defined the state as "a complete association of free men, joined together for the enjoyment of rights and for their common interest." He saw it as originating from a contract, usually with power transferred to a ruler who, although bound by natural law, generally couldn't be legally challenged by subjects.

IV. THOMAS HOBBS (1588-1679)

Thomas Hobbes's understanding of human nature sharply contrasted with that of Grotius. While Grotius viewed man as social, Hobbes believed him to be selfish, malicious, brutal and aggressive. He proposed that in nature every man is a beast to another man, and there exists no right or wrong. In this state of war, everyone has the natural right to preserve his life by any means necessary against the aggression of others. According to Hobbes, the fear of death and the desire for necessary resources lead people to prefer peace over the chaotic state of nature.

Hobbes argued that people must collectively agree to form a government by surrendering their individual powers to a sovereign authority—a "Leviathan"—to ensure peace and security. The sovereign, in his view, must be absolute and omnipotent, unbound by legal constraints, to effectively maintain order among individuals. Civil laws, distinct from natural laws, are those decreed by the sovereign and define right and wrong within the state. He believed that no law could be unjust since laws are merely commands of the sovereign. However, laws could be deemed iniquitous if they deviate from the natural laws aimed at preserving peace and protecting the well-being of the people. If the sovereign fails to maintain peace or protect its citizens, then the people might have grounds to withdraw their loyalty. Despite his support for strong centralized power, Hobbes's theory incorporates elements of individualism and liberalism, with a focus on securing life, property, and happiness, although this is executed under an absolute monarch rather than through a system of checks and balances.

V. JOHN LOCKE (1632-1704)

Locke's philosophy centred around the concept of natural rights—life, liberty, and property. He argued that in the state of nature, all individuals were free and equal, governed by natural law, which taught respect for these rights. However, the state of nature also had disadvantages, such as uncertainty in protecting these rights and the risk of individuals exceeding reason when enforcing them. To avoid these issues, he proposed that people entered into a social contract to

form a government that would preserve their rights, particularly property, which he broadly defined to include life, liberty, and estate. Locke emphasized a government with limited powers, opposing absolute monarchy. He believed the government existed to protect individual rights, and if it overstepped its bounds, the people had the right to resist or even revolt. He also advocated for the separation of powers between the legislative and executive branches.

VI. MONTESQUIEU (1689-1755)

Montesquieu built on Locke's ideas but focused more on the practical structure of government. His main contribution was the theory of separation of powers, advocating that the legislative, executive, and judicial branches should be independent and balance each other to prevent abuses of power. He believed that human liberty could only be secured through a system in which powers were divided and checked. Montesquieu sought to prevent tyranny by limiting governmental authority and ensuring individual freedoms.

VII. JEAN JACQUES ROUSSEAU (1712-1778)

Rousseau's philosophy emphasized the 'general will,' a collective sovereignty that represents the community's interests. He believed that individuals should alienate their natural rights to the community rather than to specific individuals, regaining civil liberties and security through the general will in return. He argued that the general will,

always acting for the common good, should be the ultimate authority in a state, overriding individual wills. He contended that by obeying the general will, individuals are, in effect, obeying themselves, as their individual will merges with the community's collective will. While optimistic about human nature, Rousseau believed the general will would be just and rational, minimizing the risk of tyranny. He also opposed representative democracy, arguing that true freedom requires direct participation of the people in legislative decisions. Rousseau's ideas greatly influenced the French Revolution and the development of parliamentary democracy, where the will of the majority was seen as paramount.

A collective reading of the principles of democracy and social contract theories suggests that their development was driven by the need for peaceful coexistence. This evolution occurred against a backdrop of excessive religiosity and the encroachment of individual rights due to religious interference in institutional management. Consequently, the separation of religion from state affairs became paramount. Both democracy and social contract theories emphasize peaceful coexistence, ensuring individual rights and promoting participation.

Evaluating these principles in modern contexts reveals that if a state officially endorses a particular religion or demonstrates favouritism toward it, it is likely to incite pride among members of that religion and fear among followers of other faiths. This may lead to members of the favoured religion encroaching upon the rights of individuals from

different religions, which goes against the foundational ideas of democracy. When a state exhibits bias toward one religion, it creates an environment of fear among members of other faiths, thereby hindering peaceful coexistence. Additionally, policy decisions may be guided by religious beliefs or advantages for the favoured religion rather than by 'reason'. This brings us back to the pre-reason era, where divine dictates held sway over individual participation and liberty.

Such biasness may also escalate into more significant conflicts, such as riots, as people attempt to impose their beliefs on others, while those from non-favoured religions retaliate out of fear. Therefore, an unbiased authority is crucial in a multi-religious, multi-cultural society to maintain a democratic framework and emerge out of the 'state of war' described by Hobbes.

VIII. SECULARISM AND SECULARIZATION

Before we find out how and why secularism became a part of the preamble and why it was rejected initially, we need to understand what secularism means. What it means for India, the 'mother of democracy'. As per the dictionary meaning, secularism is the belief that religion should not be involved in the organisation of society, education, etc. The idea propounds that the government, politics, and state-run institutions should remain neutral towards religion, neither showing favouritism nor endorsing any particular faith. The purpose behind the ideology is to ensure harmonious co-existence and cooperation among

religions by creating an unbiased state. Justice Tarkunde defines it as, “there should not be any interference by religion in the affairs of the State and vice versa, i.e., the State also should not interfere in the affairs of religion”.⁴

‘Secularism’, in contrast to ‘secularisation’, and ‘secular’ refers only to a particular political doctrine. John Sommerville⁵ talks about secularization in a literary sense. According to him, nothing is inherently secular because of existence of religion for such a long time. Religion is a part of almost all activity humans do, as religion grew alongside humans. Secularization is the process by which certain activities are separated from religious participation or influence. It means narrowing the scope of religion by excluding activities that are not of a religious character. In other words, confining religion to God and godly affairs would literally mean secularization of that religion. There is a difference between secularization of the society and secularization of the population. The former would mean the rules under which a society operates, and the latter are the religious beliefs held by the population. Where the whole population of a society is devoid of religious habits, it can be called as secularization of that

⁴ V.M Tarkunde, “Secularism and the Indian Constitution” (1995) India International Centre Quarterly <http://www.jstor.com> assessed 21 September 2024.

⁵ C John Sommerville, “Secular Society/Religious Population: Our Tacit Rules for Using the Term ‘Secularization’” (1998) 37 Journal for the Scientific Study of Religion 249 <<https://doi.org/10.2307/1387524>> assessed 5 March 2024.

population. It literally means the transfer of activities from religious institutions to others without that character.

Secularisation means differentiation. Phrases like secular judges, secular laws, secular legislators are used to mean those who have no connection to any religion. It is not a reference to their personal non-religious character but reflects that they are differentiated from religion in an official capacity.

Akil Bilgami explains how secularization does not really have an impact on secularism. He says, “increase in a society of loss of personal belief in God or the decrease in church- or synagogue- or mosque-going or the surrender of traditional religious habits of dress or prohibitions against pork, may all be signs of increasing "secularisation" but they are irrelevant to the idea of secularism.”⁶

Secularization can also be observed as a natural consequence of development and growth. As education and employment levels rise, individuals often exhibit a reduced tendency to adhere to superstitions, a greater inclination to question religious dictates, and a shift towards viewing religion as a personal belief rather than a communal activity.

IX. THE IDEA OF SECULARISM

⁶ Akeel Bilgrami, “Secularism: Its Content and Context” (2014) 45 Journal of Social Philosophy 25 <<https://doi.org/10.1111/josp.12048>> assessed 20 March 2024.

Secularism, like any other ideology, has different meanings for different States. Every society reacts differently to different situations based on its culture, economic and political environment, and other factors. This is why every ideology is perceived differently by different societies. However, there remains some common ground that binds all the different branches of an ideology to a single trunk. It could be the desired end result or the common struggle behind the origination of that ideology. In the case of secularism, what binds all secular countries together is the need to keep religion separate from administration to ensure that it does not influence policy decisions. The question is not of horizontal separation between church and the state but of vertical segregation of state and primordial loyalties.⁷

The political ideology of secularism can be divided into two: the Western practice and Indian Secularism. Briefly, western secular beliefs are based on the principle of mutual exclusivity. Neither the state nor religion interferes in the affairs of the other. In Western practice, religion does not play a role in shaping the laws of the nation. Likewise, even if religious practices contradict principles of equality and freedom, the state can only be a silent spectator. For instance, if a religious institution forbids a woman to be a priest or excommunicates its dissenters, the state cannot do anything.⁸

⁷ Rasheeduddin Khan, *Bewildered India: Identity, Pluralism, Discord* (South Asia Books, 1994).

⁸National Council for Educational Research and Training, *Political Theory class 11* (Reprint November 2021, 2006)116.

However, the Indian model does not impose such harsh boundaries. Dr B.R. Ambedkar defined secularism as “a secular state does not mean that we shall not take into consideration the religious sentiments of the people, all that a secular State means is that this Parliament shall not be competent to impose any particular religion upon rest of the people”⁹. In India, secular character means equal protection by the state to all religions. The Indian Constitution ensures no discrimination on the grounds of religion¹⁰ and recognises religion as a fundamental right of the citizens. It also advocates against intra-religious domination. Hence, the Indian constitution bans untouchability and there are laws abolishing child marriage, ensuring the right to maintenance, etc.

Marxian Secularism- The Marxian understanding of religion and atheism is extremely anti-religion. According to Marx, humans cannot realise their true identity and self-consciousness until they stop believing in the illusion of God. Until then, they are just a non-existent object among other objects. He propagates the idea that religion is created in the mind and imagination of man, and it is imposed upon the real world of men, human activity and nature.¹¹ He also thinks that religion has a positive historical role as it is evidence that there existed distress in society and there was something wrong with human existence. It also proves that there was a protest against distress. The

⁹M.V. Pylee, *India's Constitution* (Reprint Edn., S. Chand Publication 2007) 14

¹⁰Constitution of India, 1950, art.15.

¹¹ S Khan, “Towards a Marxist Understanding of Secularism: Some Preliminary Speculations” (1987) (Vol. 22, No. 10) *Economic and Political Weekly* <<https://www.jstor.org/stable/4376759>> assessed 21 April 2024.

source of this distress is man's horrible social, economic, and political conditions.

Marx also expected these qualities in a state and society. He believed that atheism and communism are the right ways to achieve human consciousness and realise reality. Therefore, in the Marxist State, the State should try to enlighten individual and encourage atheism.¹²

American Secularism- Secularism in American Politics is considered the ideal secularism model by most democracies. The First Amendment to the US Constitution in 1991 states, "Congress shall not make laws regarding a religious establishment or prohibiting the free exercise of religion"¹³ It was a result of practical necessity. The country had abundant natural resources and a lack of labour. In those circumstances, separation of state and church was necessary to accommodate immigrants from all backgrounds to give an impetus to economic growth. Another important reason was that the early British settlers were already rebels, who did not accept the traditional hierarchies of the Roman Catholic system. The First Amendment was not intended to secularise America, but to protect against any power snatch by any national church. It, however, did not extend to States and until the late 1830s, there were state religious establishments.¹⁴

¹² *ibid.*

¹³ United States of America: Constitution, 1787, First Amendment.

¹⁴ Wilfred McClay, "Religion and Secularism: The American Experience" (Pew Research Center, 3 December

In current times, American society is characterised by a growing population of non-religious people- people who do not belong to a religious body, who do not participate in religion, who consider religion as unimportant in their lives, and who do not believe in God or the divine origins of Scriptures. However, scholars believe that this can be termed as non-religiosity rather than secularism, as the latter denoted affirmative commitment to secular beliefs and identities.¹⁵ This attitude towards religion can also be seen in government institutions.

French Secularism- The French model of secularism can be explained in one line as “keep your religion to yourself”. It is largely tilted towards atheism, where religion is treated as non-existent in public areas. It would be considered extreme by many due to practices like banning religious symbols like hijab, turban, cross, etc at schools and other public spaces. However, the French model not only advocates for freedom of religion but freedom from it.¹⁶ The French *laïcité* is a strict model of separation between the state and church, characterised by complete removal of religious values from the public sphere and their replacement with secular values such as equality, liberty, and

2007).<<https://www.pewresearch.org/religion/2007/12/03/religion-and-secularism-the-american-experience/>> assessed 25 April 2024.

¹⁵ Smidt Corwin E., Kellstedt Lyman A., Guth James L. “The Role of Religion in American Politics: Explanatory Theories and Associated Analytical and Measurement Issues.” (2009; online edn, Oxford Academic, 2010) assessed 22 March 2024.

¹⁶ 'French secularism explained' (11 November 2020), France 24 <https://www.france24.com/en/live-news/20201111-french-secularism-explained> accessed 25 April 2024.

fraternity¹⁷. It is the result of violent struggles with the church. It protects private religious beliefs, but at the same time, keeps public affairs free from religious influence.

Indonesia and Bangladesh- In countries like Indonesia and Bangladesh, secularism takes a different shape, where religion plays an important part in the policies. Indonesia is the largest Muslim-majority state in the world. According to its constitution, the state is a democratic republic and a unitary state. The constitution states that the State believes in 'One and Only God' and guarantees freedom of worship as per one's own religion to all.¹⁸ The State officially establishes the doctrine of 'Pancasila', literally meaning 5 principles. Those are belief in the one high god, humanitarianism, Indonesian unity, democracy, and social justice. Indonesian secularism is about the unity of God and submission to it. However, despite commitment to secular principles, Sharia is applied to many areas and parts of the country. Citizens are also required to keep an identity card, indicating religious affiliation to one of the 6 recognized religions. The State looks down upon atheism and questioning the status of God is a crime. Indonesian politics is deeply impacted by Islamic values and teachings.

¹⁷ Radhika Santhanam, 'Understanding *laïcité*: the French principle of secularism' (5 September 2023), The Hindu <https://www.thehindu.com/specials/text-and-context/understanding-la%C3%AFcit%C3%A9-the-french-principle-of-secularism/article67270106.ece> assessed 25 April 2024.

¹⁸ Constitution of the Republic of Indonesia 1945, art 29.

Russian Secularism- Russia follows the Marxian secularism, tilted towards atheism. Unlike the West, where secularisation is a product of individualism, Russian secularism is based on collectivism. It means the subordination of all institutions including religion to the State, which ultimately results in them becoming a part of State structure.¹⁹ Their Constitution confirms the separation of church and State.²⁰ However, there is a recent trend of desecularization. In 2020, the word ‘god’ was included in the Constitution. Church is used to further the social policy goals of the state and even to propagate the State’s war propaganda.²¹ The population itself is not very active in religious practices and church activities. The State policy in soviet times was highly anti-religious, and even restricted young people from participating in religion. However, the church was subordinate to the State and was used to further the State’s propaganda. Post-Soviet, the Russian State became less anti-religious. The current situation in Russia is two-faceted. On one hand, the church is strictly restricted from public spheres, and on the other hand, it is subordinate to the State, works according to the needs of the authorities and supports State.²²

¹⁹ Marcin Skladanowski, Cezary Smuniewski, “The Secularism of Putin’s Russia and Patriarch Kirill’s Church: The Russian Model of State–Church Relations and Its Social Reception” [2023] Religions <<https://www.mdpi.com/2077-1444/14/1/119#:~:text=According%20to%20its%20constitution%2C%20the,as%20compulsory%20on%20all%20citizens>> assessed 26 April 2024.

²⁰ Constitution of the Russian Federation (Konstitutsiya Rossiyskoy Federatsii) 2020, art 13-14.

²¹ *ibid.*

²² *ibid.*

English Secularism- In the United Kingdom, just like the French model, secularism is characterised by the separation of church and state and freedom of religion. However, the religion is not excluded from the public sphere. The monarchy, which represents the country officially follows Protestant Christianity and king is regarded as the ‘Defender of the Faith’. The coronation of the king is a religious affair. However, such acts are merely ceremonial and far from the public life. The population of England is becoming increasingly non-religious. In education, schools can be affiliated from any religion and can carry out religious teachings. Parents and students have the option to opt out of such activities.²³

The meaning of secularism is ever-changing. However, there has to be a common thread that binds all the developments to some common principles. These common principles are needed to ensure an individual’s freedom to practice the religion of his choice. In any case, secularism should not be used to rip people off their faith or oppress a particular faith.

X. THE CONSTITUTIONAL VISION BEHIND THE INDIAN MODEL OF SECULARISM

²³ Michael Kelly, “Are French and English secularist traditions that far apart?” (The Conversation, 23 December 2023) <<https://theconversation.com/are-french-and-english-secularist-traditions-that-far-apart-219358>> assessed 20 April 2024.

The Constitution of India has been inherently secular since its inception. However, in the Constituent Assembly, the proposition for inclusion of the word “secular” was rejected. The irony is noteworthy, considering many prominent figures including Nehru, Ambedkar, Patel, and Radhakrishnan were staunch supporters of secularism. To understand the constitutional vision, the important question is whether the Constitution was framed with an underlying assumption of secularism.

Well before the discussions on the Constitution of India began, during the partition of India and Pakistan, a significant number of Muslims chose to remain in India. The partition occurred along religious lines, but it did not result in the formation of a Hindu nation and a Muslim nation. Instead, it created one Islamic state (Pakistan) and one secular state (India), an ideal that encouraged many Muslims and people of other faiths to stay in India. Hasan, in his article “Adjustment and Accommodation: Indian Muslims and Partition”²⁴ writes, “There were still others who were committed to a secular and democratic polity. They were the people who were neither swept by appeals in the name of Islam nor lured by the prospect of improving their material fortunes in the promised land of plenty.” This is further reflected in personal narratives, such as Akhtar’s account of her paternal grandfather, a

²⁴ Mushirul Hasan, “Adjustment and Accommodation: Indian Muslims after Partition” (1990) (Vol. 18, No. 8/9) *Social Scientist* <<https://www.jstor.org/stable/3517342>> assessed 20 September 2024.

staunch Congress supporter with a strong commitment to Nehruvian secularism.²⁵

When a student asked Nehru to spell out what secularism meant in independent India, he answered, “*secular state is one that protects all religions, but does not favour one at the expense of others and does not itself adopt any religion as the state religion*”.²⁶ He was the philosopher of Indian secularism. In the Constituent Assembly debates, he replied to the proposal by saying, “*May I beg with all humility those gentlemen who use this word often, to consult some dictionary before they use it? It is brought in at every conceivable step and at every conceivable stage.*”²⁷

On 15 November 1948, Prof. K.T. Shah introduced an amendment to incorporate the words “secular, federal, socialist” in Clause 1 of Article 1 of the Constitution. He believed that the inclusion of the specific word was needed as the nation was still struggling with the trauma of partition and communal tensions. He was eager to avoid such internal conflicts in the future. However, his speech majorly focused on the need to incorporate the word ‘socialist’. Responding to this, Dr Ambedkar said that the policy of the State and the organization of

²⁵ Adrija Roychowdhury “Why a majority of Muslims opposed Jinnah’s idea of Partition and stayed on in India” (New Delhi, August 15, 2022) assessed 20 September 2024.

²⁶ National Council for Educational Research and Training, *Political Theory class 11*(Reprint November 2021, 2006)116.

²⁷ Constituent Assembly of India, Volume IX, 12th August 1949, *speech by Pandit Jawaharlal Nehru*.

society in its social and economic aspects should be determined by the people themselves, in accordance with the prevailing time and circumstances.²⁸ The freedom of determination here was not to choose between secularism and a non-secular state but to choose what form of it would suit the prevailing circumstances. In the same debate, S. Radhakrishnan stated “*We aim to build a unified democratic State. That is why we have provided for fundamental rights, we allow no discrimination in public employment, we say, it is a secular State*”.²⁹ Another member of the Constituent Assembly, Mr. H.V. Kamath, emphasized that while a state should not align itself with any particular religion, this does not imply that the state should be anti-religious or devoid of religion. He clarified that a secular state, in his view, is neither godless nor hostile to religion.³⁰

After the Constituent Assembly debates, two key views on secularism emerged: Gandhi's and Nehru's. Gandhi's approach was rooted in the concept of '*Sarva Dharma Sambhav*,' meaning equal respect for all religions. He believed that religion could not be separated from public life and emphasized the importance of respecting all faiths, alongside

²⁸ Jayita Mukhopadhyay ‘Ambedkar’s vision of a secular Constitution’ (The Statesman, 6 April 2018) <<https://www.thestatesman.com/opinion/ambedkars-vision-secular-constitution-1502618002.html>> accessed 28 February 2024.

²⁹ Anand Ranganathan, ‘The Great Secularism Debate’ (NewsLaundry, 30 January 2015) <<https://www.newsLaundry.com/2015/01/30/the-great-secularism-debate>> accessed 28 February 2024.

³⁰ M.V Pylee, *India’s Constitution* (2007, S.Chand Publication).

his own.³¹ Nehru, however, followed the principle of '*Dharma Nirpeksha*,' where religion was a private matter and should not influence public life. After independence, a new version of secularism developed, combining elements of both Gandhi's and Nehru's perspectives. Independent India embraced three main ideas:

- i. Freedom to practice any religion,
- ii. The state's neutrality towards religion,
- iii. Equal respect for all religions.

The first two reflect the Western idea of secularism, while the third is a unique feature of Indian secularism. Justice P.B. Gajendragadkar, the former Chief Justice of India, remarked that the state does not align with any specific religion but is not anti-religious or irreligious, offering equal freedom to all. He also pointed out that the omission of the word 'secular' from the Constitution was deliberate, not accidental.³²

Despite the secular beliefs held by many, the word 'secular' was ultimately left out for a simple reason. When the Constitution of India was being drafted, secularism was primarily understood in its Western context. Although Indian secularism, which takes into account India's

³¹ Arun Kumar Singh, "Myth and Reality of Secularism in India: An Analysis" (2021) (Vol XIX, No. 1) *The NEHU Journal* <Pages_from_Nehu_Journal_Vol._XIX_Jan-June_2021-6_Arun_Singh.pdf> assessed 20 September 2024.

³² Gurmukh Nihal Singh, *Land Marks in Indian Constitutional and National Development* (1952, Atma Ram & Sons).

history and its unique needs was philosophised by the founding fathers, for them, it was more of an aspiration than a reality. During that era, the social practices, in almost all religions needed State intervention to free people from religious ill-practises and caste structures. Ambedkar believed that a constitutional intervention is necessary to ensure equality and justice for those who have been denied both for centuries. Therefore, State intervention in religion was crucial and the inclusion of the word would have restricted the Constitution's powers to bring much-needed social changes such as the abolition of untouchability, and special status to Scheduled Castes and Scheduled Tribes.

The label was also avoided because the dictionary meaning did not align with the vision they had. Many legislators were confused as to what secularism was. Today the jurisprudence of the term 'secularism' and its implications in the Indian context has evolved significantly. The original interpretation, which solely emphasized the State's neutrality in religious affairs and the separation of religion from State matters, would have been insufficient and could have led to confusion and chaos in the courts during that time. However, contemporary jurisprudence has broadened the understanding of secularism to accommodate India's diverse religious landscape and constitutional aspirations.

A close examination of the Constituent Assembly debates makes it very clear that the constitutional vision has always been to establish a State free from majority influence, religious favouritism, and ensuring every individual's fundamental right to religious practice. Constitution's

Articles 14, 15, 16(1), 16(2), 25, 26, 28, 29, 30, 51A, bear witness to the fact. Ambedkar argued for the separation of religion from study and research, yet religious study and propagation were included as a fundamental right. While this may seem contradictory, the framers aimed to create a system that allows citizens the freedom to practice their faith while ensuring that no religion influences policymaking in a discriminatory manner.

The iconic judgement of *Kesavananda Bharati*³³ was delivered even before the word ‘secular’ was added to the preamble. In this judgement, the Supreme Court upheld the secular character of the Constitution. The court observed that secularism is one of the essential features of the constitution and cannot be amended. The court held, “The secular character of the State according to which the State shall not discriminate against any citizen on the ground of religion only cannot likewise be done away with.”³⁴

XI. THE 42ND AMENDMENT

The 42nd Amendment, which is still a hot topic of debate, incorporated the words “secular” and “socialist” in the preamble. The change was enacted during Prime Minister Indra Gandhi’s tenure in 1976. Even though the Constitution has always been secular, the explicit mention

³³ *Kesavananda Bharati Sripadagalvaru and Ors v State of Kerala and Anr* (1973) 4 SCC 225.

³⁴ *ibid.*

of the word did not sit right with many, especially the BJP leaders. They have many a times expressed their discontent with the amendment and often ignored that it even exists. Probably because the label does not align with their focus on appealing the majority. This discontent was visible from the very beginning when in 2015, the Information and Broadcasting Ministry's advertisement on Republic Day carried the old preamble, not containing secular, was circulated in newspapers.³⁵ And also in their gift of a copy of the Constitution with the old preamble to the MPs in the first session in the new parliament building.³⁶ Not to forget the plea by BJP leader, Dr Subramanian Swamy, challenging the inclusion of the word.

A. Judicial Interpretations

To further understand the constitutional vision, it is essential to examine the judicial understanding of the concept and perspectives of eminent jurists as Judiciary is believed to be the custodian of our Constitution. The secular character of the Constitution has undoubtedly been upheld by countless judgments. It was held to be an essential

³⁵ Arunabh Saikia, "I&B's Secular Omission", (Newslaundry, 27 January 2015) <<https://www.newslaundry.com/2015/01/27/ibs-secular-omission/>> assessed on 28 February 2024.

³⁶ Purav Thakur, "Row over 'secular' and 'socialist': How and why were the words added to the Preamble" (India Today, 20 September, 2023) <<https://www.indiatoday.in/india/story/how-and-why-were-socialist-and-secular-added-to-preamble-indira-gandhi-emergency-amendment-2438268-2023-09-20>> assessed on 28 January 2024.

feature of the Constitution in Kesavananda Bharati case³⁷. Chief Justice Sikri said that the Constitution's secular character was its essence. Justice Shelatand and Justice Grover stated that the Constitution's secular and federal nature were the main ingredients of the basic structure. Justice Jaganmohan Reddy stated that “Liberty of thought, expression, belief, faith, and worship could not be amended at any cost because they were part of the basic features of the Constitution.”³⁸

Although the term was included in the constitution only in 1976 through the 42nd constitutional amendment, it has been freely used by the judges, judicially as well as extrajudicially, while explaining the nature and character of our constitution even before 1976.³⁹ In 1974, the Supreme Court said "There is no mysticism in the secular character of the state, secularism is neither anti-God nor pro-God, it treats alike the devout, the agnostic and the atheist, it eliminates God from the matters of state and ensures that no one shall be discriminated against on the ground of religion".⁴⁰ Justice Beg had said, “*Our constitution makers certainly intended to set up a secular Democratic Republic, the building spirit of which is summed up by the objectives forth in the preamble to the constitution*”.⁴¹

³⁷ Kesavananda Bharati Sripadagalvaru and Ors v State of Kerala and Anr (1973) 4 SCC 225.

³⁸ Arun Kumar Singh (n 31).

³⁹ Sanghamitra Padhy. “Secularism and Justice: A Review of Indian Supreme Court Judgments.” Economic and Political Weekly 39, (2004), 5027–32.

⁴⁰ Ahmedabad St. Xavier's College v State of Gujrat A.I.R. 1974 SC 1389.

⁴¹ Jiyamddin Bukhari v Mehra case A.J.R. 1975.

In the recent historic judgement in the *S.R. Bommai v Union of India*, the Supreme Court has further clarified that secularism is a fundamental law and basic structure of the Indian political system, essential for "man's excellence with material and moral prosperity and political justice".⁴² The Court ruled that the term 'secular,' added to the Preamble through the 42nd Amendment, reinforces the fundamental rights outlined in Articles 25-28. It further emphasized that the neutrality of the State would be compromised if religion is used for political purposes or if any political party leverages religion to pursue political objectives. The Court stressed that religion and politics should remain separate. While a secular state refrains from interfering in religious matters, this does not imply that the State has no role in religious affairs at all. The State can enact laws to regulate the secular aspects of religious institutions.

Indian secularism, as commonly understood, aims to find a balanced relationship between the legitimate roles of religion and the expanding functions of the state. This allows State involvement in overseeing secular aspects of religious institutions like temples and mosques to promote social welfare. This interpretation emphasizes religious tolerance and equal respect for all faiths, rather than advocating for strict separation of State and religion. It upholds freedom of religion and conscience, including for those with no religious affiliation, with limitations based on public order, health, and morality.

⁴² *S.R. Bommai v Union of India*, A.I.R. Dec 1994.

Secularism is nowhere defined in the Constitution of India. However, a contextual understanding of the judicial implications will help understand its meaning. The judiciary not only differentiates the religious from the secular but also acts as a bulwark against the encroachment of the state on the freedom of religion through its power of judicial review.⁴³ The judiciary, in its interpretation, has developed the doctrine of the essentiality of religious practices as the foundation for safeguarding the freedoms of conscience, as well as the free profession, practice, and propagation of religion, along with the freedom to manage religious affairs.

Further, in *Sardar Taheruddin Syedna Sahib v. State of Bombay*⁴⁴, the apex court held that Articles 25 & 26 serve to emphasize the secular nature of the Indian democracy, which the founding fathers considered to be the very basis of the Constitution. In *Aruna Roy case*⁴⁵, Supreme Court of India held that the essence of secularism is non-discrimination of people by the State on the basis of religious differences.

Recently in a lecture, former Supreme Court judge Justice K.M. Joseph stated, “*Secularism is absolutely indispensable in a democracy. If secularism is going to be removed by any government from the Preamble to the Constitution, under the impression that by merely removing the word ‘secularism’, you are removing the features of*

⁴³ Sanghamitra Padhy. “Secularism and Justice: A Review of Indian Supreme Court Judgments.” *Economic and Political Weekly* 39, (2004), 5027–32.

⁴⁴ *Sardar Taheruddin Syedna Sahib v. State of Bombay* AIR 1962 SC 853.

⁴⁵ *Aruna Roy case v Union of India* (2002) & SSC 368.

secularism...even if it is removed, it will sound the death knell of democracy”.⁴⁶ He explained the need to keep religion as a private affair that should not interfere in laws of the country. He further stated that secularism is a facet of equality, and both are just two faces of the same coin.

The debate on secularism and the need to balance it with religious freedom has come up before the apex court several times. The Supreme Court in *Subhash Desai v. Sharad J. Rao*⁴⁷ upheld the validity of Section 123(3) and (3A) of the Representation of the People Act which restricts candidates from making election appeals based on religion or using religion to incite enmity or hatred among different classes of Indian citizens, whether directly or indirectly through their representatives. It was held as not violating the freedom of religion under Article 25(1). It furthers the principles of democracy and secularism as the representatives should be elected based on their policies and not their religious affiliations. However, the Supreme Court has also been criticised many times for overstepping the fine line between religious freedoms and individual rights. One such instance was when ‘Hindutva’ was regarded as a cultural identity. A divergent perspective on religion emerged in three significant cases: *Dr. Ramesh Yashwant Prabhoo v. Prabhakar Kashinath Kunte*⁴⁸, *Manohar Joshi v.*

⁴⁶ ‘Removing Secularism Will Sound the Death Knell of Democracy’: Former SC Judge Justice K.M. Joseph, (The Wire, 23 February 2023) assessed on 28 February 2024.

⁴⁷ *Subhash Desai v Sharad J. Rao* (1994) Suppl. SCC (2) 446.

⁴⁸ *Dr. Ramesh Yashwant Prabhoo v Prabhakar Kashinath Kunte* (1996) 1 SCC 130.

Nitin Bhaurao Patel⁴⁹, and Prof. Ramchandra B. Kapse v. Haribansh Ramakbal Singh⁵⁰. In these rulings, the Supreme Court concluded that the term ‘Hindutva’ reflects a broader cultural identity and way of life for the Indian people, rather than being limited to followers of the Hindu religion.

However, this interpretation was criticized by former Supreme Court judge V.M. Tarkunde, who remarked that these decisions undermine the principles of secular democracy and contravene both the letter and spirit of Section 123(3) of the Representation of the People Act, 1951. He expressed hope that a larger Supreme Court bench would, in the future, revisit these rulings and rectify the significant damage caused.⁵¹ Religious freedom and secularism grant individuals the autonomy to determine for themselves what constitutes religious practice. Practices like meditation or yoga, for instance, may be seen as religious by some due to elements like the use of 'om' and other spiritual connotations, while others may view them purely as wellness practices. It is not the role of the courts to impose their interpretations on citizens. Instead, courts should protect against encroachments on religious freedom and individual liberty—whether from other religions, as in cases of forced conversions, from one’s own religion, as in instances of excommunication, or from the state itself.

⁴⁹ Manohar Joshi v Nitin Bhaurao Patel (1996) 1SCC 169.

⁵⁰ Prof. Ramchandra B. Kapse v Haribansh Ramakbal Singh (1996) 1 SCC 206.

⁵¹ V. M. Tarkunde, “Supreme Court Judgement: a blow to Secular Democracy” (February 1996) PUCL Bulletin.

XII. SECULARISM AND DEMOCRACY

Democracy encompasses more than just a government elected by the people. It is a bundle of rights like equality, freedom of thought, religion, expression, justice, liberty, etc which exist inclusive of each other. The core principle of democracy is that every individual should have the same opportunity to influence the decisions that affect people in society. However, merely providing an opportunity for participation in decision-making is insufficient, it must also be fair. For instance, consider a scenario where five individuals are asked to vote on the installation of ramps in an organization to facilitate the movement of differently-abled people, with only one of them being differently abled. Some may perceive this as a democratic decision since everyone got a vote. However, this overlooks the fact that the majority opinion is putting the minority in a disadvantageous position. In practical terms, if we were to apply this approach universally, India would never have been able to advance transgender rights. Hence, we talk about equity and not equality.

Secularism plays a major role in ensuring individual freedom and social harmony among diverse social groups. The separation of religion from government seeks to prevent policies from being influenced by religious principles, ensuring they are based on reason and benefit all citizens. For multiple religions to coexist peacefully, it is crucial that no one religion dominates another, regardless of its population. A

secular state upholds equal rights for everyone, regardless of their religious beliefs, and provides a neutral platform for conflict resolution. John Stuart Mill emphasized the importance of liberty in a democratic society.⁵² This liberty extends beyond mere speech and movement; it encompasses faith and beliefs as well. In a state where certain groups live in constant fear because of state favouritism, this liberty is sacrificed. Hence, democracy in the true sense is also sacrificed. According to Mill, individuals should be free to act however they wish, as long as their actions do not harm others.⁵³ This principle should be followed while striking a balance between individual rights and social harmony as it is the very foundation of democracy.

Democracy does not exist independently of other fundamental human rights. That is why, the EIU democracy index ranks the countries based on 5 parameters, namely, electoral process and pluralism, civil liberties, the functioning of government, political participation, and political culture.⁵⁴ Therefore, a democratic State cannot exist without being secular.

Furthermore, the principle of 'Nemo Judex In Causa Sua' holds that a judge must be impartial and unbiased while deciding any dispute.

⁵² John Stuart Mill, *On Liberty*. (Dover Publications, 2002).

⁵³ *ibid*.

⁵⁴ Rajesh Jha, 'Bangladesh moves one position up on Democracy Index' (DD News, 11 february 2022) <<https://ddnews.gov.in/international/bangladesh-moves-one-position-democracy-index#:~:text=The%20EIU%20democracy%20index%20is,political%20participation%20and%20political%20culture.>> assessed on 28 February 2024.

Applying the same principle in administration, it can be argued that the legislators must also be impartial and unbiased so that they consider the interests of all individuals, irrespective of religion. Here, the idea of a secular leader does not mean that the leader should be religion-less or an atheist. Instead, it emphasizes that those in positions of authority must respect all religions equally, make decisions objectively, and protect minorities from the majority rule to promote equity.

However, in contemporary times, the instances of the majority pushing the minority towards unfair disadvantage have increased. Swaminathan Aiyar, an economist and journalist writes, “secular India appears on its way to becoming a Hindu state”.⁵⁵ His remarks come after Prime Minister Narendra Modi inaugurated the Ram temple. This event maliciously threatened democracy, where a communal mob demolishes a historically significant minority institution, thousands of people lose their lives and two decades later the Prime Minister fulfils the wishes of the mob, encouraging oppression and theocracy. Prime Minister Modi in his inaugural address said, “the rule of Ram is reestablished”.

The reaffirmation of majority rule is pervasively evident. In recent years, major changes have been done in the history books, removing

⁵⁵ Swaminathan S. Anklesaria Aiyar, ‘India is still an officially secular nation, but maybe not for long’ (Nikkei Asia, 29 January, 2024) <<https://asia.nikkei.com/Opinion/India-is-still-an-officially-secular-nation-but-maybe-not-for-long>> assessed 28 February 2024.

part of Mughal history with Hindu mythology⁵⁶, science books now state Kanada and Bhardwaj as the discoverer of atoms and father of aviation, respectively.⁵⁷ Not only new textbooks, we now have new names for places that connote a relation to the minority; Allahabad, Faizabad, Feroz Shah Kotla Stadium, Mughalsarai Junction, are now Prayagraj, Ayodhya, Arun Jaitley Stadium, Deen Dayal Upadhyay Railway station, respectively. These are just few examples of how a government that doesn't believe in secularism disregards the interests and rights of its minorities. This not only impacts secularism but democracy, equality, pluralism, and freedom of expression.

XIII. CONCLUSION

India, before it incorporated 'secular' in its preamble, laid down 'fraternity' and 'equality' as the guiding light for the Constitution and the citizens. Secularism is just an extended version of fraternity and equality. As Justice Joseph said, *"If you treat all religions equally, that is secularism. You are fair, you do not bias or patronise."*⁵⁸ The Constitution has inherently maintained a secular character; the addition of the word to the preamble simply reaffirms this principle. Ultimately,

⁵⁶ Snigdendu Bhattacharya, "How RSS textbooks are reshaping Indian history and science under Modi" (Aljazeera, 19 Feb 2024) <<https://www.aljazeera.com/news/2024/2/19/how-rss-textbooks-are-reshaping-indian-history-and-science-under-modi>> assessed 29 February 2024.

⁵⁷ *ibid.*

⁵⁸ 'Removing Secularism Will Sound the Death Knell of Democracy': Former SC Judge Justice K.M. Joseph, (The Wire, 23 February 2023) assessed on 28 February 2024.

‘secularism’ is merely a label. If one truly believes in secular values, a label shouldn’t be a concern. However, it is equally important that the label is not merely symbolic; rather, both the people and the laws must genuinely uphold secular principles in their hearts and actions for the state to be a ‘secular democratic’ one in its true form.

Furthermore, it should not be a tool of the political parties to please minorities and gain votes. Achieving a secular state is more than just false promises of equality and minority pleasing. It involves inter-religion and intra-religion tolerance. It involves an unbiased administration and strict actions against discriminatory behaviour. It involves celebrating more than just Hindu festivals in schools. Secularism is as simple as ‘be and let be’. Unity is diversity is not just a slogan, it’s a constant effort by every individual and upholding it is a collective duty.⁵⁹

⁵⁹ *ibid.*