



Himachal Pradesh National Law University, Shimla (India)

*HPNLU*  
Law Journal

---

Volume IV

ISSN: 2582-8533

April 2023-March 2024

---

Volume IV (2023)

**ASPECTS OF SECULARISM UNDER INDIAN CONSTITUTION: A  
Critical Perspective**

*Harsha Sharma & Srikant Singh*

This article can be downloaded from: <https://www.hpnlu.ac.in/journal-level-3.aspx?ref-id=45>

---

Recommended Citation:

Harsha Sharma & Srikant Singh, *Aspects of Secularism Under Indian Constitution: A Critical Perspective* IV HPNLU. L. J. 85 (2023).

This Article is published and brought to you for free and open access by Himachal Pradesh National Law University, Shimla. For more information, please contact [lawjournal.editor@hpnlu.ac.in](mailto:lawjournal.editor@hpnlu.ac.in)

## Contents

Volume IV	ISSN: 2582-8533	April 2023-March 2024
-----------	-----------------	-----------------------

Articles	Page
1. LAW AS SOCIAL RULES: A Descriptive Evaluation of Hart's <i>Concept of Law</i> for Contemporary Teaching <i>Chanchal Kumar Singh, Mritunjay Kumar</i>	1
2. FROM WHANGANUI TO GANGA: A Study on Environmental Personhood <i>Naman Kumar Sharma &amp; Priyesh Pathak</i>	36
3. ONLINE MARKETPLACE LIABILITY: Safe Harbour and Fallback Liability in India <i>Ashreet Acharya</i>	50
4. ANTI-DISCRIMINATION LAWS IN INDIA: Political Illusions and Legal Myths <i>Santosh Kumar Sharma</i>	68
5. ASPECTS OF SECULARISM UNDER INDIAN CONSTITUTION: A Critical Perspective <i>Harsha Sharma &amp; Srikant Singh</i>	85
Notes & Comments	
6. THE RESTRICTIVE-LIBERAL DILEMMA: A Comment on <i>XYZ v. The Dean of B.J. Government Medical College</i> <i>Parul Bhalla</i>	101
7. CRYPTO-TECHNOLOGY MEETS REAL ESTATE: Navigating Legal Frontiers of Real Estate Tokenization in India <i>Srijan Tripathi</i>	118
8. ARBITER OF RESILIENCE: The Crossroads of Global Insolvency <i>Megha Bhartiya &amp; Sneha Bharti</i>	134
9. DHARMOPRUDENCE, NATURE OF LAW & MORALITY <i>Aastha Naresh Kohli &amp; Dhananjay Singh</i>	147
10. THE GLOBAL SHIFT: How Cross-Cultural Mediation is Transforming Conflict Resolution <i>Anisha Sharma</i>	164
11. PROMOTING 'AI' INCLUSIVITY IN INDIA: A Progressive Legal Model to Mitigate Bias <i>Titiksha Narkhede</i>	193

# ASPECTS OF SECULARISM UNDER INDIAN CONSTITUTION: A Critical Perspective

Harsha Sharma\* & Srikant Singh\*\*

[Abstract: Secularism, an abstract notion is subjective in perception and resides in the eyes of beholder. While for some, it is manifestation of equidistant religious policy of the state, for others, it is non-interventionist policy ought to be practiced by the state, drawing an imaginary line of exclusion, preventing the entitlement's trespass. An extension of the notion could be that for some, it is manifestation of one's entitlement, while for others it is a measure to dust communal riots. The question therefore arises is as to What is most pragmatic interpretation of Secularism? and What is the jurisprudential essence attached to Secularism? While the Indian diversity rests on the bedrock of 'Secularism'. The interpretation of the word 'Secular' being constructed as the antithesis of 'Religion' has led to the deterioration of the ideal's sanctity. The Indian State is often criticized due to the same being politicized by the ruling as well as the opposition parties, igniting scuffle amongst the populace for the sake of vote banks. This paper discusses the adoption of Indian secularism, various facets of secularism confining itself to the boundaries of India, the rise of scepticism in Secularism and the role of Judiciary and the prospect of secularism in India].

## I

### 'Secular', 'Secularist', 'Secularism'

The interpretation of secularism is subjective and lies in the eyes of the beholder. While the ideal originated as a means to disentangle the Church from Governmental affairs, reflecting the non-interventionist ethos in Europe,<sup>1</sup> it has since been moulded to suit one's shared objectives, shifting from one connotation to another with alarming alacrity. With shared objectives of individuals, unanimity is a probable consequence. Similarly, when united by a common faith, the principles of magnetic polarity become moot; alike

---

\* The author is Assistant Professor of Law at Asian Law College. Email: [harsha.sharma99901@gmail.com](mailto:harsha.sharma99901@gmail.com)

\*\* Adv. Srikant Singh, Junior Legal Associate at Swarnim Partners and Associates, New Delhi. Email: [singhsrikantoo758@gmail.com](mailto:singhsrikantoo758@gmail.com)

<sup>1</sup> V.M. Tarkunde, *Secularism and the Indian Constitution*, IIC QUARTERLY 143, 146 (1995).

coalesce, forming a cluster where opinions are shared and reinforced. This shared understanding can engender prejudices against outsiders. It is fallacious to assert the non-existence of prejudice. For instance, upon reading a book, one encounters an author's perspective and becomes so enthralled as to assimilate the same perception, allowing the actions of one to be governed by those perceptions. With each subsequent author, a new opinion is forged, for humans are inherently susceptible to being influenced, they gravitate towards the scenario that offers camaraderie.

An analogy can be drawn for the Indian orchard- where people share varied religious beliefs and live under the same sun, and the same soil, the co-existence is questioned due to prejudice that one holds against another. Secularism here becomes the impartial gardener to shared accommodation, rather than viewing it as a problem, it views it as an opportunity where varied beliefs can lead to a diverse harvest.

While the secular fabric woven in India forms the central pattern of our discussion, we must first unravel the individual threads of 'secular', 'secularist', and 'secularism' to appreciate the intricate design they weave together. The interpretations of 'secular', 'secularist', and 'secularism' are contingent on shared perception and vary with shared objectives. While one faction may construe them as a policy safeguarding entitlements, another might interpret them as the antithesis of religion. Yet another cohort might advocate the progression of society as embodied in secularism.<sup>2</sup> Despite this divergence, the cardinal tenet remains a non-interventionist approach ranging from 'everyone to anyone', in one's private domain.<sup>3</sup>

One may discern the widely acknowledged definitions of the terms. The term 'secular' is elastic though not capable of being precisely defined,<sup>4</sup> denotes dissociation from religious doctrine or dogma. It is an ideal that acknowledges the existence of religious doctrines and a vision that every nation aspires to, for the legitimacy it could gain in its governance when the population is varied.

A 'secularist' is an individual who consciously disregards religious influence and advocates for their exclusion from public discourse and management of state affairs. The inclusion of such religious instruction could trespass on the peaceful profession. The same was preached rigorously by Mahatma Gandhi:

*If I were a dictator, religion and state would be separate. I swear by my religion. I will die for it. But it is my personal affair. The state has nothing to do with it. The state would look after your secular welfare, health, communications, foreign relations, currency and so on, but not your or my religion. That is everybody's personal concern!*

---

<sup>2</sup> S.M.A.W. Chishti, *Secularism in India: An Overview*, IJPS 183 (2004).

<sup>3</sup> Ranbir Singh and Karamvir Singh, *Secularism in India: Challenges and its Future*, IJPS 597 (2008).

<sup>4</sup> *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1 (India).

Conversely, 'secularism' embodies religious tolerance and pluralism while maintaining a judicious allowance for faith-based margins.<sup>5</sup> The inquiry which arises: How can the pillar of tolerance be embedded in the secular fabric?

Let's understand the foundation of this pillar with the help of a fable: in a bustling park, a man strolling, swinging his umbrella grazing the ground carefree. Now imagine that another pedestrian starts walking behind him, now with every swing by the man, the pedestrian's nose becomes the target of the twirling umbrella. Aggrieved by the same, the man halts the umbrella's spirited dance. The man swinging the same perceives the action of the pedestrian impingement on his freedom and insists upon his right to swing as he pleases. The aggrieved man counters the same while acknowledging the liberty of the man, he firmly asserts, '*Your right ends where my nose begins.*'

In the forest of secularism, the risk of clash is a possibility, thereby secularism could be imbibed in individuals only when the rights are relative thereby ensuring a balance between personal freedom and social responsibility. It advocates for a society where there exists no bias towards a particular faith. This not only promotes co-existence but also upholds the right to abstain from religious affiliations altogether.

Such tolerance is the hallmark of secularism as in spirit embedded in the Indian constitution though the manifestation might differ. The Indian experience of secularism since its incorporation has been questioned and perceived with variance in perceptions, but again the beauty of the aspiration lies in its perceptions and experience encountered. As defined by the Honourable Prime Minister of India, Mr. Narendra Modi:

*Secularism is a term interpreted in many different ways by different people. For me, it has always been something very simple - putting India First.'*

With the aspiration of vowing itself to be 'secular,' the exploration must be made to illuminate the chasm between aspiration and its earthly manifestations. In this Chapter the author embarks on an odyssey through the labyrinthine paths of Indian secularism, charting its course through the convoluted sea of time and circumstances.

## II

### The Exegesis of Secularism: The Preamble to the Indian Constitution

The Indian Constitution, in Kelsian nomenclature, is the grundnorm, established upon the foundation of sovereignty vested in 'We the people of India'. The magnum opus serves

---

<sup>5</sup> TK Oomen, *Insiders and Outsiders in India: Primordial Collectivism and Cultural Pluralism in Nation-Building* (1986) available at: INTERNATIONAL SOCIOLOGY <https://journals.sagepub.com/doi/10.1177/026858098600100105> (last visited Jul. 10., 2024).

as a compendium delineating the functions of the state, the relationship between citizens and the state, and the Collective aspirations of the state and the individual aspirations of its people. The axiomatic principle that *'No matter how high you are, the law is always above you'* engenders allegiance to the Constitutional edifice. This actualizes the ideals embodied in the Constitution.

The Preamble as a part of the Indian Constitution,<sup>6</sup> is a preface to the principles embodied in it. It can be divided into trifold: the country-centric division, the people-centric division, and the declaratory division.

The *country-centric* division, encapsulates the vision of the architects of the Indian Constitution, emphasizing the trajectory envisioned for the Country<sup>7</sup> as a 'sovereign, socialist, secular, democratic republic.'

'Secularism' as an ideal and 'secular' as an aspiration is not a novel construct to Indian jurisprudence. Pandit Jawaharlal Nehru stated in a press conference,

*So far India is concerned, we have very clearly stated as government and otherwise that we cannot think of any state which might be called a communal or religious state. We can only think of a secular, non-communal democratic state, in which any individual to whatever religion he may belong, has equal rights and opportunities.*

India avows itself as a '*secular state*,' underpinning this declaration as a product of historical evolution. The Indian interpretation of Secularism is nothing but the idea that the profession of faith is not a state concern but something personal and not meant for public discourse.

The Indian state doesn't use the prefix of any religious association, the testament of which is the preamble, a byproduct of People's sovereignty. The interpretation of this National aspiration is in concordance with the preservation of dignity of the individual, while venerating diversity in religions.

India is a country where communal outbreaks usually flare up, while religion is not always conceived as the nucleus of human conduct, its pervasive influence is widely acknowledged. So, there might be divergence in the practical application of secularism from its theoretical definition to address unique circumstances. Romila Thapar, while decoding the '*Secular Mode for India*', rejects the understanding of equating the religious coexistence to mean '*secular*' she posits that this interpretation emerged largely to counter the Hindu-Muslim Tift and communalism which risked derailing the anti-colonial nationalism. The author in her work argues that secular ideas form distinct mindsets and don't involve any divine intervention. While the aspiration doesn't deny religion, at the same time it doesn't pivot around the same in the functioning of the society. It gives primacy to civil laws, i.e., code developed by men according to their

---

<sup>6</sup> *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala*, (1973) 4 S.C.C. 225 (India).

<sup>7</sup> *I. C. Golaknath and Ors v. State of Punjab and Anr.*, (1967) 2 S.C.R. 762 (India).

needs, and therefore doesn't require divine appeal or sanction for change. In such a way it offers release if religious laws become oppressive.<sup>8</sup> However, when closely observed in conclusion there is the adoption of a hermeneutical approach which fosters the harmonious co-existence of varied beliefs within a secular framework of the state.

The *people-centric* division embodies the aspirations of citizens, who enter into a bargain, relinquishing their absolute rights in return for relative rights. Their societal ideal under the Preamble of the Indian Constitution is a brew of 'justice, liberty, equality, and fraternity', as its essential ingredients; the absence of any element would render the concoction incomplete. The edifice of secularism stands at the intersection of these ideals.

Justice as outlined under the Preamble encompasses the social, political, and economic landscape. Political Justice forms the foundation of popular democracy in India. It manifests the ability of citizens to constitute a government and choose governing policies. The principle is enshrined under Article 325, which mandates one general electoral roll for every territorial constituency for election to either House of the Parliament or state legislatures and whilst the preparation for the same, no person shall be excluded from the roll on the grounds only of '*religion, race, caste, sex or any of them.*' Elections on communal lines are held to be unconstitutional.<sup>9</sup> Further, the representation of an appeal for a vote bank cannot be done on the lines of religion, race, caste, or factors of like nature that act as a persuasive force in a candidate election either positively or negatively.<sup>10</sup>

The implementation of social and economic justice in India on lines of secularism, is manifested through its affirmative policy of reservation. While Articles 15 and 16 explicitly delineate reservations for Scheduled Castes(SCs), Scheduled Tribes(STs), and Other Backward Classes(OBCs) without stipulating religion-based quotas, religious minorities who fall within the ambit of socially and educationally backward groups can be treated under the group regardless of their religious identity.<sup>11</sup> In the matter of *T. Muralidhar Rao v. State of Andhra Pradesh*,<sup>12</sup> the Andhra Pradesh High Court opined that the identification of minorities based on caste, community, or even a religious group is the role of the executive whereby judiciary takes a step back, the only requisite is the proof to substantiate the backwardness to offer benefits of reservation under Articles 15(4) and 16(4).

Several committees and executive orders at the national level have identified religious-based quotas for minorities based on their backwardness. In 2006, the Committee spearheaded by J. Rajinder Sachar opined that the backwardness of the Muslim

<sup>8</sup> Romila Thapar, *The Secular Mode for India* 41 SOC. SCI. (2013).

<sup>9</sup> *Nain Sukh Das and Anr v. The State of Uttar Pradesh and Ors*, A.I.R. 1953 S.C. 384 (India).

<sup>10</sup> The Representation of the People Act, 1951, S. 123(3).

<sup>11</sup> *Indira Sawhney v. Union of India and Ors*, (1992) Supp. 3 S.C.C. 217 (India).

<sup>12</sup> *T. Muralidhar Rao v. State of Andhra Pradesh*, (2004) S.C.C. Online A.P. 717 (India).

community can be equated with SC's, ST's, and Non-Muslim OBCs. In 2007, the J. Ranganath Misra Committee advocated for a 15 percent reservation. Within which 10 percent was opined to be allocated to Muslims. The Government of India vide an executive order in 2012, carved out 4.5 percent reservation within the 27 percent existing reservation in the OBC quota.

At the state level, the practice of such inclusion of religious minorities within the framework of reservation policy has been witnessed in Kerala, where the Muslim population comprising around 22 percent of the state's populace was subsumed within the OBC category.<sup>13</sup> Similarly, Tamil Nadu, in 2007, based on the recommendation made by the 2<sup>nd</sup> Backward Classes Commission, delineated 3.5 percent reservation to the sub-category of Muslims within the 30 percent OBC quota, the Christian denominations were also offered reservations, however the same was rescinded on the behest of the Christian Community itself.<sup>14</sup> In Andhra Pradesh Backward Classes Commission identified the backwardness of Muslims in 1994, culminating in a 5 percent quota in 2004. However, the same was struck down on the grounds of procedural irregularities by the High Court, the fortune of the 2007 enactment was the same which rendered reservations to fourteen castes within the Muslim community with occupational parallels to castes in Hindus. In 2014, the Telangana government proposed 12 percent reservation for OBC Muslims, exceeding the 50 percent reservation ceiling, the same was therefore, referred to the Central government to prevent the proposition from being put into judicial scrutiny by inclusion in the 9<sup>th</sup> schedule but the same didn't fructify.<sup>15</sup> However, these endeavours of all the organs of the Indian government ensure the intersection of secularism with justice. Secularism and Justice are two wings of the bird. If one wing is injured, the bird of social harmony cannot soar high in the sky. In the absence of any wing working together, the skies of peace become hazy with storms of resentment and wind of revolt howl.

Liberty is a cornerstone of secular democracies, the idea of personal conviction as an entitlement without the state's intervention is widely acknowledged even by the constitution as fundamental. In this paradigm, the state is precluded from giving instructions to the citizenry on religious lines. The Indian constitution while acknowledging the relative entitlement, guarantees it as a fundamental right, encompassing the '*freedom of conscience and free profession, practice, and propagation of*

---

<sup>13</sup> P. S. Krishnan, *Reservations for Muslims in India: A Step for Inclusive Development* EPW (2012) available at: [h\\_ps://www.jstor.org/stable/pdf/41720040.pdf](https://www.jstor.org/stable/pdf/41720040.pdf) (last visited Jul. 12, 2024).

<sup>14</sup> Amrita Basu, *Whither Democracy, Secularism, and Minority Rights in India?* REV. FAITH INT. AFF. (2018) available at: [h\\_ps://www.tandfonline.com/doi/full/10.1080/15570274.2018.1535035#abstract](https://www.tandfonline.com/doi/full/10.1080/15570274.2018.1535035#abstract) (last visited 12 Jul., 2024).

<sup>15</sup> Srinivasa Rap Apparasu, *Telangana raises Muslim quota to 12% taking state's total quota above SC limit*, HINDUSTAN TIMES (16 April 2017).



religion.’<sup>16</sup> However, it is also imperative to acknowledge that the entitlement is not absolute. There exists a circumscribed domain primarily concerned with ‘public order, morality, and health’ within which the state can legitimately exercise regulatory authority over religious manifestations. In *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*,<sup>17</sup> the Supreme Court emphasized the non-interference of the state in the essential practices of a religious denomination unless such practices are perceived as immoral or contrary to public order. The state in the guise of reform cannot root out the existence or identity of religion. There is a balance between personal freedom and state regulation, based on the cardinal principle that while individual beliefs are inviolable, their expression in a manner could occasionally intersect with broader societal concerns. Moreover, the state is barred from using financial tools on religious professions such as taxes for peaceful enjoyment or promotion.<sup>18</sup>

Religious liberty extends beyond mere enjoyment of entitlement to management of the internal affairs autonomously as enshrined under Article 26 of the Indian Constitution. This rests on the premise that when a boundary of non-interference is established by the state, the onus to regulate the functioning naturally devolves on the community itself. Religion being the fulcrum of communal identity, defines the roles and responsibilities of its members, based on human constructs yet deriving legitimacy from a perceived divine force. The intrusion of the state is frowned upon when the matters relate to essential practices.<sup>19</sup>

Religious freedom in a secular context is characterized by a dual commitment: an unwavering respect for religious autonomy and a judicious application of authority by the state where public welfare is concerned.<sup>20</sup> The commitment ensures that citizens can peacefully enjoy their entitlement and state maintains its secular character.

Equality as the foundation of secular interaction pleads a paradigm of equal and equitable treatment.<sup>21</sup> A citizen should neither face impediments nor reap undue advantage solely based on beliefs.

The Rushdie affair brought to light four distinct conceptions of equal treatment under the law in a multireligious society. The first is the orthodox view that while the state may not persecute or suppress any religion, it remains free to reflect the dominant religion in society. The second notion proposes that all religions should be equally protected by the law, meaning blasphemy against any religion would be banned. The

---

<sup>16</sup> The Constitution of India, 1950, A. 25.

<sup>17</sup> *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*, (1962) Suppl. (2) S.C.R. 496: A.I.R. 1962 S.C. 853 (India).

<sup>18</sup> The Constitution of India 1950, A. 27.

<sup>19</sup> *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (1954) S.C.R. 1005.

<sup>20</sup> *Vaishno Devi Shrine, Board v. State of Jammu and Kashmir*, A.I.R 1997 S.C. 1711(India).

<sup>21</sup> The Constitution of India 1950, A. 14.

third belief advocates for all religions to be left equally unprotected by the law, effectively eliminating any blasphemy laws. The fourth perspective draws a parallel with affirmative action in anti-discrimination legislation, which provides special protection to vulnerable groups. It suggests that a particular religion facing exceptional threat in a given political or social climate could be granted extraordinary measures of protection.<sup>22</sup>

The Indian Constitution while not confirming entirely to Rushdie affair, highlights certain principles to prevent blasphemy, it stipulates the policy of non-discrimination against any citizen only on the grounds of '*religion, race, caste, sex, or place of birth or any of them.*'<sup>23</sup> The negative obligation is not only against the state in terms of the provision inserted but also against private individuals if the place is '*dedicated to the use of the general public*'<sup>24</sup> or private educational institutions whether receiving funds from the state or not, saving the minority education institutions.<sup>25</sup> No citizen can be denied admission to state-aided educational institutions on the grounds of '*religion, race, caste, language, or any*' combination of these factors.<sup>26</sup> Additionally, non-discrimination has to be adhered to in case of state employment on the grounds of '*religion, race, caste, sex, residence or lineage,*' ensuring parity in opportunities.<sup>27</sup> Secular implies the primacy of civil laws, where the identity of citizenship is dominant to any other identity including religion, this identity of citizenship however must be founded on equal entitlements and duties of all.

Fraternity, a foreign historical product, has been deftly assimilated into the Indian ethos, embodying the principle of '*sarva dharma sambhav,*' calling for equanimous respect for all religions. India is lauded as the world's largest democracy accommodating a kaleidoscope of diversity. This diversity manifests in myriad forms of identity, changing from one landscape to another that spans the subcontinent. From linguistic affiliations to caste consensus, from regional ties to religious convictions, the tapestry of identity in India is multifaceted. Accommodating this wide spectrum demands a balance, one that tests the limits of mutual understanding and tolerance. Understanding it with a microcosm of this diversity: a household comprising members of different generations, with distinct opinions and worldviews. The household as a unit despite its heterogeneity finds the means to coexist harmoniously. This domestic analogy can be induced even on the national stage, where diversity in the populace occupy shared territory and should find means to accommodate.

---

<sup>22</sup> Paul Rabinow & Anthony Stavrianakis, *The Rushdie Affair: Truth and Conduct* in DESIGNS ON THE CONTEMPORARY: ANTHROPOLOGICAL TESTS (2014).

<sup>23</sup> The Constitution of India 1950, A. 15(1).

<sup>24</sup> The Constitution of India 1950, A. 15(2)(b).

<sup>25</sup> The Constitution of India 1950, A. 30.

<sup>26</sup> The Constitution of India 1950, A. 29.

<sup>27</sup> The Constitution of India 1950, A. 16.

In social experiments, tolerance is a panacea to stability. However, it is crucial to distinguish between 'bargain' and 'compromise'. Compromise implies the relinquishment of parts of one's entitlement, a bargain suggests the attainment of equilibrium where all parties retain their entitlement while finding a common ground. The equilibrium ensures that personal freedom can be enjoyed without discrimination.

The ideal of fraternity or brotherhood has been enshrined in the Constitution vide the addition of Fundamental duties as part IV A specifically Article 51A(e) which directs the Citizens,

*to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.*<sup>28</sup>

Further, for the preservation of communal harmony and tolerance, the Indian state attaches criminal liability for any act or omission that foment disharmony, ill will, or engenders hatred between religious groups as public transgression. The principle extends to committing an offense in places of worship or assemblies formed for religious celebration.<sup>29</sup>

The idea of Fraternity served in the bowl of secularism is not merely a lofty ideal but a pragmatic necessity for a state as diverse as India. It calls upon the Citizens to rise above their divine and spiritual interests and embrace a broader inclusive identity.

The inquiry that naturally emerges from our discourse is how this country-centric aspiration or people-centric ideals acquire legitimacy, particularly when faced with dissent. What, indeed is the wellspring of their acceptance? Indian secularism is a byproduct of populace consensus, an ideal borne from the collective commitment of a diverse nation.

The declaratory segment of the Preamble serves as the indomitable testament to the collective aspirations. The Indian Constitution is a living document<sup>30</sup> continuously evolving and adapting to societal changes and needs, however, the core principles remain intact, one such feature of the basic structure is the ideal of 'secularism'. Though the inclusion of 'secular' in the preamble was belated, its essence was woven intricately into the fabric of the Indian Constitution since its inception. The legitimacy of the ideal is not derived from an arbitrary decree but the resounding affirmation of 'the people of India.' The preamble isn't a mere ornamental preface, it bequeaths the future generations a manual- the law of the land which is a historical product of the national struggle, illuminating the path towards a more equitable and harmonious future.

---

<sup>28</sup> The Constitution of India 1950, A. 51A(e).

<sup>29</sup> The Bhartiya Nyaya Sanhita, 2023, S. 196.

<sup>30</sup> *Minerva Mills v. Union of India*, (1980) 3 S.C.C. 625.

### III

#### Skeptical Secularism in India

The Indian subcontinent witnessed regimes of rulers with their patronage being a kaleidoscope of religious hues. King Ashoka is seen as an ardent advocate of Buddhism after the battle of Kalinga. While Emperor Jalaluddin Md. Akbar's interfaith alchemy with his marriage with the Hindu princess and removal of cess from pilgrimage shows the reliance on religion for governance. With the arrival of the Britishers and later their imperialization, religion was the pawn used in the Indian board game. The colonizers, adept puppeteers tugged at religious heartstrings, sowing the seed of discord with their divide-and-rule machinations.<sup>31</sup> The Muslim League's birth on religious lines and the subsequent formalization of the separate electorates based on religious affiliation vide the Government of India Act, 1935, established a distinct voting system for Hindu and Muslim Communities. The bitter fruit of the poisonous seed was the partition of British India in 1947.

Post-independence, the architects of the Indian Constitution, like alchemists, sought to transmute the base metal of communal strife into the gold of secular harmony. They etched secularism into the nation's grundnorm, a talisman against the specter of religious conflict.

However, like Ouroboros, it devours its tail, perpetually reinventing itself, secularism in India is reinvented every time a new consensus emerges. The trend has now led to categorizing it as '*skeptical secularism*,' questioning the very essence of ideal that was meant to be embodied in the grundnorm.

Skeptical secularism, now a prevalent discourse, manifested itself earlier in 1985 during the *Shah Bano case*,<sup>32</sup> an obscure legal dispute, that metamorphosed into a cause célèbre when the forefront leaders of the Muslim Community deftly reframed it from a matrimonial issue to a contentious issue of communal autonomy asserting self-governance in religious matters. The Supreme Court welcomed the conflict in the name of Justice and not in the name of God, ruling in the favour of Shah Bano, causing a stir and unfolding a legal drama when capitulating to the demands of the conservatives of Muslim Community, the then Prime Minister Mr. Rajiv Gandhi, led the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, with retroactive effect nullifying the stance of Judiciary in its interpretation of rights under the Constitution making a significant retreat from secular principles.

---

<sup>31</sup> Zeenath Kausar, *Communal Riots in India: Hindu-Muslim Conflict and Resolution*, J. MUSLIM MINOR. AFF. 353 (2006).

<sup>32</sup> *Mohd. Ahmed Khan v. Shah Bano Begum and Ors*, (1985) 2 S.C.C. 556.

The clamor of the Uniform Civil Code (UCC) very apparent recently, remained largely quiescent, even though enshrined as the Directive Principle since its inception. The Shah Bano Case catalyzed its resurgence in the public sphere. The stark disparity in the legislative endeavor is questioned, while a forest has been penned on the evolution of Hindu Personal Laws, codifying the customary practices that passed the litmus test of social needs and changes. Yet the Muslim law remained untouched. To illustrate the same, the Hindu Succession Act which was enacted in 1956 is a testament conferring on Hindu Women the right to inherit ancestral property. With its amendment in 2005, it further revolutionized the rights of women, dismantling the secondary position under Hindu Law. The amendment elevated daughters' status to commensurate with sons, recognizing them as coparceners from birth. This is a paradigm shift entitling the daughters to assume the mantle of Karta. The metamorphosis of Hindu Personal Law threw sharp glares on the state questioning its obligation to extend a similar reformative measure to ameliorate the status of Muslim women based on the principle of equal treatment. While the realization seems rare, a new debate surrounds UCC, the critic of political well-being calls the move of the presently elected government raising their manifesto on UCC a mere move to galvanize the voter.<sup>33</sup>

Secularism harbours political parties to suffice any claim against their policies. 2019 seems to be a year where Indian secularism reached the critical juncture, testing the same by politicising every event.

With the BJP at the helm, an analogous concern resurfaced with the promulgation of the Citizenship Amendment Act (CAA) in 2019.<sup>34</sup> The CAA expedited the naturalization process for persecuted minorities from Pakistan, Bangladesh, and Afghanistan while precluding Muslims from its purview. The inclusion of religious criteria in offering citizenship marks a deviation from India's secular ethos, raising concerns. The proponents addressed that the plight of minorities from neighboring countries is the core objective behind such measures and this would not impinge on extant Indians. Yet it created apprehension amongst Muslims in India that the proposed National Register of Citizens could potentially disenfranchise them. The detractors pleaded the law was discriminatory and perceived it as a step towards marginalizing Muslims. They further posited the step to be in line with RSS figureheads' ideology of the qualification to be Indians, one whose *Pitrabhoomi* and *Punjabhoomi* are India.<sup>35</sup> In other words, people following faiths other than Hinduism were barred from being Indians and could survive rather than live in India only on the will of the Majority (i.e, Hindus).

---

<sup>33</sup> Soutik Biswas, *UCC: The coming storm over a single common law in India*, BBC NEWS, INDIA, (May 30, 2022).

<sup>34</sup> Nikhila Henry, *CAA: India to enforce migrant law that excludes Muslims*, BBC NEWS, DELHI, (Mar. 12, 2024).

<sup>35</sup> Ziya Us Salam, *BEING MUSLIM IN HINDU INDIA: A CRITICAL VIEW* (Harper Collins India 2023).

Another instance of 2019, that reshaped the tapestry is once proclaimed as a solitary gem on the Indian Territory, Jammu and Kashmir was unceremoniously plucked from its setting with the abrogation of Article 370 of the Indian constitution. Since October 2019, Jammu and Kashmir has been reframed as a Union Territory. With security as the mantle, the region is now under central governments' surveillance, this heavy-handed approach is seen by some as security as a concern draped in a velvet globe concealing iron fists. The same area has become a battleground for politicians as arsonists, citing religion as the cause of such upheaval. With the overhaul of property rights feeling vulnerable and uprooted apprehending displacement. Fears of demographic transformation in India's sole Muslim majority region have been exacerbated by these policy changes. Our Mahatma would have consoled the vulnerable, as for him '*Kashmir was the real test of secularism in India.*'<sup>36</sup> Although religious motivations cannot be unequivocally attributed as impetus for such governmental decision, the resultant communal turbulence is indisputable.

Another event which frayed the edges of secularism occurred during the COVID-19 pandemic, which began in late 2019 and reached the Indian shores in early 2020, presented a critical test for Indian secularism. An instance became the flashpoint to the delicate balance of India's diverse religious landscape with the spread of misinformation coupled with biased media reporting targeting a specific community. The incident pivoted around the Tablighi Jamaat gathering in Nizamuddin West, a Muslim majoritarian populace region. A significant number of reported cases were seen as a religious phenomenon relating to public suicide in the name of the religion commonly referred to as '*Jihad*'.<sup>37</sup> The social media added fuel to the fire with the emergence of hashtags such as #CoronaJihad and the spread of inflammatory, religiously charged content challenging the notion of a unified, secular response to the pandemic.<sup>38</sup> The response of various actors, including politicians, social media users, and media garnered communal hate, finding a black sheep within the herd to blame, the names of the people infected targeting the community were released on social media platforms.<sup>39</sup> The situation worsened when the Supreme Court showed its reluctance to

---

<sup>36</sup> Amar Sohal, *Kashmiri Secularism: Religious Politics in the Age of Democracy*, GLOBAL INTELLECTUAL HISTORY (2021), available at: <https://www.tandfonline.com/doi/full/10.1080/23801883.2021.1939502> (last visited Jul. 24, 2024).

<sup>37</sup> Tieri, Silvia, & Amit Ranjan, *Covid-19, communalism, and Islamophobia: India facing the disease*, SOCIAL IDENTITIES (2023), available at: <https://www.tandfonline.com/doi/full/10.1080/13504630.2023.2207460> (last visited Jul. 24, 2024).

<sup>38</sup> Jayshree Bajoria, *CoronaJihad is Only the Latest Manifestation: Islamophobia in India has Been Years in the Making*, HUMAN RIGHTS WATCH (May 1, 2020) available at: <https://www.hrw.org/news/2020/05/01/coronajihad-only-latest-manifestation-islamophobia-india-has-been-years-making> (last visited Jul. 24, 2024).

<sup>39</sup> Anilesh Kumar, *Virus Jihad: The (Mis)Representation of Muslims during Covid 19 Outbreak in*

curb such blasphemy against Freedom of Speech and Expression in response to a petition highlighting the situation. As India grappled with a health crisis, seeking vaccines and implementing measures to curb the spread of the virus, the Country's secular fabric was significantly strained.

A common thread binding these instances is the politicization of secularism. In contemporary India, religion has become a cynical tool to galvanize support by politicians from the populace, while patriotism is the last narrative of the defeated.

While 2019 marked heightened strains in the secular fabric, 2023 marked an end of the communal strife persisting since 1990, a struggle to reclaim the historical site. The period was characterised by the propagation by '*sangh parivar*' encompassing Rashtriya Swayamsevak Sangh as its ideological wing, the Vishva Hindu Parishad as its global platform, and the Bajrang Dal as its militant arm manifesting '*Hindutva ideology*'. While often misconstrued to be synonymous with '*Hinduism*,' the '*Hindutva ideology*,' fuels antagonism towards the Muslim Community within Parivar as it stands, which becomes the driving force behind a series of confrontations as they perceive and propagate India in terms of Hindu nation.<sup>40</sup>

The situation of the political landscape turned fractured when different political parties sat on the chairs of the government, while Congress had a garb over the Central government, The Bhartiya Janta Party was sitting on the political seat in Uttar Pradesh.

The ideological crusade commenced with zealous campaign launched by the Sangh Parivar to reclaim the site alleged to be native to the Hindu God, Ram. The sacred locale situated in Ayodhya was alleged to be occupied by Babri Masjid, viewed as a quest of Mughal Emperor Babar.<sup>41</sup> The Parivar was committed to their cause, and rallied behind the slogan '*mandir wahin banyega*,' (we shall erect the temple there and only there) declaring that there is no room left for compromise, eschewing any notion of secularity. This was not only a religious loss; rather the inertia of the Governments precipitated dire consequences. The storming of the mosque by an estimated 100,000 religious volunteers resulted in numerous fatalities, while the country was about to enjoy the opening of the economic gates,<sup>42</sup> it now had to worry about the fog of communal strife surrounding and impacting India and its aspiration to accommodate under the label of being '*secular*'. The dispute left an indelibly altered India's secular fabric. In 2023, with BJP at the helm, the long-contested site was reclaimed and adorned with the Ram

---

*Indian Media*, HOWARD J COMMUN (2023) available at:

<https://www.tandfonline.com/doi/full/10.1080/10646175.2023.2213181> (last visited 24 Jul. 2024).

<sup>40</sup> Sudha Ramachandran, *Hindutva Violence in India*, Counter Terrorist Trends and Analyses, ICPVTR 15 (2020).

<sup>41</sup> Farzana Shakoor, *Babri Mosque and India's Secularism*, PAKISTAN HORIZON 45 (1993).

<sup>42</sup> Ramesh Thakur, *Ayodhya and the Politics of India's Secularism: A Double-Standards Discourse*, UC Press 645 (1993).

Temple. While communities even other than Hindus hailed the momentous occasion, the specter of past conflicts continues to haunt those adversely affected.<sup>43</sup>

A parallel phenomenon emerged in 2023 which the author calls '*cinematic secularism*', wherein entertainment media exploited historical narratives to provoke contemporary discourse. While preserving history is essential, it has to be kept in mind that an excessive preoccupation with the past can overshadow the pressing challenges of the present. Although not explicitly intended to incite religious divisions, such cinematic portrayals have ignited intense controversy. Films like 'The Kashmir Files' and 'The Kerala Story' have brought to light the harrowing experiences of Kashmir Pandits and Muslims being labelled as extremists and Jihadis, exposing acts of coercion and brutality.<sup>44</sup> These narratives have galvanized public opinion and prompted governmental support for affected communities. However social media has bred online activists who exploit such sensitive issues for personal gain, deepening societal fissures. While some view these films as catalysts for justice, others perceive them as propagandistic tools designed to foment religious discord.

These documented instances, among many others, would likely disturb the framers of the Indian constitution if they could witness the current state of affairs. The secular fabric of the nation, once robust now seems to be fraying at the edges with the increasing undercurrents of mainstream politics permeating. Secularism originally enshrined as an aspiration of the Indian Republic, seems to have lost its vigour and has been diminished to a tool for garnering popular support in political contests.

## IV

### The Prospective Panacea to Indian Secularism

In the garden of India, Secularism was once believed to be the mighty oak, its branches offering shade to all who sought refuge beneath. But now, this tree finds its roots besieged by the creeping of religious fervour, its leaves withering under the harsh sun of political opportunism. The gardeners who planted this tree, the founding fathers of the Indian Constitution would weep to see the condition of the sapling, which is

---

<sup>43</sup> Grant Wyeth, *Does the Ram Mandir of Ayodhya Mark the Decline of Secularism in India?* AUSTRALIAN INSTITUTE OF INTERNATIONAL AFFAIRS (Aug. 21, 2020) available at:

<https://www.internationalaffairs.org.au/australianoutlook/does-the-ram-mandir-of-ayodhya-mark-the-decline-of-secularism-in-india/> (last visited Jul. 26, 2024).

<sup>44</sup> Soumya Rajendran, *Cinema or Propaganda: How Should we engage with movies about disinformation*, FILM COMPANION (May 18, 2023) available at:

<https://www.filmcompanion.in/features/indepth-stories/cinema-or-propaganda-how-should-we-engage-with-movies-about-disinformation-the-kerala-story-the-kashmir-files> (last visited Jul. 26, 2024).



reduced to a mere prop in the theatre of religious politics. What was meant to be living, an embodiment of unity and tolerance has become a hollow totem, drained by those who were believed to nurture it. The alarming rise in Cow vigilantism<sup>45</sup> and mob lynching<sup>46</sup> are indications that our social tapestry is unravelling.

It is time for India to rekindle the sapling in its garden and into its social fabric. Only then the nation can hope for the survival of democracy. In the grand bazaar of ideologies, let us reimagine secularism not as an antithesis of religion, but as a meta-religion. Just as devotees seek blessing from the divine why not channel the same fervour into an ideal that promises collective progress and individual growth? We always guide ourselves and our conduct with the promise of divine salvation something that happens aftermath of one's death, we plan our journey afterlife but we make the error of choosing pursuits when we are alive. This '*secular faith*' could be one common conduct that can bind our diverse tapestry and offer modernization accompanied by economic independence and societal harmony as its sacred rewards.

Robert G. Ingersoll's words resonate like a call to this prayer:

*Secularism is a religion, a religion that is understood. It has no mysteries, no mumblings, no priests, no ceremonies, no falsehoods, no miracles, and no persecutions.*

In this light secularism wouldn't be the absence of belief, but a belief in coexistence and shared prosperity.

We must ask ourselves: do we truly desire a nation where religious identity trumps all else? Should religion be the yardstick for development and policy governance? Again, we cannot blame a political party or public leader for the cause of the same and not even the Sangh parivar or the extremists but ourselves by introspecting our vision as a nation and as an Indian. It's time for our representatives to introspect- is the politicization of religion truly essential for populace support or is it a crutch that hinders our collective journey? Each citizen must ponder: which identity takes precedence- their religious affiliation, or their role as an Indian committed to patriotism?

Again this prayer and self-introspection shouldn't be misconstrued to further the idea of abandoning one's belief and faith, but to nurture alongside them a parallel devotion to secular ideas. While the mindset may seem as rare as a desert oasis, we should remember that India flourished as an experiment with the ideals borrowed and vowed itself to be a '*Sovereign, Socialist, Secular, Democratic Republic*.' '*We the People*', are the lighthouse guiding every boat that sails through these choppy waters. What we need

---

<sup>45</sup> Mohammed Sinan Siyech & Akanksha Narain, *Beef-related Violence in India: An Expression of Islamophobia*, ISLAMOPHOBIA STUDIES JOURNAL (2018) available at: <https://www.jstor.org/stable/10.13169/islastudj.4.2.0181> (last visited Jul. 27, 2024).

<sup>46</sup> Geeta Pandey, *Jharkhand: Ten sent to jail in India for lynching Muslim man*, BBC NEWS, DELHI (Jul. 5, 2023).

today is affirmative action, a collective effort to mend the fraying edges of our secular fabric.

Once tightly woven, India's diverse fabric now shows signs of wear. The Loom of progress stands idle, while hands that should be mending instead pull at loose strands.

The Bombay High Court raised its voice in the 'Vande Matram row' acting vigilant critic of the national play of religious identity in the words:

*We are constrained to observe that now-a-days people have become more sensitive about their religions, may be more than before and everybody wants to impress as to how his religion or God is Supreme. We are staying in the democratic secular country, where everybody should respect the religion, caste, creed etc. of another. But at the same time, we would also say that if one person says that his religion is Supreme, then the other person may not immediately react. There are ways and means to react on such sensitive issues.*

In the tempest of communal tension, the beacon of secularism flickers, its light dimming. The ships of various faiths once guiding with a strong beam, now are at risk of crashing against the jagged rocks of intolerance and mistrust.

Only by rekindling the secular faith, Indian can hope to weather the storm of religious discord. The choice is ours - whether to watch passively as our secular ideas erode, or become the architects of the new narrative, where secularism is not just a constitutional mandate, but a shared article of faith guiding us towards a brighter, more harmonious future.