

India has acquired multiculturalism from a very backdate. There are numerous religions and societies present in India and due to such multiculturalism, it has acquired for itself a striking character in the world. As it is said one language, culture, history, and religion are the very foundation for creating a state yet India emerges as one of its exceptions where it remains a nation with multiple cultures, languages, and religions.[1] India has invariably been a believer of the principle “unity in diversity” and the very concept of such unity is based on democracy, social tolerance, and the secular aspect of the state.

So what is secularism? Secularism implies the detachment of religion from the state. The concept of secularism can be perceived in two ways; one that the religion should not meddle in political or state matters and another, the state should not interfere in religious affairs.[2] In *Indra v Rajnarayan*[3] the Honorable Supreme Court interprets the very trait of secularism by stating that secularism means that the state should have no religion of its own and all the people in the nation should be equally empowered to exercise their freedom to profess, practice and propagate any religion. In India religion is an indispensable part of an individual life but at the same time, it is deemed separate from Indian politics. In India the scope of secularism is immense and the same is the binding glue of a democratic Nation.

Model of Indian secularism

Controversy has always been there that the Indian model of secularism is based on the Western model of secularism, but the same appears otherwise. The western model serves a strict policy of separation of state and religion and such principle is mutual separation. Hence in this model, the state has no title to interfere in religious activities and the same operate for religion. Both separately and independently functions in their jurisdiction. The state has no power, to build a policy having religious rationale, aid any religious institution; moreover, there is a very limited window for minority right matters.[4] On the other hand Indian model does not perpetually follow a very strict distinction principle. The state may act against oppression and prejudice occurring in various religions. Indian model promotes freedom of religion to the minority communities and also furnishes them with the right to set their own cultural and educational institutions, unlike the western model. Indian secularism has given room for state-supported religious

reforms.^[5] Thus in these ways, the Indian model stands on a different footing than the western model.

Need for secularism

India being a multicultural country needs secularism as a binding force. India as a Union of the state consists of people originating from different religions and languages hence to conserve this unique characteristic the right to freedom of religion comes in hand and so does secularism. India has no alternative option of secularism. Plus a threat to the unity and integrity of India came from the minorities who suffered injustice for quite a long time hence to bring the spirit of nationalism social tolerance was a must, thus secularism was and is required till date.

Revisiting History

Indian history shows the existence of secularism from ancient India, Emperor Ashoka was considered to be the first to use this concept by stating that the state will not regulate any religion. The same was prevalent in medieval times also but it was the freedom struggle that highlighted this concept.

During the freedom struggle endeavor was made to embrace different communities. A rule was looked for that could fasten individuals of various beliefs into a common union. The rule needed to be such that warrants the minorities' security against cruelty and to caveat the majority that it's undemocratic to obey majority rule. The search for the rule stopped on the doctrine of ' Sarva Dharma Samadbhava' i.e. 'tolerance of all religion' which infers that every religion ought to be dealt in a similar and equal manner.^[6] Mahatma Gandhi was a follower of such a principle. Another doctrine revolving around that time was "dharma nirpaekshata"; this Doctrine infers that the creation of the state policies will not be influenced by religious thought. To this point, Jawaharlal Nehru clarified that this doctrine did not indicate a state where religion is discouraged rather it implies freedom for all religions which covers freedom for those who did not follow any religion. For him, the word was not against religion rather it requires the state to honor all beliefs impartially and it doesn't sanction any religion to take up the status of religion of the state.

After independence when the constituent assembly was set up it was believed that the word secular will find its place in the constitution as various founding fathers believed in the concept of secularism but the result was not as expected.

Secularism in Constituent Assembly Debate

Prof KT Shah demanded the inclusion of the word secular in the preamble. This claim was admitted by some which included Lokanath Mishra who said that *“I accept secularism in the sense that a state shall remain unconcerned with religion”*. But many were against this claim like the Vice Principal of the drafting committee H.C. Mookherjee who said that *“are we really honest when we say that we are seeking to establish a secular state? If your idea is to have a secular state it will follow inevitably that we cannot afford to recognize minorities based upon religion.”*^[7] The follower of secularism Dr. BR Ambedkar and Jawaharlal Nehru were not clear about their intention to include the word ‘secular’. Ambedkar stated that *“what should be the policy of the state, how the society should be managed and organized are the matters which has to be determined by people themselves according to time and circumstances, the same cannot be laid down in the constitution as it will destroy the democracy altogether”*.

There was a lot of confusion going around the meaning of the term ‘secularism’, some believed that it is the absolute distance from all religion, some believed it’s not absolute and some insisted that the constitution should contain a provision concerning the regulation of religion hence due to all these ambiguities, as a result, in the end, India got a secular constitution as various articles in constitution were based on secularism principle, but the terms ‘secular’ was not included. The intention was explicit hence, it was said that there was no point in naming the same.

Non-inclusion of term left a grey area to be discussed. According to historian Ian Copland, the term secularism which formerly originated in late medieval Europe which deals with the theory that government will have no kind of religious relation was never going to work in India where religion, life, and politics goes hand in hand. Another reason for such an act was the fact that the draft of the constitution intervenes in religious matters hence the usage of the term secular in the constitution

would have been technically wrong so it was better to not use the term rather than using it fraudulently.

It was later in the year 1976 when the term 'Secular' was added to the Preamble by the 42nd Constitution Amendment Act due to various instances of discrimination or torture happening on the ground of religion.

Constitutional provision

Several provisions are enshrined in the constitution with respect to secularism:

Article 14 provides equality before the law to people from all religions; **Article 15** prohibits discrimination on the ground of religion, caste, race, etc. **Article 16** prohibits discrimination on the ground of religion in public employment. **Article 17** which prohibits untouchability is an important article based on secularism which curbs the ill practice happening in name of religion.

Article 25: Freedom to profession, practice, and propagate religion.[\[8\]](#) Article 25 guarantees to every individual in India the freedom of religion which is subject to public order, morality, and health. Similarly, it states that this freedom will not affect any existing law or prevent any state from passing any law regarding social welfare, restriction, or regulation of any economic-political activity relating to religious practice or opening the doors of public Hindu religious institution for all sections of Hindu.

Article 26- Freedom to manage religious affairs.[\[9\]](#) It grants right to every religious denomination to establish and manage affairs of a religious institution, acquiring and administer the property of such institution as per the law. All these are subject to public health, order, morality, etc. The constitution doesn't define the term "religious denomination" however the Supreme Court in *Commissioner, Hindu religious endowment Madras v Shri Laxmindar of Shri Shirur Mutt* defined it as a collection of individuals under the same name, religious sect, or body having a common faith and are known by a distinctive name.

Article 27- Freedom from taxes for promotion of any religion.[\[10\]](#) This article provides that no person trying to promote or maintain any religion or religious denomination will be compelled to pay any kind of taxes.

Article 28- Prohibition of religious instructions in state-aided institutions. [\[11\]](#) This article forbids imparting of any kind of religious instruction in educational institutions wholly funded by the State.

Article 29- Protection of interest of minorities.[\[12\]](#) This article renders that the minorities have the right to conserve their language culture, scripts, etc. Similarly, a person should not be denied admission in educational institutions aided by the state based on religion, caste, language, etc.

Similar **Article 30**[\[13\]](#) provides the right to the religious and linguistic minorities to build and administer their educational institution, plus the state should not discriminate against such institution while providing funding.

Article 51A establishes a fundamental duty on all citizens to promote spirit of brotherhood and harmony and to preserve rich heritage of our culture.

Interpretation of Secularism by Indian Judiciary

The term secularism has come under the scrutiny of the judiciary multiple times. In *Sardar Taherudin v Territory of Bombay*[\[14\]](#), the supreme court identified that article 25 and 26 of the Constitution encapsulate the concept of religious tolerance and said that such concept has existed in India from the starting point of civilization hence it's not new and this is the reason why emphasis was given on the secular character of the Constitution by the constitutional framers. The Supreme Court in the landmark *Keshavananda Bharti case*[\[15\]](#) held that the secular spirit of the Indian Constitution falls under the domain of doctrine of basic structure and consequently cannot be remodeled.

Similarly in *St. Xavier College vs. State of Gujarat*[\[16\]](#) the court remarked that India is a secular country and such character eliminates state affairs from God and no one should fall in the hole of discrimination based on religion. The court said that there exist

arrangements in the Indian Constitution which makes an individual wonder whether or not to consider India as a secular Nation but the court considers India as a secular state in a broad perspective. Justice Chandrachud said that “*secularism is an attitude to live and let live which is now developing into live and help live*”.

An important fact that was highlighted by the Supreme Court in the case of *Ratilal Panchand vs. State of Bombay*^[17] was that the right and freedom of religion is not limited to a citizen of India but branch out to all person including aliens.^[18] The court in *Ziyuddin Bukhari vs Brijmohan Ram*^[19] went into interpreting secularism philosophy and said that the state as a welfare state has a responsibility to act impartially in providing and safeguarding the interest of citizen of any kind and to not inflict any inability which may hamper the life of a citizen. The Supreme Court explains the concept of secularism as per Indian scriptures in *A.S. Narayana Deekshitulu vs State of Andhra Pradesh* by stating ‘Sarwa Sharma Sambhava’ which means “tolerance of all religions”, the court also said that secularism is based on the principle of non-discrimination on religion.^[20]

Furthermore, there has been a lot of buzz around various essential practices which the Court over the period has interpreted:

The Supreme Court in the famous Qureshi cow slaughter case held at the act of state which banned cow slaughtering does not violate the right of religion of Muslim. *Sri Venkataramana Devaru vs State of Mysore* ^[21] under this case, Harijans were excluded from entering into the temple and the denomination said that they have the power to do so under Article 26(b). On the other side, there was Madras temple entry Authorization Act created under article 25(2) (b) which opens all Hindu Public temples in the state for Harijans. The court, in this case, held that the matter is religious but since it comes in conflict with article 25 the Court intervention arises automatically and held that Harijans have right to enter Temple. *Aruna Roy vs Union of India* in this case state funded school was imparting religious knowledge and was differentiating between minority and majority class.

The same was prohibited under Article 28 hence the court held that such an act is not as per secularism principle. Moreover education should not be linked with religion and for this purpose a uniform code is required as per Article 44. In *MP Gopalakrishnan Nair vs State of*

Kerala [22] court held that secularism doesn't mean India is an atheist society but simply portray that all religion in the boundary of India acquires equal status. In landmark *SR Bommai vs UOI* [23] the Court again held secularism as a basic structure. Court also placed a duty on the states to include secularism in its legislations and also installed a duty on the court to hold those political parties accountable who mixes politics with religion. Moreover, court also highlighted the fact that state has the inbuilt power to bring a law on religion which includes personal laws.

Present scenario of Secularism in India

Over the past few years, there has been a lot of discussion about secularism in the context that whether India follows constitutional secularism or political party secularism. Political parties keep religion off their hand or intervene in the same when the time best suits their concern. Political party secularism has been described as an opportunistic coalition of parties with religious communities for electoral benefits and this point raises a challenge before true secular character of India. Another point that emerges is the fact that a true secular Nation calls for Uniform Civil Code mentioned under Article 44 which establishes same law for all people irrespective of their religion. But the entrenched religious sentiment of the people of different communities makes this way towards uniform code a slippery path. Hence in India religious act, politics and secularism has always comes in each other path and the same have continued since independence without any change.

Conclusion

The idea of secularism is deep-rooted in the history of India. The term secularism is complex to define hence over the period various meanings have been assigned to it by many jurists and judiciary but the essence of all those definitions has been religious tolerance and equal treatment of all religions. The state has no religion and the same should stay that way in order to maintain the unity and integrity of the nation.

There are many religions present in India like Muslim, Hindu, Christian, Parsis, etc. All have gained equal status over the period but equal treatment of all has only been on paper but not in practical sense. The fact that India has adopted secularism neither fulfills the

requirements nor stop calling for the need of strong value based secularism accepted by all. The point that politics has incorporated religion as a tool extends the need for proper enforcement of the same concept. In order to curb all these problem step has to be taken in near future towards Uniform Civil Code. The path of Uniform Civil Code will be full of hurdles but in order to put secularism and interest of people at top efforts have to be taken. The development of the uniform code should be such that it covers all the loopholes while keeping in mind various personal laws. The process and acceptance of such code will be slow and time-consuming but the end result will be satisfactory.