

Author(s) retain the copyright of this

The Evolution of Secularism in India: Constitutional Ideals and Political Challenges

Tajane Sandeep Ramesh¹, Dr. Rekha²Research Scholar, Department of Law, Sunrise University Alwar (RAJ.)¹Research Supervisor, Department of Law, Sunrise University Alwar (RAJ.)²

Accepted 15 September, 2023

Abstract

India, the world's largest democracy, adopted a unique model of secularism that distinguishes it from Western secular traditions. This paper examines the evolution of secularism in India from its constitutional inception to the contemporary political landscape up to 2023. The objective of this study is twofold: first, to analyze the constitutional framework that establishes and protects secular principles in India; and second, to critically evaluate the political challenges that have tested these ideals over the decades. The methodology employed is doctrinal and analytical, relying on constitutional provisions, landmark judicial pronouncements of the Supreme Court of India, legislative enactments, and authoritative secondary sources. The results and discussion reveal that while the Indian Constitution provides a robust framework for secularism through fundamental rights and directive principles, the practical implementation has been consistently challenged by communal politics, majoritarian tendencies, and identity-based mobilization. The conclusion drawn is that Indian secularism requires continuous judicial vigilance, constitutional fidelity, and informed citizenry to withstand the pressures of political expediency and preserve its pluralistic character.

Keywords: Secularism, Indian Constitution, Fundamental Rights, Judicial Interpretation, Communal Politics.

I. Introduction

Secularism constitutes one of the foundational pillars of the Indian constitutional order. Unlike the Western model of secularism, which primarily emphasizes the strict separation of church and state, the Indian model adopts a principled distance approach wherein the state engages with all religions equally without favouring or discriminating against any particular faith.¹ The framers of the Indian Constitution, while deliberating in the Constituent Assembly between 1946 and 1949, were deeply conscious of India's extraordinary religious diversity and the devastating

consequences of communal violence witnessed during the Partition of 1947.² Although the word "secular" was not originally present in the Preamble of the Constitution, the secular character of the Indian state was implicit in the fundamental rights guaranteed under Part III of the Constitution, particularly Articles 14, 15, 25, 26, 27, and 28.³ The explicit insertion of the word "secular" into the Preamble was accomplished through the Constitution (Forty-Second Amendment) Act, 1976, during the tenure of Prime Minister Indira Gandhi.⁴ This amendment formalized what was already regarded as an inherent feature of the

¹ Rajeev Bhargava, "The Distinctiveness of Indian Secularism," in *The Future of Secularism* (Oxford University Press, 2006).

² Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966), pp. 26-49.

³ The Constitution of India, 1950, Articles 14, 15, 25, 26, 27, and 28.

⁴ The Constitution (Forty-Second Amendment) Act, 1976, Section 2(a).

constitutional scheme. The Supreme Court of India, in the landmark case of *Kesavananda Bharati v. State of Kerala* (1973), had already recognized secularism as part of the basic structure of the Constitution, thereby placing it beyond the amending power of Parliament.⁵ The Indian experiment with secularism has, however, been fraught with significant political challenges. From the Shah Bano controversy of 1985 to the Ayodhya dispute, from the enactment of the Citizenship Amendment Act, 2019 to the debates surrounding the Uniform Civil Code, the tension between constitutional ideals and political realities has remained a persistent feature of Indian democracy.⁶ This paper undertakes a comprehensive examination of this evolution, tracing the constitutional foundations, judicial contributions, legislative developments, and political challenges that have shaped the trajectory of secularism in India up to 2023.

II. Objectives

1. To analyze the constitutional and legislative framework that establishes, protects, and promotes secular principles in the Indian democratic system, including the examination of fundamental rights, directive principles, and landmark judicial interpretations by the Supreme Court of India.
2. To critically evaluate the major political challenges, communal tensions, and legislative controversies that have tested the secular fabric of the Indian state from the post-independence period to 2023, and to assess the role of the judiciary in safeguarding constitutional secularism against majoritarian pressures.

III. Research Methodology

This study adopts a doctrinal and analytical research methodology. Primary sources include the Constitution of India, parliamentary legislation, and reported judgments of the Supreme Court of India and various High Courts. Secondary sources include authoritative legal commentaries, journal articles, government reports, and publications of recognized legal scholars. The temporal scope of the study extends from the framing of the Constitution in 1949 to developments up to 2023. The analytical framework

employed examines the interplay between constitutional text, judicial interpretation, and political practice.

IV. Constitutional Framework of Secularism in India

The constitutional foundation of secularism in India rests upon a carefully designed architecture of fundamental rights and directive principles. Article 14 guarantees equality before the law and equal protection of laws to all persons.⁷ Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.⁸ Together, these provisions establish the non-discriminatory character of the Indian state in its dealings with citizens of all faiths. The freedom of religion provisions contained in Articles 25 to 28 constitute the specific constitutional guarantee of religious liberty. Article 25 guarantees to all persons the freedom of conscience and the right to freely profess, practise, and propagate religion, subject to public order, morality, and health.⁹ Article 26 grants every religious denomination the right to manage its own affairs in matters of religion, to establish and maintain institutions for religious and charitable purposes, and to own and administer property.¹⁰ Article 27 provides that no person shall be compelled to pay taxes for the promotion or maintenance of any particular religion.¹¹ Article 28 prohibits religious instruction in educational institutions wholly maintained out of state funds.¹²

The Directive Principles of State Policy further reinforce the secular character of the state. Article 44, which directs the state to endeavour to secure a Uniform Civil Code for all citizens throughout the territory of India, reflects the constitutional aspiration toward a common legal framework transcending religious personal laws.¹³ The Supreme Court in *Mohd. Ahmed Khan v. Shah Bano Begum* (1985) observed that Article 44 remained a dead letter and urged the legislature to take steps toward its implementation.¹⁴ The Forty-Second Amendment of 1976 explicitly incorporated the word "secular" into the Preamble, thereby converting an implicit constitutional value into an express constitutional declaration. The Supreme Court in *S.R. Bommai v. Union of India* (1994) delivered a watershed judgment wherein a nine-judge bench held that secularism is a basic feature of the Constitution and that any state

⁵ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225

⁶ Zoya Hasan, *Politics of Inclusion: Castes, Minorities and Affirmative Action* (Oxford University Press, 2009)

⁷ The Constitution of India, 1950, Article 14

⁸ The Constitution of India, 1950, Article 15

⁹ The Constitution of India, 1950, Article 25

¹⁰ The Constitution of India, 1950, Article 26

¹¹ The Constitution of India, 1950, Article 27

¹² The Constitution of India, 1950, Article 28

¹³ The Constitution of India, 1950, Article 44

¹⁴ *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945

government acting contrary to secular principles could be dismissed under Article 356.¹⁵

V. Judicial Interpretation and the Shaping of Secularism

The judiciary has played an indispensable role in defining, defending, and developing the contours of Indian secularism. In *Sardar Taheruddin Syedna Saheb v. State of Bombay* (1962), the Supreme Court held that the protection under Article 26 extends only to matters of religion and not to secular activities associated with religious practice.¹⁶ This distinction between the religious and secular aspects of religious practice became a cornerstone of judicial reasoning in subsequent cases. The seven-judge bench decision in *S.R. Bommai v. Union of India* (1994) remains the most authoritative judicial pronouncement on secularism. Justice Jeevan Reddy, in his opinion, stated that religion and state have separate spheres and that the state must treat all religions and religious groups equally. Justice Sawant observed that secularism is a positive concept of equal treatment of all religions, and not merely the negation of religion.¹⁷ In *Ismail Faruqui v. Union of India* (1994), the Supreme Court, while dealing with the acquisition of land at Ayodhya, held that a mosque is not an essential part of the practice of Islam, a proposition that generated considerable academic and public debate.¹⁸ The eventual resolution of the Ayodhya dispute came through the landmark judgment in *M. Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors* (2019), where the five-judge Constitution Bench unanimously held that the demolition of the Babri Masjid was an illegal act violative of the rule of law, while simultaneously awarding the disputed land to the Hindu parties based on the evidence of faith and worship.¹⁹ The case of *Shayara Bano v. Union of India* (2017) marked a significant advancement in the judicial protection of secular rights when the Supreme Court, by a 3:2 majority, struck down the practice of instantaneous triple talaq (talaq-e-biddat) as unconstitutional.²⁰ This judgment led to the enactment of the Muslim Women

(Protection of Rights on Marriage) Act, 2019, which criminalized the practice of instant triple talaq.²¹

In *Indian Young Lawyers Association v. State of Kerala* (2018), popularly known as the Sabarimala case, the Supreme Court held that the exclusion of women of menstruating age from the Sabarimala temple violated their fundamental rights under Articles 14, 15, 25, and 26.²² The judgment generated intense political and social debate, and review petitions were subsequently referred to a larger bench, where the matter remained pending as of 2023.²³

VI. Legislative Developments and Political Challenges

The legislative history of independent India reveals a complex relationship between secular ideals and political compulsions. The Hindu Code Bills enacted during the 1950s under the leadership of Dr. B.R. Ambedkar and Prime Minister Jawaharlal Nehru reformed Hindu personal law but did not extend similar reforms to Muslim personal law, creating what critics described as selective secularism.²⁴ The Shah Bano case of 1985 exposed the vulnerability of secular principles to political pressure. When the Supreme Court upheld the right of Shah Bano, a divorced Muslim woman, to maintenance under Section 125 of the Code of Criminal Procedure, 1973, the Rajiv Gandhi government, under pressure from conservative Muslim groups, enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986, which effectively overturned the judicial ruling.²⁵ This legislative action was widely criticized as the subordination of constitutional secularism to vote-bank politics. The demolition of the Babri Masjid on December 6, 1992, represented the most severe assault on the secular fabric of the Indian state since independence.²⁶ The subsequent enactment of the Places of Worship (Special Provisions) Act, 1991, which freezes the religious character of all places of worship as they existed on August 15, 1947 (with the exception of the Ayodhya dispute), was a legislative attempt to prevent the weaponization of religious sites

¹⁵ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1

¹⁶ *Sardar Taheruddin Syedna Saheb v. State of Bombay*, AIR 1962 SC 853

¹⁷ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1 (per Sawant, J.)

¹⁸ *Ismail Faruqui v. Union of India*, (1994) 6 SCC 360

¹⁹ *M. Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors*, (2019) SCC OnLine SC 1440

²⁰ *Shayara Bano v. Union of India*, (2017) 9 SCC 1

²¹ The Muslim Women (Protection of Rights on Marriage) Act, 2019, Act No. 20 of 2019

²² *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1

²³ *Indian Young Lawyers Association v. State of Kerala (Review)*, referred to a larger bench vide order dated 14 November 2019

²⁴ The Hindu Marriage Act, 1955; The Hindu Succession Act, 1956; The Hindu Minority and Guardianship Act, 1956; The Hindu Adoptions and Maintenance Act, 1956

²⁵ The Muslim Women (Protection of Rights on Divorce) Act, 1986, Act No. 25 of 1986

²⁶ Justice Manmohan Singh Liberhan, *Liberhan Ayodhya Commission Report*, 2009, submitted to the Government of India

for political purposes.²⁷ The Supreme Court in the Ayodhya judgment of 2019 upheld the validity and importance of this legislation as a legislative instrument designed to protect secularism.

The enactment of the Citizenship (Amendment) Act, 2019 (CAA), which provides a pathway to citizenship for persecuted minorities from Afghanistan, Bangladesh, and Pakistan belonging to Hindu, Sikh, Buddhist, Jain, Parsi, and Christian communities, generated significant controversy due to the exclusion of Muslims.²⁸ Critics argued that the CAA introduced a religious criterion into citizenship law for the first time, thereby violating the secular character of the Constitution. The government maintained that the legislation was designed to protect persecuted religious minorities and did not affect any Indian citizen. As of 2023, petitions challenging the constitutional validity of the CAA remained pending before the Supreme Court.²⁹ The renewed push for a Uniform Civil Code also gained momentum. In 2023, the 22nd Law Commission of India invited public opinions on the matter, signaling a fresh examination of the issue.³⁰ The state of Uttarakhand also took steps toward drafting a Uniform Civil Code at the state level, reflecting the continued political significance of this constitutional directive. The use of anti-conversion legislation by several states, including Uttar Pradesh, Madhya Pradesh, Karnataka, and Himachal Pradesh, further complicated the secular landscape. These laws, ostensibly aimed at preventing forced or fraudulent conversions, were criticized by civil liberties organizations as instruments that restrict the freedom of conscience and the right to propagate religion guaranteed under Article 25.

VII. Indian Secularism: A Comparative Perspective

Indian secularism differs fundamentally from its Western counterparts. The American model, rooted in the First Amendment's Establishment Clause, mandates a strict wall of separation between church and state. The French model of *laïcité* similarly insists on the exclusion of religion from the public sphere. The Indian model, by contrast, does not seek to banish religion from public life but rather to ensure that the state maintains an equal and respectful relationship with all religions. Professor Donald Eugene Smith, in his seminal work *India as a Secular State* (1963), identified three dimensions of the Indian secular state: the relationship between religion and the individual,

between the state and the individual, and between the state and religion. The Indian approach has been variously described as principled distance, equal respect, and ameliorative secularism, reflecting its commitment to both religious freedom and social reform.

VIII. Conclusion

The evolution of secularism in India represents a dynamic and ongoing process shaped by constitutional ideals, judicial wisdom, legislative action, and political contestation. The constitutional framework, as articulated through fundamental rights and directive principles, provides a robust foundation for a pluralistic and inclusive state. The judiciary, particularly the Supreme Court, has consistently affirmed secularism as a basic feature of the Constitution, thereby ensuring that it remains beyond the reach of transient political majorities. However, the political challenges to secularism have been both persistent and formidable. From the Shah Bano controversy to the Babri Masjid demolition, from the Citizenship Amendment Act to the debates surrounding the Uniform Civil Code, the tension between constitutional promises and political practices has remained a defining feature of Indian democracy. The instrumentalization of religion for electoral purposes, the enactment of legislation perceived as favouring particular communities, and the rise of identity-based politics continue to test the resilience of the secular constitutional order. The preservation of Indian secularism requires a multi-pronged approach: continuous judicial vigilance in interpreting and enforcing constitutional provisions, legislative commitment to the principles of equality and non-discrimination, executive restraint in the use of religion for political mobilization, and an informed and engaged citizenry that values pluralism and diversity. As India moves forward, the fidelity of its institutions and citizens to the constitutional vision of secularism will determine whether the promise of an inclusive and egalitarian republic endures or diminishes. The Indian experiment with secularism, imperfect though it may be, remains a vital model of democratic governance in a deeply pluralistic society and warrants continued scholarly attention and civic commitment.

²⁷ The Places of Worship (Special Provisions) Act, 1991, Act No. 42 of 1991

²⁸ The Citizenship (Amendment) Act, 2019, Act No. 47 of 2019

²⁹ *Indian Union Muslim League v. Union of India*, W.P.(C) No. 1470/2019, pending before the Supreme Court of India (as of 2023)

³⁰ 22nd Law Commission of India, Public Notice dated 14 June 2023, inviting views on Uniform Civil Code