

Constitutional Foundations and Political Dynamics of Secularism in India

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Abstract

Secularism in India represents a unique constitutional philosophy that distinguishes itself from Western models by embracing all religions equally rather than separating religion from the State entirely. This paper aims to examine the constitutional foundations of secularism as embedded in the Indian Constitution and to critically analyse the political dynamics that have shaped, challenged, and redefined secularism in post-independence India. The study adopts a doctrinal legal research methodology, relying on primary sources including constitutional provisions, landmark judicial pronouncements of the Supreme Court of India, parliamentary debates, and statutory enactments, supplemented by secondary sources such as authoritative legal commentaries, journal articles, and government reports published up to 2022. The findings reveal that while the constitutional framework provides a robust foundation for secularism, political instrumentalisation of religion has consistently tested its boundaries, leading to judicial interventions that have both strengthened and complicated the secular mandate. Indian secularism remains a contested but constitutionally resilient principle whose survival depends on judicial vigilance, political accountability, and civic engagement.

Keywords: *Secularism, Indian Constitution, Fundamental Rights, Judicial Review, Religion and Politics.*

I. Introduction

The concept of secularism occupies a central position in India's constitutional democracy. Unlike the strict wall-of-separation model found in the United States under the First Amendment, Indian secularism is rooted in the principle of *Sarva Dharma Sambhava* equal respect for all religions.¹ The framers of the Indian Constitution, while not originally inserting the word "secular" in the Preamble, embedded its essence through a careful arrangement of Fundamental Rights under Part III, particularly Articles 25 to 28, which guarantee freedom of religion while simultaneously empowering the State to regulate secular activities associated with religious practice.² The insertion of the word "secular" into the Preamble through the Constitution (Forty-Second Amendment) Act, 1976, during the period of national Emergency, gave explicit textual recognition to what was already an implicit constitutional value.³ However, this amendment also opened political debates regarding whether secularism was an original feature of the Constitution or a later political imposition. The Supreme Court of India settled this controversy in *S.R. Bommai v.*

¹ Nehru, J., *The Discovery of India* (Penguin Books, 1946), pp. 531-532.

² Constitution of India, 1950, Articles 25-28.

³ The Constitution (Forty-Second Amendment) Act, 1976, Section 2(a).



Union of India (1994), declaring secularism to be a part of the basic structure of the Constitution, beyond the amending power of Parliament.⁴

India's secularism has never operated in a political vacuum. From the Partition of 1947, which was fundamentally a communal division, to the Shah Bano controversy of 1985, the demolition of the Babri Masjid in 1992, and the enactment of the Citizenship (Amendment) Act in 2019, political dynamics have continuously tested the constitutional promise of secularism.⁵ Religion has been mobilised for electoral purposes, personal law reforms have been resisted on communal grounds, and questions about a Uniform Civil Code under Article 44 remain unresolved even as of 2022.⁶ This paper undertakes a comprehensive examination of the constitutional architecture of secularism in India and analyses the political forces that have shaped its interpretation and application. The study draws upon constitutional text, judicial precedents, legislative developments, and scholarly discourse to present an integrated understanding of this critical subject.

II. Objectives

1. To examine the constitutional provisions, judicial interpretations, and legislative frameworks that establish and define the foundations of secularism in India.
2. To critically analyse the political dynamics, including electoral mobilisation of religion, communal conflicts, and legislative controversies, that have influenced the practice and perception of secularism in Indian democracy up to 2022.

III. Conceptual Framework: Understanding Indian Secularism

Secularism, as a political doctrine, originated in Western liberal thought, primarily associated with the writings of John Locke, who advocated for the separation of Church and State in his *A Letter Concerning Toleration* (1689).⁷ In the European context, secularism evolved as a response to religious wars and ecclesiastical domination of political governance. The American and French models represent two distinct articulations the former emphasising non-establishment and free exercise, and the latter insisting on *laïcité*, a more assertive exclusion of religion from public life.⁸ Indian secularism, however, developed in a fundamentally different socio-historical context. India's religious diversity encompassing Hinduism, Islam, Christianity, Sikhism, Buddhism, Jainism, and numerous tribal faiths necessitated a model that did not merely tolerate but actively respected all religious traditions.⁹ Professor Donald Eugene Smith, in his seminal work *India as a Secular State* (1963), identified three components of Indian secularism: freedom of religion, citizenship equality regardless of religion, and separation of State from religion.¹⁰ However, as Dr. Rajeev Bhargava has argued, Indian secularism is better understood as "principled distance" the State maintains a

⁴ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

⁵ The Citizenship (Amendment) Act, 2019 (Act No. 47 of 2019).

⁶ Constitution of India, 1950, Article 44 (Directive Principles of State Policy).

⁷ Locke, J., *A Letter Concerning Toleration* (1689, Huddersfield: J. Brook, reprinted 1796).

⁸ Feldman, N., "The Intellectual Origins of the Establishment Clause," *New York University Law Review*, Vol. 77, No. 2 (2002), pp. 346-428.

⁹ Census of India, 2011, "Population by Religious Community," Office of the Registrar General & Census Commissioner, India.

¹⁰ Smith, D.E., *India as a Secular State* (Princeton University Press, 1963), pp. 3-8.



contextual engagement with religion, intervening to promote reform while respecting autonomy.¹¹ The Constituent Assembly debates reveal that figures like Jawaharlal Nehru, B.R. Ambedkar, and K.M. Munshi envisioned a State that would neither promote nor persecute any religion but would retain the sovereign authority to regulate the secular dimensions of religious institutions and practices.¹² Ambedkar, in particular, was emphatic that social reform legislation should not be impeded by claims of religious freedom, a position reflected in Article 25(2)(b), which empowers the State to make laws for social welfare and reform even if they interfere with religious practice.¹³

IV. Constitutional Provisions Governing Secularism

The constitutional foundation of secularism rests on an interconnected framework of provisions spanning the Preamble, Fundamental Rights, Fundamental Duties, and Directive Principles.

The Preamble, as amended in 1976, declares India to be a "Sovereign Socialist Secular Democratic Republic."¹⁴ The Supreme Court in *Kesavananda Bharati v. State of Kerala* (1973) held that the Preamble is a part of the Constitution, and in subsequent decisions, secularism was affirmed as an integral element of the basic structure doctrine.¹⁵

Article 14 guarantees equality before the law, prohibiting State discrimination on any ground including religion.

Article 15(1) specifically prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.¹⁶ **Article 16** ensures equality of opportunity in public employment, and **Article 16(2)** forbids religious discrimination in matters of State employment.

Articles 25 to 28 constitute the core of religious freedom provisions. 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, and to other provisions of Part III.¹⁷ 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. Article 27 prohibits the State from compelling any person to pay taxes for the promotion or maintenance of any particular religion. Article 28 prohibits religious instruction in State-funded educational institutions.¹⁸

Article 44 under the Directive Principles of State Policy directs the State to endeavour to secure a Uniform Civil Code for all citizens, reflecting the constitutional aspiration to transcend religion-based personal laws.¹⁹ The Supreme Court in *Mohd. Ahmed Khan v. Shah Bano Begum* (1985) urged the State to implement Article 44, a call that was politically neutralised by the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986.²⁰

¹¹ Bhargava, R., "The Distinctiveness of Indian Secularism," in *The Future of Secularism* (Oxford University Press, 2007), pp. 20-53.

¹² Constituent Assembly Debates, Vol. VII, 4th November 1948 (Speech of Pandit Jawaharlal Nehru on Objectives Resolution).

¹³ Constitution of India, 1950, Article 25(2)(b).

¹⁴ The Constitution (Forty-Second Amendment) Act, 1976, Preamble as amended.

¹⁵ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

¹⁶ Constitution of India, 1950, Articles 14, 15(1), and 16(2).

¹⁷ Constitution of India, 1950, Article 25(1).

¹⁸ Constitution of India, 1950, Articles 26, 27, and 28.

¹⁹ Constitution of India, 1950, Article 44.

²⁰ *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556; The Muslim Women (Protection of Rights on Divorce) Act, 1986 (Act No. 25 of 1986).

Article 51A(e) under Fundamental Duties requires every citizen to promote harmony and the spirit of common brotherhood transcending religious, linguistic, and regional diversities.²¹

V. Judicial Interpretation of Secularism

The Indian judiciary, particularly the Supreme Court, has played a pivotal role in defining and defending secularism. In *S.R. Bommai v. Union of India* (1994), a nine-judge bench held that secularism is a basic feature of the Constitution and that a State government acting against secular principles could be dismissed under Article 356.²² Justice Jeevan Reddy observed that religion should be kept separate from political governance, and the State has no religion of its own. In *Ismail Faruqui v. Union of India* (1994), the Court, while dealing with the Ayodhya dispute, held that a mosque is not an essential part of Islamic worship, a finding that attracted criticism for judicial overreach into theological questions.²³ The final resolution came in *M. Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors* (2019), where the Supreme Court, while granting the disputed land to the Hindu parties, allocated alternative land for the construction of a mosque and acknowledged the demolition of the Babri Masjid as a violation of the rule of law.²⁴

In *Indian Young Lawyers Association v. State of Kerala* (2018), the Sabarimala case, the Court struck down the ban on entry of women of menstruating age into the Sabarimala temple, holding that the exclusionary practice violated Articles 14, 15, and 25.²⁵ This decision generated significant political and social debate regarding the extent to which courts should adjudicate on matters of religious custom. The "essential religious practices" test, developed in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954), has been the judicial tool for distinguishing between what is constitutionally protected religious practice and what falls within the State's regulatory domain.²⁶ This doctrine has been applied in numerous subsequent cases but has also been criticised for placing courts in the position of theological arbiters.

VI. Political Dynamics and Challenges to Secularism

The political history of independent India reveals persistent tensions between the constitutional ideal of secularism and the pragmatic mobilisation of religious identity for electoral purposes. The **Shah Bano case (1985)** is a landmark illustration. When the Supreme Court ruled in favour of Shah Bano's right 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, effectively overriding the judgment.²⁷ This episode was widely criticised as an instance of political appeasement undermining both women's rights and secular governance. The **demolition of the Babri Masjid on 6th December 1992** by Hindu nationalist groups represented perhaps the gravest assault on India's secular fabric. The Liberhan Commission, which submitted its report in 2009,

²¹ Constitution of India, 1950, Article 51A(e).

²² *S.R. Bommai v. Union of India*, (1994) 3 SCC 1, per Justice B.P. Jeevan Reddy.

²³ *Ismail Faruqui v. Union of India*, (1994) 6 SCC 360.

²⁴ *M. Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors*, (2019) 19 SCC 1.

²⁵ *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1.

²⁶ *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, 1954 SCR 1005.

²⁷ The Muslim Women (Protection of Rights on Divorce) Act, 1986 (Act No. 25 of 1986); Code of Criminal Procedure, 1973, Section 125.



concluded that the demolition was premeditated and that several political leaders bore responsibility.²⁸ The communal violence that followed, particularly in Mumbai in 1992-93, documented by the Srikrishna Commission Report, exposed deep fissures in the secular consensus.²⁹

The rise of **Hindutva** as a political ideology, articulated through the Bharatiya Janata Party's governance agenda, posed new challenges. The Supreme Court in *Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte* (1996) controversially held that Hindutva or Hinduism is "a way of life" and not necessarily a reference to religion for the purposes of the Representation of the People Act, 1951, Section 123(3), which prohibits appeals to religion in elections.³⁰ This interpretation was widely debated for potentially legitimising religiously coded political discourse. The enactment of the **Citizenship (Amendment) Act, 2019** reignited the secularism debate by providing a fast-track citizenship pathway for persecuted religious minorities from Afghanistan, Bangladesh, and Pakistan, while conspicuously excluding Muslims.³¹ Critics argued that the Act violated Article 14 by introducing a religious criterion into citizenship law for the first time since independence. As of 2022, challenges to the Act remained pending before the Supreme Court. The question of a **Uniform Civil Code** continued to generate political contestation. While the Supreme Court in *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira* (2019) reiterated the desirability of a Uniform Civil Code, and the Law Commission of India in its 2018 consultation paper concluded that a Uniform Civil Code was "neither necessary nor desirable at this stage," the matter remained politically charged and legally unresolved.³²

VII. Secularism and Personal Law Reform

One of the most contested arenas of Indian secularism is the coexistence of religion-based personal laws governing matters of marriage, divorce, succession, and adoption. The Hindu Code Bills of the 1950s, championed by Ambedkar, reformed Hindu personal law by enacting the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoptions and Maintenance Act, 1956.³³ However, similar comprehensive reform of Muslim personal law has not been undertaken by Parliament, except for the abolition of triple talaq through the Muslim Women (Protection of Rights on Marriage) Act, 2019.³⁴ The Supreme Court in *Shayara Bano v. Union of India* (2017) declared the practice of instantaneous triple talaq (talaq-e-biddat) unconstitutional, holding it violative of Articles 14 and 21.³⁵ This judgment was followed by the legislative enactment

²⁸ Liberhan Ayodhya Commission of Inquiry, Report submitted to the Government of India, June 2009.

²⁹ Justice B.N. Srikrishna Commission Report on the Bombay Riots of 1992-93, submitted February 1998.

³⁰ *Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte*, (1996) 1 SCC 130; The Representation of the People Act, 1951, Section 123(3).

³¹ The Citizenship (Amendment) Act, 2019 (Act No. 47 of 2019), Section 2.

³² *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, (2019) 20 SCC 85; Law Commission of India, Consultation Paper on "Reform of Family Law," August 2018.

³³ The Hindu Marriage Act, 1955 (Act No. 25 of 1955); The Hindu Succession Act, 1956 (Act No. 30 of 1956); The Hindu Minority and Guardianship Act, 1956 (Act No. 32 of 1956); The Hindu Adoptions and Maintenance Act, 1956 (Act No. 78 of 1956).

³⁴ The Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act No. 20 of 2019).

³⁵ *Shayara Bano v. Union of India*, (2017) 9 SCC 1.



criminalising triple talaq, a move that was welcomed by women's rights advocates but criticised by some as a selective targeting of Muslim personal law for political purposes.

VIII. Conclusion

Secularism in India is not a borrowed Western abstraction but a constitutional philosophy shaped by the country's unique civilisational experience of religious pluralism and the traumatic memory of Partition. The Constitution, through a carefully designed architecture of Fundamental Rights, Directive Principles, and Fundamental Duties, establishes a framework wherein the State maintains principled engagement with religion — protecting religious freedom while retaining authority to promote social justice and equality. The judiciary, through landmark pronouncements from *Kesavananda Bharati* to *S.R. Bommai* to *Shayara Bano*, has consistently reinforced secularism as an inviolable component of the basic structure, even as individual decisions have occasionally provoked legitimate debate. However, political dynamics have repeatedly strained this constitutional commitment. Electoral mobilisation of religious identity, legislative responses driven by communal considerations, and the failure to implement a Uniform Civil Code reflect the gap between constitutional aspiration and political practice. The Citizenship (Amendment) Act, 2019, and the Ayodhya verdict of 2019 represent the most recent chapters in this ongoing tension between constitutional secularism and majoritarian politics. As of 2022, Indian secularism stands at a critical juncture. Its survival and vitality depend not merely on judicial enforcement but on sustained political commitment to constitutional values, robust civic engagement, and an unwavering adherence to the principle that in a democratic republic, the State belongs equally to citizens of all faiths and of none. The constitutional foundations remain strong, but the political will to honour them must be continually renewed.