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# THE CONSTITUTIONAL FRAMEWORK OF SECULARISM IN INDIA: A LEGAL AND HISTORICAL PERSPECTIVE

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## ABSTRACT

Secularism is one of the fundamental principles enshrined in the Indian Constitution, shaping the relationship between the state and religion. This paper explores the historical evolution of secularism in India, its constitutional underpinnings, and its practical interpretation through various landmark judgments by the judiciary. It critically examines how secularism, as envisioned by the framers of the Constitution, is meant to maintain a delicate balance between religious freedom and state neutrality, while addressing contemporary challenges such as communalism and state intervention in religious affairs.

## Introduction:

The concept of secularism holds a prominent place in the constitutional framework of India, often referred to as a unique model of secularism due to its distinct characteristics. Unlike the Western notion of strict separation between religion and the state, Indian secularism seeks to harmonize religious pluralism with state neutrality, allowing individuals to practice and propagate their faith without state interference while ensuring the state does not favor any religion. This research paper examines the constitutional provisions related to secularism, tracing its evolution and analyzing its judicial interpretation.

## Historical Evolution of Secularism in India

India's history has been shaped by its rich diversity of religions, cultures, and traditions. The principle of secularism, as adopted by the Indian Constitution, can be seen as a response to the pluralistic nature of Indian society, where multiple faiths have coexisted for centuries. However, the idea of secularism in India was further solidified during the colonial period and

the Indian independence movement, particularly under the leadership of Mahatma Gandhi and Jawaharlal Nehru.

•**Influence of the Freedom Struggle:** During the freedom struggle, leaders like Gandhi emphasized the unity of religious communities, promoting the idea of tolerance and non-discrimination. Gandhi's notion of "Sarva Dharma Sambhava" (equal respect for all religions) laid the foundation for a secular state that respected religious diversity.

•**Nehru's Secularism:** Jawaharlal Nehru, India's first Prime Minister, was a staunch advocate of a secular state, emphasizing that religion should be kept separate from politics and governance. Nehru's secular vision was instrumental in shaping the constitutional framework that aimed at preventing communalism while promoting religious tolerance.

### **Constitutional Provisions on Secularism**

The word "secular" was explicitly added to the Preamble of the Indian Constitution by the 42nd Amendment Act in 1976, though the essence of secularism was already embedded in various provisions from its inception.

•**Preamble:** The Preamble declares India to be a "sovereign, socialist, secular, democratic republic." The term secular implies that the state will have no official religion and will treat all religions equally.

•**Articles 14, 15, and 16 – Equality Before the Law:** These articles ensure equality before the law and prohibit discrimination based on religion, among other factors. They form the basis of secularism by guaranteeing that the state will not favor any particular religion.

•**Article 25 – Freedom of Religion:** This article guarantees the freedom of conscience and the right to freely profess, practice, and propagate religion, subject to public order, morality, and health. It reflects the balance between individual religious freedom and the state's role in maintaining public order.

•**Article 26 – Freedom to Manage Religious Affairs:** Article 26 allows every religious denomination to manage its own affairs in matters of religion, establish and maintain institutions, and own and administer property, subject to public order, morality, and health.

•**Article 27** – Freedom from Taxation for Promotion of Religion: Article 27 prohibits the state from compelling any person to pay taxes for the promotion or maintenance of any particular religion or religious institution, reinforcing the state's neutrality towards religion.

•**Article 28** – Freedom as to Attendance at Religious Instruction: Article 28 ensures that no religious instruction is provided in any educational institution wholly funded by the state, though it allows religious instruction in institutions administered by religious bodies.

### **Judicial Interpretation of Secularism**

Over the years, Indian courts have played a crucial role in interpreting and defining the contours of secularism. The judiciary has been tasked with maintaining the fine balance between religious freedom and state neutrality, often having to deal with complex issues relating to religious practices and state intervention.

•**S. R. Bommai v. Union of India (1994)**: This landmark case is perhaps the most definitive pronouncement on secularism by the Supreme Court. The court held that secularism is a basic feature of the Constitution and that any action of the state that undermines secularism can be challenged as unconstitutional. The judgment clarified that secularism means equal treatment of all religions and that the state must remain neutral in religious matters.

•**Kesavananda Bharati v. State of Kerala (1973)**: In this case, the Supreme Court introduced the “basic structure” doctrine, stating that certain features of the Constitution, including secularism, cannot be amended by Parliament. This decision solidified secularism as an inviolable part of the Indian Constitution.

•**The Triple Talaq Case (Shayara Bano v. Union of India, 2017)**: In this case, the Supreme Court struck down the practice of instant triple talaq among Muslims, deeming it unconstitutional. The court's decision was based on the principle that religious practices must conform to constitutional values, particularly those related to gender equality and human rights.

•**State of Karnataka v. Dr. Praveen Bhai Thogadia (2004)**: The Supreme Court reinforced the need for maintaining secularism by curbing inflammatory speeches that could incite communal violence. The court emphasized that the state has a duty to prevent communal tensions and promote harmony among different religious communities.

## **Challenges to Secularism in Contemporary India**

Despite the strong constitutional framework, secularism in India faces several challenges in practice. Issues such as the politicization of religion, communalism, and state intervention in religious affairs have often tested the secular fabric of the nation.

•**Politicization of Religion:** In recent years, there has been an increasing trend of political parties using religion to gain electoral advantages. This politicization of religion often leads to the alienation of religious minorities and threatens the secular ethos of the Constitution.

•**Communalism:** Communal violence and tensions between religious communities continue to pose significant challenges to secularism. The state's role in addressing these issues through law and order measures is critical to maintaining peace and religious harmony.

•**State Intervention in Religious Affairs:** While the Constitution allows the state to intervene in religious practices that are in conflict with public order or morality, such interventions have sometimes been seen as selective or discriminatory. Balancing state intervention and religious autonomy remains a delicate issue.

### ***Conclusion:***

Secularism, as enshrined in the Indian Constitution, is not merely the absence of religion in governance but a positive principle that mandates equal respect for all religions while maintaining the state's neutrality. However, the practical implementation of secularism faces numerous challenges, especially in the context of communalism and the politicization of religion. The judiciary has played a crucial role in upholding the secular character of the Constitution, but it is essential for both the state and civil society to work towards preserving and promoting the secular values that are foundational to India's constitutional identity.

**References:**

1. Constitution of India, 1950.
2. S. R. Bommai v. Union of India, (1994) 3 SCC 1.
3. Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.
4. Shayara Bano v. Union of India, (2017) 9 SCC 1.
5. State of Karnataka v. Dr. Praveen Bhai Thogadia, (2004) 4 SCC 684.
6. Granville Austin, The Indian Constitution: Cornerstone of a Nation.
7. Rajeev Bhargava, Secularism and its Critics.