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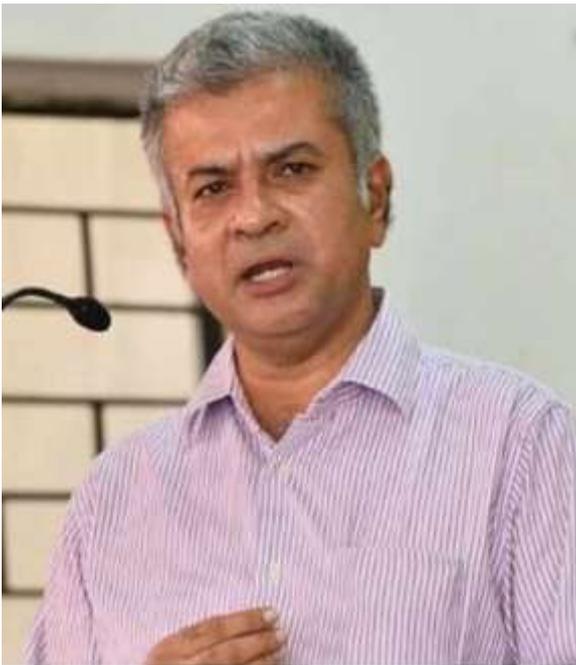
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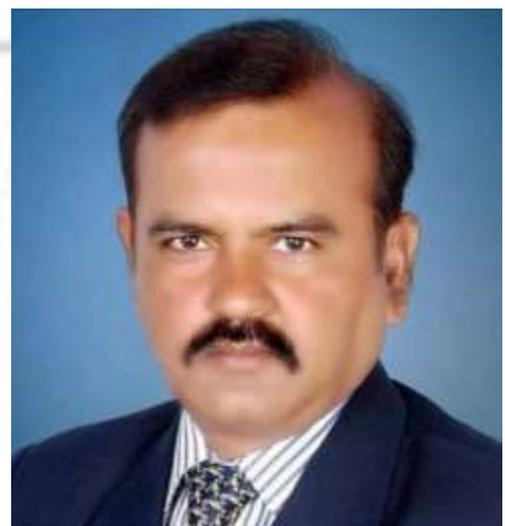


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

SECULARISM IN INDIA AT CROSSROADS: EVALUATING STATE PRACTICE AND CONSTITUTIONAL COMMITMENTS

AUTHORED BY - ABHINAV WADHWA

“The Quran does not preach hatred against Hindus, nor does Lord Ram preach hatred against the Quran. Some claim that Hindus are in danger; others say Muslims are. But if we look beyond the veil of religion, we will see that it is India that is truly in danger.”

This quote reminds us of a truth so often forgotten in the noise of politics and polarisation that human suffering knows no religion, and that justice must be blind not only to caste, creed, or community but also to prejudice dressed as law.

In a country as diverse as India, secularism is not just a constitutional principle; it is a moral necessity. Our Constitution, through Article 25, guarantees every individual the freedom of conscience and the right to freely profess, practice, and propagate religion.¹ Yet, in a practical sense, this right is not that similar to that of the constitutional path but is often influenced by state action, judicial inconsistency, and political manipulation. We will understand secularism with various lenses and substantiate it with various cases where the parliament and the judiciary have played an important role in sometimes following and sometimes breaching such secularism.

Religious Freedom is the base of Indian Society on which it has been built through eras, not only from the modern era, but religion has also got traces from the Indus Valley Civilisation, one of the earliest civilisations, which was not named in a direct sense, but was in continuity.² Followed by the Muslim Rule and the British Rule have brought new ideas further itself establishing sub religions such as Buddhism, Jainism being used by Dalits or the ‘antyaja’ who were kept outside the varna system so started to change their religions so that they do not face

¹ INDIA CONST. art. 25.

² Gautam Bhatia, Freedom from Community: Individual Rights, Group Life, State Authority and Religious Freedom under the Indian Constitution, 5 Glob. Const. 351 (2016)

discrimination and this led to development of a diverse nation.³ India has a majority Hindu population, consisting of 79.8% of the population, which is subdivided into various groups, and the remaining 14.2% of the population is Muslim and the rest of the other religious minorities.⁴

So, first of all, **WHAT IS RELIGION?** Religion is a meeting of the soul and divinity, or meeting your higher conscience, through which people seek guidance in their life, and provides a pathway for determining what things to do and what things would be unethical or immoral.⁵ Before the emergence of law, religion acted as the guiding pathway for a person, but today, after the recognition of law, religion is slowly moving towards a propaganda-based movement, as it is being used for vote bank politics and as a tool for exploiting minority religions. In the modern era, a new concept of secularism has emerged.

In the Western sense, the concept is of negative secularism, which treats religion and government as separate entities and will not interfere with each other. In the words of Akeel Bilgrami, such feelings of enmity rose within the states in Europe, subjugating them and saying the nation is ours, not theirs. The Jews, Irish, Catholics, and Protestants were various groups that were antagonists to each other, and that was where the concept of secularism arose, that the state shall have no religious interference.⁶

But in the Indian context, secularism has a different meaning because a political system has an inseparable relationship with religion. A statement by Mahatma Gandhi that “those who say religion has nothing to do with politics do not know what religion means”. The Indian concept was given by Jawaharlal Nehru and Mahatma Gandhi where these leaders viewed Indian societal condition not as similar with the Europe where in the words of Nehru the word they gave was “**Unselfconscious Pluralism**” where an example of pluralism prior Independence can be seen in Khilafat Movement where Hindus and Muslims collaborated in the fight against colonial rule, demonstrating a form of pluralistic unity in diversity and various other movements which shows our society as being united still being in diversity furthermore more bisection was made by the Britishers due to their policies of divide and rule which has been

³ B.R. Ambedkar, *Annihilation of Caste: An Undelivered Speech* (Arnold Publishers 1990).

⁴ *India Population 2025: Religion, Literacy, and Census Data Insights*

⁵ *PMA Metropolitan v. Moran Mar Marthoma* 1954 SCR 1002

⁶ NewsClickin, *Secularism in India: Talk by Prof Akeel Bilgrami*, YOUTUBE (Jan. 17, 2020) available at- [Secularism in India: Talk by Prof Akeel Bilgrami](#) (last visited- May, 20 2025).

effecting us since then.⁷

Furthermore, the Indian concept of secularism is often referred as a positive concept in the **S.R. Bommai v. Union of India**⁸, judgement where Justice Sawant said that “*religious tolerance and equal treatment of all religious groups and protection of life and property are a part of secularism enshrined in the Constitution*”.

Another idea about Secularism, according to Rajeev Bhargava, is that it is the dream of the minority that wishes to shape the majority in the utopian image where all religions have equal status but lack power under a democratically organised polity, and thus is a social myth that separates politics from religion.⁹ Bhargava states: “Unlike western secularism that appears to impose a choice between active hostility and benign indifference, Indian secularism brings to bear on religion an attitude of critical respect.¹⁰

Furthermore, the idea of Indian secularism, often articulated by public figures, entails creating a public sphere that accommodates continuous dialogue among religious traditions and between the religious and the secular figures, to be a reminder of the diversity of the theory of transcendence. The metaphysical world is the same for all the religions, and its crux is the belief system of the civilisation.¹¹

An explanation and liberal undertone can be observed in the intention of the drafters of the constitution, who claimed India to be a secular state under the aegis of the Upanishad principle “Sarva Dharma Sambhava”, which translates to respecting all beliefs and religions. But, “India has often found itself at critical junctures where it has both faltered and made efforts to course-correct itself in balancing equality and right to freedom of religion.

FACETS OF SECULARISTIC POLICIES

The polarised sections which have been created in the Indian Society are nonetheless due to hatred amongst people, but largely because such divisions were systematically ingrained before Independence through colonial policies, identity-based politics, and the selective application

⁷ Supra note 7

⁸ S.R. Bommai v. Union of India AIR 1994 SC 1918

⁹ Rajeev Bhargava, Ed., Secularism and Its Critics (Oxford Univ. Press 1998)

¹⁰ Ibid.

¹¹ Ashis Nandy, The Politics of Secularism and the recovery of Religious Tolerance, XIII(2) ALTERNATIVES 177 (1988).

of secular ideals by the postcolonial state. The three important facets in this concept are the religion, the state and the individual. These three aren't mutually exclusive categories. Here, the proposition is that the state acknowledges the equality of citizens and views them independently of their religious affiliations. In his critique of Indian secularism, Smith has suggested that the problem with the Indian 'version' lies in the fact that the State has assumed a role of the reforming body for the majoritarian Hindu religion, intervening in many of the personal laws. However, it has simultaneously, in the claim for upholding its image, been relatively non-interventional in the case of minorities like Muslims under the garb of protection of minorities.¹²

One of the early flashpoints in the secularism debate, which came prior to such constitutional amendment of addition of secularism, was the Ram Janmabhoomi debate. The slogan of "*Ram Lalla hum aayenge, mandir wahi banayenge*" became a rallying cry for Hindu fundamentalists in the early 1990s. However, the issue predates the 1990s debates as the local communities had always expressed grievances about the alleged demolition of the temple and building a mosque, which also came to the attention of the British in 1857.

Further, a connected event of the *Shah Bano judgment*¹³, where the Supreme Court upheld gender equality by allowing maintenance under Section 125 CrPC beyond the *iddat* period, reflecting positive secularism. However, due to the Ram Janmabhoomi debate, where rallies from different parts to Ayodhya by LK Advani and his followers started towards the Ayodhya Temple dispute created heated movement against the Muslim minority, thereby facing protests and fearing electoral backlash, the Rajiv Gandhi government passed the Muslim Women (Protection of Rights on Divorce) Act, 1986, prioritising personal laws over constitutional equality under Article 14.

In December 1992, the demolition of the Babri Masjid in Ayodhya, Uttar Pradesh, was a major blow to Indian secularism. What sparked nationwide communal unrest was not merely the intention to construct a temple, but the symbolic act of erecting it on the ruins of a demolished mosque, an act that challenged India's secular fabric. In the case of *M. Ismail Faruqui v. Union*

¹² Anandita Bajpai, imagining a 'Secular' India: Roots, Offshoots and Future Trajectories of the Secularism Debate in India, in Religion and Secularities: Reconfiguring the Public Sphere in Contemporary India 34 (Arkotong Longkumer & Nasreen Fazalbhoy eds., 2021)

¹³ Mohd. Ahmed Khan vs Shah Bano Begum and Ors 1985 AIR 945

*of India (1994)*¹⁴, the Central Government urged that in the existing situation and in view of the widespread communal flare-up throughout the country on account of the events at Ayodhya on 6th December, 1992, the most appropriate course, in the opinion of the Central Government, was to make this acquisition along with the Special Reference to decide the question which would facilitate a negotiated solution of the problem, and if it failed, to enable the Central Government to take any other appropriate action to resolve the controversy and restore communal harmony in the country and court.

The Godhra Carnage of 2002 is another connected event, 10 years post the Ayodhya incident, a train coach of the Sabarmati Express, carrying Hindu pilgrims returning from Ayodhya, was set ablaze by a Muslim 'mob' in Godhra (Gujarat), killing 59 pilgrims, mostly women and children. The incident led once again to a communal uproar all over the state of Gujarat as violence in immeasurable proportions overtook the state. Hindu agitators attacked Muslims in the state in retaliation for the train burning, leading to the deaths of approximately 2000 people, whereas thousands were displaced. This led to one of the important sequential events in India being an example of not only communal violence but communal vengeance.¹⁵

This argument by the central government and judgment of transfer of property to central government was said to be based on secularism withstanding rationality in the opinions but Abdul Nazeer, J the sole muslim judge in the judgment of *M. Siddiq v. Mahant Suresh Das (2019)*¹⁶ said “*Courts cannot evaluate or question the rationality of religious beliefs.*” This observation sits unknwon because we do not know whether it was judicial unity or pressure The judiciary's increasing involvement in religious disputes reflects a deeper paradox: secularists now often find themselves relying on courts to uphold secular values that elected governments often sideline for political gain.¹⁷ The Essential Religious Practices (ERP) doctrine has become a tool to negotiate this tension, yet its inconsistent application has raised more questions than answers.

Court has upheld the essential religious practice test first of all in *Seshammal v. State of Tamil*

¹⁴ M. Ismail Frauqui and Ors. vs. Union of India (UOI) and Ors. (24.10.1994 - SC): MANU/SC/0860/1994 para 18

¹⁵ Supra note 5

¹⁶ M. Siddiq v. Suresh Das, (2019) 4 SCC 641

¹⁷ Nivedita Menon, Living with Secularism in The Crisis of Secularism in India Anuradha Dingwaney Needham & Rajeswari Sunder Rajan, Eds, (Duke Univ. Press 2007).

*Nadu*¹⁸ where the hereditary practice of appointment of priests was changed by the Government of Tamil Nadu and when the priests challenged as being violative of Art 25 and Art 26(b) the Court held the amendment by the Government valid as Art 14 being overlapping over Art 25, 26. Further, in the case of *N. Adhithyan Vs. Travancore Devasom Board and Others*¹⁹ where Namboodri Brahmin to the appointment of a non-Namboodri Brahmin who was otherwise well qualified to be appointed as a priest in the temple in question it was held that rights claimed solely on the basis of caste cannot enjoy the protection of Article 25 and 26 and no earlier decision of this Court including Seshammal would support the contention that even duly qualified persons can be barred from performing Poojas on the sole ground that such a person is not a Brahmin by birth or pedigree.

Here, when we talk about the case of *State of Bombay v. Narasu Appa Mali*²⁰, where personal laws were held as not a part of law under Art 13 (1) of the Constitution of India, therefore establishing that it cannot be challenged, but as we go on and see the debates of landmark cases like *Mohd. Ahmed Khan vs Shah Bano*²¹ and *Shayara Bano v. UOI*²² and case like *Safai Karamchari Andolan v. UOI*²³ in that matter related to Hindu practices where the question related to Art 17 was raised and practice of manual scavenging being performed by the Dalit castes who were being compelled to undertake this task under the guise of "traditional occupation.". Further the Sabarimala judgement, we can see how the Supreme Court has time and again on the pretext of gender equality on such personal laws being prevalent being applicable from time immemorial. If we focus on the judgement of Shah Bano and Shayra Banor even the Safai Karamchari judgment, the personal laws or practices were not essential and even were on the face of it arbitrary, but while it was overruled in *Indian Young Lawyers Association v. State of Kerala*²⁴ but it was a right judgement in the light of personal laws and secular practices protection but shall be used sparingly like in case of Shah Bano and Shayra Bano.

But the major debate that arose in deciding the case of *Indian Young Lawyers Association v.*

¹⁸ Seshammal v. State of Tamil Nadu (1972) 2 SCC 11

¹⁹ Adhithyan Vs. Travancore Devasom Board and Others 2002 AIR SCW 4146; Adi Saiva Sivachariyargal Nala Sangam v. The Govt. of Tamil Nadu (2016) 2 SCC 725 para 25

²⁰ State of Bombay v. Narasu Appa Mali AIR 1952 BOMBAY 84

²¹ Supra Note 13

²² Shayara Bano vs Union of India and Ors. Ministry Of Women, AIR 2017, SUPREME COURT 4609

²³ Safai Karmachari Andolan v. Union of India 2014 (11) SCC 224

²⁴ Indian Young Lawyers Association v. The State of Kerala, (2017) 10 SCC 689

State of Kerala,²⁵ was whether to uphold the supremacy of constitutional morality or personal religious practices, as the case may be a stark example, where the Supreme Court's 4:1 majority where the dissent was given itself by a women judge held that the exclusion of women of menstruating age from the Ayyappa temple violated the principles of equality (Article 14) and non-discrimination (Article 15). The verdict sparked outrage among many devotees, including sections of women from the same community, who did not seek entry. In her powerful dissent, Justice Indu Malhotra argued that courts should not impose rights on religious groups if the group itself does not seek them, emphasizing that “what constitutes an essential religious practice is for the religious community to decide”.²⁶

The court took an overemphatic view of the issue, and the personal law was challenged by an NGO in Punjab for such rights of women not categorised as Ayyapans or Malikapurams. Further, the distinction is based on intelligible differntia and is reasonable because women as a class aren't prohibited and thus it does not attract social discrimination and does not violate Art 17. Women under sec 3(b) are allowed in other temples of lord Ayyappa and hence it is proven that women as a gender aren't discriminated in the said case. Furthermore, categorisation for a sect to be a religious denomination was decided in the *SP Mittal Etc. vs Union of India and Others*²⁷; These three criteria are that there must be common faith (i), a common organisation (ii), and a distinctive name (iii). The Court observed that in the present case, Lord Ayyappa cannot be regarded as a denominational character because it is not fulfilling the first requisite, i.e. common faith. The people who do not believe in Lord Ayyappa or who belong to other religions are also allowed to enter the temple.

Further, the conflict of Art 14 and Art 25 was solved by her, Indu, J observed that the exclusion of women belonging to a certain age is not violative of Article 14 because such practice is performed to maintain the sanctity of a particular temple, and it has nothing to do with the impurity of women. This verdict underscored the tension between constitutional morality and community autonomy. It also brought to light the elitist lens through which the courts may view religious traditions, portraying the customs of practicing Hindus as regressive without

²⁵ Ibid.

²⁶ Nikhilesh Koundinya, Sabarimala Judgement: A Powerful Dissent, 3 INT'L J.L. MGMT. & HUMAN. 1478 (2020).

²⁷ SP Mittal Etc. vs Union of India and Others 1983 (1) SCC 51, (1983)

appreciating the internal nuances of faith.²⁸

Given that secularism and the rule of law are part of the Constitution's basic structure, as held in *Kesavananda Bharati v. State of Kerala*²⁹ and reaffirmed in *S.R. Bommai v. Union of India*³⁰, one must question how a ruling like Sabarimala could be delivered without breaching the foundational balance envisioned by the framers. If secularism is a basic feature, how can it selectively override or enforce religious rights, depending on public sentiment or majoritarian discourse?

If we move our eyes towards the latest examples for stark difference between secularism in theory and its applicability, a recent example is the Waqf Amendment Bill, passed by Parliament, which removed the doctrine of "Waqf by User", a principle that allowed properties used as religious endowments over time to be recognised legally. Further, the Central Government has argued that waqf is not an essential religious practice in Muslim personal law. This change gives the Central Government grounds to challenge or reclaim such properties. The absence of any equivalent scrutiny or reclamation of Hindu religious sites underlines the asymmetry in state treatment of religious communities. This perceived bias aligns with the majoritarian political climate, further undermining secularism.³¹

Furthermore, the demolitions known as "Bulldozer Justice" in Uttar Pradesh reflect the erosion of procedural safeguards under the rule of law. In several cases, Muslim-owned homes were demolished without prior notice, based on unproven allegations of criminal activity. These demolitions lack support in municipal or penal law and are often justified through public statements by political leaders rather than judicial orders. In *Som Raj v. State of Haryana*³² the Supreme Court held that rule of law means the absence of arbitrary power, and in *Maneka Gandhi v. Union of India*.³³ The Court emphasized that the reading of the "procedure established by law" shall be in consonance with the "due process of law" and held that procedures should be just, fair and unarbitrary.

²⁸ Supreme Court Judgment on Sabarimala Disappointing, Will Have Problematic Repercussion, INDIAN EXPRESS (Sept. 29, 2018)

²⁹ *Kesavananda Bharati v. State of Kerala* AIR1973 SC 1461

³⁰ *Supra* note 4

³¹ The Waqf (Amendment) Act, 2025, No. 109, Acts of Parliament, 2025 (India)

³² *Som Raj v. State of Haryana*, 1990 AIR 1176

³³ *Maneka Gandhi v. Union of India*, AIR 1978 SC 59

THE UCC DEBATE AND SECULARISM

The Uniform Civil Code (UCC) has emerged as a critical flashpoint in India's secularism debate, especially post-2014 with the NDA government actively endorsing it as part of its political manifesto. While framed as a modernising reform under Article 44 of the Constitution, the push for UCC is often viewed with suspicion by minority communities, who perceive it as a potential tool for majoritarian homogenisation rather than genuine legal unification.³⁴

India's unique brand of secularism of operating a uniform law without having a codified Uniform Civil Code has gradually developed under our very noses over several decades. But most Indians, and also most academic observers, have not noticed this and the Indian state has had its own agenda for not telling people clearly what it was doing. Still, these are not accidental, haphazard developments. The Indian state has apparently acted purposefully, albeit silently and surreptitiously, cautiously and gradually harmonising the various Indian personal laws along similar lines without challenging their status as separate personal laws.³⁵

The UCC in Uttarakhand has established ground work after the Portuguese Civil Code of Goa to make a pan India code application but it has some implications for the rights of minorities as the critics fear the bill might disproportionately affect minority communities whose traditional practices and cultural identities might be disregarded and further non inclusivity of LGBTQ++ and tribal communities also raises questions upon the validity and extent of the law. In the case of *Sarla Mudgal (Smt.) President, Kalyani and Ors. V. UOI and Ors.*³⁶ "the desirability of uniform Code can hardly be doubted. But it can concretize only when social climate is properly built up by elite of the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change." The making of such law should be a socially inclusive one and not an imposition without hurting religious sentiments of any minority community then only India can build such united community trapped in various religious strangles.

³⁴ Shrusti Mulgund, Indian Secularism and Feasibility of Uniform Civil Code, 23 SUPREMO AMICUS [148] (2021).

³⁵ Werner Menski, The Uniform Civil Code Debate in Indian Law: New Developments and Changing Agenda, 9 GERMAN L.J. 211 (March 2008).

³⁶ Sarla Mudgal (Smt.) President, Kalyani and Ors. V. UOI and Ors AIR 1995 SC 1531

CONCLUSION

To summarize such finding in relation to we can say that the concept has always been in limelight due to different governments had differently perceived and would be perceiving the idea of secularism differently and being most of the times has been biased toward majoritarian religion and further the judicial system has also not played a much soothing role in preventing such communal policies and has contributed to these communalistic policies.

The people who seek guidance in their lives through pathway of religion are trapped in materialistic concepts like that of government policies and such policies pave the way for oppression of minority religion and their protests which lead us to communalism not only between religions but in the hearts of the individuals which is important to be restructured so that a life where the higher conscience of transcendence can be out of materialistic things and such policies to be framed shall be socially inclusive and thriving its way through the Constitution.

So, the government shall try to exercise judicial restraint as we have seen in the Sabarimala judgment wherein the court in this case became over empathetic towards giving such decision to maximize the principle of equality and promoting feministic policies where the women of that sect themselves does not want to enter the temple while in their menstruating period and further there not being a complete bar for women to enter such temple.

But, the larger view of this issue would be to recognize such gaps between the constitutional ideals or the pathway that paved the way for free and secular India by the constitution makers was in the direction that future governments would act upon it and work in the lines of constitution but as we pass 75 years of the making of the Constitution not much has changed and still there is still a requirement to change things at ground level which have to be started from the individuals itself. The propaganda shown to the 80% of general public is biased and one sided as can be seen explicitly in the BJP regime it's of Hindutva a majoritarian ideal which is meant to ignore the minority and get biased against other religions, I myself being a Hindu is saying this because I have not studied from such fake social media fake disseminations, we are so engrossed in this propaganda that we cannot see the actual reality that being it Pakistan is a Muslim country and was based on religious lines. There can never be a comparison of both countries, as India, prior to the adoption of the constitution, also accepted all people irrespective

of their religion, and if such feelings of hatred are enhanced at such a pace, then it would not be correct for the future of this country.

Further, the government in its promotion of the constitution as the Grund norm, the nation should also make its policies according to the same, which are what ancestors and leaders have seen in India, where they perceived it as an unselfconscious pluralistic country and not of communalistic values.

India should rethink its policies and make a more inclusive place for everyone to live and prosper.

