



A CRITICAL ANALYSIS OF WESTERN AND INDIAN SECULARISM

Atul Chaudhary
Assistant Professor
IIMT College of Law

INTRODUCTION-

Understanding the definition and history of the term "secular" is crucial before delving further into the subject. Without understanding its true meaning, people frequently discuss secularism, criticise an individual or a state action, and declare their support for or opposition to it. Therefore, understanding the definition and history of the word "secular" is crucial. One definition of secularism cannot adequately capture the idea. Its definition is examined from a variety of angles, including philosophical, political, and others. George Jacob Holyoake, a British reformer, first used the term secularism in 1851. He claims that secularism is an independent religion that does not oppose any one religion.

According to Britannica¹, Secularism is any movement which is directed away from otherworldliness to life on other.

According to Merriam-Webster², Secularism means in difference to, or rejection or exclusion of, religion and religious considerations. More of these definitions can be found in the Cambridge, Oxford, Collins, etc. dictionaries. But none of these explanations fully capture secularism. The majority of definitions state that secularism is the complete opposite of religion and is seen as the enemy of religion. However, this is untrue. Secularism actually means that the State should not have its own religion and that no one may declare that the State is to be a theocratic State.

However, it does not imply that the State should be indifferent to religion. To explicitly state the great ideals of socialism, secularism, and national integrity, the word "secular" was inserted into the Constitution. People may perceive the essential conditions for human advancement in all spheres and civilizations thanks to secularism.

A secular state, according to Nehru, is one in which all religions are allowed "free play, subject only to their non-

interference with each other or with the fundamental conception of our state." India's version of secularism is distinct from that practised in the West. In contrast to the US, India does not have a barrier separating the state from religion. In India, secularism means that

¹ *Secularism* (2023) *Encyclopædia Britannica*. Available at: <https://www.britannica.com/topic/secularism> (Accessed: 15 May 2023).

² *Secularism* (2023) *Encyclopædia Britannica*. Available at: <https://www.britannica.com/topic/secularism> (Accessed: 15 May 2023).

the government is impartial and treats all religions equally. "Charities and Charitable Institutions, Charitable and Religious Endowments, and Religious Institutions" is the 28th item on the Concurrent list under the 7th Schedule of the Indian Constitution. This indicates that laws pertaining to religious institutions may be passed by both the Central and State governments.

However, in the event of a tie, the central government's law shall take precedence.

Articles 29³ and 30 of the Constitution state that all minorities, regardless of religion or language, have the right to found and maintain their own educational institutions and that the State is prohibited from making any distinctions based on religion or language when providing funding for such institutions.⁸ This demonstrates that the State does not interfere in religious matters without showing favouritism to any one religious group.

HISTORY OF INDIAN SECULARISM-

India has practised secularism since the time of Great Ashoka and Harshvardhana. In our nation, the idea of secularism—"sarva dharma sambhava"—or tolerance for all religions, has always been present. The Yajur Veda, Atharva Veda, Rig Veda, and Akbar's Din-e-elahi are its ancestors. Since ancient times, India has nurtured the ideals of tolerance and respect for all religions on an equal footing. Its fundamental tenet is respect for one another. Later, the tolerant attitude became known as secularism. India's secularism is built on the country's rich religious background and culture. The expression "Vasudhaiv Kutumbkam," which translates to "the world is one family," aptly captures the secular fabric of the nation. India has always been a society that values diversity. It has always welcomed people of all faiths and religions with open arms, never discriminating against any faith or religion, and never viewing any faith or religion as a danger. All religious communities are given equal rights and freedom. One such location is Maharashtra's Ellora Caves. Built between the fifth and tenth centuries are the Ellora Caves. Caves from different religions dating back to the nineteenth century demonstrate their concord and coexistence. But the Mughals' presence undermined the idea of secularism. They

³ INDIA CONSTI. art 29 art 30

imposed a charge known as jizya on non-Muslim shrines and destroyed them. With the exception of Akbar, every Mughal ruler supported Islam. Both the British Raj and the East India Company did not distinguish between the state and religion. The British government established a number of regulations that strained relations between the

groups, such as the creation of a separate Muslim electorate.

Before the 42nd Constitutional Amendment Act of 1976, there was no express term like "secular" or "secularism" in the Constitution; as a result, by this Amendment, what was implied was made clear. We know that the term "Secular" was inserted by that Act to the Preamble of the Constitution. The right to freedom of religion was preserved as a fundamental right under Part III because the idea of a secular state was always present in the minds of the Constitution's drafters. In *Keshavananda Bharti v. State of Kerala*⁴, the Supreme Court declared secularism to be a fundamental component of the Constitution. In *Indira Gandhi v. Raj Narain* and *S.R. Bommai v. Union of India*⁵, the same was reiterated.

SECULAR PROVISION-

The idea of secularism was not explicitly included in the Indian Constitution at the time it was being written. However, the Indian Constitution has outlined a number of clauses that reflect the existence of secularism in Part III (Articles 14, 15, 16, 25, 26, 27, 28, 29, 30), Part IV (Article 44), and IVA . It is clear from a simultaneous reading of all these Articles that the Constitutional Fathers' purpose was neither to promote culture's rationalisation nor to resist religion. Although the 42nd (Amendment) Act, 1976, which went into effect on January 1, 1976, was the law that first added the word "secular" to the Preamble of the Constitution, The word "secular" was introduced in the Preamble on March 3rd, 1977, making secularism a part of the Constitution.

According to the 42nd Constitutional (Amendment) Act of 1976, a secular republic is one in which all religions are treated equally. Even though the legislation is written in unambiguous terms, the Hon. Supreme Court has interpreted it on numerous occasions through diverse judgements. One thing is clear, though: secularism, as defined by the Indian Constitution, does not imply atheism or anti-godliness.

⁴ *Keshavananda Bharti v. State of Kerala*(1973) 4 scc 225

⁵ *S.R. Bommai v. Union of India* (1994) AIR 1918

All people are afforded equality before the law and equal protection under the law under Article 14 of the Constitution. However, classifications that are acceptable can be made and ought to be handled similarly. The Indian Constitution forbids the State from discriminating against any citizen solely on the basis of their race, caste, gender, or place of birth.

According to Article 15⁶, no citizen shall, on any of the aforementioned grounds, be subject to any disability, liability, restriction, or condition pertaining to access to stores, public restaurants, hotels, and places of public entertainment, or pertaining to the use of wells, tanks, etc., which are wholly or partially maintained out of state funds or are intended for the general public.

Article 16⁽⁷⁾¹ establishes the basic principle that all citizens shall have equal opportunity with regard to employment in the service of the State . No citizen should be denied employment or other benefits under the State on the basis of his or her religion, race, or national origin. The equality of citizens who practise different religions

is properly protected by these regulations. The essence of our secularism calls for religious tolerance and fair treatment of all religious groups.

With several exceptions, the Constitution accepted the principle of non-interference in religious matters. According to Articles 25⁶ to 28 of the Indian Constitution, every person residing in India should have the freedom to profess his or her As long as the citizen followed the common law of the realm, they were free to practise their faith.

When and how religious freedom is allowed and how it is limited are explicitly stated in Article 25, which is a repository of religion and secularism in India. Every person has the right under this Article to freely proclaim, practise, and spread their faith. The word "any person" is used in Article 25 to imply that a person's decision to voluntarily convert to a different religion is legal because they are free to do so.

The State cannot control religious activity since it won't meddle with religious beliefs. The State may, however, control a secular activity that is connected to a religious concern Article 25. If a practise is viewed as a necessary and integral component of a religion, it will be classed as religious; if not, it will be treated as secular.

⁶ INDIA CONSTI. Art 15

⁷ INDIA CONSTI art 16

⁸ INDIA CONSTI art 25

n S R. Bommai v. Union of India, the Supreme Court of India held that India has been secular from the founding of the republic in 1994. The court's ruling confirmed the separation of church and state."Religion has no place in matters of State, and if the Constitution demands that the State be secular in thought and action, the same requirement attaches to political parties as well," it was written. Combining state power and religion is not recognised or permitted by the Constitution. The constitutional directive is that.

The Indian Constitution has given the government broad leeway to interfere in religious affairs, including the constitutional elimination of untouchability and the admission of members of "lower castes" to all Hindu temples, among other things. Since the founding of the Republic, a number of court rulings and executive directives have been in force, varying the level of separation between the state and religion.

The Indian Constitution's definition of secularism has the following distinctive characteristics:

1. No religion will be used to define the state or to exert influence over it.
2. The state does not give any religion special treatment, even if it offers everyone the freedom to practise whatever religion they wish.
3. The state will not treat anyone differently on the basis of their religion or belief.
4. The heart and soul of secularism as envisioned by the constitution is the right of every citizen, subject to any general conditions, to enter any venues under the state and religious tolerance. It establishes the prerequisites for the development of an Indian people's brotherhood that ensures both the dignity of the person and the cohesion of the country.

Landmark cases

In *Sardar Taheruddin Syedna Sahib v. State of Bombay*⁹ the apex court held that 'Art. 25 & 26 serve to emphasize the secular nature of the Indian democracy, which the founding fathers considered to be the very basis of the Constitution.

In *Kesavananda Bharati v. State of Kerala* the Supreme Court held that that secularism was a part of the basic structure of the Constitution. Chief Justice Sikri said that the secular character of the Constitution was the essence of it. Justice Shelatand and justice Grover stated that the federal and secular nature of the Constitution were the main ingredients of the basic structure.

⁹ *Sardar Taheruddin Syedna Sahib v. State of Bombay* (AIR 1962 SC 853),



In *St. Xaviers College Society v. State of Gujarat*¹⁰ Court tried to investigate into the Indian model of secularism where the Supreme Court expressed that Indian secularism does not draw a clear wall between the church and state. In Indian context secularism only mean live and let live.

In the case of *Bommai v Union of India* (1994)¹¹ elaborated the meaning of secularism. The Court said that secularism means equal treatment of all religions. The Court held that the word 'secular' which was inserted in the Preamble of the Constitution by the 42nd Amendment, highlights the fundamental rights guaranteed in Articles 25-28.

The Court was asked to rule on the issue of whether secularism entails total separation of politics and religion. In case of *Abhiram Singh* The Court ruled that secularism does not mandate that the State should be indifferent to religion, but rather that it should treat all religions equally. It is impossible to entirely separate politics from religion and caste since they are fundamental components of our society.

Another contentious issue is why there are various personal laws in a secular state that is fully divorced from religion and where the law is similarly secular. Why don't we have a single law or a uniform civil code? Why does the government rule many temples but not mosques and churches since, in a secular nation, the State will not discriminate between religions?

Article 27 of the Indian Constitution forbids the use of taxes for religious purposes, although the Ministry of Minority Affairs does. A programme has been developed that offers a number of financial aid initiatives for minority religions. Muslims received Haj subsidy, while non-Muslims were not eligible for this type of payment.

Western Secularism

One thing is common in all secular states i.e. they are neither theocratic nor do they establish a religion. Western secularism also means that separation of religion and state is understood as they are mutually exclusive, the state will not intervene in the affairs of religion and also religion will not interfere in the affairs of the state. Both religion and state has a separate sphere of its own with independent jurisdiction. Policies of the state will not be religiously rational and in the

¹⁰ *St. Xaviers College Society v. State of Gujarat*

¹¹ *Bommai v Union of India* (1994), 3SCC 1

same way religious classification have not any basis of any public policy. And if this happened in any case than it will be a illegitimate intrusion of religion in the state. Also the state cannot aid any religious institution and cannot give any financial support to educational institutions run by religious communities. State does not have any right to hinder the activities of religious communities as long as they are within the broad limit set by the law of land like the state has limited power to intervene if a religious institution prevents a woman from becoming a priest.

The state can only watch in silence if a religious community excommunicates members who disagree with it. The state is forced to leave the situation alone if a specific religion prevents certain of its adherents from entering the inner sanctum of its temple. According to this perspective, religion is a private concern, unrelated of public policy or legislation.

This conception interprets freedom and equality in an individualist manner i.e. liberty is the liberty of individual and equality is equality among individuals. In western secularism there is no scope of the idea that a community has the liberty to follow practices of its own choice. There are very little scope for the community based and minority rights. And this is shown by the western history to us that why this is so?

Development of Western secularism

The idea of secularism emerged The Protestant Reformation, which took place in 1517, was a change that upended the political and theological establishment in regions like Europe. throughout addition, there were a number of religious conflicts throughout the 16th, 17th, and 18th centuries, with the Thirty Years War being the most notable.¹²

German Protestants and Roman Catholics engaged in a civil religious struggle known as the Thirty Years War (1618–1648). Ferdinand II, Holy Roman Emperor, started this struggle by forcing Roman Catholicism on the people in an effort to compel religious conformity. This conflict started out as a religious civil war but swiftly turned into a struggle for power. The Peace of Westphalia, a new system founded on the peaceful coexistence of sovereign states and a rule prohibiting interference in another state's internal affairs, is the result of this struggle, which turns out to be one of the deadliest in history. Some analysts claim that this Westphalian system laid the groundwork for the current international order.¹³

¹² Western Secularism and Colonial Legacy in India, Economic and Political Weekly , Vol. 41, No. 2 , pp. 158-165.

¹³ Dickey, Laurence and H B Nisbet (eds) (1999): Hegel, Political Writings. CUP, Cambridge, p 197.

John Locke, commonly referred to as the "Father of Liberalism," was the most renowned proponent of this new philosophical notion at the time. Although it was only a passing idea, he was aware that one consequence of states supporting religion is that they will go to war for it. After it, although the term "secularism" has not yet been defined, the western conception of secularism starts to develop. The work of "Thomason Jefferson"—also known as Jeffersonians secularism because of his significant role in establishing secularism in the United States through the first amendment—crystallized the Western concept of secularism. Some of the pillars of western secularism include the complete separation of the religious institution from the state institution as well as the freedom of conscience for everyone, limited only by the necessity for public order and the respect for others' rights. The state will not treat anyone unfairly because of their religious convictions. Even if the term "secularism" had not yet been created, George Jacob Holyoke did so in the nineteenth century. He views secularism as a different social

structure from religion that does not explicitly oppose religious belief. Because Jacob was a British reformer, colonialism has contributed to the idea of secularism spreading throughout India.

History of Western secularism gave the fact that they naturally focused on intra religious domination. Because of the strict separation of the state from the church is emphasized to realize among the things i.e. individual freedom, inter religious issues and equality are often neglected. In Western Secularism has no place of state supported religious reform. And this feature of Western Secularism follows directly from its understanding that the separation of state from religion have a relationship of Mutual exclusion.

Comparative Study of Importance of Secularism In Indian and Western Constitutional Frameworks:

Western Secularism

1) USA

The primary change made by the USA on Congress approved it on September 25, 1789. Confirmed on December 15, 1791, it states that Congress will not pass any laws establishing a religious foundation, prohibiting its free exercise, restricting the right to free speech or the freedom of the press, or preventing the general populace from quietly gathering and petitioning the government for change.

The main reform implemented by the USA is a significant remedy for the partisan warfare that had been so destructive, and it also contributed to the clarification of various concerns held by religious groups that had immigrated to America from Europe in order to flee legislative oppression. As soon as the territory was established, the early legislation joined it. This measure was essential in order to demonstrate that America is not solely a Christian nation. Many people now believe that America is a Christian nation, and that if this weren't the case, there would be serious problems with religious disparity. Do Christians outnumber the broader population? Yes, but for that same reason, laws regarding the clarity of the legal system in the USA have to be passed in order to guarantee the safety of those who practice various religions in the country.

2) France

Lacit , which translates to "mainstream quality," is a secularist concept in French. One of the main Western countries to demand this approach is France. Since 1905, when a legislation was passed with the intention of advancing additional freedoms, it had supported this notion. This concept was important in France for the safety of children from social pressures and to keep minors who can clearly identify their religious affiliation apart from one another. It is important for a minor to respect other people's choices and be aware of their varied decisions. Today's France is more socially diverse than ever before, which makes secularism more important than ever because it empowers all citizens, regardless of their background. Philosophical or religious beliefs, to live respectively, getting a kick out of the still, little voice, having the choice to practise a religion or not, living up to

rights and obligations, and republican club. Secularism is an option to have a conclusion or an evaluation rather than a sentiment shared by others. It is everything but a conviction, but rather a rule endorsing all conjectures while taking into account the opportunities for a quiet voice and equal rights. Therefore, it is neither brilliant nor anti-religious. According to this theory, maintaining self-assurance or philosophical conviction is entirely a matter of each man's or woman's ability to hear that still, small voice.

3) Russia

Secularism has two elements: the first is what is stated in the Constitution, and the second is whether what is written is actually practised.

The Russian Constitution recognises religious freedom and accords equal protection under the law to all religious convictions. The church and the state are additionally divided. While the potential for religion in the future is always difficult to achieve. As of 1997, there were numerous instances of religious captivity. The Ministry of Justice began legally dissolving 2000 associations that hadn't been legally split on December 31, 2001. Many religious social orders practised defiling others, which gave the government an advantage because they could claim to have ended non-degenerate religious social groups simply by labelling them as such. There are also a lot of cases against religious social orders that people have documented. Numerous religious networks identified themselves as social associations because of heartless systems that saw it as inappropriate to refer to a network as a religious affiliation.

Indian Secularism

In India, the concept of secularism plays a crucial role. India's secularism is a constructive, forward-thinking, and comprehensive notion that encompasses all of the country's religious communities. Earth's conditions are not unfavourable, but is not against God. The value of religious commitment in human life is recognised by Indian secularism. It assumes that no religion possesses the limiting architecture of philosophical knowledge that would allow all religions to fully express themselves through their true words. In the unlikely event that locals feel the need to worship their god, Indian secularism recognises this desire and encourages it.

It doesn't advocate adhering to a certain religious practise. Our Indian Constitution is founded on the principle of full religious freedom. The Indian Constitution guarantees equality of all religions before the law. In that respect, our constitution is strictly founded on a secular concept. Our constitution guarantees fundamental rights of religious freedom. The concept of secularism has a firm root in India. The whole world recognizes this fact.¹⁴

¹⁴ Ankita Mishra, Short Paragraph on Importance of Secularism in India, Important India, <https://www.importantindia.com/7045/short-paragraph-on-importance-of-secularism-in-india/>.

Comparison between Indian Secularism And Western Secularism

The Western paradigm views religion as a personal concern that has no place in public life. The Indian approach, in contrast, acknowledges the significance of religion in many people's lives and aims to integrate it into public life. As a result, the government may take action to aid religious institutions and advance religious tolerance. The government should treat all religions equally and impartially. According to the Indian model, the government might actively encourage religious concord and tolerance. This involves supporting religious institutions financially, controlling religious practises, and managing conflicts between various religious communities. Positive secularism is a notion that tries to safeguard and advance religious freedom while acknowledging the significance of religion in people's lives and communities. This method of secularism permits the state to get involved in religious matters if it's required to defend people's and communities' rights. For instance, the Indian state can control religious practise to prevent exploitation or abuse, and it can also support religious groups financially. While religion is viewed as a private affair in western secularism, it actively participates in public life in India.

The Indian model goes farther by giving these communities specific rights and benefits, while the western approach protects minority communities from all forms of discrimination and state repression. The Indian constitution recognises minority communities' rights to freely practise their faith and offers them some protections against discrimination and retaliation. Last but not least, the Indian model of secularism is built on respect for variety and tolerance, whereas the western approach is based on reason and reasoning. While in the West secularism is viewed as a means of separating religion from the state, in India it is seen as a manner of preserving the nation's religious diversity.

While the Indian secularism model concentrates on preserving religious peace and advancing religious tolerance, the western secularism model places a greater emphasis on the individual right to practise any religion. The Indian government has the power to ensure the equal treatment and protection of the rights of all religious communities.

Conclusion

The Indian concept of secularism is different from the western model of secularism in many ways. The Indian model is more inclusive and tolerant of diversity and prioritises protecting the rights of minority communities, even if both models seek to uphold religious freedom and encourage tolerance. The Indian model of secularism is a distinctive one that captures both the nation's dedication to upholding religious harmony and peace and its rich multicultural background.

While the connections between religion and state were severed by the revolutionary masses in classical western

secularism, they were preserved in India despite the fact that the country's government was not theocratic. Religious minorities in the West did not evolve into a unique constitutional group with its own set of rights and laws, unlike religious minorities in India. Each of the two contrasts has its own set of repercussions. In India, it was universally disproved while a portion of the radical bourgeoisie in the west turned anti-religionist. India did not create a uniform civil code like the western world did. Old mediaeval church laws still governed marriage, succession, and property connections.

Bibliography

- 1) Ramandeep Kaur, Secularism in India, MAPS OF INDIA ,
<https://www.mapsofindia.com/my-india/government/what-is-a-secular-india>.
- 1) Ajit Sen, Article on Secularism in India, IMPORTANT INDIA , <https://www.importantindia.com/15273/article-on-secularism-in-india/>.
- 2) Neerja Gurnani, Secularism in India, LAWCTOPUS , <https://www.lawctopus.com/academike/secularism-in-india/>.
- 3) Dickey, Laurence and H B Nisbet (eds) (1999): Hegel, Political Writings. CUP, Cambridge, p 197
- 4) Bramstead, E K and K J Melhuish (eds) (1978): Western Liberalism: A history of Documents from Locke to Croce, London, pp 182-84.
- 5) American Communalism and Indian Secularism: Religion and Politics in India and the West, : Economic and Political Weekly ,
- 6) SECULARISM IN INDIA : CHALLENGES AND ITS FUTURE, The Indian Journal of Political Science ,
- 7) The Wheel of law
Secularism In India – A Historical analysis

