

THE CONUNDRUM OF INDIAN SECULARISM: ARE WE EVEN 'SECULAR'? - A CONSTITUTIONAL ANALYSIS

*Shinjinee Namhata**

Abstract: Have you ever thought- what would have been the status of India if 'secularism' had not been inserted into the Preamble to the Constitution of India? Has its introduction brought any real difference to Indian democracy? Since the country's foundation, the concept of secularism in India, as it is codified in the Constitution, has generated intense discussion and debate. The word 'secular' was added to the Preamble, long before the Constituent Assembly debates- the rich and cultural Indian history itself advocated 'secularism.'

The Preamble and the Indian is an epithet of the ideals and principles. The Indian people have granted themselves a nation under the Constitution that is sovereign, socialist, secular, and democratic, with a strong emphasis on justice, liberty, equality, and fraternity. A thorough analysis of the CA debates would indicate that a secular constitution with equal rights for all citizens and freedom for all religions was highly desired. As "secularism" should be, the Indian Constitution did not construct a "wall of separation" between religion and the State. Maintaining equal distance from all religions is what secularism entails. However, practically speaking, India lacks that. A Supreme Court petition has also been filed asking for the word "secular" to be deleted from the Preamble. So, how consistent are we in our journey to secularism?

'Religious Pluralism' would be a more suitable term to describe secularism in its actual practice in India. This abstract examines the ongoing conflict between religious freedom, minority rights, and the maintenance of communal harmony as it pertains to Indian secularism. In tackling issues like equitable treatment, identity politics it examines the difficulties of adopting a secular framework in a multiethnic and intensely religious culture. It also emphasizes upon implementation of Uniform Civil Code (UCC) throughout India irrespective of any religion, caste, sex etc.

Keywords: Constitution, Preamble, Secularism, Democracy, Pluralism, UCC

I. INTRODUCTION

The Indian Constitution is revered as the "holy book of advocacy," and its preamble, a formal introduction to the Constitution, is a declaration of its ideals and guiding conceptions. The Indian people have granted themselves a nation-state that is sovereign, socialist, secular, and democratic, with a strong emphasis on justice, liberty, equality, and fraternity. These served as the foundation of the Constitution. The words "secular" and "socialist" were first used in the Preamble of the 42nd Constitutional Amendment, which was passed in 1976, and they eventually entered the philosophy of the basic structure. The landmark judgement of *Keshavananda Bharati v. State of Kerala* set the precedent that no amendments to the Constitution shall seek to amend the basic structure of the Constitution.

* Student, IFIM Law School Bengaluru, affiliated to Karnataka State Law University;
shinjinee.namhata@ifim.edu.in

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It took a while for the Indian Constitution to incorporate the broad concept of secularism. Secularism's "fundamental unit" is "religion." The word "secular" refers to a connection between man, the state, and religion. When secularism was added to the preamble of the Constitution, it was not defined or explained. A "secular" state is one that treats and safeguards all religions equally and does not promote any particular religion as the official state religion. In England, the Protestant Church is headed by the Queen, while in India, there is no legislation designating any religion as the "established Church." The government upholds a position of impartiality and justice towards all religions.

Before going further into the topic, it is very important to understand the meaning and origin of the word 'secular'. People often talk about secularism and judge an individual or a state act and declare their act in favour or against secularism; but it's a very grey concept with no single definition. Secularism is derived from the classical Latin expression "*Saeculum*" or "*Secyulum*" denoting anything, or any concept which doesn't frequently recur or is not periodical or that which lasts for an age or a century like the secular games of the ancient Romans which they played to honour their principal deities.¹ Secularism is a concept that cannot be defined by a single definition. The definition can be studied from different points of view such as sociological, philosophical, political, etc. The term Secularism was coined by the British Reformer George Jacob Holyoake in 1851.² According to him Secularism is not against any religion, but it is one independent of it.³ According to Merriam-Webster, Secularism means "indifference to, or rejection or exclusion of, religion and religious considerations."⁴ There are a lot more such definitions given by Cambridge Dictionary, Oxford Dictionary, Collins, etc. But all these definitions do not completely make us derive into a single conserved definition of secularism. In most of the definitions, Secularism is defined as something which is antithesis of religion and considers it an enemy of religion. But this is not the reality.

Bauberot list three principal elements of a secular society-

1. Separation of the State's institutions from religious institutions;
2. No discrimination by the State against any person on the basis of their religion;

¹G. Sunil Kumar, *Secularism and its crisis in India*, 7 IJMRA (2017), https://www.ijmra.us/project%20doc/2017/IJRSS_OCTOBER2017/IJMRA-12391.pdf.

² Steven Conn *Secularism, Past and Future* (last visited July 12, 2022). https://origins.osu.edu/review/secularism-past-and-future?language_content_entity=en.html

³ *Id.*

⁴ *Merriam-Webster Dictionary*, (last visited Aug. 10, 2022). <https://www.merriam-webster.com/dictionary/secularism.html>

3. Conscience freedom for all people; and 3. Respect for the rights of other people.⁵

This paper essentially deals with the origin of secularism in India and its essence in Indian context. Part 2 of the paper discusses the models of secularism. In part 3, I have discussed the domination of secularism in Indian history and how it emerged in times of independence. Also, the role of Constituent Assembly Debates and most importantly the 42nd amendment act 1976, as an outcome of which the 'secularism' word got a place in the Constitution. Part 4 of this paper holds a special significance, as I analyse in separate subpoints the essence of secularism in Indian context and how it is clearly becoming a means of oppression by the political parties; how the present political situation of the country followed by the oppressive contemporary happenings which is changing the definition of 'secularism.' Part 5 the paper is of recommendatory nature and provides suggestions which India should have implemented or adopted in order to preserve secularism in true spirit.

II. CONCEPTS OF SECULARISM

A. Western Concept

The Western Concept and the Indian Concept are the two basic forms of secularism. Thomas Jefferson's ideas provide the foundation of the secularism that is understood in the West. He had declared that "erecting the wall of separation between Church and State is absolutely essential in a free society" in 1908. He believed that religious institutions and the government shall be distinct. Respecting the rights of others is a guiding principle, and freedom of conscience is only important for maintaining public order. According to his opinion, there shouldn't be any injustice or discrimination against people based on their religion.⁶ The Western idea of secularism has greatly influenced contemporary communities and political structures all over the world. The Western idea of secularism examined herein, along with its historical origins, fundamental tenets, and consequences for how religion and the state should interact. It envisions the separation of religious institutions from political power, preventing religious authorities from directly influencing or controlling governance. This separation aims to safeguard the autonomy of both religious and political spheres, allowing each to operate independently within its respective domain. It advocates complete separation of state from religion, as well as universal religious freedoms. The legislation too, is made apart from

⁵ *Supra* note 3.

⁶ Jean- Paul, *Secularization and Secularism- History and Nature of Secularization and Secularism to 1914*, *SCIENCE ENCYCLOPEDIA* (July 12, 2022), https://science.jrank.org/pages/11240/Secularization-Secularism-History-Nature-Secularization-Secularism-1914.html#google_vignette.html

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religious considerations. Due to the State's religious homogeneity, in this concept more focus is given on intra religion dominance than interreligious dominance. The Western Concept of secularism can be regarded as 'secularism' in its true meaning.

B. Indian Concept

The Indian Concept of secularism is very vague and arbitrary in nature. Neither has the Constitution expressly defined it, nor it has any clear interpretations. The ambit of extension is very unclear. However, there is no clear line between the state and religion, and government intervention is very frequent in every religious activity; and these are within legally mandated and judicially established bounds. A unique strategy for regulating religious diversity within the framework of a democratic and pluralistic society is represented by the Indian idea of secularism.

According to the Constitutional Assembly, secularism as it is embodied in the Indian Constitution is not anti-religious; rather, it forbids discrimination against the public on the basis of religion. *"When I say that a State should not identify itself with any one religion, it does not mean that a State should be anti-religious or irreligious"*, stated Mr. H.V. Kamath, one of the members of the Constituent Assembly. *"India would be a secular state, but in my opinion, a secular state is not one that is devoid of gods, irreligious, or hostile to religion."*⁷ In his book "Recovery of Faith," former Indian vice president S. Radhakrishnan outlined the idea of Indian secularism, saying that *"it does not mean that we reject the reality of an unseen spirit or the relevance of religion to life or that we exalt religion."* It doesn't imply that secularism itself turns into a good religion or that the State acquires divine rights. According to our beliefs, no religion should be given preference. This perspective on religious neutrality, or understanding and patience, has a prophetic role to play in national and international life."⁸

The idea of *"sarva dharma sambhava,"* or "equal respect for all religions," is one of the fundamental aspects of Indian secularism. A spirit of tolerance, harmony, and coexistence is encouraged by this idea, which also recognises and welcomes the diversity of religious traditions. Secularism's adoption in India is not without difficulties, though. With so many distinct religions and sects in the nation, balancing the rights and ambitions of various religious

⁷ Arun Kumar Singh, *Myth and Reality of Secularism in India: An Analysis*, 19 THE NEHU JOURNAL, 74, (2021), https://nehu.ac.in/public/uploads/Pages_Nehu_Journal_Vol._XIX_Jan-June_20216_Arun_Singh.pdf.

⁸ Ghosh, Y., & Chakraborty, A. *Secularism, Multiculturalism and Legal Pluralism: A Comparative Analysis Between the Indian and Western Constitutional Philosophy*. 7(1) ASIAN JOURNAL OF LEGAL EDUCATION, 73-81. (2019), <https://doi.org/10.1177/2322005819859674.html>

communities raises challenges. It's difficult to defend minority communities while also avoiding being accused of favouritism or appeasement, and this difficulty never really goes away.

III. EVOLUTION OF SECULARISM IN INDIA

A. Secularism and History

1. Ancient India

Secular traditions are very deep rooted in the history of India. Long before the term 'secular' was introduced in our Constitution. India held a secular character, more evidently a plural one. The culture is a composite and a very diverse one which is based on various spiritual traditions and social movements. India's history is rich with secular traditions. India has a secular nature that was more obviously expressed long before the word "secular" was included in our Constitution. The culture is a composite and extremely diversified one that is founded on numerous spiritual traditions and social movements. The Indus Valley Civilization is the oldest civilization in India that may be said to have represented "secularism" at the beginning of the country's history. The fact that India's earliest civilization was so clearly secular is really impressive, in Sir John Marshall's opinion. Thus, secularism is a part of our past and a fundamental element of Indian culture and tradition. The Aryans were also secular people.⁹ By inviting many traditions from various civilizations and attempting to combine them into a common ground, the Sanatan Dharma (Hinduism) was essentially allowed to evolve as a universal religion in ancient India. Hinduism has a wide range of religious practices, as evidenced by the development of the four Vedas and the different Puranas and Upanishad interpretations.

2. Medieval India

The concept of secularism in medieval India underwent a complex and evolving trajectory, shaped by the interplay of various political, social, and cultural factors. Despite ongoing foreign invasions, mediaeval India made a significant contribution to the country's cultural continuity. The Sufi and Bhakti movements in mediaeval India brought together members of different cultures in an atmosphere of peace and love. Khwaja Moinuddin, Baba Farid, Sant Kabir Das, Guru Nanak Dev, Saint Tukaram, and Mira Bai were the prominent proponents of these movements. In order to promote the foundations of secularism, Guru Nanak eloquently stated that "*There is no Hindu and no Muslim, as there is no distinction between man and man.*"

⁹ *Supra* note 2.

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Numerous Muslim saints and the Sikh Gurus both strongly supported and fostered secularism in the nation.

The 18th-century Marathi rule and the 19th-century Sikh rule both contributed to India's culture's increased secularism. The most remarkable attribute of Raja Ranjit Singh was his secularism. He had faith in the Muslims since they had always supported him. The Monarchy of Punjab was a secular monarchy where solely merit was considered for awarding services. Additionally, prominent 19th-century social and religious organisations like the Ramakrishna Mission, Theosophical Society, Prarthana Sabha, Brahmo Samaj, and Arya Samaj contributed to the moral and secular traditions of India. Additionally, this era saw the rise of religious orthodoxy and disputes within communities. Secularism's goals were sometimes put to the test by the emergence of sectarian movements and the institutionalisation of religious identities. Political expediency, the monarchs' personal convictions, and the influence of religious leaders were only a few of the many variables that shaped the development of secularism in mediaeval India. It was a complicated and dynamic process, with periods of religious exclusivism and strife coexisting with instances of tolerance and inclusivity.

3. Freedom struggle

The development of secularism in the nation was significantly shaped by India's battle for independence from British colonial authority. Diverse movements and philosophies characterised the Indian liberation war, which lasted several decades from the late 19th century to 1947. Many well-known leaders who wished to create an inclusive and pluralistic country came to accept secularism as a key value. In the foreground of the freedom movement, the Indian National Congress (INC) upheld secularist principles. Leaders like Mahatma Gandhi, Jawaharlal Nehru, and Maulana Abul Kalam Azad fought for an India that was democratic and secular and recognised the plurality of its residents' religions. The most prominent leader of the liberation movement, Mahatma Gandhi, promoted the notion of Sarvodaya (welfare for everyone), placed a strong emphasis on religious peace, and advocated for nonviolence. His values of inclusion and respect for all religions had a big influence on how India witnessed secularism. The liberals, like Gopal Krishna Gokhale, Govind Ranade, and Sir Feroz Shah Mehta, primarily followed a secular course in politics. Both the Arya Samaj, founded by Swami Dayanand Saraswati, and the Brahma Samaj, founded by Sri Raja Ram Mohan Roy, never harboured any animosity towards other religious beliefs. On the other hand, they made an effort to purge the incorrect traditions that had progressively diminished the vitality of Hinduism.

(i) Constituent Assembly Debates and the 42nd Amendment

The idea of secularism was not incorporated into the Constitution when it was first written. The phrase "sovereign democratic Republic" in the Preamble was changed to "Sovereign, Socialist, Secular, Democratic Republic" by the 42nd Constitutional Amendment Act (1976). That was the first time the phrase "secularism" was used in the Constitution. On October 25, 1976, H.R. Gokhale, the Minister of Law, Justice, and Corporate Affairs, justified the use of the words "Socialism and Secularism" in the Lok Sabha and added that the only goal was to bring about a socio-economic revolution in the nation. The idea of secularism was brought over from Europe. A few hundred years ago, the Church was in charge and the pope decided the futures of the European kingdoms.¹⁰

The Hindu Code Bill's debate in Parliament in 1951 featured Dr B.R. Ambedkar, the chairman of the drafting committee, who provided the following explanation of the secular idea: "It (Secular State) does not mean that we shall not take into consideration the religious views of the people. The only thing a secular state means is that this parliament will not have the authority to force its faith on the rest of the populace." The Constitution recognises only this particular limitation.¹¹ Thus began the evolution of secularism.

The Great Secularism Debate

'Secularism' was not a part of the 1950 first version of the Indian Constitution and it is evident that in the Constituent Assembly, there existed a conflict between two differing visions of secularism: negative secularism (a complete wall of separation between state and religion) and positive secularism (the state treats every religion with equal respect). It is also evident from the Constituent Assembly Debates that the majority of the Constitution makers never intended to introduce the concept of 'Secular' for the governance of a democratic Government. Where there is a concept of secularism, 'right to religion' doesn't hold any significance. A secular nation does not vis-à-vis require a separate concept of fundamental right to religion; in turn it suggests a contradiction in itself. Jawaharlal Nehru and B.R Ambedkar were also against insertion of the word. Both of them were secular; however, Ambedkar was religious too whereas Nehru was atheist. Ambedkar himself saw religion as a basis of political entity.¹² He himself coming from a minority community was in want of upliftment of the oppressed through constitutional means. And the Constitution drafted by them clearly advocated the division

¹⁰ Anandshankar Pandya, *Indian Secularism: A Travesty of Truth and Justice*, (Aswad Prakashan Pvt. Ltd., Mumbai) (1998).

¹¹ M.V. Pylee, *Our Constitution, Government and Politics*, (Universal Law Books, Delhi) (2001).

¹² Anand Ranganathan's THE GREAT SECULARISM DEBATE, (last visited July 15, 2022). <https://www.newslaundry.com/2015/01/30/the-great-secularism-debate.html>

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between majority and minority communities. They knew what 'secularism' meant but also realised that the provisions of the constitution they drafted didn't adhere to the dictionary meaning of 'secularism.' If secularism has to be inserted in the Constitution, provisions like 'Right to religion' don't hold any significance. There had been huge debates in the Assembly regarding whether or not to insert 'secularism.' The Vice President of the Drafting Committee in a discussion stated that "are we being really honest when we say that we are seeking to establish a secular state?"¹³ He also clearly stated that if 'secular' has to be added in the Constitution, minorities cannot be recognised based upon 'religion.' Ambedkar in his speech advocated that 'secularism' cannot be added as it will destroy the very concept of democracy in India.¹⁴ An extensive reading and analysis of the Constituent Assembly Debates would suggest there was never any plan to incorporate 'secularism' in the Preamble. It was during the rule of Indira Gandhi, during the period of Emergency of 1976, 'secularism' got formally included in the Constitution as an outcome of the 42nd Amendment.

B. Secularism and the Indian Constitution

The Indian Constitution places a strong emphasis on secularism, which serves as a guiding concept that influences the nation's government, legal system, and social structure. The Indian Constitution's constitutional provisions, judicial interpretation, and the implications for India's religiously varied culture are all highlighted in this abstract as it examines the relationship between secularism and the Indian Constitution. Secularism is one of the foundational concepts of the 1950-adopted Indian Constitution. The right to freedom of religion is protected by Articles 25 to 28 of the Constitution, which guarantees that people are free to practise, spread, and adhere to any religion they choose. Additionally protected by these articles are the rights to administer religious affairs, create and maintain religious organisations, and impart religious instruction.

Additionally, the Constitution requires the state to retain its neutrality regarding religion. Article 15 forbids religious discrimination, while Article 16 guarantees equal opportunity in areas of public employment, irrespective of religion. Every faith and every religious community must be treated equally by the state without any favouritism or prejudice. The judiciary also has had an impact how the secularism in the Indian Constitution is interpreted

¹³ *The Constitutional Assembly Debates, Book-1* (2014), https://eparlib.nic.in/bitstream/123456789/760449/3/CA_Debate_Eng_Vol_01_edited_page_217-218.pdf.

¹⁴ Adrijia Roychowdhury, *Secularism: Why Nehru dropped, and Indira inserted the S-word in the Constitution* THE INDIAN EXPRESS (Dec. 27, 2017).

and applied. The Indian Supreme Court has been instrumental in defining the parameters of secularism. While dealing with matters involving religious practises, conversion, and minority rights, the court has consistently upheld the values of religious freedom, equality, and non-discrimination.

The Supreme Court has established the doctrine of "essential religious practices" to uphold the fundamental beliefs of a religion while allowing for regulation of practices that conflict with constitutional ideals like gender equality or public order. The judiciary has strongly emphasized the necessity of preserving a balance between religious freedom and society interests and has taken action to stop religious prejudice and defend individual rights.

1. Important Judicial Pronouncements

The judiciary from time to time through various judicial pronouncements has shaped the meaning of secularism and its interpretation. Some of the very notable cases in this aspect are discussed herein under. *Sardar Taheruddin Syedna Sahib v. State of Bombay*¹⁵, In this case, the Supreme Court ruled that Articles 25 and 26 highlight the secular nature of Indian democracy, which the founding fathers believed to be the basic foundation of the Indian Constitution. *Kesavananda Bharati v. State of Kerala*¹⁶, In this instance, the Supreme Court ruled that secularism is an integral aspect of the Constitution's fundamental design. According to Chief Justice Sikri, the Constitution's fundamental feature is that it is secular. The secular and federal features of the Constitution, according to Justices Shelatand and Grover, are the fundamental components of its basic framework. Also, the basic structure cannot be altered.

*In S.R. Bommai v. Union of India*¹⁷, the definition of secularism was appropriately elucidated by the court. The Court ruled that secularism entails treating all religions equally. It was noted that the basic rights protected by Articles 25 to 28 are highlighted by the word "secular," which was added to the Preamble of the Constitution by the 42nd Amendment. The Court further stated that the use of religion for political ends and the use of religion by any political party to further political objectives would breach the State's neutrality. Politics and religion are not related and shouldn't be intermingled and in *Stainislaus Rev v. State of MP*¹⁸ judgement, the High Court of Madhya Pradesh explained that the freedom to practise one's religion includes the right to publicly declare one's affiliation with a particular religion. The Court further

¹⁵ Sardar Taheruddin Syedna Sahib v. State of Bombay, (1962) AIR SC 853.

¹⁶ Kesavananda Bharati v. State of Kerala, (1973) AIR SC 1461.

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

¹⁸ Stainislaus Rev v. State of MP, (1977) 2 SCR 611.

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clarified that the right to practise one's religion in secret or in public is included in the definition of freedom of 'practice'. The right to propagate one's religion, it was further clarified, grants one the freedom to share one's religious convictions with another person, but not to convert that person to one's religion.

IV. INDIAN DEMOCRACY AS A 'SECULAR' NATION

A. Post- Independence Era

The first question arises- Are we even secular in a true sense? To analyse this requires vast discussion. The concept of secularism was added to the Preamble in the year 1976 after the 42nd Constitutional Amendment. When India achieved independence, with the partition of the country, India had the liberty whether to adopt a strict Hindu religion in the country just like Pakistan declaring itself as the Islamic state, or remain a secular state, as encouraged in the freedom movement. India did not formally become an exclusively Hindu state. But neither did it become a Secular State. In real practice, what India acquired was- a Hindu version of a pseudo secular nation.¹⁹ We were from the very beginning, and still are- a nation of pseudo-seculars. The implication of pseudo-secularism is that secularism is only a pretence, put on to hide the truth which is of being pro-Muslim and anti-Hindu.²⁰ Many argue that the inclusion of the word 'secularism' is itself a fraud committed in the Indian democracy. Secularism was introduced in the context of European countries in order to maintain a distance and separate the state from the church.²¹ However, such a need did not arise here in the long history of India as we never had a concept of theocratic state. Thus, the introduction of secularism has not brought any real difference in the Indian democracy practically.

Secularism has two connotations- positive secularism and negative secularism. The Indian Constitution offers 'positive secularism' as it recognises the concept of '*Sarva Dharma Sambhava*.' Secularism, in negative connotation implies a process which is against:

- a. The control of religion in politics.
- b. The promotion of a state structure based on a particular religion (such as the Islamic Republic, Buddhist state, Hindutva, etc.).
- c. Dividing the populace into exclusive electoral constituencies on the basis of sects, tribes, castes, religious communities, etc.

¹⁹ Rasheeduddin Khan, *Bewildered India: Identity, Pluralism, Discord* Har- Anand Publications (1994).

²⁰ Aswnini Mohapatra, Mridula Mukherjee & Harbans Mukhia, *Are we a nation of pseudo-secularists?*, THE HINDU, (Apr. 28, 2017).

²¹ Manmohan Vaidya, *Time to get rid of pseudo-secularism*, SUNDAY GUARDIAN LIVE (Sep. 19, 2020).

Secularism in India has, nevertheless, encountered difficulties and criticism since independence. Social harmony has been challenged by intergroup conflict and acts of religious violence. Secularism's opponents contend that its execution has occasionally led to actions that are viewed as preferential treatment or appeasement, giving rise to charges of "vote bank politics." Secularism has faced challenges from the politicisation of religion as some political parties have used religious affiliations to attract support. Interfaith relations have occasionally been strained by this trend, and communal divisions have widened.

However, no positive reality can be noticed in Indian society in furtherance of this 'positive secularism.' The same shall be methodically discussed in the subsequent parts of the paper.

B. Limitations of secularism in India

However, in reality, secularism's philosophy and practice encounter many different problems on many different levels. India may appear to be a secular nation. But how about in actuality? India is a secular state, and a secular state does not encourage any particular religion but rather defends and upholds religious diversity. It could be questioned why the Constitution grants special protections for minorities' languages and cultures in Articles 29 (Articles 29(1) & 29(2)) and 30 (Articles 30(1)). Minorities and majorities, which the Constitution itself supports, have been clearly separated. Grants to minority institutions and secularism cannot coexist. These stand in opposition to one another.²² Again, in relation to Articles 331 and 333 of the Constitution, the state's authority to pass laws on religious issues and its authority to designate individuals from the Anglo-Indian community, a minority group, are in direct contradiction with the term "secular."

In Indian contexts, the term "secular" has a highly constrained connotation. Even religious minorities now enjoy some particular rights under Article 30 of the Indian Constitution, which gives the State permission to engage in religious matters. The 7th Schedule's item 20 list 1 grants the Parliament the authority to pass legislation governing pilgrimages outside of India. Both the Union of India and the States have the authority to enact laws governing trusts and trustees under item 10 of the concurrent list as well as charities, charitable institutions, charitable and religious endowments, and religious institutions under item 28.²³ The government would not have offered a subsidy for the Haj if India truly adhered to the secular

²² *Infra* note 42.

²³ Indian Constitution. Schedule VII.

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definition. A pilgrimage made with one's own resources is only recognised in Islam, according to several prominent Islamic scholars. No other Islamic nation offers a subsidy for the Hajj, and for this specific reason. It is anti-Islamic and non-secular to continue this practice in India.

Another key obstacle to India's secularism is intercommunal and religious conflict. The values of religious cooperation have been put to the test by instances of communal violence and polarisation, which have harmed social harmony. These tensions are made worse by the politicisation of religion and the manipulation of religious feelings by some political parties. The successful application of secularism might also be hampered by identity politics that are motivated by affiliations with a particular religion or caste. Political parties frequently use religion to their electoral advantage, which results in the appeasement of particular religious groups and claims of preferential treatment. The objectivity and impartiality that secularism seeks to protect is compromised by this.

Furthermore, it is debatable why various personal laws exist in the nation if a secular State is fully divorced from religion and its legal system is also secular. We have umbrella civil and criminal legislation; however still in matters of marriage, inheritance, succession, divorce, and adoption, the cases are governed primarily by the personal laws of our religion.²⁴ Each community has its own distinctive practices. The Hindus have codified personal laws for every matter which have been amended over time, on the contrary- many aspects of Muslim personal law, though unlegislated and uncoded, are left to the fancies of Islamic jurisprudence and practice. Secularism in true essence cannot apply to such a scenario. There must be a fair and uniform code applying to all Indians irrespective of their religion.

How could Indian courts, which assert to be secular, acknowledge Sharia Muslim Personal Law? If Central and State governments were truly secular, how could they seize control of Hindu temple management? How could a nonreligious organisation fund educational institutions governed by a secular government? Why does the Constitution itself have special clauses that support minorities? Because everyone is a citizen of the same nation in a secular state, the issue of majority and minority should not have arisen. So, unlike the West, India does not practise secularism. These problems put Indian secularism in jeopardy. A nuanced and fair approach to secularism is necessary to get beyond these restrictions. While ensuring the equality and welfare of all citizens, it involves defending minority rights and religious freedom.

²⁴ Marc Galanter & Jayanth Krishnan, *Personal Law Systems and Religious Conflict- A comparison of India and Israel, in Religion and Personal Law in Secular India* (Indiana University Press) (2001).

The ideas of secular governance in India must be advanced by addressing social and economic inequality, fostering interfaith dialogue, and developing a culture of tolerance and respect.

C. Dilemmas of Secularism and politics

A thorough examination of Indian politics and society reveals that, rather than remaining a secular state, the country has become more majoritarian in recent years. Only when equality is a fundamental value in a democratic society can secularism have meaning. There should be enough dedication to equality. If Secularism has been followed in its true sense in India, there wouldn't have been any cases of communal riots, any communal mob lynching, or any incident of Hate speech. Secularism is a complicated concept in our country. Political parties use secularism as a means of power and personal gain.

The political situation of India has always been of great debate. There are numerous parties, and everyone has been using the weapon of religion as a ground to gain votes.²⁵ Laws that benefit one community at the expense of the rights of other religious communities violate the Constitution's guarantee of religious freedom. As a result, there is discrimination in the law itself. The emergence of majoritarianism presents another challenge to India's secularism. A certain religious or cultural majority's domination can marginalize minority communities and violate their rights. Maintaining a fully secular framework necessitates the protection of minority rights and ensuring their equitable participation in society.

We, the Indians are very arrogant of our religious beliefs and principles and have ourselves given the power to these parties to use that as their means of riding the political staircase. The whole political system has been indulging in Religion-based politics. In various instances, one political party in the name of Secularism tried to assuage the minorities, mainly Muslims. Another has nonetheless done the same by favouring the majority community i.e., Hindus. Our country really doesn't function on the principle of separation of state matters and religion. Government intervention is evident in every matter. In actual practice, India is advocating as a site for political and legal contestation. Slowly, Indian Secularism has decentralised into political pandering.

1. Contemporary burning issues

²⁵ Ashwin Sanghi, *Want to preserve secularism in India? Well, preserve the Hindu ethos first*, THE PRINT (Aug. 9, 2020).

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One of the most recent controversies related to a broader aspect of secularism, and the ruling party using it as a means of political gains is the passing of the Citizenship Amendment Act, 2019. The Act gives Indian citizenship to illegal migrants who belong to Hindu, Sikh, Buddhist, Jain, Parsi and Christian religious communities, from Pakistan, Afghanistan, and Bangladesh. But it expressly excludes Muslim migrants.²⁶ This is the very first instance where an Act is amended based on ‘religion.’ There have been several debates regarding the constitutionality of CAA; a litigation is still awaiting in the Supreme Court. Kept apart from all these, is the Act constitutionally valid and does it really conform to the principle of ‘Secularism’ embedded in the Preamble to our Constitution?

India had the option of becoming an exclusively ‘Hindu’ nation during the time of Partition itself- Like the Islamic republic of Pakistan, India could have been the Hindu Republic; but the then leaders believed in diversity and advocated the principle of *Sarva Dharma Samanvaya* (secularism). As a result, it also became a fundamental part of our Constitution. So, why are they now violating that principle and discriminating on the basis of religion? Why is this much government intervention evident? The creators themselves are becoming the destroyers.

In my opinion, the CAA is clearly violating the provisions of the Constitution. According to the Amnesty International, the Citizenship (Amendment) Act (CAA) stands in “clear violation” of the Constitution of India and international human rights law and “legitimises discrimination” on the basis of religion,²⁷ “The CAA law that has been passed in my judgment should be turned down by the Supreme Court on the grounds of it being unconstitutional.”²⁸ CAA is argued to be violative of Article 14 and Article 15 (1) of the Constitution. Article 14 of the Indian Constitution states that ‘The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.’²⁹ The word person includes and protects both citizens and non-citizens. Article 15 states that ‘The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.’³⁰ The CAA is argued to have violated equality and supported discrimination based on religion.

As a burning instance, in places like Delhi and West Bengal both Hindu and Muslim priests are receiving monthly stipends from the state governments. Isn’t it a serious violation of the secular principle? Every other temple in the country is run by State Governments. According to one

²⁶ The Citizenship Amendment Act (CAA), 2019.

²⁷ PTI, *CAA a clear violation of Indian Constitution*, THE HINDU (Feb. 2, 2020).

²⁸ PTI, *CAA violates constitutional provisions: Amartya Sen*, THE ECONOMIC TIMES (Jan. 8, 2020).

²⁹ India Const. art. 14.

³⁰ Indian Const. art. 15.

source, the various state governments collected a total of around Rs 6,000 crore from the temples in the year 2020. A total of Rs 2,300 crore from the Tirupati temple were transferred to the treasury of the Andhra government in 2021.³¹ Just imagine the possibility of corruption with all these enormous amounts floating around.

Other burning instances in the country are the very recent Hijab Controversy in Karnataka, the Gyanvapi mosque episode, the Nupur Sharma Controversy, and its continuing aftermath. The Nupur Sharma controversy resulted in a wildfire across the country among the Hindu-Muslims. The shocking killings of Kanhaiya Lal, a tailor in Udaipur, and Umesh Kolhe in Amravati³² have sent shock waves across the country. The government interventions in such religious controversies only make the situation worse in most of the instances. Not only the incidents are one-sided, but the Hindu community also has sufficient contribution. The *gau rakshaks* (Hindu community) regularly seize the possible traffickers and burn their cargo.³³ In several cases, these vigilantes have seized and brutally killed Muslim truck drivers who are allegedly transporting cattle (cows).

The government is intervening into changing names of places which is mainly of Islamic origin-the very recent instance is changing of “Allahabad” to “Prayagraj.” The main propaganda of the government seems to be “eradication” of Islam and its proponents from the public sphere.³⁴ One of the most prominent political leaders and a die heart Hindu nationalist spoke in a rally. ‘we cannot let Muslim invaders from centuries ago define us today!’³⁵ History is a nation’s pride. So, why mock History! All these unusual comments result in communal riots hence putting Indian secularism at stake. A crucial concern is the emergence of religious nationalism and its impact on politics. The supremacy of a particular religion or religious identity is emphasized by some ideologies and organizations, potentially marginalizing or alienating minority communities. Secularism may be threatened by the dominance of religious nationalism, which threatens the values of equality and non-discrimination. Violence inside communities has been on the rise for some time. It is alleged that secularism is to blame for

³¹ Arvind Sharma, *Dharma Files This is how secularism has failed India*, OPINION (July 24, 2022) <https://www.firstpost.com/opinion/dharma-files-this-is-how-secularism-has-failed-india-10950141.html>.

³² PTI, *Amravati Murder: Police arrest Mastermind, say chemist was killed over posts backing Nupur Sharma*, THE WIRE (July 3, 2022) <https://thewire.in/communalism/amravati-murder-police-arrest-mastermind-say-chemist-was-killed-over-posts-backing-nupur-sharma.html>

³³ Smita Nair, *Refrain in Sangh turf: Cards will give us power*, THE INDIAN EXPRESS (Jan. 27, 2017).

³⁴ Christophe Jaffrelot’s *The Fate of Secularism in India*, (last visited July 16, 2022). <https://carnegieendowment.org/2019/04/04/fate-of-secularism-in-india-pub-78689.html>

³⁵ Audie Cornish’s *India is changing some cities’ names, and Muslims fear their heritage is being erased*, (last visited July 17, 2022). [https://www.npr.org/transcripts/714108344#:~:text=YOGI%20ADITYANATH%3A%20\(Foreign%20language%20spoken,Prime%20Minister%20Modi's%20ruling%20party.](https://www.npr.org/transcripts/714108344#:~:text=YOGI%20ADITYANATH%3A%20(Foreign%20language%20spoken,Prime%20Minister%20Modi's%20ruling%20party.)

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India's current dilemma. Secularism was described as an "*inadequately defined attitude*" by T. N. Madan, a professor of sociology at the Institute of Economic Growth (University of Delhi).³⁶

2. Judicial Incursions and secularism

In addition to all the political parties, another most important institute that has a huge contribution towards moulding 'secularism' is the Judiciary. The balance of secularism in our country can be maintained if the Rule of Law prevails; and an impartial judiciary is required for that purpose. As argued in previous parts, there are evident government interventions in matters concerning religion in India. No doubt, the judiciary from time to time through its various notable pronouncements, has tried to maintain peace and calm and prevent discrimination based on religion. But in many cases, the aftermath was proven to be inhuman. In describing the secular nature of the Indian Constitution in the case of *Sardar Taheruddin Syedna Saheb v. State of Bombay*³⁷, the Supreme Court stated that "Articles 25 and 26 embody the principles of religious toleration that have been the characteristic feature of Indian civilization from the beginning of history." Additionally, they highlight the Indian democracy's secular aspect, which the Constitution's forefathers believed to be its basic foundation.

In the case of *Sri Jagannath Ramanuj v. State of Orissa*³⁸ (popularly referred to as the Shirur Mutt case), the Supreme Court ruled that people who are not involved in the religious functions of a public temple or other religious institution cannot have an unrestricted and unregulated right of entry. It has long been customary to forbid visitors from entering the most sacred areas of a temple, such as the area where the deity is housed, for example. The idol may have set hours for prayer and slumber during which no public disruption may be permitted by the temple authorities. Government representatives are permitted admission with proper notification to the institution's head and during times that won't obstruct the institution's ongoing rituals and ceremonies.

Through welcome judgements, the judiciary has successfully prohibited religious discrimination, but in many cases, the influence of the majoritarian Hindu attitudes is apparent, especially in the lower courts. In the case of *Mubin Shaikh v. State of Maharashtra*³⁹, a young engineer was assassinated by a gang of Hindu activists as he was returning from the mosque.

³⁶ T.N. Madan, *Secularism in its Place*, in 46 (4) The Journal of Asian Studies 747, 759 (Association of Asian Studies) (2014).

³⁷ *Supra* note 16.

³⁸ *Sri Jagannath Ramanuj v. State of Orissa*, (1954) AIR SC 400.

³⁹ *Mubin Shaikh v. State of Maharashtra* criminal appeal no. 221 of 2022

According to the district sessions court, Shaikh was attacked "because he looked like a Muslim." However, the Bombay High Court overturned the conviction and released several of the attackers on bail for the following reason: "The deceased's only sin was that he belonged to a different religion. This is a point in the applicants' or accused's advantage, in my opinion. The judiciary, through its welcoming decisions has sufficiently prevented religious discrimination but in many instances, the influence of the majoritarian Hindu sentiments seems very evident mostly in the lower courts. Furthermore, neither of the applicants nor the accused had a criminal history, and it appears that they were provoked and killed in the name of their religion."⁴⁰ How can a prominent court of the country be so religiously biased! The Supreme Court later overturned the high court, stating that "the deceased's involvement in a particular community cannot be a justification for any assault" and that the High courts should follow our country's pluralistic constitution. These and other instances imply that subordinate courts have occasionally supported Hindu majoritarian opinions, despite the Supreme Court's general efforts to uphold the secular nature of the Indian Constitution. The 'secular' tenet of our Constitution is largely violated by this.⁴¹

V. THE WAY FORWARD

A. How can India move forward to protect democracy?

"WE, THE PEOPLE OF INDIA,

having solemnly resolved to constitute India into a

SOVEREIGN SOCIALIST SECULAR

DEMOCRATIC REPUBLIC

and to secure to all its citizens....."

'Secular' and 'socialist' the two most debatable concepts pertaining to India, were inserted in the Preamble to the Constitution of India by the 42nd Amendment 1976 during the time of Emergency. The Emergency era 42nd Amendment is famously named as the "Constitution of Indira" pertaining to the autocratic rule of the then Prime Minister of India, Indira Gandhi. In 1973 was the articulation of the 'Basic structure Doctrine' as a result of the famous judicial decision of *Keshavananda Bharati v. State of Kerala*.⁴² According to the basic structure doctrine, the Preamble to the Constitution cannot be amended, any amendment which seeks to alter the basic structure will be regarded as ultra vires the Constitution. Is this the reason, since

⁴⁰ Alok Prasanna Kumar, *Is the Bombay High Court saying a Hate Crime isn't Heinous?*, THE WIRE (Jan. 16, 2017), <https://thewire.in/law/bombay-high-court-hate-crime.html>

⁴¹ *Supra* note 37.

⁴² *Keshavananda Bharati v. State of Kerala*, (1973) AIR SC 1461.

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all these years, 'secular' still holds a part of the Constitution as it forms a part of the basic structure?

The Supreme Court invalidated various provisions of the 42nd Amendment with the passage of the 45th Constitutional Amendment Act in 1980. However, the Preamble was kept intact since it just "expressed explicitly what was implicit," in the words of the Supreme Court.⁴³

The 42nd Amendment Act of 1976 was challenged under Article 32 in the case of *Balram Singh & Ors. v. Union of India & Anr.*,⁴⁴ in 2020. The petition claimed that the words "secular" and "socialist" are per se illegal for violating the concept of freedom of "Speech and Expression" enumerated in Article 19(1)(a)⁴⁵ of the Constitution of India and the right to "freedom of religion"⁴⁶ guaranteed under Article 25 of the Constitution of India, and that the The petitioners claim that "socialist" and "secular" concepts are political ideas and may be suitable for the country's governance while still being in line with a democratic system.⁴⁷ The petitioners have submitted that 'Socialist' and 'Secular' concepts are political thoughts and may be applicable for the Governance of the country but at the same time in a democratic setup, application of such completely rests upon the will of the people. The case is still pending.

So, the backdrop has already been set, huge controversies are also in place regarding removal of the word 'secular'- But would mere removal of the word from the Preamble change the situation?

In my opinion, 'pluralism' is the primary set up which India should adopt. Further, there is a strong need for enactment and implementation of Uniform Civil (Religious) Code throughout India. In the next three sections of my paper, I would discuss the recommendations in detail.

1. Concept of pluralism

Pluralism is a broader concept with an extensive domain. It can be said that secularism, though not completely dependent, forms a part of pluralism. In layman terms, a 'singular' being cannot survive and requires certain other persons to coexist. There comes the concept of being 'plural.' It is a rightful alternative for 'monism.' In a democratic nation, in order for survival, there is a high need for the existence of 'pluralism.' Pluralism, in simple terms, is the coexistence of multiple religions, ethnicities, castes or linguistic groups in a society. It is the belief that all religions are 'true' and that their truths are not mutually exclusive. It acknowledges the

⁴³ Arti Goyal, *Preamble to the Constitution of India*, (2014), (last visited July 20, 2022), <https://www.lawctopus.com/academike/preamble-constitution-india.html>

⁴⁴ *Balram Singh and Ors. v. Union of India and Anr*

⁴⁵ India Const. art. 19, cl. 1(a)

⁴⁶ India Const. art. 25.

⁴⁷ *Supra* note 47.

existence of all religions as equal. A society's plurality of identities, viewpoints, and values is acknowledged by pluralism. Recognising the benefits of diversity, it encourages coexistence and respect between various religious communities. The promotion of plurality creates a setting where people are free to display their religious and cultural identities while having productive conversations and working together.

Pluralism is any of the several forms of 'inclusivism'; sometimes also synonymic for 'ecumenism'⁴⁸ which means promotion of some level of unity, co-operation, and improved understanding between various religions or different denominations of the same religion. Pluralism is not only about religious diversity, but also diversity in other aspects such as language, race, caste etc.

Secularism, as already discussed on the other hand, recognizes no religion. Secularism is the belief that religion is a private matter and should not be openly discussed in public. It acknowledges the existence of no religions. It also emphasises upon the kind of relation existing between the state and religion; where the state should not intervene in religious matters and should maintain a principle distance.

Why is India a clear example of 'pluralistic' nation and not completely a 'secular' one?

In practice, India shows a high inclination to the principles of pluralism rather than secularism.

There are certain aspects of Indian secularism that distinctly address its pluralistic nature:

1. Unlike Pakistan, where Islam is the official state religion, India does not adhere to any particular faith. It encourages state involvement in religious affairs as well.
2. In addition, the eighth schedule of the Indian Constitution⁴⁹ recognises 22 languages, demonstrating linguistic diversity and, consequently, a pluralistic society.
3. Dalits and women are suppressed by unjust religious practices, and Article 17 of the Indian Constitution protects people from these injustices by outlawing untouchability.
4. India, where separate personal laws (Hindu laws, Muslim laws, etc.) are given significant weight and where the Constitution itself divides the community into Majority and Minority, does not have the same concept of secularism as in the West.

⁴⁸ Rev. Dr Samuel Kobia, *Ecumenism in the 21st century*, <https://www.oikoumene.org/resources/documents/ecumenism-in-the-21st-century.html> (last visited Aug. 10, 2022).

⁴⁹ Indian Const. Schedule VIII.

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5. According to Article 27, of the Indian Constitution, and other similar protective clauses, secularism in India supports including provisions that defend minorities' rights through their own educational institutions.
6. Our constitution is fundamentally pluralistic, although secularism is portrayed as "freedom of religion" in Articles 25 to 30. In actuality, pluralism is the instrument for ensuring India's secularism.

2. *Why should independent India have adopted ‘pluralism’ instead of ‘secularism’?*

The original version of the Constitution didn't enshrine the concept of 'secularism.' It got inserted in the Preamble as an outcome of the 42nd Amendment Act 1976 during the period of State Emergency (1975-1977) declared by Indira Gandhi.

The idea of "secularism" first appeared in the Western world, as was previously discussed. The primary intellectual component of secularism is the notion of the separation of the state and the church or any organised religion. Our founding fathers wished to implement this idea in Indian democracy, where "Dharma" (religion) is the most important and prominent aspect, literally the obsession of everyone. In response to the theocratic state headed by the Pope that had existed for 1,000 years, secularism emerged in Europe. Secularism was implemented in order to detach and release the control of nonreligious things from the Church.⁵⁰

We never had such a concept of theocratic state. So, did the makers of the Constitution try to comprehend Indian reality through a European point of view? The problem which Europe faced in reality to which 'secularism' became the solution was actually a sectarian problem, not a religious one.⁵¹ Europe is dominantly a Christian land, and the conflicts were amongst people of different sects (every one of whom professed Christianity). Whereas what India faced was not inter-sectarian, but inter-religious. But analysing India at large would indicate that mere 'secularism' holds no significance. The constitution provides no single definition of secularism. As a result, it lost its actual meaning amongst a series of interpretations.

India is fundamentally a pluralistic society that finds a space for all beliefs and religions in public life. The great leader Swami Vivekananda referred to India as the "mother of all religions".⁵² during his speech to the Parliament of World Religions in Chicago in 1893. We go beyond tolerance and accept all explanations as true, he concluded. Karl Marx, a famous

⁵⁰ *Supra* note 24.

⁵¹ *Supra* note 32.

⁵² Anagha. P, *The Spiritual Beacon of Profound Nationalism*, <https://organiser.org/2021/10/27/17965/bharat/the-spiritual-beacon-of-profound-nationalism/.html> (last visited Aug. 4, 2022).

economist, philosopher, sociologist, and political theorist, saw religion as "the soul of soulless conditions" or "opium of the people."⁵³

The dominating most factor in India is 'religion.' What people don't want to understand through logic and science, at once grasp and believe in the name of religion. Religious ideologies can make people do such things, nothing else can. 'Religion' gives rise to both- fruitful instances as well as disaster.

If the government's lack of interest in any one religion is what is meant by secularism, then the secularism in question is highly unusual and aberrant for the general population.⁵⁴ Therefore, instead of embracing "pseudo-secularism," why not embrace "pluralism"—a truly constructive strategy. If pluralism rather than secularism served as our Constitution's guiding concept, it would better reflect India's rich range of religious customs and cultural expressions. What lies in the *Bharatiya Atmas* (Indian souls) is 'spiritual pluralism' and not secularism.

The Supreme Court rightly observed in the case *Mrs. Valsamma Paul v. Cochin University* that "Pluralism is the theme of Indian culture and religious tolerance is the backbone of Indian secularism...It represents a difficult interpretive process in which there is both a transcendence of religion and a unity of various religions. It serves as a link between religions in a pluralistic society to overcome the obstacles posed by their differences."⁵⁵

3. Implementation of Uniform Civil Code (UCC)

The principle of Uniform Civil Code essentially connected with the question of contemporary secularism of India. India is a plural nation with diverse religions, caste, language. Due to having various religions, there are different personal laws set up for the citizens of the country. There is no homogeneity in respect of personal laws. As already argued in previous parts, a 'secular' nation cannot and should not recognise any personal religious laws. But that's not the case in India. There comes the need of a Uniform Civil Code (UCC). The UCC is mentioned in our constitution under article 44 DPSP. The debate on whether or not to adopt UCC is going on since Independence, but the issue remained unresolved. Where the father of Indian Constitution, Dr B. R. Ambedkar with other nationalists were in favour of the UCC, on the other hand Muslim fundamentalists were against it as UCC has no room for their Muslim personal laws. According to the opponents of Uniform Civil Code, personal laws are derived

⁵³IS RELIGION THE OPIUM OF PEOPLE, <https://www.theguardian.com/commentisfree/2009/jun/26/religion.pdf> (last visited Aug. 4, 2022).

⁵⁴ Animesh Nilesh Vaze, *Spiritual pluralism, and not secularism, lies at the core of Indian-ness*, THE PRINT (Apr.14,2021),<https://theprint.in/campus-voice/spiritual-pluralism-and-not-secularism-lies-at-the-core-of-indian-ness/639394.html>

⁵⁵ *Mrs. Valsamma Paul v. Cochin University*, (1996) AIR SC 101.

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from religious values, therefore it is not required to interfere in them, because this might lead to hostility and friction between different religious groups.

UCC is not in implementation in the country, has the hostility between the religious groups in the name of 'secularism' stopped?

Article 44 corresponds with Directive Principles of State Policy which state that “State shall endeavour to provide for its citizens a uniform civil code (UCC) throughout the territory of India.” Uniform Civil Code means a set of common civil laws or personal laws for every citizen of India irrespective of any religion. Personal laws include marriage, adoption, divorce, succession, and maintenance. The need of implementation of UCC have been significantly discussed in the cases of *Sarla Mudgal*⁵⁶, *Shah Bano Begum*⁵⁷ and *Shayara Bano*⁵⁸. However, no steps are taken for implementation of the same. *The Jordan case* brought to light that in India there is an urgent and pressing need for a common civil code. The Supreme Court in the case of *Mohd. Ahmed Khan v. Shah Bano Begum and Ors.*, invited the Government of India through the Prime Minister of the country to take a fresh look at Article 44 of the Indian Constitution.⁵⁹

The main issue which comes in the way of enactment of UCC is that it comes under Part IV of the Constitution which envisages the Directive Principles of the State policy (DPSP). And DPSPs are not enforceable by the court and are just directions to the state.

But it is high time for India to adopt UCC in order to prevent discrimination and religious intolerance in the country. In modern India, a uniform set of personal law is highly desirable for the nation's unity and dignity as a whole.

a. Uniform Civil Code (UCC) in Goa

Goa is the only state in India where UCC exists for all irrespective of caste, creed, religion, and gender. All the people whether belong to Hindu, Muslim, Christians follow the same rule related to divorce, marriage, and succession. There is no place for personal laws in the state. For instance, in Goa polygamy is prohibited for Muslim men unlike other states. And Goa is on its way to a highly progressive and developed state in India.

The best interests of all religions (religious plurality) should be considered when drafting the Uniform Civil Code in order to achieve uniformity. UCC is a symbol of modernism and a

⁵⁶ *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635.

⁵⁷ *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 3 SCR 844.

⁵⁸ *Shayara Bano v. Union of India and Ors.*, (2017) 9 AIR SCC.

⁵⁹ Indian Const. art. 44.

highly developed, progressive society. It does away with personal laws and gets rid of caste and religion-based politics in the country.

VI. CONCLUSION

India is far larger than what is seen on a map in terms of geography. India has endured numerous invasions over the years and has become a symbol of openness and humanism. The term "religion" may have an enduring quality. The value of "religion" is, however, gradually being undermined by the secularization process. According to noted sociologist Ashis Nandy, "there is now a curious double-bind in Indian politics: the problems of religion have found political expression but the strengths of it have not been accessible to control corruption and violence in public life."⁶⁰ The various separationists' movements, caste assertions, Hindus nationalism and majority-minority schism on cultural identities- all such incidents have put Indian secularism at question, and all these are often inspired by political parties for personal gain. The hatred between the religious communities mainly, Hindu and Muslims have surged to such a level that the cases of communal mob lynching, the cases of hate speech against each other have increased exponentially in the contemporary times.

India is essentially a plural nation with multivarious diversity and cultural regimes, the founding fathers of the Constitutional Assembly should have understood it long back. As discussed in previous parts, it is high time for India to adopt a Uniform Civil Code (UCC) irrespective of religion, caste, language, creed and so on.

In conclusion, I would like to discuss the evident viewpoints of two notable scholars, political scientist and sociologist, T.N Madan and Ashish Nandy. Ashish Nandy instantly rejects the idea of 'secularism' which India has borrowed from the West. The claim is that India's secularism is a foreign idea thrust upon a people who have never desired to separate religion from politics in their daily lives and thoughts.⁶¹ And in practice too, Indian secularism doesn't advocate separation of State from religious matters; which results in a series of communal violence. According to him, in order to preserve and protect democracy, India needs to maintain a 'pluralistic' society, which is actually in existence. T.N Madan, too is regarded as an anti-secularist pertaining to his rejection of the idea of 'secularism.' According to him, secularism has failed in countering religious fundamentalism and can never succeed in India. India needs

⁶⁰ *Supra* note 39.

⁶¹ Arif Rashid Malik, *Crisis in Indian secularism*, THE ARMCHAIR JOURNAL (Sept. 25, 2020), <https://armchairjournal.com/crisis-in-indian-secularism.html>

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to revive in practice its ‘Unity in Diversity’ and get away with these negative connotations of ‘pseudo- secularism.’

Indeed, I agree with these two eminent scholars as I have already put forward in other parts of this paper. Why to keep such a term in a ‘Holy book’ (*as I regard the Indian Constitution to be*) which has no essence in Indian context. Still a long way off, the UCC. In order to fulfil the goal of "*Sarva Dharma Sambhava*," sufficient efforts should be taken to foster equality while maintaining the social, cultural, linguistic, and religious pluralism. To ensure that every person, regardless of their religious affiliation, is accorded equal standing before the law and is treated with respect and dignity, legal pluralism should serve as the standard. This makes it possible to fulfil the constitutional mandate to "promote harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic, and regional or sectional diversities." The process should involve consultation, dialogue, and a focus on social harmony, ensuring that the rights and traditions of all communities are respected while upholding the principles of equality and secularism.