



## THE TRUE FACETS OF SECULARISM IN INDIA – TOLERANCE & FRATERNITY

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**Abstract:** The term ‘secular’ refers to detachment from religion or the absence of a religious foundation. The philosophy of ‘Secularism’ recognises life without resort to religion. Under the Western concept of secularism, the State and religion are separated, and the State believes in absolute non-interference with religion. However, Indian secularism differs in that the state is neutral toward all religious organizations but not necessarily separate. Secularism in India means that the state will have no official religion, there will be no religious discrimination, and every individual would have equal freedom under the right to religion. Here, state neutrality, non-discrimination, and religious freedom are not enough religious tolerance is also important. It is not about ‘achieving secularism’. Rather, it is about safeguarding and regulating secularism by implementing mechanisms, because Indian society is naturally secular. So, proactive role of the State is significant. The state must provide mechanisms to promote religious brotherhood, including religious tolerance. It’s not that one community coexisting with another. Rather, it is about both coexisting and valuing to each other in order to build fraternity. Fraternity cannot be imposed, but can be encouraged, and so the State must encourage mutual respect amongst religious communities by taking appropriate steps.

This paper focuses on the constitutional philosophy and ideals relating to religious freedom that lead to secularism in the sense that it promotes fraternity and harmony among the people, as well as the journey from secularism to fraternity and from fraternity to unity and integrity which the State strives to achieve.

**Keywords:** Secular, Secularism, Fraternity, religious harmony, religious tolerance, freedom of religion, right to religion.

**Introduction:** The term ‘Secularism’ means ‘indifference to or rejection or exclusion of religion and religious consideration’.<sup>1</sup> So the term ‘Secular’ means having no connection with religion. However, this concept of secularism is followed in Western countries and not in India. In Western civilizations, the government is completely separated from religion, have adopted this secularism approach (i.e., separation of church and state). For a long time, India has been known for being a place of religious pluralism and cultural variety. The majority of Indians have never supported a theocratic state, but there have always been undercurrents of thought in the country suggesting that religion has a place in state affairs.<sup>2</sup> It has a positive meaning that is developing, understanding and respect towards different religions.<sup>3</sup>

**Influence of Indian philosophy on the concept of secularism: Concept of ‘Dharma Nirapekshata’ and ‘Sarva Dharma Sambhava’:** If we see India’s past carefully, it is evident that secular traditions are deeply established in Indian soil. The unification of many spiritual traditions and social movements has resulted into the distinctiveness of Indian culture. In ancient India, the ‘*Sanatana Dharma*’ (Hinduism) flourished as a holistic religion by accepting and

<sup>1</sup>Merriam-Webster, (Jul. 9, 2021, 08:26 PM), <https://www.merriam-webster.com/dictionary/secularism>.

<sup>2</sup>Tahir Mahmood, Religion and the Secular State: Indian Perspective, (Jul. 9, 2021, 08:26 PM), <https://classic.iclrs.org/content/blurb/files/India.rev.2011.05.16.pdf>.

<sup>3</sup>Aruna Roy v. Union of India, AIR 2003 SC 3176.

attempting to merge various spiritual traditions into a single mainstream.<sup>4</sup> The Vedas, Puranas and Upanishads reveal the religious diversity of Hinduism. The term ‘secularism’ in India is related to the Vedic concept of ‘*Dharma Nirapekshata*’ or the state’s apathy for religion. Indian philosophy of secularism is related to ‘*Sarva Dharma Sambhava*’ which literally means that destination of the paths followed by all religions is the same, though the paths may be different. Thus, in Indian philosophy of ‘secularism’ promotes ‘equal respect to all religions’.

**Practice of secularism by Indian rulers (Ancient and Medieval period):** Emperor Ashoka was the first Indian emperor who made an appeal not only for the toleration of all religion sects but also to develop a spirit of great respect toward them. The struggle for religious tolerance and cohabitation of many religions continued even after the arrival of Jainism, Buddhism, and eventually Islam and Christianity on Indian land. In medieval India, the Sufi and Bhakti movements bonded the people of various communities together with love and peace by some prominent leaders, e.g., Khwaja Moinuddin Chisti, Sant Kabir, Guru Nanak Dev, Mira Bai and many. Akbar took remarkable steps to promote religious toleration and freedom of worship, the most prominent evidence of which was his promulgation of ‘Din-i-Ilahi’ or the Divine Faith.

**Spirit of secularism during pre-independence era to strengthen national movement:** India’s struggle for independence from foreign rule was fought on the basis of equality for all religious traditions and their adherents. The spirit of secularism was strengthened and enriched through the Indian freedom movement. During the period of independence-struggle, leaders like, Sir Feroz Shah Mehta, Govind Ranade, and Gopal Krishna Gokhale adopted a secular approach to politics. J. L. Nehru’s secularism was based on scientific humanism and a progressive historical perspective. Gandhiji’s secularism was based on a commitment to the brotherhood of religious communities based on their respect for and pursuit of truth. At present situation, the separation of religion and state is at the heart of the secularist view.

**Constituent Assembly Debate on Secularism:** There was widespread opposition due to the ambiguity of the word ‘secular’, as there was no clear-cut definition that could adequately describe the meaning of the word. Attempts were made on three different occasions to introduce this term in the constitution but were rejected on all three occasions. B.R. Ambedkar opposed these because he believed that the people of the country should be given the freedom to choose their preferred economic or social framework<sup>5</sup> because he realized that introducing such a phrase into the political and public debate may create some disturbances.

**Secularism in the Preamble to the Constitution of India:** The Preamble of Indian Constitution aims to “constitute India a Sovereign, Socialist, Secular, Democratic, Republic”. The terms ‘socialist’ and ‘secular’ were added to it by the 42<sup>nd</sup> amendment (in 1976). But before that, the Supreme Court of India in its landmark judgment in *Kesavananda Bharati v. State of Kerala*<sup>6</sup> introduced the doctrine of basic structure and held that ‘secular and federal character of the Constitution’ is a part of basic structure. The word ‘basic structure’ was not defined but the doctrine was interpreted to include some principles, e.g., Supremacy of the Constitution, rule of law, independence of judiciary, sovereignty of India etc. So the Constitution cannot be amended destroying the basic structure.<sup>7</sup>

**Constitutional provisions on Secularism:** The ideal of secularism is already implicit in the Preamble thus: Liberty of ... belief, faith and worship.<sup>8</sup> Secularism has two dimensions: positive and negative. By negative dimension means a duty has been imposed on the State to maintain secularism and by positive dimension it means that the aim of secularism is to promote religious fraternity. In *S.R. Bommai v. Union of India*<sup>9</sup>, it was held that secularism is a basic feature of the Constitution.<sup>10</sup> Secularism in India means religious tolerance with mutual respect to all religions and the State shall take positive steps to ensure equal protection to all individuals irrespective of their religion and shall play a pro-active role in promoting religious fraternity. The State shall not interfere in purely religious matters though it may control the secular activities associated with religion.

<sup>4</sup>Secularism, (Jul. 10, 2021, 08:26 PM), <https://www.drishtiiias.com/to-the-points/paper1/secularism-1>.

<sup>5</sup>Diganth Raj Sehgal, Arguments for deletion of the word ‘Secular’ from the Preamble of the Constitution of India, (Jul. 19, 2021, 09:08 PM), <https://blog.ipleaders.in/arguments-deletion-word-secular-preamble-constitution-india/>.

<sup>6</sup>AIR 1978 SC 1461.

<sup>7</sup>Secularism and Constitution of India, (Jul. 19, 2021, 09:08 PM), <http://www.legalservicesindia.com/article/1964/Secularism-and-Constitution-of-India.html>.

<sup>8</sup>INDIA CONST. Preamble.

<sup>9</sup>AIR 1994 SC 1918.

<sup>10</sup>J. N. Pandey, Constitutional Law of India, 323 (Central Law Agency, 47<sup>th</sup> ed. 2010).

Articles 25 to 28 of the Constitution of India guarantees to every person the ‘freedom of conscience and the right to profess, practice and propagate religion.’ In *St. Xavier’s College v. State of Gujarat*<sup>11</sup>, the Supreme Court held that although the word ‘secular’ was not mentioned in the Constitution, there can be no doubt that the Constitution-makers wanted to establish such a State and accordingly Articles 25 to 28 have been included in the Constitution.<sup>12</sup> Article 25 guarantees all persons two-fold freedoms: 1) freedom of conscience and 2) right to profess, practice and propagate of religion. Religion is a belief which binds the spiritual nature of men to supernatural being. It includes worship, belief, faith, devotion an extent to rituals. Article 25 also guarantees right to propagate which includes conversion. But ‘voluntary’ is a pre-condition for conversion. However, the State may regulate ‘mass conversion’. The Supreme Court held the freedom to propagate religion involves the freedom to convert into other’s religion, but such conversion should be purely voluntary. Conversion made under forceful or fraudulent method or under any promise will be illegal. However, this right is subject to some restrictions, i.e., public order, morality, health and other fundamental rights. The court will not out rightly curtail the freedom of religion if it comes in conflict with the other fundamental rights. It must create a balance. The court should first try to harmonise and if such harmony is not possible at all, then the freedom of religion must give way to other fundamental rights.

Article 25 (2)(b) is limited to Hindus only but the broad spirit of fraternity suggests that it should apply to all religious communities and any discriminatory practices by any other religious community or prohibiting a person from entering into a temple or Gurudwara is against the spirit of fraternity and it can be declared to be unconstitutional even when Article 25 does not expressly provide so.

Article 17 outlaws the caste system; probably Hinduism’s an important feature, by ‘abolishing’ untouchability and making the enforcement of any impairment resulting from it a criminal offence.<sup>13</sup>

In *Bhurinath v. State of Jammu & Kashmir*<sup>14</sup> (Vaishno Devi Shrine case) the issue was whether the hereditary right was an essential part of religion or not. The Supreme Court held that hereditary right of being ‘Mahant’ is not an essential part of religion.

Article 26 provides for freedom of religion to every religious denomination. Under this Article this right is provided to establish and maintain institutions for religious and charitable purposes. In *T.M.A. Pai Foundation v. State of Karnataka*<sup>15</sup>, it was held under Article 26 (a) pure religious education can be given on religious as well as secular education can also be given. However, charitable purpose is compulsory. If an institution wants to earn profits it cannot do so under Article 26. However, it can do so under Article 19 (1)(g) under the head of ‘business’. The right to religion under Article 26 is not absolute. It is subject to certain restrictions. If any religious practice is in contravention to any public order, morality or health then the protection of the state is not to be given.

**Right to religion & Essential religious practice:** In this context, it is worthy to be mentioned that not all religious practices are protected under Articles 25 & 26. In *Dargah Committee, Ajmer v. Syed Hussain Ali*<sup>16</sup>, the Supreme Court distinguished between religious rituals that are practices essential and integral to a religion and those that are religious but stem from superstitious beliefs. Only those practices which are essential or integral part of the religion or constitute the foundation of a religion are protected.<sup>17</sup>

Article 27 prohibits a person form being compelled to pay any tax for promotion of any particular religion because under secularism the State cannot promote any religion. Therefore, imposing tax for promoting any religion is unconstitutional and in violation of Article 27 as well as secularism. However, payment of fees for visiting a religious place (entry fees etc.) is not unconstitutional.

Article 28 prohibits imparting religious instructions in any educational institutions that are maintained wholly out of the state funds. But it shall not apply to those educational institutions administered by the states but established under endowment or trust requiring religious instruction to be imparted in such institution. Any person attending state recognized or state-funded educational institution is not required to take part in religious instruction or attend any workshop conducted in such an institution or premises of such educational institution. Article 28(1) bars on religious

<sup>11</sup> AIR 1974 SC 1389.

<sup>12</sup>Id.

<sup>13</sup>Rejeev Bhargava, The Distinctiveness of Indian Secularism, (Jul. 9, 2021, 09:08 PM), <https://iow.eui.eu/wp-content/uploads/sites/18/2014/05/Bhargava-04-Bhargava.pdf>.

<sup>14</sup>1997 2 SCC 745.

<sup>15</sup>AIR 2003 SC 355.

<sup>16</sup>1962 SCR (1) 383.

<sup>17</sup>Vineet Gupta, RGNUL Student Research Review, (Jul. 9, 2021, 09:10 PM), [rsrr.in/2018/11/16/essential-religious-practice-sabarimala/](https://rsrr.in/2018/11/16/essential-religious-practice-sabarimala/).

instructions in the institutes which are established by the government and funded by the government wholly. Article 28(2) states that there is no bar on religious instructions in the institutions which are established by a Trust or endowment and funded not totally by the State but administrated by the State. Article 28(3) says religious instructions can be given in the institutions which are partially funded or not funded by the government but affiliated by the government. Attendance should not be made compulsory unless consent from the student (if a major) or from the guardian of the student (if minor) is taken.

**Aim to promote Fraternity:** The Constituent Assembly had visualized the peculiar situations of the country and a very arranging the preamble it aims to secure to citizen's justice, liberty, equality and fraternity. The basic aim is to promote fraternity 'assuring individual dignity and unity and integrity of the nation'. The Indian Constitution commits us to being a secular polity.<sup>18</sup> Fraternity is a powerful weapon for overcoming the dividing factor. In order to foster fraternity in India, religious concord is required. As a result, the state has a constitutional obligation to counteract the circumstances that limit religious freedom. It is also the state's responsibility to foster brotherhood through both positive and negative measures.

Indian secularism is not blindly anti-religious but respects all religions. As B. R. Ambedkar observed, every aspect of religious doctrine or practice cannot be respected. Respect for religion must be accompanied by critique.<sup>19</sup> It means that, our government must respect religion while also intervening when religious groups encourage community disharmony and discrimination on religious grounds (an inter-religious issue) or are unable to defend their own members from the oppressions they perpetuate (an intra-religious issue).<sup>20</sup> So, the State must make continuous efforts to forbid untouchability or interfere in personal laws if required. It must constantly decide whether to engage or not engage, whether to assist or impede religion, entirely on the basis of which of these options advances our constitutional commitment to liberty, equality, and fraternity. This constitutional secularism cannot be perpetuated solely by governments; it requires a collective commitment from an independent court, a responsible media, civil society activists, and a vigilant population. As a result, the State's and Constitutional officials' acts must reflect the constitutional value of "fraternity". Fraternity must be seen in the laws and enactments by Parliament and the Legislature. The Constitution's framers believed that a sense of fraternity must pervade people's lives in order to maintain a sense of brotherhood. Liberty, equality, and fraternity are all intertwined and cannot be separated.<sup>21</sup>

**Fraternity An aid to make an Egalitarian society:** The egalitarian society rests on four pillars established in the Preamble: Justice, Liberty, Equality, and Fraternity. Inspired by the French Revolution, the Drafting Committee adopted the concept of the trinity of Liberty, Equality, and Fraternity, which is preceded by Justice. Liberty, Equality, and Fraternity must be considered "as a trinity, not as independent and mutually exclusive items". They must be viewed as imposing factors that cannot be divorced from each other. Ambedkar said: "They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them."<sup>22</sup>

**Conclusion:** Nowadays we are living in a troubled time, marked by rising hate and inequality, when almost everybody has forgotten to respect each other. Religious tolerance which promotes fraternity can be a way out to save the secular democracy in India. Fraternity, i.e., a sense of common brotherhood of all Indians binds all Indians as being one people. It is the principle that can give solidarity and unity to the lives of the Indians.<sup>23</sup> Religious tolerance, equality and respects to all religions despite differences and fraternity should be promoted to protect secularism in India. Only then India can become a State which the Constitution-framers had dreamt of.

<sup>18</sup>Indian Constitutional Law and Philosophy, (Jul. 9, 2021, 07:35 PM), <https://indconlawphil.wordpress.com/tag/secularism/>.

<sup>19</sup>Rajeev Bhargava, The future of Indian Secularism, (Jul. 9, 2021, 08:15 PM), <https://www.thehindu.com/opinion/lead/the-future-of-indian-secularism/article32329223.ece>.

<sup>20</sup>*Id.* at 20.

<sup>21</sup>Robin David, Fraternity must to preserve to Indian unity, (Jul. 7, 2021, 08:13 PM), <https://www.dailypioneer.com/2021/columnists/fraternity-must-to-preserve-indian-unity.html>.

<sup>22</sup>*Id.* at 22, para 6.

<sup>23</sup>Harsh Mander, Fraternity: The missing link of India's Democracy, (Jul. 6, 2021, 7:37 PM), <https://www.theindiaforum.in/article/fraternity-missing-link-india-s-democracy>.