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The Obscure case of Secularism in India

PRIYANSH PRIYADARSHI¹

ABSTRACT

It has been long debated whether or not India is a secular country. Secularism is one of the most debated topics in India and there exists a plethora of debate about India's secular nature. Many claim that India is not a secular country as it lacks the wall of separation between the state and the religion and state does not follow the non-interventionist approach in the matters concerning religion as the western countries do but there's another school of thought which claims that India indeed is secular state and we don't need to view India's secularism from rigid-western lens, India has its own version of secularism and the concept of secularism has been deeply imbedded in the Indian society and its dates back to ancient India.

This socio-legal paper is an attempt to analyse the debates about secularism India, by tracing the history of secularism in India by examining the various sociological as well as legal aspect. In an attempt to encapsulate the secularism discourse, the paper also traces the constitutional as well as judicial history by focusing on the intent of the drafters of the constitution and the various judicial interpretation about the secular aspect of the India constitution.

Keywords: *Constitution, History, Indian, Intervention, Separation, Secularism, Western.*

I. INTRODUCTION

The Preamble of India reads “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.....” The text of the preamble hasn't been the same since its inception and has been changed by integrating a few words in it. This paper shall be talking about one of those newly added words by the 42nd amendment act. The word “Secular”. There have been and there will be a plethora of debates concerning the word secularism in the Indian context, and it's not a new phenomenon, the inception of the debate particularly in modern India dates back to the time of inception of the constitution and is still continuing. It's just that the debates have changed its forms and objectives throughout the course of time. This paper aims to trace those prominent changes in debates about

¹ Author is a student at Chanakya National Law University, Patna, India.

secularism in the country while trying to encapsulate it's sociological as well the legal impact on the Indian society as a whole and for that end, the paper shall try to explain the various approaches to secularism such as judicial and social in pursuit to find the answers to the question is Indian a secular state?

'Secularism' is arguably if not the most then at least the 2nd most used words in Indian political debates next to the word 'Democracy'. We see the word reappearing around us so frequently and almost everyone having an opinion and providing their input on the topic but yet the issue of secularism is far from a settled issue in India. None of us are oblivious to various allegations claiming that India is not truly a secular state. This paper shall try to look into the credibility of those allegations and examine the various rationale provided by the authors of such allegations and towards the end try to explore the option available to India under the ambit of the constitution and in which directions the Indian state shall head towards from the crossroad it is standing at right now.

II. ORIGIN OF SECULARISM: FROM THE WEST TO INDIA

The Oxford English dictionary defines the word Secularism as 'the belief that religion should not be involved in the organization of society, education, etc.' belief. The term 'Secularism' comprises of the word 'secular' word which finds its root in Latin the word 'saecularis'. Which means not concerned with the religion, not sacred, not monastic. The Cambridge dictionary defines the same word as 'The belief that religion should not be involved with the ordinary social and political activities of a country.' Now in a vacuum, if we try to apply these two definitions to the Indian context, any person would easily be able to conclude that India is not a secular state. But the constitution of India claims India to be a secular state and various judgments of the Supreme Court as well as the intention of the framers of the constitution provide enough conclusive evidence supporting the constitutional claim. The question here is: If we go by the general definition of the word, the same could not be applied to the Indian context, then how could one consider India as a secular state? To find the answer to this question one needs to travel some distance in History.

Often Secularism is considered to be a western concept, a by-product of the famous renaissance movement in Europe. Secularism does not find its root in the east or Asia but in Europe and it was later brought and applied to the eastern part of the world by the European colonies during their so-called age of Enlightenment. The colonizers saw secularism as a

means to civilize the people of their colonies whom they often considered as savages.² The term appeared and gained importance during the years of Anti-Catholicism in England during the year 1850-51³, it was the time of a conflict between the church and the state, so to put it in context it was the time when the state tried to abnegate the dominance of the religion and the religious institution in the matter of state activity concerning the public affairs. This is the point from where we see the doctrine of 'Wall of separation' taking shape, the doctrine which separates the state from religion and providing the state with a sense of neutrality towards different religions. But it was often a common mistake for the people to consider secularism as a contrast to the religion, but secularism as a doctrine of 'wall of separation' referred to a state divorced from religion rather than being opposed to religion. Then about a century later in the year the term 'secularisation' gained popularity in the year 1648 post the thirty-year war in Europe. The term was used in the context of transferring the Churches property to the Crown with exclusive control of the crown over it. The Europeans saw this divorce of state and religion as a progressive step ahead for a peaceful and prudent society and were eventually welcomed by the majority of the population.

When the Europeans brought this concept of secularism to India, they were unaware of the challenges they were about to face while applying it in the Indian subcontinent. To begin with, India was much more culturally diverse compared to Europe and the administration of Indian kingdoms were completely in contrast to their European counterpart. Application of the western version of secularism or secularism as such in India was similar to forcefully shoving a brick into a round hole in the wall in the hope to seal it. The problem did not end there for Europeans, as India was not just a multi-religion state but also a multi-cultural state and unlike the west, the culture is mostly the product of religion. The culture and religion are deeply intertwined that just separation of state and religion would not guarantee a peaceful transition to a secular state as the separation didn't just mean a departure from religion but culture as well, and this is where the application of an alien concept (read secularism), failed because of the ignorance of the colonizers towards understanding the sociological background of India. So, unlike the west, the definition of secularism wasn't just restricted to its relation to religion but culture too. And that was the very reason we saw the rise of religious fundamentalism as opposed to secularism and the entire premise of the argument of fundamentalism was based on that 'secularism as a western concept is against

² SASHI THAROOR, *INGLORIOUS EMPIRE: WHAT THE BRITISH DID TO INDIA* (2017).

³ D.G Paz, *Popular Anti-Catholicism in England, 1850-51*, Vol. 11, No. 4, ALB: QJCBS, 331-359 (1979).

our Indian culture.’⁴

To counter so-called westernized secularism the conservatives devised a narrative, that secularism as a western concept is alien to India and is sabotaging the Indian culture to which some among the Indian liberal academia came up with the argument that secularism is not alien to India as one can even find its origin in India itself. And to support such a claim they cite examples of Ashoka⁵ and Harshvardhan who during their reign accepted and patronized various religions and proved that secularism rather than being alien to Indian culture is deeply embedded in the Indian culture. Numerous examples have been cited to strengthen such claims such as Ellora cave temples of different faith built next to each other⁶. And not in just ancient India, the presence of secularism could be found even in the much recent part of the history too and it was not adulterated or had an influence of the western secularism. Madan in his work on the Sikh religion and secularism writes “The self is thus seen in relation to the divine and the social, so that a withdrawal from either of these relationships must spell one’s extinction. It is this combination of piety and practical activity which is the essence of Nanak’s this-worldliness, his secularism.”⁷ He tries to encapsulate how the Sikh tradition finds its root in the secular and plural aspects of society and this was before the advent of the concept of western-secularism in India and furthermore the famous quote of Gurunanak which translates into English as “there is no Hindu and no Muslim” helps in furthering the claim. And not just Nanak there have been numerous claims that many prominent names in Indian history supported and promoted the composite culture such as the Kabir, Khawaja Moinuddin Chishti, etc. Even though there might be shreds of evidence of the Muslim emperors to be among of the most barbaric and unsecular rulers, Akbar the Great is hailed as one of the most secular rulers in Indian history, his acts of abolishing the religious tax ‘Jizya’ and instituting ‘Din-i Ilahi’ or the Divine faith provide us with conclusive evidence for the same.

Furthermore, a similar explanation and liberal undertone can be observed in the intention of the drafters of the constitution, as well as Gandhi who claim India to be a secular state under the aegis of the Upanishad principle ‘Sarva Dharma Sambhava’ which translates to respecting and all beliefs and religion. But this definition does not talk about the wall separating state and religion, by which it can be inferred that the term ‘Secularism’ means something else in the Indian context or by the so-called western definition India is not a

⁴ Amartya Sen, *The Threats to Secular India*, Vol. 21, No. 3, SS, 5-23 (1993).

⁵ Romila Thapar, *Ashoka — A Retrospective*, Vol. 44, No. 45, EPW, 31-37 (2009).

⁶ CHANDRA, PRAKASH, INDIAN GOVT. AND POLITICS” A STUDY OF INDIAN POLITICAL SYSTEM 515 (2018).

⁷ T.N Madan, *Secularisation and The Sikh religious tradition*, Vol. 33, Issue 2-3, SC, 257-273 (1986).

secular state, to begin with, and the concept of secularism even though the Indian culture was reluctant, it was forcefully imposed on India to sever the malevolent intentions of the colonizers⁸.

III. INDIA: A SECULAR STATE?

The constitution of India states it is a secular state explicitly in the preamble after being polemically inserted the 42nd amendment act and by the means of preamble the secular aspect of the constitution has been classified as 'Basic Structure', rendering it as an integral part of the state and to that end, there are no legislative means under the present constitution to deprive the Indian state of its secular identity, principle, and morality. It's been established time and again, that India didn't just become a secular state overnight post the 42nd amendment but India since its very inception was a secular state and this can be inferred by the various other provisions of the constitution itself, that the state of India did seek to promote a secular society and maintain neutrality towards different religions. Article 17, 25, 26, 27, 28, etc. of the constitution provide conclusive proof of the claim. Moreover, even the supreme court of India held that India is a secular state given the various constitutional provisions⁹ long before the term 'secularism' was inserted into the constitution.

Furthermore, if one goes through the constituent assembly debates, the intention of the constitution-makers to make India a secular state can be very easily deciphered. The further constitutional and the legal aspect of secularism shall be dealt with under the next subtopics, under this section shall analyze the sociological aspects mostly throughout the 20th century to trace the various debates pertaining to the question, if India is secular or not.

It's an undisputed fact that an innumerable amount of allegation has been hurled in the recent past especially by RSS-BJP led forces that India is not a secular but a pseudo-secular nation and the rationale of such allegations is rooted in the so-called minority appeasement (mostly Muslims) and neglecting the majority (Hindus) for the vote bank politics. Regardless of the politics, India in past has been infamous for its indifference towards coming up with common legislation for each and every religion namely the Uniform Civil Code (UCC)¹⁰, and has been one of the major contentions from the side of the aisle who

⁸ Himanshu Roy, *Western Secularism and Colonial Legacy in India*, Vo. 41, No. 2, EPW, 158-165 (2006).

⁹ Sardar Taheruddin Syedna Saheb v. State of Bombay, A.I.R. 1962 S.C. 853.

¹⁰ Harish V Nair, *Eye on Polls, BJP pushes for UCC*, INDIA TODAY, May 22, 2018. (The promise of UCC has been one of the major reasons which has propelled BJP led govt twice into the power with humongous amount

claim 'India not to be a secular state' as the absence of such provision violates the very basic principle of secularism namely neutrality. If we come to think of it and going by the west given definition of secularism, which is 'state's neutrality towards all religion' and for that end, a 'wall of separation' is a must, one may claim India is not a secular state because of the obvious reasons.

We need to retrospect when we ask a very basic question; 'Why did we become a secular state and how?' While struggling to find the answer in history we come across the very famous 'Gandhian Philosophy of Religious Tolerance' or the 'Sarva Dharma Sambhava' principle and it might not be appalling to believe that the major part of the rationale behind why Indian is a secular state and in such an obscure way is borrowed from the 'Gandhian Principle' to which even the Supreme Court of India agreed in land-mark major judgment¹¹. Tough the same court later claimed that it departed from the rationality and went on diluting the active, positive concept of secularism based on the scientific principle which it had come up with in a previous judgment.¹² But there is a caveat attached with this interpretation of secularism when we try to find the meaning of 'Sarva Dharma Smbhava' from the Upanishads and with reference to the Gandhian philosophy it translates to 'treating every religion with equal respect' and it nowhere talks about the separation of state from the religion and this is another major reason for many to claim India not to be a secular state in a true sense (given that we adhere to the western definition). The core of the Gandhian principle of Secularism is majorly influenced by the idea of tolerance and tough it might appear as a positive trait that can be attributed to secularism from a communitarian perspective, it fails to pass the scrutiny of the 'test of neutrality' posed by the given definition of secularism.

In one of his famous essays 'Secularism in Places' Madan claims that "In either formulation, Indian secularism achieves the opposite of its stated intentions; it trivializes religious difference as well as the notion of the unity of religions. And it really fails to provide guidance for viable political action, for it is not a rooted, full-blooded, and well-thought-out weltanschauung, it is only a stratagem."¹³ One does not need to read the entire essay but just these few lines, to conclude what Madan here is trying to say and that is: Indian is far from being a secular state and not just that but also has miserably failed in an attempt to become one. He reaches this conclusion by arguing that, it is next to impossible for the

of majority in the Lok Sabha.)

¹¹ Ismail Faruqui v. Union of India, (1994) 6 S.C.C. 360.

¹² S.R. Bommai v. U.O.I., A.I.R., 1994 S.C. 1918.

¹³ T. N. Madan, *Secularism in Places*, Vol. 46, No. 4, TJAS, 747-759 (1987).

governing, administrative as well as judicial bodies in India to have a strictly a secularist (the western definition) approach because the religious faith is way too significant for the Indian population, and the so-called secularist do not and cannot dare to strictly stick with the non-interference and the neutrality principle and even they do, in the end, the gun which they picked up in for the purpose of reformation shall backfire. Now we can see another debate emerging not about the efficacy of secularism in India but its validity. M.N. Srinivas while talking on similar lines in his article back in 1993 which he wrote for *The Times of India*, he argues "that philosophy cannot be secular humanism. It has to be firmly rooted in god as creator and protect". Srinivas's intention was clear, he laid impetus on the urgency for the need for a new philosophical approach to solving the perilous cultural and religious crisis in India but secularism wasn't the approach to solve the crisis it'd rather worsen it. Again, the rationale: religion being such an integral part of the Indian population's life that divorce of state and religion and states neutrality was seen as a threat. It won't be possible to discuss the opinion of all the anti-secularist given the constraints of the paper but one could possibly conclude that that the major part of the claim that why Indian is not and cannot be a secular state in a strict western sense, emanate from the postulation that the only and prudent way for India to achieve its goal of a tolerant and pluralistic society is by organic and indigenous means which would be more holistic, moral and maternal and not by individualistic approach namely secularism.

Acevedo in her work argues that we are just latching ourselves to the tag of secularism "for the sake of possessing the label"¹⁴ This is another major argument that is often advanced by a group of academicians mostly from the legal background who prefer to restrict their understanding of the ambit of secularism completely within the legal framework, under the patronage of the western definition. It has been claimed that secularism was adopted by the framers of the constitution in their pursuit of achieving the goals of the Gandhian Principle but they failed to realize that the path that leads towards the pursuance of the 'Gandhian principle' has a plural society at the end rather than a secular one, and once they start to tread on that path it was almost impossible to make a deviation without tarnishing its reputation as secular-liberal democracy. Now we see a debate emerging that Indian wasn't supposed to be a secular state because of the importance of religious faith in people's lives here and to make India a secular state, the state needs to undertake some effective reformative steps which would not guarantee a peaceful transition, as a matter of fact even some of the slightest reformative steps have led to massive unrest nationwide, and among the plethora of examples

¹⁴ Deepa Das Acevedo, *Secularism in the Indian Context*, Vol. 38, Issue 1, JABF, 138-167 (2013).

the aftermath of Shah Bano's judgment would perfectly encapsulate the reaction of mass. And later to call a truce the Rajiv Gandhi's government took the advantage of the absence of the principle of 'non-interference' (despite being a secular state) and came up with the legislation almost negating the reformative judgment passed by the Supreme Court of India. And this does not end here, furthermore, there have been claims that the very absence of the principle of non-intervention has led to the rise in the Far-right Hindu Nationalist groups in India¹⁵. Due to restrictions of this paper, it won't be possible to go through all such claim but amid abundance of such claims, one could argue that given the restrictive definition of secularism by west India is not a secular state and an attempt to become one it has miserably failed attracted unwanted dissent.

There exist yet another debate where various academicians in the recent past such as the likes of Bhargava have opined that secularism in India is distinct from the rest of the world and it carries a pluralistic undertone which is situated in the very core of its definition and secularism in actual practice may differ from context to context. If it is so then why do we have one particular definition of secularism in the English dictionary? One could say Secularism differs in practice, principle and definition and in the Indian context, the difference is noticeable. Yildirim in 'Expanding Secularism's and Scope: An Indian Case study' states "should be approached as a discourse to reconstruct the political space so that religion and the state can co-exist."¹⁶ Talking about the reconstruction of political space, many have argued that India in the present state even though may have a distinct form of secularism but is not a completely secular state. Bhargava in his 'The Distinctiveness of Indian Secularism' argues; Instead of following the doctrine of the wall of separation, India has the 'principled distance'¹⁷ doctrine because of which state can interfere in the religious matters for the public welfare given the volatile and nature vastness of Indian belief system. But the question arises: Even if we consider the 'principled distance' as a feature of secularism in India the question arises is that if the Indian state maintains a principled distance, 'can we consider that the state is 'equidistant' from each and every religion?' And if not then it loses out on the most important principle of secularism which is the 'Neutrality of State'. The distance, the state maintains from the religion is not equal, Bhargava claims "entails a flexible approach on the question of intervention or abstention, combining both, dependent on the context, nature or current state of relevant religions." And considering this in the paradigm that secularism is a very context-based principle, one could

¹⁵ Kanwal Sibal, *Minority Focused Secularism Will not work*, THE HINDUSTAN TIMES, Jun. 17, 2019.

¹⁶ Seval Yildirim, *Expanding Secularism's Scope: An Indian Case Study*, Vol. 52, No. 4, AJCL, 901-918 (2004)

¹⁷ RAJEEV BHARGAVA, *THE FUTURE OF SECULARISM*, 20-53 (T.N. Srinivasan ed. 2006).

argue even though the state may not strictly adhere to the non-interference principle and the degree of the interference may vary, yet we could assign India to be a secular state as to be secular is not a destination a path that must be travelled upon, to uphold the pluralistic nature which is the very substance that makes up secularism. Apart from this, there have been various claims that the very concept of secularism entails an erroneous assumption that faith is completely a private affair and the state shall not be concerned with it,¹⁸ to this many claim that this definition might be suitable for a western society but the same may not be applied to India which boasts a plethora of faith and religions with a huge spectrum of different culture and practices and there might be certain practice in a certain culture which follows a certain religion which can tantamount to the violation of constitutional norms and can jeopardize the tolerance among different sections, and hence to restrict such occurrence the state needs to intervene in the personal-religious matters and this forms the major part of the rationale why Indian state has the concept of distinct personal law, and further sections shall discuss the constitutionality of the same.

After going through the arguments made by the academicians of the likes of Bhargava and Yildirim, we are compelled to rethink the singular value assigned to secularism by the western definition, it could be argued that secularism is an ever-expanding concept and it can and must be assigned a different and desirable meaning which fits in the context. It can be argued that the western definition is very static and due to its rigid nature, it cannot be applied to different places and of all those places especially not in India. The doctrine of 'separation of Church and the state' cannot fit in the Indian model as of Indian, to begin with, did not have a single or multiple organized church to look into the matter to state affair, though the Indian dynasties have a reputation of consulting the religious bodies in the matter of administration but that was very restrictive and could not be compared to the western model such as England. As matter of fact, the west might as well face the difficulty even in applying the very definition of secularism which they came up with in the first place. Considering the example of France of putting a ban on public display of the symbols of religious beliefs.

IV. INDIAN CONSTITUTION: A SECULAR LITERATURE?

As discussed above the word 'Secular' didn't find a room in the constitution adopted in 1950 but was inserted by the means of 42nd amendment act in the year 1976. There was no special article promulgated for adding the word secular but it was inserted in the preamble itself. There are arguments we often come around in the debates concerning secularism that India

¹⁸ Karan Singh, *A Suitable Secularism*, THE INDIAN EXPRESS, Jun. 26, 2015.

was not a secular state and it was forcefully made a secular state during the dictatorship (emergency) regime of Indira Gandhi. But on contrary to this argument the Supreme Court in its landmark S.R. Bommai judgment made it clear that the addition of the word secularism by the means of the 42nd amendment did not bring any new or alien concept to the Constitutional Framework or the Indian society per se but in the words of J. Ahmadi “By this amendment what was implicit was made explicit.”¹⁹ And it was not just the view of the supreme court but many academicians shared a similar view. Nandy in his in essay ‘Closing Debate On Secularism’ says “Though the constitution was always secular, secularism as an ideology entered it for the first time during the Emergency in 1975–77 when civil rights were suspended by Indira Gandhi.”²⁰ The rationale behind this judgement was that there were certain pre-existent provisions in the Indian Constitution which made it a secular literature such as the Article 15 and Article 16 provided the grounds for the states neutrality towards the religions in the opportunities related public employment and state-run educational institutions respectively, whereas Article 25- 28 specifically talks about the religious freedom such as right to profess, practice and propagate one’s religion, rights to manage religious affairs, right to run religious educational institutions, exemption from tax for propagation of religion, and various other religious rights and apart from these there are certain negative provisions for the state itself to restrict its actions in pursuance to maintain the neutrality towards each and every religion, such as under Article 28 (2)(1) puts forth that no religious knowledge can be imparted in an institution which is administered by the state itself and one can find several other provisions throughout the constitution.

Supreme Court in the *Sardar Taheruddin Sedana Saheb v. State of Bombay* (commonly known as the ex-communication case) in the year 1962 which is more than a decade before the word secularism was inserted in the constitution, held that "Articles 25 and 26 embody the principle of religious toleration that has been the characteristic feature of Indian civilization from the start of history. The instances and periods when this feature was absent being merely temporary aberrations. Besides, they serve to emphasise the secular nature of the Indian democracy which the founding fathers considered to be the very basis of the Constitution."²¹ And one could find the inception of such a view of the judiciary regarding the secular aspect of the constitution right from the year 1953 in the case of *Nain Sukh Das v. The State of Uttar*

¹⁹ S.R. Bommai v. U.O.I., A.I.R. 1994 S.C. 1918.

²⁰ ASHISH NANDY, *THE CRISIS OF INDIAN SECULARISM*, 107-117 (Anuradha Dingwaney Needham & Rajeswari Sunder Rajan eds. 2007).

²¹ *Sardar Taheruddin Syedna Saheb v. State of Bombay*, A.I.R. 1962 S.C. 853.

Pradesh²². It has been the precedence of the Indian judiciary which in various cases, time and again established that the Indian constitution is secular in nature and it is not because of the insertion of the word 'SECULAR' in the preamble through the 42nd amendment but it already had provisions since its inception which very much secular in nature and moreover later the feature of secularism was also granted the shield of the basic structure doctrine making it an integral part of the constitution which was not be touched.

The judiciary and the academia didn't just reach the conclusion that the constitution of India is a secular literature just by the mere presence of the secular provisions in it, but the intention of the framers of the constitution also played a very crucial role in concluding the same. Right now, in its present form, the word secularism is to be found only once in the preamble. On the day the preamble was being discussed in the constituent assembly, it wasn't a benevolent discussion and there were a lot of verbal skirmishes on the issue of insertion of the word secular in the same. It was HV Kamath who initiated the discussion of adding the phrase "In the name of God" in the constitution ²³ and there were similar amendments brought forward by various other members. This was rebutted by the Pandit Kunzru by saying "We invoke the name of God, but I make bold to say that while we do so, we are showing a narrow, sectarian spirit, which is contrary to the spirit of the Constitution and which we should try to forget at this time when we have reached the end of a very important stage of our labours."²⁴ and many even joked about such amendment such as Rohini Kumar Choudhary saying "May I move an amendment to that of Shri Kamath that, instead of 'In the name of God', would he be pleased to accept 'In the name of Goddess'? (laughter)."²⁵ The result of voting of the amendment against it, with 41 for and 68 against. Though the amendment was not passed but it mirrored the mood of the constituent assembly. More than 35 percent wanted that phrase to be in the constitution and that too in the preamble and 35 percent is in no way a negligible minority, it only depicted how religion and god were an integral part of the Indian population. And this notion was perfectly put forward in a speech by Kamath in a reply to Rajendra Prasad that "This (religion) has been the voice of our ancient civilization, has been the voice through all these centuries, a voice distinctive, vital and creative, and if we, the people of India, heed that voice, all will be well with us."²⁶ Though the Amendment of adding the word God and having faith in it was not approved by the constituent assembly in order to maintain state's neutrality in order to be secular, but the

²² Nain Sukh Das v. The State of Uttar Pradesh, A.I.R. 1953 S.C. 384.

²³ Constituent Assembly Debates, Vol X, 17 October 1949.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

amendment to add the word Secular too wasn't accepted. Laster Brajeshwar Prasad came up with the amendment "'WE THE PEOPLE OF INDIA, having resolved to constitute India into a CO-OPERATIVE COMMONWEALTH to establish SOCIALIST ORDER and to secure to all its citizens-..'"²⁷ and again this amendment was made fun with remarks such as "what about a camel and a motorcycle" by PB Deshmukh and many other members and eventually this amendment too was voted out and further there were barely any discussions on adding of the secular in the preamble.

As the preamble was discussed during the last leg of the constituent assembly debates one could encapsulate the entire intention and motive of the framers of the constitution formed over the preceding years discussing the constitution. Moreover, the hesitation of the framer on adding the word and their reasons behind it, made the ambiguous nature of the term "secularism" more evident, and hence paved a path for future discourse which led to a destination far from the proper and uniform definition. However, if one goes through the preceding debates one could still argue that the framers of the constitution intended to make it a secular literature. As Lok Nath Mishra said on December 6 1948 "I accepted this secularism in the sense that our State shall remain unconcerned with religion, and I thought that the secular State of partitioned India was the maximum of generosity of a Hindu dominated territory for its non-Hindu population. I did not, of course, know what exactly this secularism and how far the State intends to cover the life and manners of our people. To my mind, life cannot be compartmentalised and yet I reconciled myself to the new cry"²⁸ It was very clear that the framers very well-intended India to be a secular state but this very statement had an undertone or maybe a caveat which echoed India shall only be a secular state because of the tolerance and generosity of the majority which were the Hindus. Furthermore, many members too came up with their idea during the discussion which directly or indirectly resonated that Indian should be a secular state for example, Renuka Rai, on 7th December 1948 said " I am sure that all those in this House and the country outside will agree with me that above all things, it is necessary that the instruction that is given to the citizens of the future shall be such that the idea of a Secular State in which all citizens are equal comes into being, and the provision for this adopted in our Constitution becomes a living reality. This can only be done if education which is the very basis on which we build our Society is so imparted to the young that they do not learn to realise the distinctions which separate man and man, but rather to learn that the under flying unity of humanity is more fundamental and the basis of

²⁷ Ibid.

²⁸ Constituent Assembly Debate Volume VII part I, 6 December 1948.

religion to which they must adhere.”²⁹ This was said in regards to the article talking about “imparting of the religious instruction in educational institution maintained out of the state funds.” This very statement and supporting of the article was mostly in line with the generally perceived definition of secularism even by the west and it upheld the doctrine of “wall of separation” and “nataity of state” and it was vocally supported by a number of members such as the likes of V. I. Muniswami Pillai.

After one tries to know the intention of the framers of the constitution on the matter of secularism, one still could not come to a final conclusion that they intended to make it a secular literature. And even if they intended to make India a secular state what did they conceive a secular state to be? It would be quite impossible to conclude that the framers wanted India to be a or not to be a secular state. It’s better to believe that the framers themselves weren’t sure (though there are certain isolated incidents during the period of drafting the constitution based on which one could claim to know the clear intention of the makers, but the constitution isn’t the product of only those isolated incidents) and left on the future generation of decide what they couldn’t.

V. JUDICIAL APPROACH: SECULAR IN NATURE?

The framers of the constitution passed on the mantel to interpret and expand the scope of the constitution to the Judiciary, they made it the supreme guardian of the Magna Carta and most importantly an Independent one. Since the constitution came into force the judiciary had tried to interpret, expand and protect the constitution and the constitutional value and the concept of secularism has been an essential part of it. But again, one has to look at how far the judiciary has gone in this matter and have they done any justice and upheld the secular aspect of the constitution. As the constitution scants its attention towards providing a proper definition of secularism, it is the judicial interpretation upon which one could reply to ascertain whether or not India is a secular state. In certain cases, the court has come out with some bold remarks and decision based on which it could be said Indian is indeed a secular state which adheres to the various principles inherent to secular state such non-intervention, the wall of separation and the neutrality of the state but in some other cases the opinion of the court are, on the contrary, ranging from completely negating the principles of non-interference³⁰ to bringing minorities way of life under the same umbrella as the majority³¹.

²⁹ Constituent Assembly Debate, Volume VII part II, 7 December 1948.

³⁰ Commissioner of Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar, Shirur A.I.R. 1954 S.C. 282.

³¹ Yashwant Prabhu vs Prabhakar K Khuntes, (1996) 1 S.C.C. 130.

It was mentioned in prior text that, the Supreme Court mentioned that the Indian constitution provides for a secular state, even before the word secularism was inserted into the constitution. But the Court did not stick with its opinion and has a history of deviation from what would qualify India as a secular state and could be seen right from the landmark judgment of *Keshvananda bharti*³²; though in the judgment the C.J Sikri while deliberating upon the basic structure laid impetus on the secular features of the constitution but never explicitly considered the feature as part of the basic structure and this ambivalent approach was again observed in another landmark case³³ where the bench's uncertainty was observable when it stated "The Constitution has not erected a rigid wall of separation between the Church and the State. It is only in a qualified sense that India can be said to be a secular State. There are provisions in the Constitution which make one hesitate to characterise our State as secular. Secularism in the context of our Constitution means only an attitude of live and let live developing into the attitude of live and help live."³⁴ This particular statement enumerates the vicissitude in the judicial (often considered to be the scientific one) notion of secularism with the social construct of secularism present in the Constitution.

Though there is a different school of thought as a counter to this statement made by SC. It claims the reason of no rigid wall present between the state and the religion is because it allows the state to intervene in the matters of religion to bring in social reforms as the society of India prior to independence and still continues to practice certain custom which violated rights of the citizens enshrined in the constitution itself. Which gives the reason for the state to intervene in the matter of religion and the degree of intervention may vary in each case. But there even exist a rebuttal to this argument when in 1994 in *S.R. Bommai* case Justice B P Jeevan Reddy came up with an argument that; "In the matter of state, the religion has no place and is completely irrelevant"³⁵; this statement can be interpreted as; the SC saw the state may or may not intervene in each and every instance where there is a violation of rights due to any religious practice, but choose to intervene arbitrarily or worst only intervene in the certain issues which could jeopardize certain community be it majority or minority. This could lead to a grave violation of constitutional morality. During those years, and probably only those years the SC could be seen strictly protecting, the ideals of secularism and adhering to the scientific and strict definition of secularism.

But again, the judiciary didn't always stick to the strict interpretation of secularism. One of

³² *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225.

³³ *Ahmedabad St. Xaviers College Society v. State of Gujarat*, (1974) 1 S.C.C. 717.

³⁴ *Ibid*, Para 139.

³⁵ *S.R. Bommai v. The Union of India*, A.I.R. 1994 S.C. 1918, Para 232.

the earliest examples of the judiciary's aberration from adhering to one of the core principles of secularism can be seen in the Shirur Mutt Case of the years 1954³⁶. This is the case when the judiciary came up with the doctrine of "essential practice" according to which the legality of an act didn't depend upon its adherence to the law of land but whether or not it comprised as a part of the essential practice of the religious belief. Justice Mukherjea came up the justification that "...what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself."³⁷ The judgment attracted a lot of criticism about how the court abnegated its responsibility to uphold the secular feature of the constitution. The judgment was seen as a precedent which was set to further used in the pursuit of forcing the majoritarian view on the minority, the best example of this case was the beef ban case³⁸ where the court denied the right of sacrificing cow by a Muslim as it didn't constitute as an "essential practise" Islam. This approach of the judiciary is considered as a cornerstone to indicate how the state has deviated from the pursuit of its secular goal long ago and if the judiciary considers Indian to be the secular state it needs to abandon this practice and come up with a new test which is endorsed by the constitutional law regardless to its essentiality to any particular religion or belief.

Any conversation about the Indian Judiciary would be incomplete if the 'Babri Masjid' or the "Ram Janm Bhoomi"³⁹ case is ignored. It would not be possible to discuss the entire judgment in length in this article as doing so would require a multi-volume book, but it could be said that What started as a 'title dispute' for a piece of land became a cornerstone in the debate concerning secularism in India'. "Here is a small piece of land (1500 square yards) where angels fear to tread. It is full of innumerable land mines. We are required to clear it."⁴⁰This statement by Allahabad HC perfectly encapsulated the importance of this case in the jurisprudence of Indian Courts. In the final judgment on this matter, the Supreme Court handed over the title of the piece of land to the Hindu Body and instructed the govt. to allot another piece of land somewhere else for the construction of the Mosque to the Muslim body. Many scholars criticized the judgment on the basis that it was legally unsound.⁴¹ The major claim of the scholars criticizing the judgment came from the fact that if the court accepted

³⁶ Commissioner of Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar, Shirur, A.I.R. 1954 S.C. 282.

³⁷ Ibid, Para 20.

³⁸ Mohd. Hanif Quareshi v. State of Bihar, A.I.R. 1958 S.C. 731.

³⁹ M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors. (2010) SCC OnLine SC 1483.

⁴⁰ The Sunni Central Board of Waqfs U.P., Lucknow & Ors. V. Gopal Singh Visharad & Ors., (2010) S.C.C. OnLine 1919.

⁴¹ Upendra Baxi, *Ayodhya Verdict must be seen dispassionately from the prism of law, Constitutionalism*, OUTLOOK INDIA, Nov. 25, 2019.

that the demolition of the Mosque was illegal then on what basis did the court transferred the rights of the property to the Hindus.⁴² The criticism of judgment once again unearthed the debate of how the state used the judiciary as a tool for imposing the (religious) majoritarian ideologies which go against the very principle of secularism. Many saw the allotment of another site to Muslims as an amelioration for the court knew what they did was legally wrong and not in accordance with the secular principle as enshrined in the constitution. The Court mentioned that giving of the land to Muslims “necessary because ... on a balance of probabilities, the evidence in respect of the possessory claim of the Hindus stands on a better footing than the evidence adduced by the Muslims”⁴³. Many even criticized this act of the court, as it was a title dispute and, ‘since the court found that Hindus had a better claim of the property so what was the need to providing another property to the Muslims?’ that’s not how title dispute settlement works. The debate is far from settled about how the Court departed from upholding the secular principles enshrined in the constitution, a few months later another court acquitted those who instigated the demolition of the Mosque. This again fuelled an already virulent debate of how could the court acquit the perpetrators of the demolitions despite when the Supreme Court in its verdict clearly held that the demolition was illegal. All these past incidents epically concerning the Babri Masjid case have raised some serious questions as well as allegation about the intention of the judiciary when it comes to upholding the secular values (not just from the point of narrow interpretation i.e. the western standard of the term, but even in the most dynamic and broad sense) and casts doubt on the secular stance of India.

VI. CONCLUSION

As mentioned earlier the question about whether or not India is a secular state revolves around a bigger question of what exactly is secularism? There are various definitions and interpretations of secularism. If one interprets it in a very strict sense, drawing inspiration from India’s western counterpart it’s a cakewalk to conclude that India is not a secular state due to the lack of a ‘wall of separation between state and the church’ which can be deciphered by the lack of uniform personal law or the interventionist approach of the govt. in matters concerning religion, but there are counter-arguments based on the premise that there is no one meaning of secularism, thus the western concept of secularism can not be applied in the India context due to dissimilitude among various sociological aspect between the west and India, which can be attributable to cultural heterogeneity of the Indian society. So rather

⁴² Syeda Hameed, *The Ayodhya Verdict’ is this justice?*, THE HINDUSTAN TIMES, Jul. 20, 2020.

⁴³ M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors., (2010) S.C.C. OnLine SC 1483, Para 923.

than concluding India is not a secular state by viewing it from a rigid western lens one could say India has its own version of secularism, which draws inspiration from its own past where, various ancient rulers, as well as the father of nation himself, espoused a pluralistic state where the wall separating state and religion is non-existent but the state is principally distanced from the religion(s). The critique of such liberal interpretation claims that this ambiguous distance between state and religion leaves scope for the legislature to act arbitrarily, be it for the minority or the majority, as it is quite evident from past events.

One thing could be said with certainty that the constitution of India manifests the principle of secularism. Even the intention of the drafters to make the constitution secular literature is quite evident as deduced from their deliberation and by the act of inserting, certain provisions as discussed above. The same has been affirmed time and again by the courts as well as various scholars. Though in recent time it's not an unknown fact that secularism in India has been under various challenges, now it's the job of the judiciary to uphold the principle of secularism and the constitutional value. The rise of religious majoritarianism in the past few decades has posed a major threat to the secular nature of India and it's an ugly truth that the Judiciary itself has been used as a tool for imposing majoritarian rule.
