

Comparative Study of Essential Religious Practices under Secularism in India, France, and the USA

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Abstract

This essay compares and contrasts the idea of fundamental religious practices under secularism in France, India, and the US, examining how each nation strikes a balance between religious liberty and official impartiality. A positive secularism approach exists in India, where the state interacts with religion to guarantee equality while courts decide what "essential religious practices" are worthy of constitutional protection. France adheres to a more rigorous form of secularism called *laïcité*, which emphasizes a clear separation between religion and state, frequently limiting religious expression in the sake of maintaining governmental neutrality, particularly with regard to Islam. Under the First Amendment, the United States employs a separationist approach that guarantees both the free exercise of religion and its non-establishment. However, there are obstacles in balancing religious liberty with public policy and anti-discrimination laws. The study comes to the conclusion that although all three nations strive to maintain secularism, there are differences in how different historical, cultural, and legal settings are interpreted, making it difficult to accommodate religious practices.

Introduction

In political and constitutional thinking, the link between religion and the state has long been a central concern. This connection is frequently articulated by the secularism principle in contemporary secular democracies, which seeks to draw a distinct line between religious institutions and state authority. But because every nation has a different history, culture, and legal system, so do its interpretations and applications of secularism. This difference is especially noticeable in the ways that various countries handle the defense of religious liberty and the control of religious activities. This essay examines the idea of "essential religious practices" and how secularism functions in three different settings: France, India, and the United States. Each of these nations has chosen a different path toward secularism, and as a result, their legal systems have evolved to balance the interests of the state in upholding equality, neutrality, and public order with the rights to religious freedom. France follows a stricter version of secularism known as *laïcité*, which severely restricts religious expression in public life. India follows a type of "positive secularism," where the state works with religion to maintain equality and manage religious diversity. The First Amendment of the United States, on the other hand, upholds a "separationist" concept that guarantees both the non-establishment of religion. This essay compares how important religious rituals are handled under secularism in France, India, and the United States. It investigates how each nation defines and governs religious practices, the role of the judiciary in this process, and the wider consequences for religious freedom and secular governance by looking at significant court decisions and constitutional

frameworks. The goal of this analysis is to provide light on the complicated interplay between secularism and religion in various democratic situations, emphasizing the difficulties in striking a balance between religious liberty and the values of equality, state neutrality, and public order.

India's Model of Secularism:

India's model of secularism, often referred to as **positive secularism**, is distinct from the strict separationist secularism seen in countries like France or the United States. Instead of entirely separating religion and the state, India's approach actively engages with religion to ensure that all religious communities are treated equally. This model reflects the country's deep religious diversity and aims to promote harmony and balance in a multi-faith society.

1. Equal Respect for All Religions (*Sarva Dharma Sambhava*):

India's secularism is built on the idea that the state must respect all religions equally. Rather than promoting atheism or irreligion, the Indian state acknowledges the importance of religion in people's lives and seeks to ensure that no religion is privileged over another.

Article 25 of the Indian Constitution guarantees the right to freely profess, practice, and propagate religion, subject to public order, morality, and health.

2. State Intervention in Religious Matters:

India's positive secularism allows the state to intervene in religious affairs when necessary to uphold constitutional values such as equality, justice, and human dignity. This can include regulating religious institutions or practices that conflict with the rights of individuals, especially in matters of social reform. For example, the state has historically intervened in religious practices that perpetuate discrimination, such as untouchability or the exclusion of women from certain religious spaces.

3. Regulation of Secular Aspects of Religion:

The Indian Constitution distinguishes between religious activities and secular aspects of religious practices. While religious beliefs are protected, the state can regulate secular activities connected to religion, such as financial matters of religious institutions or practices that affect public health.

This is evident in Article 25(2), which allows the state to make laws regulating or restricting any economic, financial, or political activities associated with religious practices.

4. Protection of Minority Rights:

A crucial element of India's secularism is its emphasis on protecting the rights of religious minorities. The Indian Constitution includes several provisions to safeguard the cultural and educational rights of minorities, ensuring that they can preserve their religious and cultural identities.

Articles 29 and 30 grant minorities the right to establish and administer their own educational institutions, and the state is prohibited from discriminating against these institutions in terms of financial aid.

5. Essential Religious Practices Doctrine:

The judiciary plays a significant role in determining what constitutes an "essential religious practice" in India. This doctrine, developed by the Supreme Court, allows courts to decide whether a particular religious practice is integral to a religion and thus worthy of constitutional protection.

However, this doctrine has been controversial as it requires the judiciary to make theological decisions, which some argue is beyond its mandate. Notable cases, such as *Shirur Mutt* (1954), *Sabarimala Temple* (2018), and *Triple Talaq* (2017), have invoked this doctrine to assess whether certain religious practices should be protected or reformed.

6. Balancing Religion and Reform:

India's secularism seeks to balance the protection of religious practices with the state's interest in promoting social reform and equality. This has led to key legislative and judicial actions, such as abolishing practices like untouchability, regulating temple entry for women, and banning instant triple talaq.

The state's proactive stance in promoting reforms within religious practices, while protecting the core tenets of faith, reflects India's unique approach to secularism.

Secularism in the USA

Secularism in the United States is primarily defined by the **First Amendment** of the U.S. Constitution, which mandates the separation of church and state through two critical clauses: the **Establishment Clause** and the **Free Exercise Clause**. The U.S. model of secularism, often referred to as "**separationist secularism**," seeks to prevent government involvement in religious matters while simultaneously protecting individuals' rights to practice their religion freely.

1. Constitutional Basis: The First Amendment

- The First Amendment of the U.S. Constitution states:
 - **Establishment Clause:** "Congress shall make no law respecting an establishment of religion."
 - **Free Exercise Clause:** "Congress shall make no law... prohibiting the free exercise [of religion]."
- These two clauses are the foundation of secularism in the U.S., ensuring that the government cannot favor or establish a religion, while also protecting citizens' rights to freely practice their religion.

2. Establishment Clause: Separation of Church and State

- The **Establishment Clause** is interpreted as prohibiting the government from establishing a state religion or endorsing any religion. This principle is often summarized as the "separation of church and state."
- This separation is designed to prevent religious institutions from exerting undue influence over government policies and vice versa. The state remains neutral in matters of religion, neither promoting nor inhibiting religious beliefs or practices.
- Key Supreme Court rulings, such as *Engel v. Vitale* (1962), which banned school-sponsored prayers, and *Lemon v. Kurtzman* (1971), which established the **Lemon Test** to determine whether a law violates the Establishment Clause, have shaped how this principle is applied.

3. Free Exercise Clause: Protecting Religious Freedom

- The **Free Exercise Clause** guarantees that individuals can practice their religion without government interference. This protection extends to both religious beliefs and, in most cases, religious practices.
- However, the government can regulate religious practices if they conflict with other important societal interests, such as public health or safety. For example, in *Employment Division v. Smith* (1990), the Supreme Court ruled that the state could deny unemployment benefits to a person fired for using illegal drugs (peyote) as part of a religious ritual, as long as the law in question is neutral and generally applicable.

4. Judicial Interpretation and Key Cases

- The U.S. courts, particularly the Supreme Court, have played a central role in interpreting the boundaries between the Establishment and Free Exercise Clauses. Key cases include:
 - **Engel v. Vitale** (1962): This case declared that school-sponsored prayer in public schools violated the Establishment Clause, reinforcing the idea that public institutions should remain secular.

- **Lemon v. Kurtzman** (1971): This case established the "Lemon Test," a three-pronged standard used to determine if a law violates the Establishment Clause. The law must have a secular purpose, not advance/inhibit religion, and avoid excessive government entanglement with religion.
- **Employment Division v. Smith** (1990): This case ruled that neutral, generally applicable laws can restrict religious practices, thereby limiting the scope of the Free Exercise Clause.
- **Masterpiece Cakeshop v. Colorado Civil Rights Commission** (2018): This case highlighted the tension between religious liberty and anti-discrimination laws, ruling in favor of a baker who refused to make a cake for a same-sex wedding due to his religious beliefs.

5. Public Religious Expression and Government Neutrality

- While the U.S. government must remain neutral in religious matters, public expression of religion is not prohibited. For instance, individuals can pray in public or display religious symbols privately.
- However, government endorsement or promotion of religious symbols or activities is restricted, especially in public institutions like schools, government buildings, and courts. In *Town of Greece v. Galloway* (2014), the Supreme Court ruled that legislative prayer is permissible, provided it does not coerce participation or favor one religion over another.

Secularism in France

Secularism in France, known as **laïcité**, is one of the most rigid forms of secularism in the world. It is deeply rooted in the country's revolutionary history and reflects a commitment to separating religion from the state and public life. Laïcité goes beyond the idea of religious neutrality and actively seeks to limit religious expression in public spaces, ensuring that the state and its institutions remain secular. This approach to secularism has had a significant impact on how France regulates religious practices, particularly those of minority religions like Islam.

1. Historical Roots and Evolution:

- Laïcité was formally institutionalized in France with the **Law of 1905 on the Separation of the Churches and the State**. This law established the principle of strict separation between religion and government, marking a decisive break from the influence of the Catholic Church on state affairs, which had been strong before the French Revolution.
- The 1905 law emphasizes two core principles:
 - The state does not recognize, subsidize, or endorse any religion.
 - Religious expression is a private matter and should be kept out of the public sphere, especially public institutions like schools, government offices, and public services.

2. Laïcité as a Constitutional Value:

- The French Constitution enshrines laïcité as a fundamental value. Article 1 of the French Constitution declares that "France shall be an indivisible, secular, democratic, and social Republic." This establishes the state's commitment to secularism as a central feature of the French Republic.
- Laïcité ensures that no religion holds any formal power or privilege in the public sphere and that all citizens are equal before the law, regardless of their religious beliefs.

3. Secularism in Public Institutions:

- French secularism particularly applies to public institutions, such as schools, government offices, and courts. Religious symbols, religious clothing, and religious practices are largely prohibited in these spaces.

- This strict interpretation is seen as necessary to preserve the neutrality of the state and public institutions. The aim is to ensure that individuals interact with the state as citizens, not as members of particular religious communities.
- **Education** is a critical area where laïcité is strictly enforced. Public schools in France are expected to be entirely secular, meaning that religious instruction and symbols are banned. This is to foster unity and prevent the formation of religious divisions among students.
- 4. **Banning of Religious Symbols in Public:**
 - One of the most controversial aspects of laïcité is the restriction on religious symbols and attire in public spaces, particularly in public institutions. This includes laws like the **2004 law banning conspicuous religious symbols** in public schools, which targeted visible religious items such as the Islamic hijab, Jewish kippah, and large Christian crosses.
 - In 2010, France became the first European country to ban full-face coverings, including the **burqa** and **niqab**, in public spaces through the **Law of 2010 Prohibiting Concealment of the Face in Public Spaces**. The law was justified as a measure to uphold public safety and maintain the secular character of public spaces.
 - The **burkini ban** controversy in 2016, where several French towns attempted to ban the burkini (a full-body swimsuit worn by some Muslim women) on public beaches, exemplified the ongoing tension between laïcité and religious freedom, particularly for Muslim women.
- 5. **Laïcité and Islam:**
 - While laïcité applies to all religions, its implementation has disproportionately impacted France's Muslim population, the largest in Western Europe. Many of the laws and regulations surrounding religious symbols have been perceived as specifically targeting Islamic practices, such as the wearing of the hijab or burqa.
 - Critics argue that French secularism, in its strict form, has increasingly become a tool for restricting the religious freedoms of Muslims, leading to feelings of alienation and discrimination within the community.
 - Supporters of laïcité, on the other hand, contend that these laws are necessary to protect the secular character of the Republic, ensure gender equality, and maintain social cohesion.
- 6. **Key Legal Cases and Debates:**
 - **The 2004 Law on Religious Symbols:** This law, which banned conspicuous religious symbols in public schools, was upheld by the French courts and has been a model for the broader application of laïcité in public spaces. The law applies to all religious symbols but has had the most visible impact on Muslim girls wearing the hijab.
 - **S.A.S. v. France (2014):** In this case, the European Court of Human Rights upheld France's ban on face-covering veils, including the burqa and niqab. The court ruled that the ban did not violate the European Convention on Human Rights, stating that it was a legitimate measure to ensure "living together" in a cohesive society.
- 7. **Secularism and Religious Freedom:**
 - France's interpretation of secularism often brings it into conflict with international human rights standards regarding religious freedom. While France argues that its laws promote equality, neutrality, and the protection of secular public spaces, critics contend that they infringe on individuals' rights to freely practice and express their religion.

- The balance between maintaining secularism and respecting individual rights remains a contentious issue in French politics and society. French Muslims, in particular, often view laïcité as a form of state-sponsored Islamophobia, as many of the restrictions seem to target Islamic practices disproportionately.
- 8. **Laïcité as a Political Issue:**
 - Laïcité continues to be a central issue in French political debates, particularly in the context of rising concerns about immigration, terrorism, and national identity. Politicians across the spectrum, from far-right to centrist parties, have invoked laïcité in calls for stricter laws on religious symbols and attire, arguing that these measures are necessary to protect France's secular identity.
 - Laïcité has also been used to justify measures aimed at curbing what is termed "Islamist separatism," with laws proposed to regulate religious funding and religious education, and to increase scrutiny of religious associations.

Conclusion

The comparative study of essential religious practices under secularism in India, France, and the United States reveals distinct models of secularism, each shaped by unique historical, cultural, and legal contexts. While all three countries uphold the principle of secularism, their approaches to balancing religious freedom with state neutrality and public order diverge significantly. In India, secularism is defined by an active engagement between the state and religion, allowing the judiciary to determine what constitutes "essential religious practices" deserving constitutional protection. This positive secularism aims to protect religious diversity while promoting social reform and equality, but it also faces challenges regarding judicial overreach and the state's role in religious matters. The doctrine of essential religious practices remains a complex tool for balancing tradition with modern constitutional values. France's model of laïcité represents a strict separation between religion and state, where public expression of religion, especially in public institutions, is limited to maintain secular public spaces. The French approach emphasizes neutrality but has faced criticism for disproportionately affecting religious minorities, particularly Muslims. The rigid enforcement of laïcité often leads to tensions between maintaining secularism and respecting individual religious freedoms, especially in an increasingly multicultural society. In contrast, the United States follows a separationist model, where the First Amendment protects both the free exercise of religion and the non-establishment of religion by the state. The U.S. approach offers broad protections for religious practices but grapples with the challenge of balancing religious liberty with anti-discrimination laws and public interests. The courts play a central role in navigating the boundaries between religious freedom and other civil rights, particularly in cases where religious beliefs clash with evolving social norms. Ultimately, the study underscores that while secularism aims to provide a neutral framework for governance, its interpretation and implementation vary across different legal and social contexts. India's engagement with religion, France's strict separation, and the United States' balancing act each reflect different responses to the same core challenge: how to protect religious freedom while upholding the principles of secularism in a pluralistic society. Each model presents its own successes and challenges, demonstrating that the relationship between religion and state is continuously evolving, shaped by the ongoing tensions between tradition, modernity, and individual rights.