

The Indian Constitution: Provisions Relating to Secularism

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ABSTRACT

The Indian Constitution is supreme document that strikes a careful balance between the rights of the individual and the goal of a secular, inclusive country. Despite being specifically included to the Preamble by the 42nd Amendment, secularism has long served as an unspoken tenet of constitutional interpretation. This abstract describes how the Constitution's many provisions including those pertaining to Fundamental Rights, Directive Principles of State Policy (DPSPs), and judicial interpretations protect secularism.

The State is prohibited from favoring or discriminating against any religion by fundamental rights like the freedom of religion (Articles 25–28), the right to equality (Article 14), and the ban against discrimination on the basis of religion (Article 15). These clauses safeguard others against religious imposition, particularly in educational institutions, while granting people the freedom to practice, spread, and oversee their own concerns.

By highlighting the State's role in creating an equitable and inclusive society and advocating for social justice, equal treatment, and non-interference in religious matters, the DPSPs further reinforce secular ideals. India's dedication to equal respect for all religions, which was reaffirmed during discussions of the 42nd Constitutional Amendment, is reflected in the Preamble's reference to a "secular" Republic.

Particularly through significant Supreme Court rulings, the court has been instrumental in interpreting these clauses. By striking a balance between religious freedom, public order, and constitutional morality, these rulings have made it clearer where religion and the state meet.

Keywords: Constitution, Preamble, Fundamental Rights, Directive Principles of State Policy, Judiciary, Secularism.

1. FUNDAMENTAL RIGHTS AND SECULARISM

India's long history of religious tolerance is reflected in its Constitutional structure, which is firmly anchored in secularism. The Indian type of secularism takes a principled distance attitude in contrast to the Western model, which rigidly divides the state from religion. This implies that the state maintains its neutrality and does not support any particular religion, but it also steps in when required to preserve social fairness, safeguard FR, and maintain religious harmony. Secularism-related Constitutional prov. protects individual liberties while guaranteeing fair treatment for all religions. India's secular character is greatly influenced by the Fundamental Right guaranteed by Part III of the Indian Constitution.

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Particularly, by guaranteeing equality, non-discrimination, religious freedom, and limitations on religious instruction in state-run institutions, Arts. 14, 15, 25, 26, and 28 uphold secular ideals. Together, these clauses preserve the spirit of religious diversity and guard against any one religion taking precedence over others.

1.1.Right to Equality

Equal protection under the law and the right to equality before the law are guaranteed by Art. 14 of the Indian Consti.. Since it forbids the state from discriminating against anyone on the basis of their religion, this Cl. is fundamental to Indian secularism. It guarantees equal access to legal rights and protection for all citizens, irrespective of their religious beliefs. Art. 14 prohibit legislation or policies that give preference to one religion over another in the context of religious pluralism. For instance, the SC ruled in *Shayara Bano vs. UOI*³ that the practice of instant triple talaq was unconstitutional since it infringed upon the FR to gender justice and equality. The decision showed how the government can step in to shield people from religious activities that go against the Constitution.

In a similar vein, Art. 14 guarantee that the state treats religious communities fairly. Welfare programs and government initiatives cannot favor one religion over another. However, even if they indirectly benefit particular religious groups, affirmative action policies like reservations for Scheduled Castes and Scheduled Tribes (SC/STs) are permitted in the name of social justice. This Cl. guarantees that secularism in India encompasses more than just religious neutrality; it also aims to provide justice and equity for all communities.

1.2.Prohibition of Discrimination

Discrimination on the basis of religion, ethnicity, caste, sex, or place of birth is forbidden by Art. 15. It guarantees that no one's religious identity will prevent them from accessing public spaces, educational opportunities, or jobs. Case law *Farzana Batool v. Union of India*⁴ discussed the right of education for minorities. By avoiding religious discrimination and exclusion in the political and social arenas, this Clause is important for preserving India's secular foundation. For Example, the SC maintained the idea that affirmative action intended to improve underprivileged populations does not infringe upon the right to equality in *State of Kerala vs. N.M. Thomas*⁵. The ruling underlined that guaranteeing substantive equality, where historically marginalized groups receive the support they require, is what secularism entails rather than treating all populations equally.

Furthermore, problems like prohibitions in educational institutions based on religion have been addressed in large part thanks to Art. 15. According to this Art., any regulation that aims to prevent students from enrolling in schools or universities because of their religious identification would be unconstitutional. One instance of a court dispute concerning whether or not restrictions on the wearing of religious clothing in schools violated Art. 15 was the Karnataka hijab ban controversy of 2022 *Aishat Shifa vs. The State of Karnataka*⁶. The case emphasizes how difficult it is to strike a balance between religious freedom and homogeneity in secular institutions.

1.3 Freedom of Religion

Subject to public order, morals, and health, Art. 25 protect the freedom of conscience as well as the right to openly declare, practice, and spread religion. Each person to practice their religion freely from

³ All India Reporter 2017 SC 4609

⁴ (2021) SCC OnLine SC 357

⁵ 1976 AIR 490

⁶ [2022] 5 S.C.R. 426

government intrusion, this Cl. promotes religious pluralism. This freedom is not unqualified, though, and appropriate limitations may be put in place to preserve social cohesion and stop religious activities that go against the principles of the Constitution.

The SC decided in *Commissioner of Police vs. Acharya Jagdishwarananda Avadhuta*⁷ that Ananda Margis' Tandava dance was not a necessary religious practice and could be prohibited in public areas. This ruling serves as an example of how courts weigh religious liberties against the more general goal of maintaining discipline and good order. Similarly, the SC declared in *Indian Young Lawyers Association vs. State of Kerala*⁸ that the prohibition against women of menstruating age entering the Sabarimala temple was unconstitutional, citing violations of both the right to equality under Art. 14 and the right to freedom of religion under Art. 25. The ruling reiterated the need for religious activities to be consistent with gender fairness and Constitutional morality. Other cases on the same vein are *Haji Ali Dargah Trust v. Dr. Noorjehan Safia Niaz*⁹ and *Sri Venkataramana Devaru v. State of Mysore*¹⁰ which are based on Women's entry into religious shrines and temple entry rights and caste discrimination respectively.

1.4. Freedom to Manage Religious Affairs

Religious denominations have the authority to create institutions, own property, and legally manage that property, as well as to handle their own affairs with regard to religious concerns, according to Art. 26. Because it permits many faith communities to preserve their customs and independence, this Clause is essential to maintaining religious plurality.

However, morality, health, and public order also affect this right. When necessary, the state can regulate religious organizations. The SC decided in *A.S. Narayana Deekshitulu vs. State of Andhra Pradesh*¹¹ that the government might step in and take control of temple management in order to stop corruption and poor management. This decision made clear that, notwithstanding their autonomy, religious organizations are subject to the law. According to the Supreme Court's interpretation of Art. 26 in the (*Shirur Mutt Case*) *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*¹², religious organizations are allowed to conduct their own affairs so long as they do not conflict with the general welfare. This case served as a reminder that religious pluralism entails a balanced approach in which social responsibility and religious freedom coexist rather than unfettered liberty for religious groups. Cases like *Ratilal Panachand Gandhi vs. The State of Bombay And Ors.*¹³ explains the Scope of Article 25 and religious freedom.

1.5 Freedom from Religious Instruction in Certain Institutions

Religious instruction is forbidden at state-owned educational institutions under Art. 28. This Clause, which forbids the promotion of any specific religion in government-funded institutions and universities, is a clear declaration of India's secularism. However, as long as pupils are not forced to participate, religious education is allowed in establishments run by religious organizations. Promoting a secular, inclusive learning environment and preventing religious bias in state-funded education are the goals of Art. 28. The SC affirmed in the *Aruna Roy vs. UOI*¹⁴ case that although religious instruction is

⁷ 2004 (12) Supreme Court Cases 770

⁸ 2018 SC 243

⁹ 2016 SCC OnLine Bom 5394

¹⁰ 1958 AIR 255

¹¹ 1996 AIR 1765

¹² 1954 AIR 282

¹³ 1954 AIR 388

¹⁴ 2002 (7) SCC 368

forbidden in state institutions, neutral, academic teaching about the philosophies of various religions does not contravene secular principles.

In discussions over the inclusion of religious materials in school curricula, the Clause also comes up. While some contend that teaching texts such as the Bible, the Quran, or the Bhagavad Gita in government schools is against Art. 28, others contend that comparative religious studies can promote a deeper understanding of various religions. The judiciary has consistently argued that education does not contravene secular principles as long as it does not include proselytizing. Case *Durgah Committee, Ajmer v. Syed Hussain Ali*¹⁵ explained state intervention in religious institutions and the doctrine of essentiality

2. DIRECTIVE PRINCIPLES OF STATE POLICY AND SECULARISM

Part IV of the Indian Constitution contains the DPSP, which act as governing principles and are essential in advancing religious and secular pluralism. These principles provide the state a moral and Constitutional duty to develop policies that support justice, equality, and social welfare, even though they are not legally binding. By guaranteeing nondiscrimination, equitable treatment of all religions, and the avoidance of religious dominance in public life, the DPSPs exemplify the secularism model of India.

In line with India's commitment to religious tolerance, the DPSPs place more emphasis on the state's duty to establish a society founded on justice, liberty, and equality than do FR, which is more concerned with individual liberties. These values direct the government's efforts to eliminate socio-religious disparities, advance economic and educational advancement for all communities, and guarantee that no religious group receives special treatment. Together with FR, the DPSPs help to create India's inclusive, participatory secular framework. Case *Christian Medical College v. Union of India*,¹⁶ addressed religious minority educational institutions and state regulation.

2.1. Role of DPSP in Promoting Secularism

The secular vision of the Indian Constitution is directly supported by the DPSPs' emphasis on social and economic democracy. The state operates in a non-discriminatory manner while advancing the welfare of all communities, regardless of their religious connections, thanks to a no. of measures.

By guaranteeing social, economic, and political fairness, Art. 38 instruct the state to advance the well-being of the populace. By addressing disparities based on socioeconomic class, religion, and caste, this Cl. subtly promotes secularism. This principle, for instance, is the foundation of governmental programs that prioritize educational scholarships, job opportunities, and poverty reduction for underprivileged groups, including religious minorities. Indian Muslims' socioeconomic backwardness was brought to light in the Sachar Committee Report (2006), which also suggested government action to increase their access to jobs and education. The government implemented programs like pre-matric and post-matric scholarships for minority students in response to these proposals, illustrating how DPSPs support a more inclusive secular framework.

To guarantee that no religious community is denied economic rights, Art. 39 demands equal chances in work, education, and resource access. This order serves as the foundation for numerous governmental policies on reserves and affirmative action that are intended to improve underprivileged areas. There has been political and legal discussion on extending reservation advantages to Dalit Muslims and Dalit Christians. These communities' exclusion from Scheduled Caste (SC) reservations runs against to Art.

¹⁵ (1962) 1 SCR 383

¹⁶ (2020) 8 SCC 705

39's egalitarian and secular principles. Affirmative action should be based on economic deprivation, not just religious identity, according to the inclusion argument.

While Art. 45 initially mandated that the state offer free and compulsory education for children under the age of 14 (later integrated into FR as Art. 21A), Art. 41 instruct the state to ensure the Right to Work, Education, and Public Assistance for all citizens. The Mid-Day Meal Scheme, which was introduced to increase school attendance among kids of various religious backgrounds, is a clear example of how these measures affect secularism. Children from underprivileged Muslim, Dalit, and tribal communities are most benefited by the program, which supports the notion that state policies should be inclusive and should not give preference to any specific religion.

This Clause also guarantees non-discriminatory access to education for religious minorities. Madrasas (Islamic schools), Christian missionary schools, and establishments operated by Sikh and Buddhist groups are all eligible for government funding. However, in accordance with the secular tenets of the Constitution, this money are only used for educational reasons and not for religious instruction.

Art. 44 of the DPSPs, which advocates for a UCC throughout India, is one of the most contentious secular elements. The UCC aims to establish a common set of civil rules in place of religiously based personal laws, especially with regard to marriage, divorce, inheritance, and adoption. Because it guarantees equality before the law and gets rid of religious biases in personal legislation, proponents contend that the UCC is necessary for real secularism. For instance, Muslim personal law allows for unequal inheritance, whereas Hindu law grants women equal inheritance rights. The UCC would guarantee that the same civil laws apply to all citizens, irrespective of their religious beliefs. In case *Bijoe Emmanuel & Ors vs. State of Kerala & Ors*¹⁷ it was held that Held that students cannot be forced to sing the national anthem if it conflicts with their religious beliefs as long as they don't disrupt public order or show disrespect.

Critics counter that the UCC might violate religious freedom, especially for minorities. The *Mohd. Ahmed Khan vs. Shah Bano Begum and Ors*¹⁸, in which the SC granted maintenance rights to a divorced Muslim lady under secular laws, reignited the discussion over UCC and caused a national uproar. The case illustrated the intricate connection between India's personal laws, religious pluralism, and secularism. Notwithstanding these arguments, Art. 44 embody the Indian Constitution's goal of establishing a legal framework that respects secularism while protecting religious liberty. The difficulty lies in striking a balance between homogeneity and variety while honoring Indian society's heterogeneous nature.

2.2. How Equal Treatment and Non-Interference in Religious Matters is insured

In addition to encouraging active secularism, the DPSPs guarantee equitable treatment for all communities and prohibit government meddling in religious affairs. This balance is demonstrated by the following Clauses:

The state is required by Art. 46 to advance the economic and educational interests of Scheduled Tribes (STs), Scheduled Castes (SCs), and other marginalized groups, including religious minorities. Without going against the secularism concept, this Cl. guarantees that religious communities who are socioeconomically disadvantaged receive special help. E.g. Art. 46 serve as the foundation for the Prime Minister's 15-Point Programme for Minorities, which includes financial aid, skill development,

¹⁷ 1986 SCR (3) 518

¹⁸ 1985 AIR 945

and job initiatives. All religious groups are given equal chances under these programs, which also forbid prejudice or partiality.

The state is required by Art. 48 to forbid the killing of cows and other milch animals, mostly for commercial and agricultural rather than religious purposes. Bans on cow slaughter, however, have frequently been linked to Hindu religious beliefs, which have caused them to clash with secular ideals. Legal difficulties have resulted from the contradiction between state legislation and religious dietary traditions. E.g., the SC upheld cow slaughter bans in *Mohd. Hanif Qureshi vs. State of Bihar*¹⁹ based on economic usefulness rather than religious emotions. The delicate balance between state regulations and religious behaviors within a secular framework is highlighted by this case.

Art. 51 urges for the advancement of Human Right, world peace, and cultural tolerance. This Clause emphasizes the value of religious tolerance and interfaith harmony in India within the framework of secularism. This instruction is in line with government programs that support inter-communal harmony, religious discourse, and conflict resolution. The National Foundation for Communal Harmony, for instance, focuses its initiatives on efforts to promote reconciliation amongst religious communities that have been impacted by communal violence. These programs show how secular ideals go beyond the letter of the law to actively promote harmony in a country with a wide range of religious beliefs.

3. PREAMBLE AND SECULARISM

The tenets of the Indian legal and political system are outlined in the Preamble of the Consti. It describes the core principles—justice, liberty, equality, and fraternity—that India seeks to preserve as a sovereign, democratic, secular, and socialist nation. The 42nd Amnd. (1976) publicly reaffirmed India's commitment to religious neutrality and plurality by adding the word "secular" to the Preamble. Nonetheless, as seen by the FR (Part III) and DPSP (Part IV), the secular nature of the Constitution was present from the start.

The Western idea of secularism, which frequently suggests a rigid separation of state and religion, differs from India's model. India, on the other hand, has a principled distancing policy, in which the government does not support or encourage anyone religion but does step in when required to protect social justice and religious freedom. The secular vision of the Preamble seeks to preserve religious minorities, ensure that all religions are treated equally, and stop one religion from dominating another. In light of India's wide range of religious beliefs, secularism continues to be an essential component of its Consti.al character, guaranteeing peace and harmony between different religious groups.

3.1 Analysis of the term "Secular" in the Preamble

The Preamble's use of the word "secular" denotes that there is no official state religion in India and that the state must maintain its neutrality toward all religious views. It ensures that all religions are treated equally in terms of government, legislation, and policy while also guaranteeing freedom of religion, which permits people to declare, practice, and spread their faith. India allows the state to intervene in religious matters to change discriminatory practices, including the outlawing of triple talaq and the removal of untouchability, in contrast to Western secularism, which requires strict separation. This distinctive secular ethos promotes national unity and concord by guaranteeing social justice, inclusion, and religious pluralism. It also prevents any faith from superseding FR and Constitutional values. Instead of imposing a strict division between religion and state, the Preamble's dedication to secularism guarantees that India's legal system preserves social justice, inclusion, and religious freedom. India's

¹⁹ 1959 Supreme Court Reports 629

secular culture respects religious diversity while making sure that religious beliefs don't take precedence over fundamental principles.

3.2. Debates around its inclusion (42nd Amnd.)

Originally absent from the 1950 Consti., the word "secular" was reintroduced in 1976 during Prime Minister Indira Gandhi's government's Emergency by the 42nd Amnd.. The Amendment specifically added the phrase to eliminate any doubt regarding India's religious neutrality, even though the country's secular character was already clearly established by a no. of Constitutional Clauses.

Debates were triggered when the 42nd Amnd. (1976) added the word "secular" to the Preamble. Critics contended that it was superfluous because India's secularism was already ingrained in the Directive Principles and Fundamental Rights. Some saw it as a political ploy by Indira Gandhi to promote progressive administration and consolidate control during the Emergency. Others feared misinterpretation, where secularism could suppress religious traditions instead of ensuring equal treatment of all faiths. The SC has continuously maintained secularism as a fundamental aspect of the Constitution in spite of these reservations. The Court reiterated in *S.R. Bommai vs. UOI*²⁰ that secularism is essential to Indian governance, guaranteeing the state's neutrality while defending religious freedoms within the bounds of Constitutional morality.

3.3. Reasoning behind India adopting secularism

In addition to being required by law, India's embrace of secularism was motivated by a political and philosophical desire to maintain religious harmony and national cohesion in a multicultural society. A neutral Constitutional framework was necessary to avoid religious majoritarianism and to advance equal regard for all faiths, especially in light of India's history of religious conflict and coexistence.

India's secular culture was greatly influenced by its historical heritage and religious diversity. India, which is home to Sikhism, Buddhism, Islam, Christianity, Hinduism, Jainism, Zoroastrianism, and Judaism, has seen both interfaith dialogue and inter-communal strife. India's heritage of religious inclusion was strengthened by the Mughal Emperor Akbar's policy of *Sulh-i-Kul* (universal peace) and Emperor Ashoka's decrees, which promoted religious tolerance. As a result, secularism was an obvious choice.

The defense of religious minorities was a major factor in the decision to embrace secularism. Widespread inter-communal violence during India's 1947 Partition highlighted the necessity of an impartial and inclusive government to protect religious minorities. Various Articles which guarantee freedom of religion while permitting governmental involvement to eradicate discriminatory religious practices, and Arts. 29 and 30, which protect minorities' cultural and educational rights, are two of the Consti.'s specific protections. These Clauses guarantee that India will continue to be a pluralistic, multi-religious democracy where all people, regardless of their faith, have equal rights.

India's approach was also influenced by the secularism envisioned by Gandhi and Nehru. Mahatma Gandhi envisioned a policy that was politically neutral but spiritually tolerant, adhering to *Sarva Dharma Sambhava*, or equal respect for all religions. India's first Prime Minister, Jawaharlal Nehru, promoted progressive reforms including the Hindu Code Bill, which gave women equal rights in marriage and inheritance, while emphasizing the state's neutrality in religious matters. His worldview allowed cultural traditions to flourish while ensuring that official policies were not dictated by religion.

Finally, social justice and Consti.al morality are closely related to secularism in India. The Constitution mandates that religious practices must align with Constitutional values, ensuring they do not violate FR,

²⁰ 1994 SCC (3) 1

gender equality, or human dignity. E.g., the Supreme Court's 2017 decision against triple talaq advanced gender equity within Muslim personal law, while the repeal of untouchability ended caste-based religious discrimination. These instances show that Indian secularism aims to prevent religion from superseding democratic and Human Right ideals in addition to maintaining religious neutrality.

4. JUDICIARY AND SECULARISM

As a core tenet of the Indian Consti., secularism is upheld in large part by the judiciary. The SC of India has continuously upheld secularism as a fundamental component of the Constitution via seminal rulings, guaranteeing that religious liberties do not supersede equality, justice, and morality under the Consti.. The judiciary has served as a protector of secular norms in India, a nation with a wide range of religious beliefs, by striking a balance between religious freedom and the state's obligation to protect Fundamental Rights and democratic ideals.

4.2.Landmark SC cases

A landmark case in Consti.al history, *Kesavananda Bharati vs. State of Kerala*²¹ established the Basic Structure Doctrine. The SC decided that although Parliament can change the Constitution, it cannot change its fundamental elements, such as democracy, secularism, and FR. This decision was important because it guaranteed that, even in the event of a Constitutional revision; secularism could not be eliminated or diminished. It set the stage for other rulings that upheld secularism as an indisputable tenet of Indian polity.

The SC reiterated that secularism is a fundamental aspect of the Consti. and cannot be compromised in the *Minerva Mills vs. UOI*²² decision. In order to defend secularism from political manipulation, the case invalidated changes that granted the government unrestricted authority. In order to guarantee that state policies uphold religious freedoms and advance social justice, the ruling underlined the need for Fundamental Rights and Directive Principles to coexist.

One of the most important decisions regarding secularism was made in the *S.R. Bommai vs. UOI*²³ case. The case dealt with state governments being fired for their anti-secular actions. The SC held that the state cannot favor one religion over another and that secularism is a basic aspect of the Indian Consti.. It additionally held that the President of India has the authority to remove a state government under Art. 356 (President's Rule) if it violates secular values. This decision was essential in maintaining the government's neutrality in religious affairs and preventing communal politics from affecting governance. Additionally, the *S.R. Bommai vs. UOI*²⁴ case emphasized what secularism meant in the Indian context. Indian secularism permits governmental engagement in religious concerns in order to preserve Constitutional ideals, in contrast to Western secularism, which promotes a total separation of religion and state. By making this distinction, the government may ensure that all religions are treated equally while reforming discriminatory religious practices.

The Triple Talaq case, also known as *Shayara Bano vs. UOI*²⁵, illustrated the judiciary's function in striking a balance between religious freedom and Constitutional morality. Because it violated women's rights to equality and dignity under Arts. 14 and 21, the SC declared that the practice of instant triple talaq, also known as *Talaq-e-Bid'ah*, was unconstitutional. The decision demonstrated how the judiciary

²¹ 1973 4 SCC 225

²² 1980 AIR 1789

²³ 1994 SCC (3) 1

²⁴ 1994 SCC (3) 1

²⁵ AIR 2017 SC 4609

upholds secularism while ensuring gender justice within religious communities by reaffirming that religious tradition cannot supersede FR.

In case *Animal Welfare Board of India vs A. Nagaraja & Ors*²⁶, SC completely ban the practice of Jallikattu, Bullock-cart races etc. under the provisions of PCA Act 1990 and TNRJ Act 2009.

4.3.Judiciary's Role in Balancing Religion and the Constitution

By making sure that government policies are impartial and do not favor any one religion over another, the judiciary has been crucial in maintaining secularism. The SC supported the inclusion of secular principles in education while prohibiting religious indoctrination in the case of *Aruna Roy vs. UOI*²⁷. Furthermore, under Art. 25, the courts have controlled religious rituals to make sure they adhere to morals, public order, and health. The Court made a distinction between essential and non-essential religious rituals in the *Shirur Mutt Case* (1954), enabling the state to step in where practices went against fundamental principles.

In *T.M.A. Pai Foundation vs. State of Karnataka*²⁸, where the Court maintained minorities' Art. 30 right to create and run educational institutions, the judiciary has also protected minority rights. As the *M. Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors*²⁹ (*Babri Masjid-Ram Janmabhoomi case*) demonstrates, the courts have attempted to find fair solutions in cases involving religious disputes. In order to maintain religious unity, the SC approved the contested land for temple building while noting that the mosque's demolition in 1992 was unlawful. The court also provided alternative land for the mosque. These decisions demonstrate the Indian judiciary's dedication to secular values, religious tolerance, and Constitutional ethics.

²⁶ (2014) 7 SCC 547

²⁷ 2002 (7) SCC 368

²⁸ (2002) 8 SCC 481

²⁹ 2020 (1) SCC 1