INDIAN CONSTITUTION AND THE ANECDOTE OF SECULARISM IN INDIA

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ABSTRACT:

In the eighteenth and nineteenth centuries, British colonial rule adopted a system of religious equality in their colonies. The British attempted to remain neutral in religious disputes, taking special care not to be perceived as publicizing Christianity. Following the British Crown's assumption of power in India in 1858, a substantial step was taken toward establishing equality before the law by implementing uniform codes of civil and criminal law. Personal law, on the other hand, remained controlled by various religious laws as identified and construed by the courts. The colonial state's reluctance to intervene in matters close to the heart of religious doctrine and practice was the rationale why personal law was not brought within the scope of a uniform civil code.

This research paper talks about the concept of secularism concept in India that attained its objective. The position of secularism in the Indian Constitution following the 42nd Amendment has been hotly debated. Secularism, as a fundamental principle of the Indian constitution, is reflected in articles 25-26, 29-30, and possibly the formation of a theoretic state. This paper will also talk about the difference between religious freedom and secularism. Conflicts happened in the name of religion in India and how it is increasing rapidly, how politics has a great impact on religion and dividing people and their unity. Difficulties faced by Indian Secularism.

An identification of the country's religiocultural uniqueness, the Constitution enables each segment of citizens across all regions of the country to maintain their unique culture, language, and script, while enforcing a Fundamental Duty on all citizens to "value and preserve the rich heritage of our composite culture." There is no provision in the Constitution guiding the State to stay unbiased to strict issues; nor does it explicitly request that the State help out the strict networks in regard to their confidence issues. The order is just for non-segregation between individuals on religious grounds. The quiet of the Constitution on this issue is taken as an implicit endorsement for State mediation in religious undertakings, everything being equal, and all organs of the State lawmaking body, leader, and legal executive have likewise been looking into such issues in a manner that might be unfathomable under an unbendingly common political set up.

INTRODUCTION:

The Actual word "secular" is derived from the Latin word "saeculum," which implies "an age" or "the spirit of an age." Which has the same meaning as the Greek word 'aeon,' which is used in the New Testament to refer to an 'age' or an 'era. The confrontation between religion and human reason, which would be part of the background to the emergence of the modern ideology of secularism, first emerged in the late middle ages. There is no secular tradition in India. During Asoka's reign, there may have been some pretense of acceptance for a faith that differed from Buddhism, the national religion. Afterward, Akbar was the only...
significant ruler who exercised religious tolerance. In neither case, however, was the state secular. Following the fall of the Mughal Empire, India was governed by thousands of rulers, all of whom were Hindu or Muslim, and each seem to have their own state religion, which was the ruler's religion. The situation remained unchanged after the British took over as leaders of India. The British had their own official state religion, and the Governor-General had full control over the Ecclesiastical Department.

Nehruji sourced the principle of secularism from Europe. Several hundred years ago, the Church ruled the roost, and the pope decided the fates of Europe's kingdoms. Although the term 'secularism' was excluded anyplace in the Constitution as it was initially passed in 1949, the framers of the Constitution had to them regarding what they implied by secularism, Dr. B.R. Ambedkar, was the Chairman of the Drafting Committee, while taking an interest in the conversation in Parliament on the Hindu Code Bill in 1951, clarified the common idea as follows:

It (Secular State) does not signify that we will disregard people's strict feelings." A Secular State simply means that this Parliament would not be able to enforce a specific religion on the rest of the people. This is the lone limit that the Constitution perceives." In the Constituent Assembly itself, a few individuals had communicated comparative thoughts in more intricate terms.

M.N. Roy was a harsh critic of the Indian state's personality. It was far from secular in his opinion because it was associated with Hinduism. People like Jawaharlal Nehru and Radhakrishnan, for example, did not visit temples or other religious sites. However, Prime Ministers and Presidents presently do so in full view of the media. When asked what religious belief or spiritual practices could have a position in a secular state, Dr. Rajendra Prasad said yes. He responded, "Secularism implies that all citizens of the country are free to practice and spread their faith." We respect all religions and want them to flourish without interference. In a secular state, all religions are both inferior to and distinct from the state in one way. Religious organizations, as voluntary associations of individual citizens, are subject to the general state laws and are responsible for the effective discharge of civil duties (payment of taxes, maintenance of public order, etc.). Religions are regarded by the state in the very same way that other voluntary associations based on shared social, cultural, or economic interests are.

THE 42ND AMENDMENT AND THE GLIMPSE OF EMERGENCY PERIOD IN INDIA:

A Constitution to be living should be developing. On the off chance that the obstructions to the development of the Constitution are not taken out, the Constitution will endure a virtual decay. The subject of changing the Constitution for eliminating the challenges which have emerged in accomplishing the target of socio-economic revolution, which would end poverty, ignorance, disease, and disparity of chance, has been connected with the dynamic consideration of Government and the general population for certain years now. The democratic foundations given in the Constitution are essentially strong and the way for progress doesn't lie in stigmatizing any of these establishments. In any case, there could be no disavowal that these establishments have been exposed to
impressive anxieties and strains and that personal stakes have been attempting to promote their self-centered finishes to the incredible determent of the public great. As a result, it is suggested to amend the Constitution to explicitly state the strong principles of socialism, secularism, and national integrity, to create the directive principles extra extensive and to offer them historical precedent over those basic rights which have been allowed to be relied on to stymie socioeconomic reforms for enacting the directive principles. It is also suggested to clarify citizens’ fundamental duties and make special rules for coping with anti-national activities by individuals and organizations. The will of the people is encapsulated in Parliament and state legislatures and the nature of democracy is the will of the people should win out in the end. Despite the fact that Article 368 of the Constitution is evident and categorical in respect to an all nature of the amending power, it is deemed necessary to place the subject beyond doubt.

It is posited to reinforce the assumption in the best interest of the constitutionality of laws proposed by Parliament and State Legislatures by requiring the least number of Judges to determine queries of legality and a particularly unique majority of not less than two-thirds to declare legislation to be constitutional. It is also suggested to deprive High Courts of their jurisdiction over determining the constitutional validity of Central laws and to grant the Supreme Court unique jurisdiction in this regard, in order to prevent the multitude of proceedings concerning the validity of the very same Central law in different High Courts and, as a result, the possibility of the CJEU. To decrease the rising arrears in High Courts and to ensure the timely disposition of matters specified, revenue matters, and other matters of special value in the history of socio-economic development and growth, it is regarded expedient and provide for organizational as well as other courts to deal with so matters while preserving the Supreme Court's jurisdiction. It is also essential to make some changes to the High Courts' writ jurisdiction under Article 226.

The 42nd amendment in the Constitution of India took place during the Emergency Period (25 June 1975 – 21 March 1977) by the Indian National Congress government headed by Indira Gandhi. The majority of the amendment's provisions came into force on January 3, 1977; others came into force on February 1, 1977, and Section 27 went into effect on April 1, 1977. The 42nd Amendment is widely considered to be the most contentious constitutional amendment in Indian history. It sought to minimize the Supreme Court's and High Courts' ability to rule on the constitutionality of laws. It established Indian citizens' Fundamental Duties to the Nation. This amendment resulted in its most variety of differences to the Constitution's history, it is sometimes referred to as a "Mini-Constitution" or the "Constitution of Indira." During in the Emergency, Indira Gandhi enacted a 20-point economic reform that resulted in increased economic growth, assisted by the utter lack of strikes and trade union clashes. Compelled by these promising signs, as well as warped and misleading news from her party's followers, Gandhi called for elections in May 1977. The Emergency, on the other hand, was widely despised. The 42nd Amendment was heavily criticized, and the general population was outraged by the crackdown on civil rights and prevalent misuse of human rights by officers. Within the election manifesto for the 1977
elections, the Janata Party pledged to "regain the Constitution to its pre-Emergency situation and to impose stringent constraints on the official's emergency and comparable powers." Following its election victory, the Moraji Desai government has attempted to repeal the 42nd Amendment. Among many other things, the amendments abolished the 42nd Amendment's provision that Directive Principles take precedence over Fundamental Rights, and they restricted Parliament's authority to monitor against "anti-national activities." However, the Janata Party was unable to fully realize its goal of regaining the Constitution to its pre-Emergency state.¹

Legal challenges of the amendment:

The legality of section 4 and 55 of the 42nd Amendment have been tested in Minerva Mills v. Union of India,² while Charan Singh transformed into overseer Prime Minister. Section 4 of the 42nd amendment had changed Article 31C of the Constitution to accord need to the Directive Principles of State Policy over the Fundamental Rights of people verbalized in Part III. Section 55 expressly forbids any amendment to the constitution from being "called into question in any Court on any ground." It also stated that Parliament's authority to amend the Constitution would indeed be unrestricted in any way. Following the Indian national election in 1980, the Supreme Court ruled that sections 4 and 55 of the 42nd amendment were unconstitutional. It supported and developed the Constitution's basic structure doctrine.

From 1975 onwards, the courts have interpreted and extended the doctrine to incorporate a judicial review of choices by the High Court and Supreme Court under Articles 226 and 32, secularism and federalism, the opportunities under Article 19, judicial independence, and as of late, legal supremacy in the legal arrangement interaction to the essential design and structure of the Constitution. In any case, it was not until a lot later that the Supreme Court governed on whether or not an expansion to the Ninth Schedule would make the recorded rule resistant from the prerequisite of not encroaching on an essential right

In I. Coelho v State of Tamil Nadu³ the Supreme Court held that all laws were dependent upon the trial of being predictable with central rights, which are a piece of the basic structure. The Emergency period had been broadly disliked, and the 42nd Amendment was the most disputable issue. The clampdown on civil liberties and far and wide maltreatment of basic liberties by police infuriated people in general.

THE PREAMBLE OF CONSTITUTION:

The term 'Preamble' signifies a prologue to a Statute. The preamble is the starting part of the Constitution. The Preamble can't supersede the express provisions of the Act. It pronounces that the wellspring of power under the Constitution is the People of India and there is no subjection to any outside power. The preamble to the Indian Constitution is a vital piece of the

² Minerva Mills v. Union of India AIR 1980 SC 1789
³ I. Coelho v State of Tamil Nadu AIR 2007 SC 861
Constitution and can be corrected however the basic structure can't be altered. Secularism, Socialist, and Integrity were added in the constitution after 42nd Amendment. Consequently, the drafters of the Constitution additionally drafted the Preamble as a mirror and a presentation of the equivalent. It would not be right to say that the soul of the Constitution is available in the Preamble.

In the leading case of Berubari, the Supreme Court held that the Preamble to the Constitution is a key to opening the minds of the framers, and it demonstrates the goal in which the drafters created so many provisions in the Constitution. The Preamble can't supersede the express arrangements of any Act. The Supreme Court held that the Preamble was not a piece of the Constitution and couldn't be viewed as a wellspring of any considerable force. The Constitution awards such powers explicitly. Whatever is valid about the forces is additionally obvious.

The term 'Preamble' signifies a prologue to a Statute. The preamble is an early piece of the Constitution. The Preamble defines the beliefs and objectives which the producers of the constitution are expected to accomplish through the constitution. The preface is likewise viewed as a key to open the psyche of the producers of the Constitution which may show the overall purposes for which they made a few arrangements in the Constitution. The Constitution grants such powers expressly. Anything that is real about the powers is also realistic about the Constitutions' prohibitions. The implementation of the Constitution is limited and should only be used when there is uncertainty in a statute. If the words used in the Constitution can be interpreted in different ways, the Preamble may be favored. The Supreme Court disallowed the above view in the Kesavananda Bharati's case and held that the Preamble is the piece of the Constitution. The force of Parliament under Article 368 of the Constitution to correct the Constitution is restricted by the Preamble. The "essential components" in the Preamble can't be revised under Article 368.

In Randhir Singh v. Union of India the Supreme Court depending on the Preamble and Articles 14 and 16 held that Article 39 (a) conceives a sacred right of equivalent compensation for equivalent work for the two people.

**Was there a ratio in Kesavananda Bharati, and what was the “Basic Structure”?**

It is difficult to determine that the Judges who established the majority view in Kesavananda Bharati did agree on what actually constitutes the constitution's "basic structure" and/or why Parliament's power to amend it was restricted. Chief Justice Sikri observed "no authority has been referred before us to establish the proposition that what is true about the powers equally true about the prohibition and limitation. Even from the preamble limitations have been derived in some cases." It appears that our constitution's preamble is extremely important, and the constitution should be read and interpreted in light of the grand and noble vision expressed in the preamble.

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4 Berubari AIR 1960 SC 845

7 Randhir Singh v. Union of India 1982 AIR 879
Principles enshrined in the preamble:

- **Sovereign:** Cooley has characterized Sovereign as, "A State is sovereign when their lives inside itself a preeminent supreme influence, recognizing no predominant." India is as yet an individual from the Commonwealth of Nations yet its enrollment of the Commonwealth of Nations isn't conflicting with its autonomous sovereign status and it has no Constitutional importance as it's anything but a deliberate relationship of India and it is available to India to remove this relationship freely.\(^8\) The word Sovereign was embedded into the Preamble to feature that India isn't subject to any external position and that both remotely and inside India is a sovereign. India perceives no unfamiliar force as its master. The word “Sovereign” means that the state has the power to legislate on any subject in conformity with constitutional limitations.\(^9\)

- **Socialist:** The word "Socialist" was introduced to the Preamble by the 42nd Amendment Act of 1976. In a real sense, the term socialist implies state ownership and control of method for ownership and control of method for creation, dissemination, and trade. The Constitution, notwithstanding, has alternate importance for the term. In *D.S. Nakara v. Union of India of India*, the Court saw that "the essential structure of communism is to give a respectable norm of life to the functioning individuals and particularly given from support to grave. This conceived monetary balance and impartial dissemination of pay".\(^10\) The Supreme Court held that the chief point of a communist state was to eliminate the imbalance in pay and status and standard of life. The majority rule communism in this way expects to end neediness, obliviousness, infection, and disparity of chance.

- **Secular:** The term Secularism implies that the State treats all religions similarly with equivalent individual rights for confidence, religion, or worship and doesn't perceive any religion as a State. Articles 25 to 30 of the Constitution via Right to Freedom of Religion contains the idea of Secularism. The Supreme Court in *St. Xavier's College v. the State of Gujarat*, clarified that India "is neither enemy of God nor supportive of God; it treats the same the dedicated, the opposing and the nonbeliever. It takes out God from the questions of the State and guarantees that nobody will be victimized on the ground of religion."\(^11\) Secularism is past the correcting force of the Parliament which makes it the essential component of the Constitution. It implies regarding all religions. The Constitution of India perceives no religion and treats all religions similarly and urges one to rehearse his preferred religion.

- **Democratic:** The term “democratic” has been gotten from the Greek root 'demos' which signifies 'individuals': 'Kratos' means 'rule' or 'government'. Along these

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\(^10\) *D.S. Nakara v. Union of India of India* 1983 AIR 130, 1983 SCR (2) 165

\(^11\) *St. Xavier's College v. the State of Gujarat* 1974 AIR 1389, 1975 SCR (1) 173
Most in a real sense, vote based system means 'the standard individuals.' The definition given by Abraham Lincoln peruses "Majority rule government is the public authority of individuals, by individuals, and for individuals." The Supreme Court in Mohan Lal v. Dist. Justice Rai Bareilly, noticed: "Majority rules system is an idea, a political way of thinking, an ideal rehearsed by numerous countries socially progressed and politically develop by turning to administration by agents of individuals chose straightforwardly or, in a roundabout way." It was likewise inferred that immediate majority rule government is one where individuals straightforwardly practice their force of the public authority and carry on the public authority and change the public authority by their immediate vote, nonetheless, in a circuitous majority rules system, individuals choose their delegates who carry on the organization of the public authority straightforwardly. The Supreme Court in the leading case of Union of India v. Association for Democratic Reforms, noticed: "an effective majority rules system places a mindful populace". "Popular government can't get by without free and reasonable decisions, without free and genuinely educated citizens".

- Republic: The term Republic is used to distinguish itself from the term "Monarchy." India is a republic because the head of state is not a hereditary monarch. The Indian people elect the country's head of state. The Indian Constitution establishes a "republican form of government" in India, with the body of the people wielding ultimate power. The President of India is the Executive Head of State. He is chosen by the public and serves a five-year term.

Difference between Religious Freedom and Secularism:

First of all understanding, the meaning of religion is very important, we often relate or mix both secularism and religion. Religion and secularism are opposing concepts that cannot coexist, necessitating a distinction between the two. The impartiality of the state in personal or communal religious matters is important in any secular country. It has been observed that it is sometimes important to involve in responsive religious matters. The concept of Secularism and Religious Freedom.

What is religion?

The term “religion” is not defined in the constitution and indeed it is a term that is susceptible to any rigid definition. The Supreme Court has given it a broad definition. Religion has its basis in a system of belief or doctrines which are regarded by those who profess that religion or conducive to their spiritual well-being. A religion has its basis in a system of belief or doctrines which are regarded by those who profess that religion or conducive to their spiritual well-being. A religion may not only establish a set of ethical rules for its adherents to follow, but it may also prescribe rituals and occasions, ceremonies and modes of worship that are considered an integral part of religion, and those forms and observances may extend

13 Union of India v. Association for Democratic Reforms 2002 AIR 2112
even to food and dress. On another hand Secular means unrelated to religion and unconcerned with it. It is a concept in which a state or country considers to be officially neutral in religious matters. There really is no influence of religion on the government's political choices taken for the betterment of the public. The government does not impose religious rules on the people. The government believes in individual freedom, and people are not judged based on their religious beliefs. Personal freedom must be prioritized in any democratic country, and people must be given as much freedom as possible so that they might enjoy the freedom of religion guaranteed by Article 25 of the Indian constitution.

Wearing and carrying kirpans shall be considered part of the Sikh religious profession. The allusion to Hindus in sub-clause (b) of clause (2) shall be considered as along with a reference to those who practice the Sikh, Jains, or Buddhist religions, and the comparison to Hindu religious institutions shall be construed. The important question is when the state should intervene in matters of religion. Secularism is a concept in which the state is anticipated to be impartial in religious spiritual matters. According to the Indian constitution, the state has decided to intervene to prohibit superstitious beliefs and blind belief, or certain religious practices give rise to strong economic exploitation and harassment by people in the name of religion. Under the chapter of fundamental in the constitution, it is anticipated that each and every Indian will follow scientific temper.

It also applies to all Indians to repudiate pejorative strategies toward women. If any religion says so, it will be the duty of the government to prohibit such religious practices and enhance secularism in India. In Rev Father Stannis vs State of Madhya Pradesh, the Supreme Court of India carried that the primary function of Article 25 of the Indian constitution is to profess, practice, and propagate any religion, and thus the standard measures not be used forceful conversions. The conversion should take place voluntarily and without coercion. Article 25 of the Indian constitution guarantees freedom of religion by allowing anyone to profess, practice, and propagate any religious belief. Would this freedom also include the freedom to convert a person's belief? The response is emphatically no. There are bashing components in the country who run mafias to convert people from one religion to another. There have been no direct regulations in the Indian constitution that read conversion of an individual, but the freedom of conscience clause provided the concept of conversion.

The right to convert is not granted by the propagation of any religion. It only allows for the propagation of religious teaching if the people to whom it is communicated like the religious teaching and choose to convert to religion on their own accord and without coercion. In the last seven decades, India has seen many violent conversions. The poor were duped or misled into converting their faith; occasionally financial benefits were offered, and other times fear was instilled in people's minds.

In 2014, Muslims have been converted to Hinduism by providing Below Poverty Level

15 The Indian Constitution of India, Art. 25
16 Rev Father Stannis vs State of Madhya Pradesh 18 AIR 1997 SC 611
(BPL) cards. The alert media picked up on this. This is only a glimpse of something larger. Using strategies, many people were converted. Because poverty is at an all-time high in India, it is quite easy to attract people. Everyone needs to be wealthy, and religions take unfair advantage of this, so anti-conversion laws in India are long overdue. Since there is no central law in India dealing with forcible conversions, many states have enacted their own laws to prevent rebuttable conversions.17

CONSTITUTIONAL PROVISIONS:

➢ Article 25

One of the most important article in the Indian Constitution is Article 25, which must be read broadly. Article 25 states, among other things, that everyone has the right to freedom of conscience as well as the right to freely profess, practice, and propagate their religion. An individual while practicing his right under Article 25(1) should not influence some other individual's major right. Depending on a similar rule, the court justified the Environment (Protection) Rules, 1986 which disallows the utilization of amplifiers and loudspeakers by religious organizations. Above all else, the utilization of amplifiers is definitely not a fundamental piece of any religion, and furthermore, aside from the overall freedom under Article 21, a group additionally have a right under Article 19(1)(a) to not hear things he/she don't care for.

- Article 25 (1) (a) also applies to the right to religious freedom. This clause states that any current law or any law made by the State for the purpose of monitoring or restricting any activity, whether economic, financial, commercial, or secular in nature, if that activity is in association or linked with religious practice, would be considered a violation of Article 25's guarantee of religious freedom.

In the case of Bijoe Emmanuel v. State of Kerala18, our Supreme Court upholds the religious views of Jehovah's Witnesses not to sing the National Anthem. The Court ruled that eviction of three students from school for refusing to stand for the National Anthem infringed their right to religious freedom. “The issue wasn't whether a particular religious belief or practice attracts to our reason or sentiments, but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion,” Chinnappa Reddy J stated.

In the case of Mohd. Hanif Quareshi v. State of Bihar19 the court ruled that prohibiting cow slaughter is not an infringement of Mohammedan religion. The court rejected the argument that the sacrifice of cows on Bakrid day was appreciated by the Koran and was an integral part of the religion, holding that the practice was not an important component of Mohammedan law and thus should be regulated under clause (2)(a) of Article 25.

- Clause (2)(b) of Article sets down two additional exceptions: (I) "Providing for social government assistance and social change" and (ii) "opening up of Hindu


strict establishments of a public person to all classes and sec of Hindus."
This condition gives that any current law or any law made by the State to accommodate social betterment and social change would not be negated on the ground that it violates the privileges of religious freedom of any individual. Accordingly, the laws forbidding bigamy, and insidious practices, for example, sati and the concept of devasai are supported under Article 25(2)(b). Yet, the Court likewise held that "the law providing social welfare and social change" should not be planned to cover the fundamental things of a belief of a religion which are ensured by Article 25(1).

Article 26

Article 26 cherished the opportunity of religion for group or a part of it. The articulation "denomination" was characterized by the Supreme Court in Shirur Mutt Case from Oxford word reference which signifies "a collection of people classes together under a similar name: a strict sec or body having a typical belief and association and assigned by a particular name."

- Article 26(1) ensures strict division or a sec of it the option to build up and keep up with organization for strict and charitable purposes. The expression 'establish and maintain' should be perused all together category can just keep up with those foundations which were set up by them. In the case of *Azeez Basha v. Union of India*22, the court held that Aligarh Muslim University can't be kept up with by Muslims since it's anything but settled by them. The University was set up by the Act of the Parliament.23
- Article 26(2) maintains all the rights to the religious denominations and a sec of it to deal with its own undertakings in the issue of religion. The Court didn't restrict the extent of the expression "in the matter of religion" just to the matter of teachings or beliefs it extends it to every one of the demonstrations which are done incompatibility of the religion, containing customs and observances, functions and methods of love which are viewed as a fundamental piece of religion. What is a necessary piece of a religion is controlled by the Courts concerning the tenets of the specific religion. Article 26(c) and (d) gives that each religious denomination or any sec of it would reserve the privilege to possess and get property (movable and immovable) and furthermore to control such property in agreement to law.

Article 27

Article 27 restricts the requiring of levy of taxes, the proceeds of which are explicitly appropriated in paying the costs for the promotion or maintenance of any religious denomination. The primary condition for this Article is that the levy should be a tax and not an expense. Both these terms appear to be very comparable yet are entirely unexpected. Installment of any tax is made for public purposes whose benefits are delighted by the overall public and is gathered under the overall public revenue. While the payment of any fees is made against administrations

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22 *Azeez Basha v. Union of India* (1968) SC 662
delivered or work done for the individual making the installment and it is gathered and kept independently from the overall public revenue. Consequently in expense there is a component of remuneration which is missing in charge, and furthermore, the commitment from the charge is kept independently from State subsidizes which isn't the situation in a tax.

In *Jagananth Ramanuj Das v. Territory of Orissa*\(^{24}\), the Orissa Hindu Religious Endowments Act, 1939 was challenged on the ground that it is in violation of Article 27 of the Constitution. This Act was passed for the better organization and administration of certain religious endowments and furthermore forced on each math or sanctuary having yearly income exceeding Rs. 250, a yearly commitment for meeting the costs of the Commissioner and different workers working under him. The Court upholding the legitimacy of the Act held that the payment has to be viewed as fees, not as a tax. Since the levy was to meet the costs of the Commissioner and different workers working under him and not to support the overall public and the collection likewise was not converged in the overall public revenue.\(^{38}\) If even the commitment is viewed as an assessment, the goal of the duty was not to encourage or advance a specific religion or section inside it however for the better organization and administration of the strict endowments. The other condition is that the returns acquired from that duty should be explicitly appropriated for the installment of the costs for the advancement or upkeep of a specific religion or strict group. Assuming the returns are not appropriated for that reason, it won't hit Article 27.

\(^{24}\) *Jagananth Ramanuj Das v. Territory of Orissa* A.I.R. (1954) SC 400; 1954 SCR 1046


**Article 28**

Article 28 revered the opportunity to go to religious instructions or religious worships in certain educational institutions. This Article sets down three (3) classifications of educational institutions Firstly, organizations kept up with entirely out of State funds; besides, institutions controlled by the State yet have been set up under any blessings or trust; and thirdly, establishments perceived by State or getting help out of state reserves. According to this article, the classification (1) establishments are denied from granting any strict directions or strict loves of any sort. The classification (2) organizations are permitted to give strict directions in the event that they so require. The class (3) establishments are likewise permitted to grant strict directions however there can be no impulse on participation for an individual except if such individual gives his assent and if the individual is minor, assent given by his folks. This condition is needed for class (2) organizations too. In *D.A.V. School, Bhatinda v. Territory of Punjab*\(^{25}\), the validity of Section 4 of the Guru Nanak University was maintained, which guided the State to make provisions for the study and examination on the life and lessons of Guru Nanak. The Court held that the Act doesn't allow religious guidelines or advancement of a specific religion yet was advantageous for the study.

**SECULARISM AND POLITICS:**

In India, Secularism isn't followed as it ought to be. On the off chance that secularism has been continued in its actual senses there wouldn't have been any instances of communal riots, any mob lynching, any kind
of hate speech, or any sort of common fights. As of now examined above secularism is a muddled idea in light of the fact that not at all like, the U.S. or Europe, in India a few powers rests with the state to meddle in the issue of religion. This element of India's Secularism was regularly utilized by the Political Parties for their own advantage. Communal politics publicly uses communal utilization for political purposes. Also, there is a politics that uses communal mobilization proactively for short-their own electoral gains. The first category includes organizations such as the VHP, the Shiv Sena, the Muslim League, the Majlis-eIttehadul Muslimeen, and others. Parties in the second category include Congress-I, Trinamool Congress, Telegu Desam, Samata Party, and others. The first group's political programs openly rely on the mobilization of religious groups.

When politics is associated with secularism or religious beliefs it goes to communal politics Communal Politics issues in this sense are principally a type of legislative issues which activates a specific strict local area for political powers. It is the misuse of strict contrasts for political increases. Shared communal politics may likewise appear as featuring the communitarian interests of a religious groups without essentially creating hatred towards other communities. What is significant about communal politics is that it's anything but determined by any strict or profound issue, however common interests, which can go from expecting occupations, instructive concessions, political support, separate portrayal or command over organizations of administration. Urgent for public legislative issues is an inclination of unity inside a strict local area as likewise a feeling of social distinction between networks. Common legislative issues, regardless of whether for monetary concessions or for political force elevates this feeling of inner cognizance and the sensation of distinction between communities.

Religion-based politics have pervaded the entire political system. The major parties in India, the Congress, and the BJP have been using religion to gain power in the name of religion and destroying India's secularism. In the name of secularism, Congress has tried to accommodate minorities, primarily Muslims, in order to boost and increase its vote bank. But on the other hand, the BJP, which started accusing the Congress of "pseudo-secularism," or appeasing minorities, has accomplished the same goal by impressing the majority community, namely Hindus.

The beautifully executed political move by The Congress party has frequently managed to pass laws that benefit the Muslim community in order to gain their votes. One such case was Mohd. Ahmed Shah v. Shah Bano Begam. In this case, the Court issued a decision allowing Shan Bano Begam to seek maintenance from her husband under Section 125 of the CrPC, thereby protecting Muslim women's rights. This judgement was met with overwhelming condemnation from the Muslim community, who claimed that it violated one’s personal laws. As a result, in order to achieve the support of the Muslim


community, the elected Prime Minister, Rajiv Gandhi, enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986, which overruled the above-mentioned judgement. In this manner, the Congress government has made a criticism of the Supreme Court and has harmed the concept of secularism for own political gain. The Congress as well reshaped Hindu personal law with such a sequence of Hindu bills that did not impose the same as on other minorities, but Muslims were entitled to hold their Sharia law.

There have also been countless incidents where the BJP has attempted to contaminate the fundamentals of secularism. The Bharatiya Janata Party, which adheres to the Hindu Nationalism philosophy, has frequently condemned the Congress for enacting pro-Muslim or anti-Hindu policies in order to increase their vote bank. However, they, too, had also accepted the same policy of pacifying Hindus in order to gain their votes. The BJP government has committed numerous acts that are contrary to the teachings of secularism.

The latest is the Citizenship Amendment Act of 2019, which grants citizenship to non-Muslim illegal migrants who face religious persecution in three countries: Pakistan, Afghanistan, and Bangladesh. The Act seemed to be wrong on many levels, but the primary reason it should be declared unconstitutional is that, for the very first time in history, an individual's citizenship was granted based on his or her religion.

The judiciary, known as the Guardian Constitution, has played an important role in preserving the spirit of secularism. In a number of cases, the Supreme Court had declared ‘Secularism' to be an unchangeable part of a Constitution's basic structure. The judiciary has not only protected the spirit of secularism, but it has also made the appropriate capacity to better implement it. The Supreme Court invoked Article 44 of the Constitution in Sarla Mudgal v. Union of India. The Court emphasized the importance of a uniform civil code and demanded that the government review Article 44 of the Constitution.

RELIGIOUS AUTONOMY AND STATE:

• Some Religions' Separate Identity:

As previously stated, neither the Constitution nor any regulatory ratification precludes the State from getting involved in matters relating to religious doctrine or of a purely religious nature. A key concern upon which the government has made a policy decision is whether such religions in India are variants of the same religion or represent distinct faith traditions. There are basically three minority religious groups Sikhs, Buddhists, and Jains believe their corresponding religions are distinct from Hinduism but so many existing laws lump them (or some of them) in with

Hindus. Even as encouraging the State to erase caste-based constraints on entering into Hindu temples through the law, the Constitution declares that the term "Hindu" in this context includes Buddhists, Jains, and Sikhs because the practice is not popular in either of these three communities, the concept was most likely to allow them enter into Hindu temples in order to promote unity amongst these four faith organizations. The four family-law legislations of 1955-56, all titled "Hindu" laws, clarify that the term "Hindu" is used their writing contains Buddhists, Jains, and Sikhs, and also that various Hindu religious-endowment control rules are enforced to the first two of them. This same formal association of the three religious groups with Hinduism is often despised by all those communities, particularly by the Sikhs, who are the biggest religious group between the with a single doubt it provides indirect help to those religious and political groups within the majority group who assert these faiths are different instances or splinter groups of their religion and believe on differentiating among religions of Indian and “extra-terrestrial” origins.

- Shrines and Pilgrimages Legislation:

Just like previously stated, the Constitution provides “freedom to manage their own affairs” to all religious groups and denominations. At the very same time, the Constitution places so many religious issues within the purview of the central and state legislatures for both the reasons of necessary legal regulation, including religious endowments and religious institutions, as well as pilgrimages within and outside of India. As a result, religious place administration is governed by a number of particular and group legislative enactments, in which the central or state government appoints a delegate to the temple board. The nomination of non-Buddhists to a management board of India's most prominent Buddhist shrine, located in the city of Gaya, has become a source of contention. So many inland and overseas religious pilgrimages of different communities are planned and monitored by government agencies or statutory authorities (including the great Islamic pilgrimage to the holy cities of Islam in Saudi Arabia known as the "Haj"). The Government authorities offer intricate security measures and public amenities at holy places and pilgrimage sites that draw large crowds.

Many religious buildings and places have been included among the protected monuments and archeological sites managed by State authorities functioning under central and state laws. These laws prevent the State from changing the religious character of such buildings and sites, but congregational prayers are not allowed in many old mosques which the Muslim community resists.

Many other states require previous official approval for the development of new religious facilities or the renovation of

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33 The Constitution of India 1950, art. 246 & Schedule VIII, Concurrent List (Entry 28), Union List (Entry 20), State List (Entry 7).

34 Bodh Gaya Temple Act, 1949

35 Ancient Monuments and Archeological Sites and Remains Act 1958, Sections 5 and 16.
existing ones. Unauthorized construction of religious structures on public lands has been and continues to be a threat. As of late a generally unconfirmed belief propounded by certain gatherings of Hindu strict pioneers guarantee, that the site of an antiquated mosque in the blessed city of Ayodhya was where the most mainstream Hindu god, Ram, was brought into the world in the pre-noteworthy past, prompted a gigantic strict struggle. At the point when the contention was at its stature and was spreading to some other old mosques as well, Parliament instituted a law declaring that all place of worship in the nation would hold their particular strict personality and alliance as on the Independence Day (15 August 1947) and any endeavor to change over a hallowed place having a place with one religion into that of some other will be a culpable offense.36

- Involvement of the Judiciary in Religious Matters:

In contrast to the practice of secular western countries, the Indian judiciary never has shied away from talking, describing, and mediating on solely religious issues, such as the nature and scope of India's different religions. “Recognition of the Vedas with veneration, appreciation of the reality that signifies of redemption are diverse, and realization that the number of gods to be worshipped is large, that is the distinctive element of Hindu religion," the Supreme Court of India expressed in a landmark case.37 There have been legal choices deciding that a prohibition sale of non-veggie lover food in the areas respected heavenly by the Hindus, and instructing of crystal gazing drawn on Hindu sacred writings in State colleges, don't repudiate arrangements of the Constitution identifying with opportunity of exchange and occupation and strict opportunity respectively.38 While the Hindu family-law establishments of 1955-56 explain that "Hindu" applies to every one of its "structures and advancements" (particularly implying a portion of these remembering the Aryasamaj), for various cases the courts have analyzed the precepts of different divisions and cliques to decide that they are an integral part of the Hindu religion at times, the courts have arbitrated additionally on strict debates between the Hindus and some of the other three networks legitimately organized with them (as expressed previously). In the main case, a High Court needed to settle a question among Hindus and Jains on the issue if a Jain sanctuary could house a Hindu strict symbol.39

Disagreements over Islamic practices and beliefs frequently attain the courts. Other than engrossing and choosing in certain cases Sunni-Shi'a conflicts about the use of mosques and religious rituals, the courts too have evaluated the Ahmadiya group's creed, which is considered by progressive Muslims as heretical because it regards its founder as a "sub-prophet" (contrary to the mainstream Muslim belief there can be no prophet after Muhammad), and chose that they are

A few real judgments have investigated and given evidence on the centrality of the Holy Qur'an in the Muslim faith and the Granth Sahib in the Sikh religion. The judiciary too have heard and resolved religious disagreements between various Christian denominations and groups, as well as their churches. The latest instance upheld Parsi Zoroastrians' right to establish a housing colony (on state-allotted land) booked for their co-religionists. Administrative bans on praying on the streets out front of mosques have always been enforced. Similar rules on the use of voice amplifiers in Hindu, Muslim, and Christian religious places have been consistently enforced by the courts. The Jehovah's Witnesses, who believe that singing the National Anthem is against their faith, have won a Supreme Court ruling in their favor.

- Religious Organizations at Work:

In India, all religious communities seem to be able to act in confidential non-religious realms. Plenty of them has formed health care facilities and provided assistance to people affected by natural disasters and communal riots. The state only has power over these actions in terms of funding outside India. Most affiliations with a "definite religious program" that expect to receive foreign donations are legally required to sign up with State authorities and notify them of each such donation received. In the utter lack of such registering, they must obtain prior approval for each very transaction.41

Religious organizations can actively seek voluntary enrollment under state laws if such conditions are met, making them sui generis.

A majority of state laws excluded religious institutions or belief practices from one general provision, including those governing business, taxation, state acquisition of private property, police work, and security forces.

WAR/CONFLICTS IN THE NAME OF FAITH AND RELIGION:

Despite the fact that India is a country divided by different cultures, religions, and regions, there's real unity in diversity. As a secular nation, people of various ethnic groups coexist with respect and dignity. Our country is known as the land of peaches because it created men like Gautam Buddha, Mahavira, Gandhiji, Jawaharlal Nehru, Bhagat Singh all of whom advocated for unity and tranquility. They did believe that these measures will indeed aid our country's lengthy development. Our nation, on the other hand, has created many cruel men who have attacked and killed many helpless lives in the name of religion and their fake nationalism.

- Calcutta Riots, 1946

The 'Great Calcutta Killings' is among the deadliest communal riots in Indian history. Minority groups in India assumed after the British rule ended, Hindus will ask people to flee the country. As a consequence, they began a campaign of violent acts against Hindus, which culminated in an outbreak of war. The slayings in West Bengal's capital lasted four days and took the lives of approximately 10,000 people.

- Gujarat Riots, 1969

The Gujarat riots of 1969 are widely regarded as one of the deadliest Hindu-Muslim clashes in Indian history. The terrorism began on the evening of September 18, 1969. A minor event involving cattle hurting the carts of

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40 Shihabuddin Koya v Ahammad Koya AIR 1971 Ker 206.
41 Foreign Contribution (Regulation) Act 1978.
shoppers from a specific community sparked widespread violence, arson, and beheading. The riots lasted until September 24, 1969, when 514 people were killed and 6,123 homes and businesses were destroyed.

**Bhiwandi Riots, 1970**
Until the 1992 Babri Masjid riots, the 1970 Bhiwandi riots were viewed among the most brutal types of riots ever to have happened throughout the state of Maharashtra. The terror attack was triggered by a ceremony commemorating the birth anniversary of the legendary Maratha ruler, Shivaji. During the parade, Hindu and Muslim communities clashed, resulting in the deaths of 250 people.

**Anti-Sikh Riots, 1984**
Riots erupted in so many parts of Delhi as well as other parts of India after former Indian Prime Minister Indira Gandhi had been assassinated on 31 October 1984 by two of her Sikh security guards in reaction to her actions authorized the military operation. In these riots, the Sikh community was focused, and approximately 2800 persons were dead, including 2,100 in Delhi. Human rights groups and newspaper articles throughout India presume the killings were planned.

**Kashmir Riots, 1986**
Since before the country's independence, Kashmir has also been riddled with rebel activities. Against Kashmiri Hindus, communal riots erupted inside the state in 1986. These riots erupted when Kashmiri Muslims pressured Kashmiri Pandits to flee the Kashmir valley terrorism attacks. Approximately 1000 people were killed, and over 1000 people were made destitute.

**Bhagalpur Riots, 1989**
People started yelling controversial phrases during the Ramila ceremonies that were expected to drive the Gausala area and travel to Ayodhya. The deadly riots began when a sequence of speculations expanded that a particular group had killed around 200 students, which has been followed by a sequence of other baseless speculations. The riots lasted two days in Bhagalpur and the surrounding 250 villages. According to reports, 1,070 persons were dead and 524 were injured.

**Mumbai Riots, 1992**
In December 1992 and January 1993, Mumbai was rocked by riots that killed over 1000 people. The confrontation of conflict following a large-scale protest by Muslims in response to the 1992 Babri Masjid Demolition by Hindu Karsevaks in Ayodhya has been the reason for the riots. These riots resulted in the 1993 Bombay serial bomb blasts.

**Gujarat Riots, 2002**
On February 27, 2002, a coach of the Sabarmati Express exploded, killing 58 Vishwa Hindu Parishad Karsevaks. The VHP called for a nationwide ban that culminated in arson and killings of Muslims. The riots spanned three days before the Army was called in. The riots slaughtered around 1,000 people, wounded 2,500, and left 220 people went missing.

**Aligarh Riots, 2006**
On the 5th of April 2006, in the event of Ram Navmi, a brutal incident occurred in Aligarh owing to a suspected miscommunication among Hindus and Muslims. Six people were killed and many others were injured in the process of this communal schism. Shortly after the event, a ban was imposed in the city, allowing the area to return to normalcy.

**Muzaffarnagar Riots, 2013**
The Muzaffarnagar riots of 2013 are one of the most significant blots in Uttar Pradesh's history. These riots came as a result of conflict between both the Hindu and Muslim communities; even then, the precise cause of such riots is unknown. The riots killed 423
Muslims and 20 Hindus and disrupted the lives of over 50,000 people in the district. The riot leads to so much disaster which included sexual violence like gang rape.\textsuperscript{42} The major riots in North-East Delhi in February, as well as Ujjain, Indore, and Mandsaur in Madhya Pradesh are giving numerous signs of the age we live in in 2020. The trends in these violent clashes point to the authoritarian state's abuse of power in attacking the Muslim community. Previously, the institutionalized riot system (IRS) was meticulously built, with riots designed and planned, and executed at available trigger points. There were strong social mobilization and policyholders to spark a riot. Nevertheless, there's still some fear of indictment and inquiry into the communal riots, even if the investigation had been feeble and biased against religious minorities. However, the state was not as openly and formally engaged as that is today. The state no longer tries to pretend to be unbiased. Hindu nationalists are openly inciting and fueling violent protests against Muslims, as seen in Madhya Pradesh. They are unafraid and have political corruption.

Communal riots, while smaller in number in 2020, do not indicate a decline in regional violence and thoughts. As shown in the Delhi riots, there is a centralization of communal identifications and increased political mobilization of Hindu nationalists who really are overcome with blatant hatred for Muslims and fearlessly howling again for the blood of Muslims. A nation facilitates this targeting not only by failing to take appropriate response measures against the offenders, but by punishing religious minorities with the sole purpose of strengthening their inferior position in India's now brittle democracy. As a consequence of which there is more malicious intent for perpetrating violence toward religious minorities, as well as its regularization and religious polarizability.\textsuperscript{43}

**DIFFICULTIES WITH INDIAN SECULARISM:**

The validity of the concept of a secular state into multi-religious communities like India is fraught with problems. It must be recognized that secularism cannot be limited to humanism, but must also be consistent with religious faith and beliefs. The Indian narrative of secularism assumes that, while public life might not be kept free of religion, it must allow for ongoing dialogue between religious practices as well as between religion and secularism. The state in independent India is formally secular because it is not affiliated with every religion or a tool of any church. In practice, however, the Indian state doesn't really differentiate itself by religion but instead attempts to portray itself as a stable country by publicly acknowledging all religions and their cultural norms. Religious rituals, sometimes with a Hindu bias, are a part of public functions held underneath the state's pretense. Secularism became visible because of the most effective viable alternative that might be capable of offering harmonious dwelling collectively.


\textsuperscript{43} Irfan Engineer and Neha Dabhade, Communal Riots in 2020 Low Numbers only a Deception. 4, February 2021, <https://cjp.org.in/communal-riots-in-2020/> accessed 9 July 2021
for the one-of-a-kind tribes and peoples of India. Sadly Indian expertise of secularism did not offer a high-quality dating between nation and faith and the founders have been now no longer capable of providing an explanation for to the humans in their very own languages what became supposed via way of means of secularism.

Partha Chatterjee a famous politician affirms that the utility of the constitutional traits of a secular nation to the state of affairs in India has brought about essential. These irregularities can be stated to be the unique capabilities of Indian secularism. The first principle, that is, a proper to freedom of religion, offers to each citizen now no longer only ‘the same proper to freedom of moral sense however additionally the proper freely to profess, instruction and propagate religion’. However, the nation has the liberty to regulate ‘any economic, financial, political or other secular interest which can be related to non-secular practice’ to offer for social welfare and reform to all sections.

The second principle, equality, forbids the state from doing any kind of discriminating in opposition to any citizen completely on the grounds of faith or caste, while it makes unique provisions for the development of socially and educationally backward groups or classes or for scheduled tribes. Such unique allocation in employment and education, or reserved seats in consultant bodies, have of direction caused a great deal disagreement in India in ultimate few decades. These allocations may be visible as advantageous discrimination in favor of scheduled castes: with a view to qualify as a member of a scheduled caste, someone has to profess both Hindu and Sikh faith; a public statement of the adoption of another faith might result in disqualification from the quota.

The third principle, the segregation of nation and faith, announces that there will be no reliable nation faith, no spiritual training in nation schools, and no taxes to support any specific faith. But the nation has been twisted with inside the affairs of faith in approaches and the diploma and quantity of entanglement have extended since independence. The wall of separation can hardly ever be carried out to the prevailing Indian state of affairs. This is exactly one of the motives why Indian secularism is explained in a different way from Western secularism. The cultural and historic realities of the Indian state of affairs name for a one-of-a-kind courting among the nation and civil society than what is appeared as normative in Western political discourse, as a minimum with inside the be counted of faith. India, the state should support all religions similarly which would be a necessary augmentation to the standard of equality. In the impossible to miss circumstance of India, secularism as an instrument of social change and political change has somewhere around three functional measurements:

- As a cycle of non-communal political combination (as between religion-based portions like Hindus, Muslims, Christians, Sikhs, and so forth)
- As interaction of between local area social combination (as between the varna-cum-jati portions of the Hindus and the social layers among the Muslims, Christians and so on) and
- As the prevailing political maxim, strategy, and objective of general socio-political change to change a religion-
overwhelmed ethos into an ethos of edified humanism.

Secularism as a term utilized openly in broad daylight talk in India infers an idea and an interaction that looks to change a customary society into the current commonwealth, by underscoring certain qualities and standards of civic life and political culture. It's anything but a negative and positive meaning. In its regrettable underlying meaning, secularism infers, for example, a cycle which is against indications like:

- Domination of religion in legislative issues.
- Building a mono-religious structure (like for example Islamic Republic, the Buddhist state, Hindutva, and so forth).
- The possibility of a religious or semi-religious state-controlled and coordinated by a religious community.
- Discrimination between the religious segment in the public arena, state and government for the reasons for municipal life, and in the political framework and in making the constitution, laws, rules, and techniques, and so on.
- Counter presenting strict personalities to the brought together public character; and
- Fragmentation of the residents into the selective discretionary electorate, in light of a scriptive grounds of organizations, clans, rank, strict local area, and so on.

CONCLUSION:

Indian patriotism and Indian secularism are the two endeavors to come in wording with multicultural India. The two of them attempted to join the diverse ethnic gatherings and religions of India by shaping a character of fellowship Indianess. For the solidarity of the country, Indianess was upheld by an Indian type of secularism. The two of them were focused on ensuring the quiet concurrence of the various religions and ethnic gatherings of India. Indianess was envisioned, however, it was not acknowledged by other Indian patriotisms. This can be found in the manner the Indian state was estranging from the Indian culture when it attempted to bind together the various networks under the state. Indian secularism denied the job of religion in regular day-to-day existence circumstances such that networks couldn't acknowledge. A significant part of the Indian patriotism was additionally the guarantee for a cutting edge India with monetary development and prosperity of the residents. The Indian country state neglected to give this and 'new Indian' patriotisms began to arise and request the right to rule over their own networks on their own conditions. The 'customary' ethnic personalities were more grounded than the focal government had expected, and this immediately drove to conflicts and brutality between the various perspectives on the quintessence of India. The savagery was frequently directed by an ideological group, which demonstrated that it is almost difficult to restrict religion in private life in India.

Nevertheless, historically, the competition of Indian secularism began with the various Indian nationalisms that refused to merge into the concept of an Indian nation-state. The ruling power saw secessionist movements as a risk to India's integrity, and in order to maintain a certain concept, some leading politicians have aggressively attacked the project of homogenization diversities. However, as a result of the attempted homogenization, an increasing number of separatist and secessionist movements have gradually gained power in
the country. As a result, homogenization has contributed to India's political decay and the decline of secularism, particularly by the use of oppressive politics, which has led to the rise of secessionist movements. On the off chance that we are not proficient enough to keep up with the soul of Secularism, as it would see it we should quit announcing ourselves as a Secular Nation. A State doesn't get Secular just by receiving it in its Constitution. The State should follow the standards of Secularism in the genuine sense. It is likewise the obligation of each individual living inside the domain of India to follow those standards and legally practice their right to opportunity of religion and simultaneously regard this right of different residents as well. India has a rich culture and is renowned all throughout the planet for its multiplicity of religions. It has Hinduism, Islam, Buddhism, Jainism, Zoroastrianism and Sikhism, Ashoka, The Great unique religion was Buddhism lectured however he offered equivalent rights and chances to all religion. During the Mughal period as well, Akbar didn't consider other religions and not as much as Islam and give equivalent regard to all religions and accepted that nobody ought to be dealt with diversely based on their religion.

The Preamble of the Indian Constitution uses the words that "We the People of India have solemnly resolved to constitute India into a Secular nation" Therefore, it is the obligation of each and every individual residing in India to put forth attempts and made India into a Secular country that each individual regardless of his/her religion is given equivalent regard, rights and opportunity.

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