

Indian Constitution Vis-À-Vis The Idea of Secularism: The Role of State in The Ongoing Trends

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Abstract

We, the people of India, when the Constitution was drafted, adopted the magnificent path for the equal freedom of right to religion (under Article 25). However, 42nd Amendment, 1976 categorically made this path crystal clear by inserting the term “secular” within the preamble. It is, therefore, the intention of the Constitution makers which endorses the idea of secularism in India. India, that is to say, as a state has no religion but comes out as neutral towards the concept of religion. The Constitution, furthering the idea of values enshrined in the preamble, equally preserves and protects all religions. In this way, the state is certainly bound to abide by the Constitutional virtues of secularism; however, the ongoing trends in India depict otherwise. This paper, therefore, investigates these trends which seem to violate the secular idea of the Indian Constitutional philosophy. The researcher intends to establish as to how the state, in recent times, is involved in matters based on a specific religion and how it affects the very principles which were set by the Constitution makers. It is established that the ongoing trends in India have tremendously impacted the Constitutional ethos (including Constitutional morality) of secularism in India and the state has failed to keep them intact.

Introduction

The Constitution of India (*hereinafter referred as COI*) constitutes India into a democratic republic wherein the state has been enjoined with an indispensable duty to protect the fundamental values of *justice, liberty, equality and dignity*, etc. of its citizens¹. A democratic republic, *herein*, refers to the idea of unity and integrity of the nation where the state is under a positive obligation to achieve all these fundamental values. The idea of democracy as envisaged within the COI is therefore one against the majority rule² but nourishes the very concept of inclusive citizenry wherein there is freedom of expression³. Such an argument is well supported by the Constitutional scheme laid

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¹ *Constitution of India*, 1950, preamble.

² Jon Roper, *Democracy and Its Critics: Anglo-American Democratic Thought in the Nineteenth Century*, Unwin Hyman, London, 1989, p. 63.

³ Robert A Dahl, *On Democracy*, Yale University Press, New Haven, 1998.

down in the form of Fundamental Rights⁴ and Directive Principles of State Policy⁵ which respectively not only *promote, preserve* and *protect* the intrinsic human rights of citizens but also simultaneously casts a duty on the state to carry forward these principles in its future legislative and executive activities⁶.

Undoubtedly, right to freedom of religion is one of the fundamental rights that is available to all the people of India and the state is therefore bound to respect and protect it⁷. Indian Constitution further strengthens the freedom of religion by affirming the principle of secularism (*equal treatment of all religions*)⁸. The Supreme Court of India has also from time to time upheld the very idea of secularism⁹.

Ironically, the present state of affairs in India leads one to ask whether the secular state is really conforming to all these connotations which emanate from the four walls of the terminology “*secularism*”. It is, *at the same time*, interesting to see that the societal trends of Indian Civil Society are in contrast with the very idea of secularism. Therefore, it becomes apposite to analyze as to what all are the adversaries which pose as hurdles in the proper implementation of the concept of secularism in India which has also been included within the ambit of one of the basic structures of the Constitution¹⁰.

The prominence is also to be attached to the fact that the state’s participation in non-secular activities has been on the rise in recent times. In order to examine the constitutional scheme of secularism, lot of questions can be advanced as to certain structures [Rashtriya Swayamsevak Sangh (RSS), Vishwa Hindu Parishad (VHP), Bajran dal, etc.] prevalent in the civil society; whether these structures are being backed in such a way that is slowly endangering the very roots of secularism in India or the secular nature of the COI. The bonding between these structures and the state is also interesting to be seen and emphasized upon. A deep study of all these ongoing trends will draw a picture depicting the present status of the constitutional idea of secularism in India.

For this purpose, the article is divided into four further sections which clearly show the diminishing value of the idea of secularism in India amidst growing incidents based on religion. *Firstly*, it targets the understanding of the concept of secularism as enshrined within the organic text of the Indian Constitution. *Secondly*, the researcher analyses the ongoing events which question the very existence and function of a state in the secular democracy. *Thirdly*, the paper argues that the ongoing events have tremendously affected the very idea of secularism in India which consequently also affects the constitutional morality of the Indian Constitution. *Fourthly & lastly*, the paper argues

⁴ *Constitution of India* (n 1), part III.

⁵ *Constitution of India* (n 1), part IV.

⁶ P.B. Gajendragadkar, *The Constitution of India: Its Philosophy and Postulates*, Oxford University Press, 1969, p. 11.

⁷ *Constitution of India* (n 1), arts. 25-28. See T.M.A. Pai Foundation v State of Karnataka, SCC, 2002, SC, p. 481.

⁸ *The Constitution (Forty-second Amendment) Act*, 1976.

⁹ *State of Karnataka and another v Dr. Praveen Bhai Thogadia*, SCC, 2004, SC, p. 684.

¹⁰ *Kesavananda Bharati v State of Kerala*, AIR, 1973, SC, p. 1461.

that the Indian State has failed in its duty to protect secularism as part of the basic structure of the Constitution and seems to legitimize the ongoing adversaries against the very understanding of secularism in India.

Constitution and the Secular India

The Black's Law Dictionary defines the term secular as “*Worldly, as distinguished from spiritual*”¹¹. If we go by the definition of the Chambers dictionary, it defines it as “*the belief that the state, morals, education, etc. should be independent of religion*”¹². These definitions signify a complete separation from the contours of religion; *however*, the Indian idea of secularism is different from what these dictionaries suggest.

What is pertinent to note is that, originally, the COI did not use the word “*secularism*” and it was only by the 42nd Amendment, 1976 to the COI, the word “*secular*” was introduced in the preamble¹³ to the COI. Therefore, the post-independent India did not have the formal idea of secularism in the form of constitution. A slight look at the Constituent Assembly debate also shows the omission in using the term “*secular*” by Nehru¹⁴ and Ambedkar¹⁵. Some have even held it as a deliberate omission on the part of the drafters¹⁶. But it can also be witnessed that the members in the assembly had the vision of India to be a secular state¹⁷.

It was then, *through 42nd Amendment*, the term “*secular*” was added; the explanation assigned for its insertion was the previous omissions for its addition. It may, *however*, be appreciated that from the very beginning of the COI, Part III has provided for the fundamental right to freedom of religion (Articles 25-28)¹⁸ to all the persons; what was absent was the explicit neutrality of the state-religion that was expressly bestowed by 42nd Amendment, 1976. The Amendment emphasizes upon the state's neutrality in the matter of religion or that the state itself demonstrates no religion; neither does it profess any particular religion nor does it provide any kind of preferential treatment (*to a particular religious denomination*) whatsoever¹⁹.

One conclusion which may be arrived at is that the drafters of the constitution intended India to be a democracy that respects every religion and protects the respective interests thereof. The Supreme Court of India, *being the guardian of the COI*, has also discussed the concept to a great extent—including the landmark decision in *S.R. Bommai v. Union*

¹¹ *Black's Law Dictionary*, 9th edition, West, 2009, p. 1474.

¹² *The Chambers Dictionary*, Allied Publishers, 1998, p. 1495.

¹³ *Constitution of India* (n 1), preamble. “WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens”.

¹⁴ Constituent Assembly Debates (CAD), 9 – 23 December 1952, vol. 1 p. 62.

¹⁵ *Ibid*, pp. 33-34 (Vol. VII).

¹⁶ P.B. Gajendragadkar, *Secularism and The Constitution of India*, University of Bombay, Mumbai, 1971.

¹⁷ Constituent Assembly Debates (n 14), p. 823 (Vol. VII).

¹⁸ *Constitution of India* (n 1), art. 25(1), “Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.”

¹⁹ M.V. Pylee, *An Introduction to The Constitution of India*, Vikas Publishing House Pvt Ltd, Delhi, 2005.

of India²⁰, confirming the basic structure doctrine with respect to secularism in India. The court went on to say that the idea of secularism itself differentiates religious from political. The case was clear in its indication against the use of religion in matters of politics and also for personal gains²¹.

Furthermore, it is also to be taken into consideration that the secularism in India is not as it is in the western part of the world (*that provides a sense of absence of religion*). The Indian connotation of secularism denotes the state's participation in the formation of certain religious practices of each religion that is required for the welfare of the people; it certainly drives one to the appreciation of the fact of 'reforms (*such as sati and untouchability*) to be made by the instrumentality of the state' (wherever needed)²². What can be extracted is that India as a nation-state is a secular democracy which *constitutionally* equally respects every religion, belief and faith.

Therefore, it is of utmost relevance and importance to note that Indian secularism is not based on Nehru's idea of *dharma nirapekshata* (strict separation of religion from politics) rather it reflects the idea of *saarya dharma sambhava* (equal respect for all religions)²³. The Constitutional scheme is not interested in separating state from religion rather it emphasizes on the idea of toleration of all religions equally²⁴. At the same time, it must also be understood that the state itself cannot, *on its own*, establish or practice a specific religion²⁵. What is, *at this juncture*, also compelling to note is that India carried forward its colonial legacy (*colonial state was not separated from religion and intervened in the matters of public interest except in traditions and customs*) and retained the principle of equidistance (*which Bhargava terms as principled distance*) from the institutions of religious significance rather than complete separation from them²⁶. Therefore, it can be said that the Constitution has empowered the state as an interventionist in matters concerning religion²⁷.

It is, *beyond doubt*, clear that the state and the religion as not strictly separated can, *within the constitutionally permitted parameters*, interact and intervene into each other's spheres; what is essential on the side of state is the flow of a non-discriminatory attitude towards all the religious bodies and denominations whether under its direct or indirect control²⁸. The reason behind such scheme is also that in India, the concept

²⁰ *S.R. Bommi v. Union of India*, AIR, 1994, SC, p. 1918.

²¹ *Ibid.* 'the court criticized the BJP led governments in various states and also its close linkages with RSS for the political gains.'

²² *S.P. Mittal v. Union of India*, AIR, 1983, SCR, p. 729. This idea was clearly depicted by the Supreme Court of India in the decision of *S.P. Mittal v. Union of India*, (1983) 1 SCR 729.

²³ Brenda Cossman & Ratna Kapur, 'Secularism's Last Sigh: The Hindu Right, the Courts, and India's Struggle for Democracy', vol. 38 (1), *Harvard Int'l. Law Journal* p. 113, 1997, p. 141.

²⁴ P.K. Tripathi, 'Secularism: Constitutional Provisions and Judicial Review', in G. S. Sharma (ed.), *Secularism: Its implications for Law and Life in India*, N. M. Tripathi, Bombay, 1966.

²⁵ Upendra Baxi, 'The 'struggle' for the Redefinition of Secularism in India: Some Preliminary Reflections', vol. 44 (1), *Social Action*, 1994. See, Badrinath Rao, 'The Variant Meanings of Secularism in India: Notes Toward Conceptual Clarifications', vol. 48, *J. Church & St.* p. 47, 2006, p. 54.

²⁶ Shabnum Tejani, 'Secularism', in Gita Dharampal-Frick et al. (ed), *Key Concepts in Modern Indian Studies*, NYU Press, New York, 2015, pp. 251-252.

²⁷ *Ibid.*

²⁸ Tahir Mahmood, 'Religion, Law, and Judiciary in Modern India', *BYU Law Review*, 2006 available at <https://digitalcommons.law.byu.edu/lawreview/vol2006/iss3/6>, accessed on 6 January 2019.

of secularism does not target at the complete separation of state from the church²⁹. It is rather to assure protection to the minorities of their cultural, religious and relevant identity against the majoritarian view. In this manner, it goes much forward than merely being a neutral state and therefore the minority rights become one of the essential features of secularism in India³⁰.

Therefore, *in a nutshell*, the idea of Indian secularism implies—the rejection of a theocratic including semi-theocratic state, equality of all citizens without any discrimination, the right of state's interference in the religious practices of various communities for the purpose of their peaceful co-existence and cultural development³¹.

However, it is equally important to note that the RSS, Bhartiya Janta Party (BJP) and their supporters of Hindu state criticize and oppose this concept of secularism as it inculcates the statutory safeguards for the minority rights and allows Muslims to maintain their separate identity³² which according to them is the biggest hurdle in making India a strong nation and that is possible only with the idea of a Hindu nation-state³³.

The Role of Instrumentality of State and Secularism: Ongoing Trends in India

The above discussed constitutional scheme revolving around secularism in India depicts how India as a state has chosen to stay away from the contours of a specific religion. However, the present social and political atmosphere of the country does not seem to comply with this constitutionally laid scheme.

Purposely, it becomes inevitable and pertinent to discuss all those instances which evidently resist the very principles on which the edifice of Indian secularism has been founded. What is more problematic is the existence of justifiable nexus between the standpoint of the state and non-state actors and the events taking place. Such events and active participation of state not only go against the very fabric of democratic republic but also pose grave concerns to the idea of constitutional morality which essentially represents the very intent of constitution.

Such an exercise also puts a question mark on the very idea of human rights that also includes the right to follow one's religion. Therefore, it would be of significant relevance to have a logical analysis of the chain of events that are taking place in the state.

(i) The saffronization and Hindutva Agenda

As the topic itself suggests about the idea of current trends of state and secularism,

²⁹ Donald Eugene Smith, *India As A Secular State*, Princeton University Press, Princeton, 1963, p. 159.

³⁰ Faizan Mustafa & Jagtshwar Singh Sohi, 'Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy', *BYU Law Review*, 2018 available at <https://digitalcommons.law.byu.edu/lawreview/vol2017/iss4/9>, accessed on 6 January 2019.

³¹ Prashant Amrutkar, 'Indian Secularism: Is it a way out to Communalism?', vol. 72 (1), *The Indian Journal of Political Science* p. 173, 2011, p.175.

³² Badrinath (n 25), p. 76.

³³ *Ibid.*

it is noteworthy to understand how the political parties such as Bhartiya Janta Party (BJP) from its very inception in 1980 and Shiv Sena along with other organizations including Rashtriya Swayamsevak Sangh (RSS) and Vishwa Hindu Parishad (VHP)³⁴ have been furthering the idea of *Hindutva*³⁵. What their idea of *Hindutva* refers to is the establishment of supremacy of Hinduism and Hindu nation in the context of the entire political, cultural and religious arena³⁶. BJP has called the idea of secularism as a supporter of Muslims and it is for this reason that the Hindu society is over-burdened with an anti-Hindu State³⁷.

As an ideology, *Hindutva* always identifies India as a Hindu Nation in which Islam religion and Muslims are considered not more than aliens who have worked as a detriment against “Hinduness”³⁸. However, *in recent times*, especially from 2014 when BJP came back to power, the incidents of attacking and subverting the other religious minorities have increased either in the name of cow vigilantism³⁹ or love-jihad⁴⁰ or even making of a temple⁴¹, etc. In a very latest phenomenon, the government has proceeded with building a religious statue too⁴². The interesting fact is that the basic values of secularism are being tricked in the most evident manner. The governmental machineries are at their best to get the uncountable votes by playing the cards of religion, belief and faith of the people. It can be witnessed that the state is using its instruments for making an unprecedented benefit out of the shade of saffronization⁴³—be it in the matter of vote politics or the curbing of people’s religious and political reservation.

(ii) Rising Islamophobia in India

The events ranging from partition, Babri Masjid demolition, *amongst others*, and Gujarat riots 2002 have well cemented⁴⁴ the already laid down foundation of islamophobia in

³⁴ These organizations are considered main organizations in context of Hindu Communalism. See, Bipan Chandra, *Communalism In Modern India*, Vani Educational Books, Delhi, 1984, p. 1.

³⁵ Manini Chatterjee, *BJP's Rightwing Communalism: The Political Face of Hindutva*, National Book Centre, New Delhi, 1996, p. 2.

³⁶ Cossman (n 23), p. 116.

³⁷ Rajeev Bhargava, ‘Giving Secularism its Due’, vol.29, *Economic and Political Weekly*, 1994, p. 61.

³⁸ Prashant Waikar, ‘Reading Islamophobia In Hindutva: An Analysis of Narendra Modi’s Political Discourse’, vol. 4(2), *Islamophobia Studies Journal*, 2018.

³⁹ Rana Ayyub, ‘Mobs are killing Muslims in India. Why is no one stopping them?’, *The Guardian* (July 2018) available at <https://www.theguardian.com/commentisfree/2018/jul/20/mobs-killing-muslims-india-narendra-modi-bjp>, accessed on 7 January 2019.

⁴⁰ Hindi Extremists consider it as a strategy deployed by Muslim man to boost their population in India. See, Mohan Rao, ‘Love Jihad and demographic fears’, vol. 18 (3), *Indian Journal of Gender Studies*, 2011, p. 425.

⁴¹ Omar Rashid, ‘U.P. manifesto: BJP promises Ram temple, 1 GB free data’, *The Hindu* (January 2017) available at <https://www.thehindu.com/elections/uttar-pradesh-2017/U.P.-manifesto-BJP-promises-Ram-temple-1-GB-free-data/article17108508.ece>, accessed on 7 January 2019.

⁴² Maulshree Seth, ‘Yogi Adityanath clears 221-meter tall Ram statue in Ayodhya’, *Indian Express* (November 2018) available at <https://indianexpress.com/article/india/yogi-adityanath-ram-statue-ayodhya-dharma-sabha-5463026/>, accessed on 7 January 2019.

⁴³ Manjari Katju, ‘Not a sprinkle, but a spread of saffron’, *The Hindu* (May 2015) available at <https://www.thehindu.com/todays-paper/tp-opinion/not-a-sprinkle-but-a-spread-of-saffron/article7245608.ece>, accessed on 7 January 2019.

⁴⁴ ‘Muslims – India’, 2018, *Minority Rights Group International*, available at <http://minorityrights.org/minorities/muslims-2/>, accessed on 7 January 2019.

India⁴⁵. In its continuing journey, it manifests itself in many ways—from the very idea of *ghar vapas*⁴⁶, *Hindu Rashtra* (Hindu Nation), *Hindutva* to the evils of love-jihad and saffronization⁴⁷. The present political power has been instrumental in the rise of Hindu Nationalism in India that ultimately has led to the hostile environment against Muslims in India⁴⁸. The problem has become so grave that the religious identity, *an intrinsic human right*, has now become a cause of victimization. If examined in present context in India, even the ongoing Coronavirus pandemic has been given a touch of religious intolerance wherein Muslim people are being targeted on the pretext of spreading the disease⁴⁹. Giving the pandemic an islamophobic touch, Muslim people were alleged to have spread “Corona Terrorism”, which has certainly turned the situation and presented it as Corona Jihad⁵⁰. The situation has become so bad that, *due to corona scare*, the Muslim students in Indore have been asked to sit outside class for their board examinations⁵¹.

(iii) Increasing incidents of hate crimes in India

The hate crimes are those crimes that are committed out of motivation by the *victim's race, color, ethnicity, religion, or national origin*⁵². Wolff and Copeland consider it as violence against those who are discriminated by the majority of the people in society⁵³. Though, the idea of hate crimes is not new to the Indian soil⁵⁴; however, *since 2014*, there has been a tremendous shift in the commission of hate crimes. Between 2015 to 2019, Amnesty International's special initiative Halt the Hate has reported 902 incidents of

⁴⁵ Paula Thompson, Rhonda Itouai & Dr. Hatem Bazian, *Islamophobia in India Stoking Bigotry*, Islamophobia Research & Documentation Project at UC Berkeley, Berkeley, 2019, p. 18.

⁴⁶ It refers that all people should return back to Hindu religion. See, Charu Gupta, ‘Allegories of ‘love jihad’ and ghar wapsi: interlocking the socio-religious with the political’, in Mujibur Rehman (ed), *Rise of Saffron Power (Reflections on Indian Politics)*, Routledge, India, 2018, pp. 104-130.

⁴⁷ Minority Rights Group (n 44). See, ‘World Report 2018: Rights Trends in India’, 2018, *Human Rights Watch* available at <https://www.hrw.org/world-report/2018/country-chapters/india>, accessed on 7 January 2019.

⁴⁸ Gupta (n 46).

⁴⁹ Vishal Yashoda, ‘The coronavirus pandemic intensifies Islamophobia in India’, 5 May 2020, *Global Voices* available at <https://globalvoices.org/2020/05/05/the-coronavirus-pandemic-intensifies-islamophobia-in-india/>, accessed on 8 February 2019.

⁵⁰ Jayshree Bajoria, ‘CoronaJihad is Only the Latest Manifestation: Islamophobia in India has Been Years in the Making’, 1 May 2020, *Human Rights Watch* available at <https://www.hrw.org/news/2020/05/01/coronajihad-only-latest-manifestation-islamophobia-india-has-been-years-making>, accessed on 8 February 2019.

⁵¹ Zarafshan Shiraz, ‘Islamophobia: Bengali School in Indore Forces Muslim Students to Write Class 12 Board Exam Outside Hall Due to COVID-19 Scare’, June 2020, *India.com* available at <https://www.india.com/viral/islamophobia-bengali-school-in-indore-forces-muslim-students-to-write-class-12-board-exam-outside-hall-due-to-covid-19-scare-4055939/>, accessed on 12 February 2019.

⁵² Black's (n 11), p. 428. This definition is merely illustrative. When examined in Indian Context, one's caste, profession and sexual orientation have also to be considered. Therefore, it is pertinent to note that the characteristics from which the perpetrator takes motivation can change from one jurisdiction to another. See, D Brax, ‘Motives, reasons and responsibility in hate/bias crime legislation’, vol. 35 (3), *Criminal Justice Ethics* p. 230, 2016, p. 233.

⁵³ L. Wolff & L. Copeland, ‘Violence against women as bias-motivated hate crime: defining the issues in the USA’, in M Davies (ed), *Women and Violence*, Zed Books, London, 1994, p. 201.

⁵⁴ M. Mohsin Alam Bhat, ‘The Case for Collecting Hate Crimes Data in India’, vol. IV (9), *Law & Policy Brief*, 2018 available at http://www.jgls.edu.in/wp-content/uploads/2019/03/9th_issue_law_and_policy_brief_sep_2018.pdf, accessed on 12 February 2019.

hate crimes in India⁵⁵, out of which a total of 196 were committed against Muslims on the basis of their identity⁵⁶. A significant number of Muslim people were mob-lynched⁵⁷ in the name of cow-vigilantism [*by the self-proclaimed gau-rakshaks (protector of cows)*], love-jihad⁵⁸ and their profession⁵⁹. In India, such incidents have now become a phenomenon of daily life-routine wherein the people belonging to other religions (*particularly Muslims*) are being forced to chant *Jai Shri Ram (Glory to Lord Rama)*; the denial to which may even result into their death⁶⁰. What is more disheartening is that even after the Supreme Court in *Tehseen S. Poonawalla v. Union of India & Ors*⁶¹ passed extensive guidelines against mob culture in India, there is no proper implementation of the order and, instead, the cases are increasing by the day.

(iv) Recent legislative actions of the state

To name a few incidents of legislative actions, Indian state has recently amended, by way of Unlawful Activities (Prevention) Amendment Act, 2019⁶², the Unlawful Activities (Prevention) Act, 1967 that has violated international law and made the life of religious minorities (Muslims and Sikhs) more vulnerable⁶³. Moreover, it has brought internationally criticized Citizenship Amendment Act, 2019⁶⁴ which has amended the Citizenship Act of 1955; the Act has only left out the Muslim population from its purview, that offers citizenship to the persecuted people from a number of neighboring countries⁶⁵. The Act explicitly violates the very fabric of secularism and equality of

⁵⁵ 'Halt the Hate', 2019, *Amnesty International India*, available at <https://amnesty.org.in/wp-content/uploads/2019/10/Halt-The-Hate-KeyFindings-Amnesty-International-India-1.pdf>, accessed on 12 February 2019.

⁵⁶ *Ibid.*

⁵⁷ Katie Harris, 'India news: Rising religious hate crime reports put India in crisis', November 2018, *Sunday Express*, available at <https://www.express.co.uk/news/world/1039920/india-news-religious-hate-crime-rising>, accessed on 12 February 2019.

⁵⁸ 'BJP alleges film 'Kedarnath' promoting 'love jihad', demands ban', November 2018, *Indian Express*, available at <https://indianexpress.com/article/india/bjp-alleges-film-kedarnath-promoting-love-jihad-demands-ban-5440550/>, accessed on 12 February 2019.

⁵⁹ Amnesty (n 55).

⁶⁰ Shyam Sunder Sushovit, 'Bihar youth thrashed for refusing to chant 'Jai Shri Ram', FIR registered against 7', June 2020, *Times Now News*, available at <https://www.timesnownews.com/india/article/bihar-youth-thrashed-for-refusing-to-chant-jai-shri-ram-fir-registered-against/602233>, accessed on 12 June 2020. See, USCIRF Statement on Mob Lynching of Muslim Man in India, June 2019, *USCIRF*, available at <https://www.uscirf.gov/news-room/press-releases-statements/uscirf-statement-mob-lynching-muslim-man-in-india>, accessed on 12 February 2019.

⁶¹ WN. 754, 2073 (2016).

⁶² The Unlawful Activities (Prevention) Amendment Act', 2019, *The Gazette of India*, available at <http://egazette.nic.in/WriteReadData/2019/210355.pdf>, accessed on 13 February 2019.

⁶³ Aakar Patel, 'UAPA (Amendment) Bill 2019 violates the very international laws it quotes, defines principles of natural justice', August 2019, *Firstpost*, available at <https://www.firstpost.com/india/uapa-amendment-bill-2019-violates-the-very-international-laws-it-quotes-defies-principles-of-natural-justice-7104391.html>, accessed on 13 February 2019.

⁶⁴ 'The Citizenship (Amendment) Act, 2019', 2019, *The Gazette of India*, available at <http://egazette.nic.in/WriteReadData/2019/214646.pdf>, accessed on 13 February 2019.

⁶⁵ 'India: Citizenship Bill Discriminates Against Muslims', December 2019, *Human Rights Watch*, available at <https://www.hrw.org/news/2019/12/11/india-citizenship-bill-discriminates-against-muslims>, accessed on 13 February 2019.

Indian constitution and can rightly be termed as an anti-Muslim law⁶⁶.

(v) Renaming of the Indian cities

The government, *for the last few years*, has dramatically renamed many of the major cities and districts in India⁶⁷; the latest being the renaming of Allahabad as *Prayagraj*⁶⁸. *Prima facie*, it may look as a no big deal for the government of a state to rename a city but rationality requires a deep analytical appreciation⁶⁹. Allahabad refers to a Muslim name whereas Prayagraj is a Hindu name. Moreover, the chief minister of the state of Uttar Pradesh also discharges the duties as *mahant* of the Gorakhnath temple⁷⁰. Undoubtedly, it is unfortunate to see how the secular constitutional posts are being exploited to such an extent wherein the executive steps are being influenced by personal beliefs and commitments⁷¹. The general questions may be posed behind the manner of exercise of constitutional powers of the state and to answer such queries, the linkages of the political association with the other prevalent structures (*herein RSS*) must be examined⁷². Such participation of the political entities with the non-secular structures is undoubtedly a threat to the basic structure of the secularism within the confines of the COI.

Crumbling Walls of Constitutional Secularism in India: State and Constitutional Morality

As the researcher already discussed in this article how the basic idea of secularism as developed by the constitution makers conveys the respect of all religions by the state and non-indulgence into a particular religion on its own. However, the present societal developments (ignoring the very essence of secular India) as discussed in this article question the very foundation of secularism in India. The ongoing approach of the instrumentality of state does not seem to conform with what has been obligated upon it—that is to equally tolerate all the religions and not to discriminate on any ground

⁶⁶ Bilal Kuchay, 'What you should know about India's 'anti-Muslim' citizenship law', December 2019, *Al Jazeera*, available at <https://www.aljazeera.com/news/2019/12/india-anti-muslim-citizenship-bill-191209095557419.html>, accessed on 13 February 2019.

⁶⁷ 'Over the Last Year, the Centre Approved 25 Renaming Proposals', November 2018, *The Wire*, available at <https://thewire.in/government/over-one-year-the-centre-approved-25-renaming-proposals>, accessed on 13 February 2019.

⁶⁸ 'Yogi Adityanathgovt officially renames Allahabad to Prayagraj', October 2018, *Economics Times*, available at <https://economictimes.indiatimes.com/news/politics-and-nation/yogi-adityanath-govt-officially-renames-allahabad-to-prayagraj/videoshow/66238996.cms>, accessed on 13 February 2019.

⁶⁹ Omar Rashid, 'Prayagraj divides Allahabad', October 2018, *The Hindu*, available at <https://www.thehindu.com/news/national/other-states/prayagraj-divides-allahabad/article25274402.ece>, accessed on 14 February 2019.

⁷⁰ LalmaniVerma, 'Yogi Adityanath's double role: Chief Minister and Mahant', September 2017, *Indian Express*, available at <https://indianexpress.com/article/india/yogi-adityanath-double-role-chief-minister-mahant-navarati-priest-puja-4867508/>, accessed on 14 February 2019.

⁷¹ 'Allahabad to Prayagraj: Renaming 'Islamic-sounding' places not new for Yogi Adityanath', October 2018, *New Indian Express*, available at <http://www.newindianexpress.com/nation/2018/oct/17/allahabad-to-prayagraj-renaming-islamic-sounding-places-not-new-for-yogi-adityanath-1886483.html>, accessed on 14 February 2019.

⁷² Samshul Islam, 'RSS is not just antithetical to Muslims, but to a democratic-secular India as well', June 2016, *Indian Express*, available at <https://indianexpress.com/article/blogs/rss-is-not-just-antithetical-to-muslims-but-to-a-democratic-secular-india-as-well-2845298/>, accessed on 14 February 2019.

whatsoever⁷³.

The ongoing destruction in the form of *Hindutva* agenda, *Saffronization*, *Islamophobia*, *Hate crimes*, and *arbitrary use of legislative powers* has manifested before us a series of questions—ranging from the reluctance of the state to take action against such adversaries to its duty to protect the idea of Constitutional morality that emerges from the very cornerstones (*equality, justice and freedom*) of the Constitution.

On the question of reluctance of state to counter such adversaries against secularism, it must be taken into consideration that the state has been obligated to consider all the citizens equal and as the citizens in civil society are indulged in pluralistic approach of things, the state must not concern itself with a particular religion⁷⁴. It must additionally be noticed that in India, the current political regime is greatly influenced by the RSS, its fusion with a particular religion (herein Hindu) has the capacity to influence its approach towards other religious minorities (herein Muslims) who because of such fusion become second class citizens⁷⁵. Looking at the circumstances prevailing in India⁷⁶, such an assertion seems absolutely feasible.

Moreover, such hostile environment also requires the problematization of the concept of Constitutional morality. The idea of Constitutional morality as suggested by George Grote is ‘a paramount reverence for all forms of the constitution and acting within its forms’⁷⁷. The Indian Supreme Court has also emphasized the concept in various judgments to overthrow the arbitrary existence of majoritarianism⁷⁸.

The Supreme Court, first time, in *Manoj Narula v. Union of India*⁷⁹ observed that:

‘The principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflectible of action in an arbitrary manner. Commitment to the Constitution is a facet of constitutional morality’.

Also in *Government of NCT of Delhi v. Union of India and others*⁸⁰, it observed that ‘Constitutional morality in its strictest sense of the term implies strict and complete adherence to the constitutional principles as enshrined in various segments of the document’.

⁷³ Tahir (n 28).

⁷⁴ Jocelyn Maclure & Charles Taylor, *The Principles of Secularism in Secularism and Freedom of Conscience*, Harvard University Press, Cambridge, 2011, pp. 20-21.

⁷⁵ Ibid.

⁷⁶ Refer to Section III of this paper.

⁷⁷ George Grote, *A History of Greece*, Routledge, London, 2000, p. 93.

⁷⁸ Such as in *Navtej Singh Johar v. Union of India* or in the Indian Young Lawyers Association case (*Sabrimala Temple case*).

⁷⁹ *Manoj Narula v. Union of India*, SCC, 2014, SC p. 1.

⁸⁰ SCALE, 2018, p. 72.

Recently, the Supreme Court in *Navej Singh Johar v. Union of India*⁸¹ observed that the Court must always be ‘guided by the conception of constitutional morality and not by the societal morality’⁸². Chandrachud J., *more specifically*, differentiated between Constitutional and Public morality and observed that in the matter of public morality, ‘the conduct of society is determined by popular perceptions existent in society’, whereas the Constitutional morality ‘requires that the rights of an individual ought not to be prejudiced by popular notions of society’⁸³.

With respect to religious freedom, the Court in *Indian Young Lawyers Association v. State of Kerala*⁸⁴ observed that:

The term “morality” occurring in Article 25(1) of the Constitution cannot be viewed with a narrow lens so as to confine the sphere of definition of morality to what an individual, a section or religious sect may perceive the term to mean. We must remember that when there is a violation of the fundamental rights, the term “morality” naturally implies constitutional morality and any view that is ultimately taken by the Constitutional Courts must be in conformity with the principles and basic tenets of the concept of this constitutional morality that gets support from the Constitution.⁸⁵

What this discourse on Constitutional morality shows is the establishment of the fact that the state and everyone in civil society is under an obligation to adhere to the principles of the Constitutional morality that ultimately emanate from the very contours of the Constitution. Therefore, it can be seen as to how, *amidst such tyrannical environment for realizing the religious rights*, Indian state has failed in carrying out the very objective of the Constitutional morality that certainly leads to the destruction of basic principles of the Constitution.

Consequently, some of the societal structures such as RSS and VHP even equate secularism with the term such as ‘*pseudo-secularism*’⁸⁶. Such hostility not only troubles the very norm of secularism but also violates constitutionally protected notions of justice, equality, liberty, freedom⁸⁷ and dignity. India is witnessing the greatest crisis of secularism at this time⁸⁸. Therefore the constitutional scheme with respect to secularism in India not only appears to have been reduced as a theoretical notion on paper, but rather alarmingly looks to be crumbling.

⁸¹ *Anr. v. Union of India and Ors.*, SCC, 2018, SC, p. 1.

⁸² *Ibid*, para 131.

⁸³ *Ibid*, para 598.

⁸⁴ *Indian Young Lawyers Assn. v. State of Kerala*, SCC, 2018, SC, p. 1690.

⁸⁵ *Ibid*, para 106.

⁸⁶ An idea wherein the minority is said to be pleased.

⁸⁷ Such as freedom of speech and expression.

⁸⁸ Neera Chandhoke, ‘Why Secularism is in Crisis Today’, August 2018, *The Wire*, available at <https://thewire.in/religion/secularism-india-democracy-pluralism>, accessed on 14 February 2019.

Critical Appraisal

Though Indian Constitution has not opted for the strict separation of state from religion, it has also not agreed to give preferential treatment to any specific religion. The idea behind adopting such an approach was to equally protect and further strengthen the basic values of all religions. As Bhargava rightly says that though the Indian Constitution has allowed the state to intervene in matters of religion, it has at the same time laid down certain measures (such as of equal treatment, freedom and non-discrimination) which strengthens the democratic nature and does not negate the authenticity of secularism⁸⁹. Therefore, the state has to always cherish the values of democracy and egalitarianism that are very fundamental to the principle of secularism.

On the part of the state, there is an urgent need to revisit the idea of secularism as enshrined within the organic text of Indian Constitution. The current scenario even challenges the very existence of the state as an institution as it does not seem to be working within the parameters of the COI. What is required is the renunciation of personal biases or beliefs and to follow what the morality of Constitution says.

As, *in the present time*, the tyranny of the state is evident in the whole analysis wherein the minorities are being suppressed in the name of religion and personal beliefs; it not only tramples upon the individuals' rights but also collectively on the very spirit of the preamble, fundamental rights, and the Constitutional morality of the COI. Therefore, what is also necessary is the other institutions such as the judiciary to take proper measures or provide certain guidelines to curb the arbitrary exercise of power and also lay down the limitations within which the state has to function as far as the matters related to religion are concerned.

It can, *therefore*, be well concluded that the present condition of the constitutional secularism in India is underperforming on the scale of measurement (*certainly as per constitutional norms*) wherein the state has failed to keep the idea of secularism intact. It is, *at the same time*, also high time for us as citizens that we must revisit our right to question the state in a democratic set-up so that the state does not forget its accountability.

⁸⁹ Shabnum (n 26), p. 254.