

Asymmetric, Pluralistic or Distinctive? Secularism in India and Malaysia within Comparative Perspective*

Asimetrik, Çoğulcu veya Farklı mı? Karşılaştırmalı Perspektifle Hindistan ve Malezya'da Laiklik

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Öz

Bu makale, Hindistan ve Malezya'da laikliğin karmaşık ve nüanslı doğasını ele alarak, sabit ve evrensel bir tanımın sorgulanmasını amaçlamaktadır. Makale, söz konusu ülkelerin, çeşitli dini görünümüne rağmen, laik yönetimlere farklı yaklaşımlar benimsediğini inceler. Hindistan'da laiklik, dini meselelerde tarafsızlık ilkesi olarak görülmekte olup, Anayasa'nın dini özgürlük ve eşitlik için getirdiği hükümlerde yansıtılmaktadır. Bununla birlikte, makale, Hindistan'daki laikliğin içerdiği zorluklar ve çelişkileri Shah Bano davası örneğiyle ele almakta dini medeni hukuk ile laik prensipler arasındaki gerilimleri ortaya koymaktadır. Öte yandan, Malezya'nın laikliğe yaklaşımı belirgin bir şekilde farklıdır, İslam'ın üstün din ilan edilmesi ve devlet yasaları ile kurumların etkilemesiyle belirgindir. Buna rağmen Malezya'nın anayasası laiktir ve makale, Malezya'nın İslami ve laik yönetim arasında nasıl gezindiğini, hukuki yorumlar ve çift hukuk sistemiyle göstermektedir. Genel olarak, makale, laikliğin yeniden değerlendirilmesini savunmakta, küresel olarak çeşitli laik uygulamaları dikkate alan ve bunları dini özgürlük, eşitlik ve hoşgörü prensipleri temelinde değerlendiren bir çerçeve önermektedir.

Anahtar Kelimeler: laiklik, Hindistan, Malezya, devlet, din

Abstract

This article explores the nuanced and complex nature of secularism in India and Malaysia, challenging the notion of a fixed, universal definition. It examines how these countries, despite their diverse religious landscapes, have adopted distinct approaches to secular governance. In India, secularism is seen as a principle of impartiality in religious matters, reflected in the Constitution's provisions for religious freedom and equality. However, the article also delves into the challenges and contradictions within Indian secularism, such as the Shah Bano case, which revealed tensions between religious personal laws and secular principles. On the other hand, Malaysia's approach to secularism is markedly different, with Islam being declared the supreme religion and influencing state laws and institutions. Despite this, Malaysia's constitution is secular, and the article discusses how the country navigates between Islamic and secular governance, as seen in legal interpretations and the dual legal system. Overall, the article argues for a reevaluation of secularism, proposing a framework that considers the diversity of secular practices globally and evaluates them based on principles of religious freedom, equality, and tolerance.

Keywords: secularism, India, Malaysia, state, religion

1. INTRODUCTION

Secularism is a contentious concept with various meanings attributed over time, from the decline of religion in the public sphere of the developed world via modernization to religious privatization. In its simplest form, secularism is a political doctrine that emerged in the Western context, claiming the separation of the state from religious

institutions. However, this fixed definition has failed to explain developments at the dawn of the 21st century. The modernization theory, which dominated the explanation of secularism during the 1950s and 1960s, has given way to alternative theories, recognizing that modern societies are not directly becoming secular, and religion is not declining in the public space as expected. On the contrary, religion has started to play a significant role in public life², leading to

* In this article, the principles of scientific research and publication ethics were followed. / Bu makalede bilimsel araştırma ve yayın etiği ilkelerine uyulmuştur.

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Geliş Tarihi/Received : 14.03.2024

Kabul Tarihi/Accepted : 24.04.2024

Çevrimiçi Yayın/Published : 26.04.2024

Makale Atf Önerisi /Citation (APA) :

Yıldız, T. (2024). Asymmetric, Pluralistic or Distinctive? Secularism in India and Malaysia within Comparative Perspective. *İzmir Sosyal Bilimler Dergisi*, 6(1), 11-20. DOI: 10.47899/ijss.1452785

² One remarkable study on the role of religion in the public sphere of modern societies is Jose Casanova's book titled "Public Religions in the Modern World" in which Casanova surveys cases two religious traditions (Catholicism and Protestantism) in four countries. Casanova, J. (1994). *Public Religions in the Modern World*. University of Chicago Press.

alternative views emerging to explain the religion-secular divide in the post-secular age³.

Most cases worldwide indicate that the definition and understanding of secularism are shaped by different social and cultural contexts and change over time. There is no single homogeneous Western understanding of secularism either. For instance, secularism in France (laïcité) differs from that in the UK, US, or any other Western country. Attempting to unify these different versions of secularism in the Western world under a single umbrella leads to the first theoretical problem in the field of secularism studies. Additionally, defining secularism as the separation of church from the state points to the second theoretical problem, as there is no single church either, but rather different religious groups, communities, and sects treated differently by the state. In summary, the heterogeneity of secular interpretations, even across the West, and temporal changes in secular understanding led to the conclusion that socio-political concepts retain their meanings and significance depending on the social context and geographic/local realities.

The specific socio-cultural histories of societies and their experiences through modernization, globalization, and colonization have revealed different versions of secularism. Indeed, the structure of secularism, based on guiding normative principles such as liberty, toleration, and neutrality, is open to change depending on different national political contexts. Acknowledging the concept of “multiple secularisms”⁴ suggested by Alfred Stepan, this article argues that different patterns of secularism are shaped by both domestic and global dynamics. Variations in state-religion-society relations over space and time, as well as global interactions between and within states, forge different patterns of secularism. Recognizing the existence of multiple secularisms in the contemporary world, this article aims to analyze and offer a critical comparison of two different interpretations of secularism in a non-Western world: the Malaysian version of asymmetric (*hybrid* in some sense) secularism and the Indian version of pluralistic secularism. A further aim is to demonstrate how the specific historical and cultural roots, as well as their global interactions, have led these countries to choose different ways of handling the challenges of religiously pluralistic societies. These (non-Western) country cases are chosen for several reasons.

³ Jürgen Habermas proposed first the term of “post-secular age” to refer the times in which modernity is perceived as falling morally so there is a need for mutual tolerance between religious and secularist people to coexist peacefully. See for example: Habermas, J. (2008). Notes on Post-Secular Society. *New Perspectives Quarterly*, 25, 17-29.

⁴ Alfred Stepan classifies the different patterns of secularism into four groups: (1) the separatist pattern found in the USA and France, (2) the established

First and foremost, both countries have polarizing ethnic and religious divides within their populations that seek political and economic resources. Second, both countries have a British colonial past that introduced parliamentary democracy and led them to envision their future in a similar way after independence. Third, both countries have a majority group with one religion and a minority divided into different religious groups, but with the strength to challenge the majority. Despite these similarities, each country has chosen a different way of dealing with tensions between the majority and minority, as well as a different path in the politics of religion. By focusing on the contrasts as well as commonalities between these cases, this article offers multiple lenses that challenge the singular picture of secularism originating in the West.

2. DEFINING SECULARISM IN NON-WESTERN WORLD

The starting point of contention is these simple questions: What is secularism? How do we define it? Are there any criteria that we can use to evaluate whether one state has secularism or not in its way of governance? Despite the sizeable body of literature, there is no single simple answer regarded as *de facto* to identify secularism, as even today the lively, intense debates around the politics of religion and secularism make clear. Different varieties of secular understanding across time and space indicate the incapability of a neutral, universal, and monolithic definition of secularism.

Until very recently, the standard secularization thesis, which assumes secularism as a mere negation of religion, had been prevailing in the literature. According to this thesis, modernity, characterized as the progressive decline of religion in the public sphere and its transfer to the private sphere, is assumed to bring secularism as a neutral category (Rectenwald et al., 2015). However, global developments within the past two to three decades indicating the “resurgence of religion in international affairs”⁵ have shaken the rigid base of the standard secularization thesis. As a result of secularization thesis losing its paradigmatic status within the social sciences, sociological debates on secularism have undergone change in a way that has necessitated revisions and even has given rise to new approaches. Peter Berger (1999), once a prominent secularization theorist, has radically changed his views on secularization to the point where modernization does not lead inevitably to religion's loss of relevance, but rather to

religion in Sweden, Denmark and Norway, (3) “positive accommodation” found in the Netherlands, Belgium, Switzerland and Germany and (4) the “positive cooperation, principled distance” model in India, Senegal and Indonesia.

⁵ For some scholars, religious resurgence is not simply the rise of religion but the rise of challenges to dominant forms of secularism. See, for example, Hurd, E. S. (2007). *Theorizing Religious Resurgence*. *International Politics*, 44, 647-665.

pluralism (Berger, 2008). In his book "The Many Altars of Modernity", he suggests the new paradigm of double plurality that refers to the co-existence of different beliefs, values, and religious traditions on one side, and the coexistence of religious and secular on another side (Berger, 2014). Similarly, Jürgen Habermas has put forward a new thesis called the "postsecularism thesis", in which he emphasizes the persistent role of religion in politics as well as public life (Bhargava, 2008).

Consequently, secularism, accepted as the basis of a modern nation-state until very recently, is now regarded as a political, social, and cultural formation (Bhargava, 2008). In other words, multiple formations of secularism, rather than a single model of secularism as idealized in the European experience, are acknowledged by many scholars. Accordingly, the number of empirical works on the distinctive traditions of secularism in various countries has increased. These works distinguish secularisms in terms of the institutionalized relationship between religion and politics (Wohlrab-Sahr and Burchardt, 2012). The common point emphasized is that secularist traditions are context contingent, which suggests their meaning is shaped in connection with and in distinction from others. This implies that secularism is constructed not only within a single national state boundary but also between states through power relations such as nationalist projects, state-society relations, colonial or post-colonial interactions, etc. Cady and Hurd (2010), for example, refer to French laïcité by arguing that it developed not only from the Enlightenment critique of religion and Christian reform but also from global relationships, including colonial and postcolonial relations with religious minorities both in France and abroad. Similarly, Talal Asad (2003) sees secularism as a social construct that emerged primarily within Latin Christendom. He suggests that the evolution of Western secularism is closely tied to Western engagement and influence in regions such as the Middle East. During the process of colonization, the West came into contact with various belief systems and cultural practices, which were often categorized as "religions." To manage the colonies, the West tried to understand these diverse belief systems as conditioned upon Protestant Christianity. That led to the development of Western secularism. Thus, secularism emerges in an interactional relationship network in which, while on the one hand it relies upon religion, it also reproduces the definitions of religion in that context on another.

The aim of this article is to contribute to the literature of

"multiple secularisms" that has emerged recently by offering different patterns of secularism in these two cases. While doing this, it refrains from falling into the dichotomous grid that regards the social world as modern-western on one side and traditional-indigenous on the other. Related to this abstention, this article tries to show a picture of different variants of secularisms that fall into the religious-secular spectrum. This article has dual ends, in a sense. On the one side, it examines the presence of different secularisms in the non-Western world, which modernization and secularization theories remain incapable of explaining. On another side, it aims to answer the question of whether each case, i.e., Indian or Malaysian, is significantly distinctive or shares some components with another. This article argues that secularism is context-contingent, socially constructed, and an adaptable normative category. Based on the context and time, each country case indicates a different pattern of secularism. Yet, all these variants essentially have three principles that constitute the foundations of secularism: the religious freedom of individuals, equality in terms of religion, and religious toleration. Depending on the degree of such principles that one has, each takes a position on the religious-secular spectrum. By this way, while India takes a position nearer to the secularism end of the spectrum, Malaysia remains close to the religious side in the spectrum.

3. SECULARISM IN INDIA: PSEUDO- OR PLURALISTIC?

India, as one of the most populous countries in the world with diverse religions such as Hinduism, Islam, Sikhism, Jainism, Christianity, etc., holds a distinctive importance as a case study in matters of religion and politics.⁶ In fact, in India, religion is deeply embedded not only in politics but also in all aspects of social life. Consequently, the fact that religion determines the way social relations are conducted, with its norms and values, makes it difficult to provide unity and harmony in multicultural and multireligious India. Here, secularism comes into play in Indian politics to address the issue of harmony.

The implication of the Western concept of secularism⁷, which suggests the separation of church and state, in a non-Western country has been a topic of discussion in the literature. In the case of India, the politics of religion and secularism reveal themselves differently. Since its independence, India has proposed impartiality in religious matters as one of its guiding principles. Indeed, the Indian constitution, with its certain provisions, demonstrates the secular nature of independent India.⁸

⁶ It should be noted that there is a huge internal heterogeneity within Hindus and Muslims that make mobilization difficult in one sense.

⁷ The term "secularism" was used first by the British writer George Holyoake in

1846. See for further information: Holyoake, G. J. (1876). *The Principles of Secularism*. London: Austin & Co.

⁸ The provisions relating to "Right of Freedom of Religion" of Article 25-28 of the

Yet, the "wall of separation" between state and religion in India is somewhat blurry. While some articles in the Indian constitution imply strict separation as idealized in the Western world, some other provisions require the state to intervene in some religious matters, such as funding religious educational institutions and providing community-based rights for religious minorities.⁹ Moreover, there is an acceptance of distinctive religious laws for Hindus, Muslims, and Christians, which are regarded as part of Personal Law, governing marriage and divorce. In some non-personal matters, such as commercial matters, a General Civil Code prevails (Almeida, 2015).

Another interesting example that Rochelle Almeida focuses on is that there is no other example of religious freedom seen from the list of national holidays than that in India. Known as "Gazetted" holidays, public holidays in India include all important dates related not only to the country's history but also to the birth and death of the founders of individual religions. The ironic relationship between national (and religious in one sense) holidays and the nation's commitment to secularism indicates how Indian secularism is different from any other examples in the world. Regardless of the size of the religious population, all religious groups have the same recognition in terms of the representation of their special dates in Gazetted Holidays (Almeida, 2015).

This distinctive character of Indian secularism has paved the way for discussions over many years among not only politicians and citizens but also intellectuals and scholars. Debates on secularism mainly revolve around the nature of secularism in the Indian context, i.e., whether secularism is an appropriate normative value in India, whose roots can be found in Ancient Indian traditions, or if it is an imposed Western colonial value ill-adapted to Indian social and political realities. For some scholars, the

concept of secularism is irrelevant, not useful, and creates tremendous confusion because the initial constitution of India ratified in 1949 had no clause including the concept of "secularism".¹⁰ Yet, discussions in the Constituent Assembly on the nature of the Constitution indicate that India had already been accepted as a secular state by its drafters. For example, Jawaharlal Nehru, the first Prime Minister of India, had a strong commitment to secularism. He defined secularism in his speech at Oxford as the state giving equal protection to all religions while keeping equal distance from all religions. However, it took three decades to include the word "secularism" in the Constitution. The Indira Gandhi-led government included the word "secularism" in the Preamble with the 42nd amendment to the constitution enacted in 1976 without a certain definition given.¹¹ With this amendment, it is declared that the nature of the Indian republic is socialist and secular.¹² Yet, there is still a discussion going on whether the Preamble is a part of the constitution or not. Since then, secularism, with different meanings attributed by various groups, has been used as an instrument for power struggle. In other words, it has not been an easy task to handle successfully a multi-religious, multi-cultural, multi-caste society in practice than to make a country "secular" with only the inclusion of the word "secularism" through constitutional amendment.

The inclusion of the word "secularism" in the Indian constitution has had a two-way impact on politics. On one side, it has been an important step that increased the awareness of society about their respective positions. This could be seen from the rapid increase in the number of cases brought by women and minorities to the Court just after the inclusion. On the other side, the fact that there is no concept equivalent in Hindi and no precise definition in the Constitution has opened the room for different definitions. These differences in understanding of secularism have led to the use of secularism as a political propaganda tool. The lack of exact wording in lieu of

Constitution of India indicate that India is a secular state:

Article 25. Freedom of conscience and free profession, practice and propagation of religion,

Article 26. Freedom to manage religious affairs,

Article 27. Freedom as to payment of taxes for promotion of any particular religion,

Article 28. Freedom as to attendance at religious instruction or religious worship in certain education institutions.

⁹ The Constitution determines to sets of rights of minorities that can be put under "common domain" and "separate domain". 'Common domain' donates all rights that are applicable to all citizens of the country. On the other hand, 'separate domain' includes rights that are applicable to only minorities to protect their identity. For example, it is stated in the article 30 that all religious and linguistic minorities have a right to establish and administer educational institutions of their choice and they are not discriminated in the matter of receiving state aid. For detailed information, please see <https://legislative.gov.in/constitution-of-india/>

¹⁰ In fact, amid a debate in the Constituent Assembly on the nature of constitution, Prof. K. T. Shah declared his demand to include the word of

"secularism" in the article 1 describing the nature of Indian state. However, the members of assembly decided to drop the word "secular" in Preamble even though they agreed on secular nature of Indian state.

¹¹ Some authors evaluate the inclusion of the word "secularism" during Emergency period strategic tool because Prime Minister Indira Gandhi could easily pass the constitutional amendments with suppressed opposition and used this word in accordance with her political purposes. See for example: Roychowdhury (2017), Fatangare (2020), Blitz (2021) and Thakur (2023).

¹² In Preamble, it is stated that: "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: Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all;

Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;

In our Constituent Assembly this 26th day of November, 1949, do hereby adopt, enact and give to ourselves this constitution."

secularism in other languages apart from English—particularly in non-Western languages—is one of the biggest challenges that politicians, intellectuals, and elites in the non-Western world face in order to explain it to ordinary citizens. Misidentification of secularism in a country in which religion is an inseparable part of the culture has the possibility to cause reactions among society towards any government policy made in the name of constituting or protecting secularism. Such reactions have been seen in the political history of both India and Malaysia after independence.

As has happened in other parts of the world in recent years, India has witnessed the acceleration of religious revivalism, fundamentalism, and communalism too. The increasing numbers of violent acts and communal riots in parallel with these developments have made it visible that secularism in India is under threat.¹³ Competition for access to political and economic resources among different ethnic and religious groups has escalated communalism, which manifests itself in two different ways. On one hand, one of the prominent political parties of post-independence India, the Bharatiya Janata Party (BJP) (Indian People's Party in English), including mostly Hindu fundamentalists, created new concepts such as *Hindutva*¹⁴ to attract support and votes from lower castes. The BJP is highly critical of the secular policies of the Indian National Congress (Congress Party) and argues that the Congress Party has fabricated the concept of "secularism" for minority appeasement that can provide gains in elections. It increased its political attraction by using anti-Muslim sentiments after the erection of a Hindu temple in an area in Ayodhya considered sacred for Hindus and the occupation of the Babri Masjid (Mosque of Babur). Increased hatred among Hindus towards Muslims led to the demolition of Babri Masjid on 6 December 1992, which led to increased violence throughout the country.

In a similar vein, some others call Indian secularism "pseudo-secularism"¹⁵ to define government policies as for minority appeasement. In some matters, such as separate personal laws, Article 370¹⁶, the existence of Aligarh Muslim University, etc., Hindu fundamentalists have argued that secularism puts the majority in a disadvantaged position while overly favoring Muslims or other minorities. On the other hand, minority

communalism has gradually consolidated its power. In some cases, such as the Shah Bano judgment, Supreme Court judgment in the Sarla Mudgal case, the Government has met the demands of Islamic theocracy at the risk of damaging secularism.

3.1 Shah Bano Case: Indian Secularism on Shaky Ground

The Shah Bano case from the 1980s stands out as a significant and early example highlighting the complexities of Indian secularism and shedding light on the status of Muslim women in the country. Shah Bano, a 62-year-old Muslim mother of five, was divorced by her husband in 1978. She filed a petition in a local court seeking maintenance from her ex-husband under Section 125 of the Code of Criminal Procedure (CrPC) since she was unable to support herself. This section mandates that a man must provide maintenance to his wife during marriage and after divorce if she cannot support herself.

However, Shah Bano's husband, Mohammed Ahmad Khan, a wealthy and well-known advocate in Indore, Madhya Pradesh, objected to this demand citing Muslim Personal Law, which stipulates that a husband is only required to provide maintenance to his wife for the *iddat* period after divorce, not permanently. The All-India Muslim Personal Law Board supported Khan's argument, advocating for the application of Muslim Personal Law (Shariat) in matters of divorce, maintenance, and other family issues.

Amidst ongoing debates, the Supreme Court ruled in 1985 in favor of granting maintenance to Shah Bano under the CrPC, applicable to all Indian citizens irrespective of their religion. Chief Justice Y.V. Chandrachud justified the verdict by asserting, "This is the moral edict of the law, and morality cannot be equated with religion."¹⁷ However, this decision was later overturned due to significant pressure from Islamic orthodoxy.

The Indian National Congress, led by Rajiv Gandhi, which had a strong majority in the government, faced pressure from ministers and the Muslim Personal Law Board. Fearing electoral repercussions, the Congress government passed the Muslim Women (Protection on Divorce) Act in 1986. This Act gave Muslim women the right to maintenance for a period of 90 days or *the iddat*¹⁸ period after divorce. If the woman could not support herself, the magistrate had the

¹³ The 1980s and 1990s has witnessed many riots and violent acts such as in Meerut, in Bombay Bhiwandi, in Ahmedabad, in Surat, in Hyderabad, in Gujarat. Ayodhya dispute, the Ram Janmabhoom and the destruction of Babri Mosque on 6 December 1992 are some of the critical events that shape the political and social future of the state.

¹⁴ Hindutva meaning Hinduism is an ideology that supports Hindu nationalism.

¹⁵ Anthony Elenjittam was the first who used the term of "pseudo-secularism" in his book *Philosophy and Action of the R.S.S for the Hind Swaraj* (Laxmi

Publications, 1951).

¹⁶ Article 370 gives autonomous status to the state of Jammu and Kashmir. Along with this, Special Provision gives certain privileges to its citizens.

¹⁷ For the detailed information about Shah Bano case, please see: <http://cscs.res.in/dataarchive/textfiles/textfile.2008-07-22.2150472804/file>

¹⁸ *Iddat* period is the period a woman must observe after the death of her spouse or after a divorce during which she may not marry another man.

authority to direct the Wakf Board to provide necessary maintenance to her and her dependent children. Consequently, this Act nullified the Supreme Court's ruling in the Shah Bano case.

The Shah Bano case brought attention to several issues, including the need for gender equality, the existence of separate personal laws for different religious groups, state intervention in religious matters, and the importance of implementing a Uniform Civil Code, as provided for under Article 44 of the Constitution, for a secular nation.

3.2 Distinctive Indian secularism?

It is apparent that the distinctiveness of Indian secularism stems mostly from the different position of the state in respect to religion compared to an idealized Western secularism. Rather than strict separation of state and religion, the Indian state stands at an equal distance to all religions, personal faiths, and beliefs. Plenty of work has been written on the distinctive character of Indian secularism. Rajeev Bhargava, one of the prominent thinkers on the existence of distinctive Indian secularism, claims that Indian secularism – Modern Indian constitutional secularism (MICS) as he names it – is hybrid in a way that it is informed by Western precedents but also constitutes its own modern variant (Bhargava, 2010). While preserving the basic universal components of secularism such as equality, tolerance, etc., Indian secularism gives different weights to each component.

On the other hand, Madan (1997) argues that the notion of secularism emerged out of the dialectic of Protestant Christianity and the European Enlightenment. That's why he argues that secularism in a Western sense is totally alien to Hindu thought. Yet, he claims that Indian secularism is a distinctive one shaped by the religious and cultural roots of India's past and the political challenges of the present (Cady and Hurd, 2018:18). According to him, Indian secularism can be understood as "religious pluralism as a positive value combined with the affirmation of national unity within a democratic framework" (Madan, 2011:8).

According to Madan, Indian secularism differs from any other example in the West. Unlike the secularism in the United States that has a motive to keep the state and religion apart and the secularism in France and Turkey that aims to put religious expression outside the public sphere, Indian secularism is a "religio-secular ideology" based on the inherent values of Hindu traditions – religious pluralism and tolerance. On the other hand, Zoya Hasan

regards Indian secularism as a political project of the state to reform religion with an objective of national unity, justice, equality, and rights of minorities rather than a religio-political vision rooted in the religious history and culture of the Hindu tradition as Madan says. In a similar vein, Jacobson defines Indian secularism as "ameliorative secularism" since through certain provisions in the Constitution, it is aimed to reform Hinduism (Jacobson, 2003).

Rajeev Bhargava, with his efforts to explore the historical trajectories of Indian secularism, claims that there are some conceptual spaces in Indian history where secularist elements were formed and out of which secularism in the modern sense was developed. According to him, religious diversity in India since the 5th century BCE with different religious traditions such as Hinduism, Buddhism, Jainism, Islam, etc., paved the way for the development of secular ideals. For example, religious freedom and toleration as well as the idea of human equality can be found in the doctrines of Buddhism, Bhakti and Sufi movements, and Islam (Bhargava, 2010).

In sum, the founding fathers of India aimed to give a secular character to the new state through certain provisions in the constitution. Indeed, the main foundations of secularism such as equality, religious tolerance, and religious freedom have already been in Indian culture. Yet, the association of certain government policies with secularism has given a different meaning and character to it unlike one in the Western context. Hence, secularism has been used - in a positive or negative way - as a principle, normative ideal, or political discourse to serve certain political ends of the majority or even sometimes the minority.

4. POLITICS OF RELIGION IN MALAYSIA: ANOTHER WAY OF HANDLING CHALLENGES OF DIVERSITY

Malaysia, with its diverse religious and ethnic groups, provides another interesting example for the study of the politics of religion.¹⁹ The diversity in terms of religion, race, and ethnicity has brought about a totally different way of governance in Malaysia compared to India. Instead of standing at an equal distance to all religions as in the Indian case, the state of Malaysia regards Islam as the supreme religion and not on par with other religions. Similarly, the Malaysian state claims a monopoly on the reinterpretation of Islamic law and its incorporation into state law. In other words, Muslims, who constitute 60% of the population, are subject to some rules and regulations of Islamic jurisprudence (fiqh) that the Malaysian state has deemed appropriate for implementation. Along with this, Islam is

¹⁹ According to the year 2010 records, 61.3% of population is Muslim, 19.8% is Buddhist, 9.2% is Christian, 6.3% is Hindu, 3.5% is others. (For further

information, please see: https://www.indexmundi.com/malaysia/demographics_profile.html)

stated as the only official religion of the state in Article 3 of the Federal Constitution.²⁰ More importantly, and most emphasized in religious-secular debates, is that there is no provision including the word 'secular' in the Federal Constitution, unlike in the Indian or Turkish constitutions.

Nevertheless, when Malaysia gained independence in 1957, there was no provision in the constitution stating that the nation was an Islamic state. The crucial date was on September 29, 2001, when Prime Minister Mahathir Mohamad declared that Malaysia was an Islamic state (Rosdi and Shafie, 2016). Government officials then repeated this claim (Adil, 2017:121). However, there has been no attempt to amend the constitution to reflect Malaysia as an Islamic state. Discussions on whether Malaysia is an Islamic state or not revolve around two main issues. Some argue that the prescribed official religion as Islam in the constitution prevents the state from being secular in nature. Others claim that Malaysia was founded on secular principles, as can be seen from the discussions of drafters during the constitutional process in 1957.²¹

In addition, those claiming the presence of a secular nature in the Malaysian state point to Article 4 of the Federal Constitution, which suggests that the Federal Constitution is the supreme law of the federation. In fact, all these debates are shaped according to how one interprets secularism. As emphasized in the literature review part, the concept of secularism has been misunderstood by inhabitants of non-Western countries, especially Arabic-speaking Muslims, due to the lack of exact wording in Arabic that conveys the meaning of secularism. Another problem can arise from the misdirection of some scholars who argue that secularism and Islam are incompatible. Since secularism has been equated with atheism or non-religiosity, any policy or political discourse for the sake of secularism has been regarded as something bad, evil, and negative to the culture.

²⁰ Article 3.1 of the Federal Constitution says that "Islam is the religion of the Federation; but other religions may be practiced in peace and harmony in any part of the Federation." [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Constitution%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Constitution%20(BI%20text).pdf)

²¹ Reid Commission including members from the UK, Ireland, India, Pakistan and Australia was independent responsible commission to draft the constitution for independent Malaya. For the discussions in Reid Commission on the nature of the constitution, see Fernando, J. M. (2006). The Position of Islam in the Constitution of Malaysia. *Journal of Southeast Asia Studies*, 37(2), 249- 265.

²² In 1957, upon gaining independence, it was known as the Federation of Malaya. However, with the inclusion of the northern Borneo states of Sabah and Sarawak, along with Singapore in 1963, the official name was changed to the

4.1 Malaysian Hybrid Version: Quasi-theocratic? Quasi-secular?

When Malaya²² gained independence, it had two potential models from its British colonial past to follow: "Islamic Pakistan" on one hand and "secular India" on the other. In the early stage of drafting the constitution, drafters found secularism appropriate for governing religious diversity in Malaya. During the constitution debates, two important actors in the Reid Commission influenced the process: Justice Abdul Hamid of Pakistan and Justice Malik of India (Stilt, 2015). Justice Abdul Hamid insisted on including the Islamic establishment clause²³, citing examples of countries with such clauses, including "Christian countries" like Ireland, Norway, and Denmark, as well as countries like Afghanistan, Spain, Panama, and Paraguay (Stilt, 2018). In the final drafting stage, a clause stating that Islam is the religion of the federation was added to the constitution, with a statement that it shall not impose any restriction on non-Muslim citizens professing and practicing their own religions. It seemed that Justice Abdul Hamid of Pakistan was successful in pushing his views on constitutional Islam.

The question arises: Why would a country include such an establishment clause in its constitution despite the initial intent to create a secular constitution? According to Stilt (2018), accepting or rejecting establishment clauses depends not only on global dynamics but also on local ambitions and hopes. She argues that these clauses result from debates and power struggles among drafters on political, legal, economic, and cultural issues such as federalism, the location of power, national security, and anti-colonial sentiment. In the Malaysian case, the inclusion of the establishment clause could be based on both domestic concerns and global implications. Domestically, the United Malays National Organization (UMNO) supported the inclusion of the establishment clause not for religious purposes, but for special guarantees, privileges, and advantages for ethnic Malays, such as language and citizenship. This was driven by demographic anxieties about Malays becoming a minority against Chinese and Indians, whose numbers were expected to overwhelm Malays. Since Malays were constitutionally Muslim²⁴, any provision that

Federation of Malaysia.

²³Stilt (2018) in her article above uses the concept of "establishment clause" to refer the provision that Islam is the religion of the state. This article follows her conceptualization.

²⁴ Article 160 of the Constitution defines "Malay" as;

1. A person who professes the religion of Islam,
 2. Habitually speaks the Malay language,
 3. Conforms to Malay custom, and
 4. (a) was before Merdeka Day born in the Federation or in Singapore or born of parents one of whom was born in the Federation or in Singapore or is on that day domiciled in the Federation or in Singapore; or (b) is the issue of such a person.
- Therefore, the Malaysian Constitution legally binds together the status of Malay and Muslim.

put Muslims in a superior position in terms of citizenship, languages, and quotas for Parliament could directly benefit Malays. However, it should be noted that not all Malays are Muslim.

Another important feature of the Malaysian state that shapes its position on the religious-secular spectrum is the dual legal system. Along with civil law, there is Islamic law (*Shariah*) applicable to Muslims to regulate personal matters such as marriage, divorce, custody of children, and inheritance. Islamic law is administered by a separate court system, the Syariah Court. Additionally, the state has a monopoly on religious interpretation through the Islamic Religious Council (*Majlis Agama Islam*), the office of the Mufti, and the Islamic Legal Consultative Committee (Moustafa, 2013). Despite these bodies having absolute authority in religious interpretation and lawmaking, there is no requirement for members to have formal training in Islamic law. For example, Article 32 of the Administration of the Islamic Law Act states that the Mufti, who has sole power to issue *fatwas* (binding legal documents upon publication), must be 'fit and proper persons,' but no further explanation is given in the article (Moustafa, 2013:11). Unlike in classical Islamic jurisprudence, when a fatwa is issued by the Mufti, it carries the force of law and is backed by the full power of the Malaysian state.²⁵

While the Malaysian state appears to accommodate God's law into its legal system, it is argued that Malaysia is an Islamic state. However, the state has a monopoly on interpreting and codifying selected parts of *fiqh* (Islamic jurisprudence) and making them applicable through state institutions. Therefore, it is not correct to say that Malaysia is an Islamic state, as the highest law in the country is the man-made federal constitution. The following case illustrates the secular nature of the Malaysian legal system.

4.2 The Landmark Case of Che Omar bin Che Soh vs. PP: Evoking the Secular Nature of the Malaysian State

The mere mention of Islam as the official religion in Article 3/1 does not automatically classify Malaysia as an Islamic state. Simply referring to Islam does not alter the secular nature of the Constitution. This viewpoint was upheld by a Judge of the Supreme Court of Kuala Lumpur in the 1988 case of Che Omar Che Soh v Public Prosecutor. In this case, the appellant argued that the mandatory death sentence for drug trafficking is invalid because it contradicts Islam. The appellant's lawyer cited Article 3 of the Federal Constitution, contending that since Islam is the religion of

the Federation, imposing the death penalty, which is not *hudud* or *qisas* according to Islamic law, goes against Islamic principles and is thus unconstitutional.

However, the Supreme Court dismissed this argument, explaining that while Article 3 does give Islam a special status, it does not mean that Islam is the foundation of all laws. In essence, Article 3 does not state that the death penalty is unconstitutional because it conflicts with Islamic law. The Che Omar Che Soh case highlights the primacy of secular law in Malaysia.

Considering these aspects and legal rulings, Malaysia can be seen as falling into a gray area on the secular-religious spectrum.²⁶ It is constitutionally secular, yet Islam is recognized as the religion of the federation. Some legal experts view Malaysia as a hybrid of Islamic and secular principles, while others describe it as an example of "semi-secularism," (Bakashmar, 2017) blending elements of Islamic and liberal democratic governance. Politicians and civil society actors strategically employ democratic and Islamist policies to address internal and external challenges.

5. CONCLUSION

Secularism is a contested term in the study of the politics and religion, and our understanding of state-religion-society relations is shaped by how we define it. If one views secularism as a fixed notion implying the separation of religion from state affairs, then it becomes challenging to characterize countries like India or Malaysia, among others, as secular. It is now widely accepted that even within Western countries, secularism manifests differently. Therefore, fixed normative models are inadequate to explain today's state-religion-society relations, necessitating a reformulation of the concept to encompass diverse dynamics, both domestic and global.

Alternative approaches and theories are needed to comprehend the underlying factors influencing states that pursue distinct forms of secularism. By acknowledging the existence of "multiple secularisms" worldwide, it becomes possible to establish acceptable criteria for comparative studies. In this regard, this article proposes three foundational principles of secularism—religious freedom, equality in religion, and religious tolerance—as evaluation criteria for placing countries on a religious-secular spectrum.

Rather than categorizing countries as strictly secular or religious, this approach recognizes different variants of secularism along a spectrum. Each country's position on this

²⁵ It is stated in Article 34 that: "[a] fatwa shall be recognized by all Courts in the Federal Territories as authoritative of all matters laid down therein."

²⁶ For in depth research on the discussions about the secularism and religion in

Malaysia, please see: Hoffstaedter, G. (2013). Secular state, religious lives: Islam and the state in Malaysia. *Asian Ethnicity*, 14(4), 475-489.

spectrum is determined by the degree to which it upholds these principles. For example, the case of India exemplifies a unique approach to secularism, distinct from Western models, where the state maintains an equal distance from all religions rather than a strict separation. Despite constitutional provisions, the practice of secularism in India is complex and often contentious, with ongoing debates about its relevance and interpretation. The country's rich religious diversity and historical context have shaped its unique form of secularism, which continues to evolve amidst political and social challenges.

In contrast, Malaysia presents a different scenario, where Islam holds a privileged status, yet the state remains constitutionally secular. The country's hybrid approach to governance, blending Islamic principles with democratic ideals, reflects its unique historical and political context. The Malaysian case underscores the complexities of managing religious diversity within a secular framework, highlighting the need for continuous dialogue and negotiation.

Both India and Malaysia provide valuable insights into the complexities of secularism in multicultural societies. Their experiences demonstrate the importance of context-specific approaches to governance, acknowledging the diverse religious and cultural landscapes within each country. Indeed, the position of a state on the religious-secular spectrum is influenced by the political actions and decisions of various actors, including elites, politicians, and intellectuals. Historical events such as Babri Masjid Demolition (1992) and Shah Bano Case (1985) in India and Islamization policies of Malaysia since the 1980s as well as the introduction of bill to implement *hudud law* (Islamic penal code) in the state of Kelantan (Malaysia) in 2014 illustrate that secularism have often been used as a political tool to manage the challenges of diversity in these societies, rather than arising from religious wars between sects as seen in the Western world. As India and Malaysia deal with the complex connections between secularism, diversity, and politics, their histories remind us of the ongoing challenge of maintaining secular values in diverse religious and cultural settings.

REFERENCES

- Adil, M. A. M. (2017). The Federal Constitution: Is Malaysia a Secular State?. *Islam and Civilisational Renewal*, 8:3
- Ahmad, S. R. (2017). The Minority Status of Aligarh Muslim Univeristy. *ILI Law Review*, 1: 109- 125. Retrieved from <http://ili.ac.in/pdf/paper717.pdf> (19.02.2024)
- Almeida, R. (2015). Secularism and 'Gazetted' Holidays in India. In M. Rectenwald, R. Almeida and G. Levine (eds.), *Global Secularisms in a Post-Secular Age* (pp.155-170). Boston-Berlin: De Gruyter.
- Asad, T. (2003). *Formations of the Secular: Christianity, Islam, Modernity*. California: Stanford University Press.
- Bakashmar, M. (2017). Religion and politics in Malaysia: A case for "Semi-Secularism"?. *International Journal of Islamic Thoughts*, 5(2), 1-15. Retrieved from <http://irep.iium.edu.my/63916/> (19.02.2024)
- Berger, P. (ed.) (1999). *The Desecularization of the World: The Resurgence of Religion in World Politics*. Grand Rapids, Mich: Wm. B. Eerdmans Publishing.
- Berger, P. (2008). *Secularization Falsified*. First Things. Retrieved from <https://www.firstthings.com/article/2008/02/secularization-falsified> (19.02.2024)
- Berger, P. (2014). *The Many Altars of Modernity: Towards a Paradigm for Religion in a Pluralist Age*. Boston/Berlin: 4de Gruyter Press.
- Bhargava, R. (2008). Political Secularism. In John S. Dryzek, Bonnie Honig, and Anne Phillips (eds.), *The Oxford Handbook of Political Theory* (pp.636-55). Oxford: Oxford University Press.
- Bhargava, R. (2010). The 'Secular Ideal' before Secularism: A Preliminary Sketch. In Linell E. Cady and Elizabeth Shakman Hurd (eds.), *Comparative Secularisms in a Global Age* (pp. 159-180). New York: Palgrave Macmillan.
- Blitz, D. (2021). Indira Gandhi used 'secularism' for hiding her faults. Retrieved from <https://weeklyblitz.net/2021/03/14/indira-gandhi-used-secularism-for-hiding-her-faults/>
- Cady, L. E. and E. S. Hurd (eds.) (2010). *Comparative Secularisms in a Global Age*. New York: Palgrave Macmillan.
- Casanova, J. (1994). *Public Religions in the Modern World*. University of Chicago Press.
- Elenjmittam, A. (1951). *Philosophy and Action of the R.S.S for the Hind Swaraj*. Laxmi Publications.
- Fatangare, G. (2020). Socialism and Secularism: Controversy over the Preamble of the Constitution. *Indian Law Portal*. Retrieved from <https://indianlawportal.co.in/socialism-and-secularism-controversy-over-the-preamble-of-the-constitution/> (14.03.2024)

- Fernando, J. M. (2006). The Position of Islam in the Constitution of Malaysia. *Journal of Southeast Asia Studies*, 37(2), 249- 265.
- Jacobsohn, G. J. (2003). *The Wheel of Law: India's Secularism in Comparative Constitutional Context*. Princeton University Press.
- Habermas, J. (2008). Notes on Post-Secular Society. *New Perspectives Quarterly*, 25, 17-29.
- Hoffstaedter, G. (2013). Secular state, religious lives: Islam and the state in Malaysia. *Asian Ethnicity*, 14(4), 475-489.
- Holyoake, G. J. (1871). *The Principles of Secularism*. London: Austin & Co.
- Hurd, E. S. (2007). Theorizing Religious Resurgence. *International Politics*, 44, 647-665.
- Indian Constitution. Retrieved from <https://legislative.gov.in/constitution-of-india/> (19.02.2024)
- Madan, T. N. (1997). *Modern Myths, Locked Minds: Secularism and Fundamentalism in India*. Delhi: Oxford University Press.
- Madan, T. N. (2011). *Sociological Traditions: Methods and Perspectives in the Sociology of India*. Delhi: Sage Publications.
- Malaysian Constitution. Retrieved from <https://web.archive.org/web/20061015121438/http://www.trybunal.gov.pl/constit/constitu/constit/malaysia/malays-e.htm> (19.02.2024)
- Malaysian profile of population. Retrieved from https://www.indexmundi.com/malaysia/demographics_profile.html (19.02.2024)
- Moustafa, T. (2013). Judging in God's Name, State Power, Secularism, and the Politics of Islamic Law in Malaysia. *Oxford Journal of Law and Religion*, 3, 1-16.
- Shad, S. F. Is Malaysia an Islamic State? (2003). In A. Razak, A. Baginda and P. Schier (eds.), *Is Malaysia an Islamic State?: Secularism and Theocracy, a Study of the Malaysian Constitution* (pp.13–75). Kuala Lumpur: Malaysian Strategic Research Centre & Konrad-Adenauer-Foundation.
- Shah Bano case. Retrieved from <http://cscs.res.in/dataarchive/textfiles/textfile.2008-07-22.2150472804/file> (19.02.2024)
- Stepan, A. (2010). Multiple Secularisms of Modern Democratic and Non-Democratic Regimes. American Political Science Association Meeting. Washington D.C.
- Stilt, K. (2015). Contextualizing constitutional Islam: The Malayan Experience. *International Journal of Constitutional Law*, 13(2), 407-433.
- Rectenwald, M., R. Almeida, and G. Levine (2015). *Global Secularisms in a Post-Secular Age*. Boston-Berlin: De Gruyter.
- Rosdi, M. S. M. and N. H. M. Shafie (2016). Declaration Of Malaysia As An Islamic State In The Era Tun Dr Mahathir Mohamad's Governance: Implications Towards Political Economics In Islamic Ways. *International Journal of Management and Economics Invention*, 2(3).
- Roychowdhury, A. (2017). Secularism: Why Nehru dropped and Indira inserted the S-word in the Constitution. *The Indian Express*, Retrieved from <https://indianexpress.com/article/research/anant-kumar-hegde-secularism-constitution-india-bjp-jawaharlal-nehru-indira-gandhi-5001085/>
- Thakur, P. (2023). Row over 'secular' and 'socialist': How and why were the words added to the Preamble. *India Today*. Retrieved from <https://www.indiatoday.in/india/story/how-and-why-were-socialist-and-secular-added-to-preamble-indira-gandhi-emergency-amendment-2438268-2023-09-20>
- Wohlrab-Sahr, M. and M. Burchardt (2012). Multiple Secularities: Toward a Cultural Sociology of Secular Modernities. *Comparative Sociology*, 11(6), 875-909.



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