

Non-Western Perspectives on Constitutional Supremacy

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SHEENA SINGH, AUG 8 2014

“Constitutional democracy is at once an attractive idea and a daunting enterprise.”[1] A feature of a large number of the world’s democracies, constitutional supremacy is a concept that necessitates the primacy of the constitution over all other forms of legislation, and prohibits the passage of any law contrary to the principles and norms laid down by the constitution. It is reliant upon a number of implicit and explicit norms, mainly the rule of law, which involves a basic adherence to the legal system put in place – implying also an implementation of democracy and secularism. Secularism comes to the forefront as a constitutive principle of constitutional supremacy because its widely believed rival, religion, can provide a compelling alternative source of authority to the state and its constitution, as well as create divisiveness within a society. Therefore, any challenge to secularism or its establishment will undoubtedly impact how constitutional supremacy is manifested in a state – this aspect varies greatly between Western and non-Western societies. The polarization of secularism and religion in the West is replaced by more blurry dividing lines in the East, where the emphasis placed on religion as an integral aspect of society is much higher and hence the opportunity cost of secularism is higher as well.

This essay will first explore conceptual differences in the understanding of secularism and their variance between East and West. This will be followed by a case study exploration of secularism as it is implemented in two of the world’s non-Western democracies – Turkey and India. These two will be compared in terms of their legal influences, their approaches to secularism, and their inclusion in their constitutional law. Finally, case law will be used to discuss the consequences of Turkey’s Westernized, restrictive form of secularism and India’s permissive and indigenous one for constitutional supremacy overall. This examination will aim to demonstrate that non-Western countries will necessarily have a different type of approach to constitutional supremacy than Western nations, and that it will be characterized by flexibility, vulnerability, and overall, more uncertainty.

Conceptual Understanding of Secularism

Constitutional supremacy is a concept closely linked to societies based on Liberal Constitutionalism: an ideology assuming the constitution to be “distinct from and superior to ordinary legislation”[2] and has both its origin and most frequent applicability in traditionally Western nations like America or France. While this definition is accurate, what is more important for this exploration is the normative values attached to constitutional supremacy – for example, its commitment to protecting human rights, an indication of larger norms like democracy, modernization, and “a tacit, if not overt, expression of public secularism.”[3] It is this notion of secularism that is then seen as critical to the rule of law, which, in turn, is crucial in upholding the idea of constitutional supremacy itself. For this reason, religious challenges to secularism are extremely important as an indicator of the state of constitutional supremacy itself – any challenge to the secular nature of a state is a challenge to its foundational principles and ideals.

Secularism in the West

A Contextualist argument of secularism argues for it to be defined differently in varying contexts,[4] even though it is a fairly universal element of a modernized democracy. Thus, these variations in how secularism is understood in the Western and non-Western world are crucial to analysing the differences between the two in their overall approach to constitutional supremacy. Most often seen as “a universal principle that goes along with other ideals such as democracy or liberalism,”[5] secularism aims to prescribe the place of religion in the context of the state. Seen as a

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Western concept in origin, its development in Western Europe (Germany, the Netherlands, Britain, etc.) can be linked to a strong Christian influence that resulted in religious wars that made much of Europe “a living hell”[6] for two centuries and led to the eventual reformulation of the relationship between state and religion.[7] The devastation of Europe based on religion resonates in the theories of writers such as Edward Said, who presented secularism and religion as anti-thetical forces, with secularism being a “safeguard against nationalism.”[8] Hence, it is not hard to imagine why the concept took on an anti-religious character[9] as it evolved. The image of secularism in its modern and Western context is one of an ideology at loggerheads with religion, but one that, in countries such as the United States and France, is kept dominant by using a system of checks and balances that does not allow either secularism or religion to completely overrule the other. This is what Acevedo refers to as ‘Separation-model secularism,’ reliant on a complete demarcation of ‘religious’ and ‘non-religious’ domains within a state that do not intersect or overlap[10] and are based on the idea of Liberal Constitutionalism previously discussed.

Secularism in Non-Western Countries

An ideal as broad as secularism cannot necessarily be transplanted into a non-Western context without significant changes – especially in multi-religious societies such as India, or states on the cusp of East and West such as Turkey. In both these cases, secularism was considered a non-negotiable founding principle – for Turkey in 1924 and India in 1950, when their respective constitutions came into effect – because it was seen as a way to create a sense of national unification more than anything else.[11] These are what Lerner calls ‘religiously divided societies,’ where the religious character of the state is still the subject of heated debate internally.[12] Cinar, Roy, and Yahya argue that this is why secularism is a ‘particularistic’ rather than a universal principle and, rather than an abstract ideal, it is “an ideology or a political identity that shapes public discourse and practice.”[13]

In contrast to the separation-model of the West, in these countries it is an attempt to define the role of religion within the state so as to achieve coexistence, rather than noninterference.[14] What this means is that the state takes more control over religious matters, so as to ensure secularism persists, rather than to completely refrain from any involvement. Where in the West secularism has resulted in the privatization of religion and faith, in the non-Western world, there is an emphasis on “inter-religious understanding.”[15] Jacobsohn continues in this vein to point out that in India, for example (although this could be applied to Turkey as well), the approach to secularism is more ‘militant,’ whereas the West, for example the United States, tends to take a more ‘acquiescent’ approach.[16]

Legal Traditions

Turkey and India were chosen as case studies because of their many commonalities, but also their divergences. They are both large democracies, defined as secular by their constitutions, which have faced significant challenges from religious groups within the country in their pursuit of democracy. Ultimately, the religious character of the state itself has been questioned extensively in both nations, and this provides an opportunity to look into their approaches to secularism and its subsequent effect on the notion of constitutional supremacy.

In order to understand their reasons for responding to religious challenges a certain way and discuss their institutional formation, we must first examine their legal traditions and approach to secularism on the basis of two authors: Orucu and Lerner. Orucu describes all legal systems as mixed in some way, and refers specifically to India as a mixture of common law, religious law, and customary law, and Turkey a mix between civil law, ‘covert’ Islamic law, and customary law.[17] The large difference is that Turkey is also influenced, more recently, by European and American law, which India is not. The Western influence found in Turkey further helps us clarify and decipher the distinction between a Western and non-Western perspective on constitutional supremacy.

When it comes to their approaches on secularism, Lerner’s classification of India as a ‘permissive’ and Turkey as a ‘restrictive’ country is particularly relevant. Even in their approach to secularism, a commonality arises from them both being ‘religiously divided countries,’ which brings religion to the forefront as an issue that cannot be mitigated by liberal constitutionalism, an ideology “not perceived by all drafters as a neutral ground.”[18] A permissive constitutional approach to religion, like India’s, utilises “constitutional ambiguity, ambivalence and vagueness,”[19] tools designed to prevent a rigid or specific framework regarding religion from being incorporated into the

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constitution. In India, this was implemented by providing multiple personal law systems for different religions, as opposed to implementing a uniform civil code – this was intended to equalize the treatment accorded to all.[20] Normatively, these permissive systems are seen as ‘inferior’ because they are less well equipped to protect human rights.[21] This flexibility resigns religion to a parliamentary level, and by refraining “...from providing a definitive set of norms and values,”[22] it leaves room both for more discussion and hence vulnerability in the future by prioritizing the maintenance of political and social harmony in the present.

The other approach, the restrictive approach, is taken by Turkey wherein constitutional constraints, albeit harsh in the present, are enacted in order to “limit the range of possibilities available to future decision makers”[23] with regard to religion and the state. In Turkey, the creation of a Presidency of Religious Affairs in 1924 assigned all religious matters to a centralized government agency, which is intended instead to purport secularism as a “foundational ideology” of the modern Turkish state by confining religion to a very specific sphere (although it remains a public sphere, unlike in the Western world). This public sphere ascribed to religion is shared with India, what Cinar, Roy, and Yahya call a ‘secular-national public sphere’ that relies on a “controlled inclusion” of religion rather than the Western notion of complete exclusion – in this way, the manner in which secularism was laid out in these countries is responsible for the subsequent politicization of religion therein.[24]

Religion in the Constitution

Turkey

Turkey, at the time of its independence in 1924, was a 99% Muslim country with a population of 20 million. The reconciliation of religious differences at the time was based on an exclusionary ideal, which was imposed in a top-down manner by an authoritarian elite to assist in the creation of a “prosperous, rational and irreligious modern society” under Mustafa Kemal.[25] The 1924 constitution, put forth by Kemal’s Republican People’s Party, was based on an ideal of modernization through a combination of Westernization and Turkish nationalism. However, modernization, in this context, necessitated the “homogenization”[26] of the Turkish population with regard to religion. The implementation of a uniform civil code that included banning traditional dress at this early stage, in a country where 99% of the population was Muslim, reaffirms Kemal’s commitment to a Western notion of secularism. While Lerner argues that this was a Rousseauist democracy where the general will of the people was being enacted into law, it is clear that this Western outlook was in fact introduced by the social and political elite, which explains the need for a top-down implementation of the system.[27] The lack of popular support for this move is also illustrated by the fact that Islam was the official religion of the Turkish state and was included in the constitution until 1937.

The commitment to modernization led to a concerted effort by Turkish elites to exclude religion through a changing of cultural norms, intended to create a ‘rational religiosity’ that strived for the complete reinterpretation of religion. The consequence of this effort was a greater constraint on freedom of religion and the reduced ability to publicly propagate religious agendas. This was complemented by a guaranteed and “strictly protected”[28] freedom from religion, which implies the same anti-religious character of secularism viewed in Western nations. However, it is important to note that the adaptation of Western principles does not mean that Turkey cannot be classified as a non-Western country; to the contrary, the dissociation from religion implied in Western secularism was replaced here by an attempt at a fundamental shift in norms and values[29], which indicates an effort but does not assume that it was successful.

On the theoretical level, Turkey’s constitutional approach to religion was hence rigid, similar to Western viewpoints, and religion was approached as something to be feared and tamed through centralization. This restrictive approach to religion was later challenged by a resurgence of religious sentiment among the Turkish population, a counter-move that raises the question of limitations when transposing a Western notion to a non-Western nation. Best exemplified by the case of the Refah Partisi, these limitations and what they portray about a non-Western perspective on constitutional supremacy will be discussed at a later stage.

India

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What makes India an unique case is the importance of equally respecting all religions instead of distancing the state from them, with the same intention to create state neutrality in the public sphere as was intentioned in Turkey.[30] The political stage in India at the time, and still today, consists of a 'communitarian' base that is more pluralist and wishes for religious communities to have their own laws and guidelines, as well as a more liberal secularist base, somewhat Westernized, which advocate the implementation of a universal civil code that would separate religion from politics in its entirety.[31] The tension between these two, when added to the opposition presented by those religious nationalists who do not want any kind of secularism to prevail in the country at all, necessitated the creation of a more permissive secularism in India – there simply was no other alternative if any sort of harmony was to be preserved, especially in light of the Partition that ripped apart the country in 1947. The 1950 constitution, drafted over three years, did not mention secularism (this was only included after the 42nd Amendment in 1976), but was still assumed as an underlying principle of the constitution so as to provide a counterweight to religious and cultural nationalism.[32] A similarity with the West emerges in that India was also somewhat afraid of the effect religion would have, hence utilizing secularism as a 'check,'[33] given an 85% Hindu majority but a sizeable 10% Muslim minority, whose identities were strongly linked to religion, not to mention Christians, Sikhs, and others in a vast land of 250 million people (in 1947).

B.R. Ambedkar, a prominent Indian politician at the time, upheld Indian secularism by defining it as the condition wherein "Parliament shall not be competent to impose any particular religion upon the rest of the people." [34] The Indian constitution upholds secularism as a protection to practice religion freely, and hence focuses on providing 'freedom of religion' rather than 'freedom from religion,' especially by guaranteeing religious freedoms in Articles 25-28 of the Constitution (such as the freedom to establish institutions, guaranteeing religious minorities the right to foster their religious culture, etc.). Instead of providing freedom from religion, however, the Indian constitution aims to provide a freedom from majoritarian religion through the protection of minority religions i.e. to limit the preferential status that would otherwise have been accorded to Hinduism.[35] Perhaps the most important stipulation in the Indian constitution is state control over finances accorded to religious institutions, especially Hindu temples, which have been the subject of controversy and much criticism from the Hindu nationalist community at a later stage. Reforms in the 1950s only served to further complicate this already ambiguous approach to secularism in the constitution, as they implemented personal law systems for each religious group, with almost no changes to Muslim and Christian personal law. These quasi-interventionist attitudes assumed by the Indian state towards religion are best represented in Rajeev Bhargava's theory of 'principled distance,' the idea that the state is compelled to do and does "engage with religion at the level of law and social policy" [36] if it is truly committed to reaching an entirely secular end. This implies a model similar to Turkey's of state intervention to assure equality, but in a less rigid manner and making many more exceptions. However, given the religious composition of India versus that of Turkey, these exceptions seem contextually more logical.

In India's case, it is also important to understand the geographical context in which this secularism was implemented and continued to strive. India's neighbours – Pakistan, Burma, and Bangladesh – were all countries with declared state religions, among which India's bold decision was upheld as a "glowing achievement of Indian democracy." [37] This attitude envisaging India as exceptional in its neighbourhood was a symbol of modernization in a way, but this modernization could not be entirely implemented due to a fear of religious conflict [38] and an overpowering desire for social harmony. Thus, while enough secularism was implemented to ensure that India could be held up as an example, Prasad and Kumar point out the need to balance this modernization act with tradition – implementing special exceptions and advancements for backward classes, or even the outlawing of cow slaughter which remains a decidedly Hindu-favouring policy.[39] At the same time, the minor changes to Muslim and Christian personal law when implemented form the basis for a frequent criticism of Indian secularism by the Nationalist Right: its tendency to undermine the majoritarian religion, Hinduism, in favour of minority religions. These contradictions were left within the constitution on purpose, since the permissive approach followed an "evolutionary rather than a revolutionary approach" [40] that relied on the probability of the religious question being resolved in the future through consensus and negotiation.

While the intention behind this openness was to allow democratic institutions to emerge on their own and allow a gradual evolution of religious sentiment, Lerner makes it clear that these were intended to be temporary provisions that were never changed.[41] This delaying tactic has resulted in religion becoming today an even more contentious

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issue in Indian society, and the institutional approach to it remaining as vague as it was in 1950 – evidenced by the Supreme Court avoiding involvement in contentious issues surrounding religion.[42] Contradictions persist as Lerner argues that “...in India legal pluralism in the area of personal law results in greater freedom from religion for Hindus, while religious law is de facto applied to Muslim and Christian minority groups.”[43] However, the close linkage of identity to religion in India raises the criticism that this freedom from religion may be unwanted and not a positive thing in a non-Western context (though it would certainly be perceived as positive in the Western world). This legal pluralism held so dear manifested itself in the Shah Bano case in India, discussed below.

Religion in Practice

The Challenges – Turkey

In both Turkey and India, religious challenges began to emerge in the 1980s with a resurgence of nationalist politics, indicated by the Refah Partisi in Turkey and the rise of the Hindutva (Hindu nationalist/fundamentalist) parties in India. As previously mentioned, this new Islamist tendency, even in Turkey, criticized secularism on the basis that that neutrality favoured liberalism and the lifestyle of the elites, while the Muslim masses suffered discrimination in their daily lives due to the rigidity of Turkish secularism.[44] The rise of the Refah Partisi as an “East-oriented project”[45] came about seemingly by popular demand, and the right-wing party’s 10% vote share skyrocketed into a mass movement along with its explicit adoption of an Islamist agenda. The challenge faced in Turkey was that the state’s previous strategy of using print media and elite influence to deliver a normative and cultural societal change was ceasing to function, and actual people began to constitute the political public that the government was accountable to.[46] The roots of this Islamist movement, moreover, were not limited to a traditional, anti-modern sect of society but appeared first among university students, with the resurgence of the burkha (headscarf) in public. The utilisation of the burkha as a campaigning tool by the Refah Partisi in advertisements was the conjunction of the two issues, which put together, became representative of a much larger failure to implement the Western brand of secularism, and hinted that Islam had always lurked in the shadows of secularism in Turkey.[47]

The Challenges – India

In India, the diversity of religious representation meant that the problems that arose were twofold: one was the argument that India had a “majoritarian emphasis” and a Hindu-led state,[48] and the other that religious orthodoxy was not compatible with the Indian brand of secularism, as it privileged minority religions over Hinduism. This created what is known as communalism, the “perceived or even concocted threat from other religious groups”[49] that has manifested itself in inter-religious violence for decades. The growth of this explicit divide paved the road to communal politics in India, whereby parties began to appeal to specific communities or groups as an electoral strategy. In the late 1980s, an increase in right-wing power appeared to prove the advancement of a communalist ideology that presented a first and large challenge to Indian secularism and to the principles of the constitution. The same tension with constitutional principles was also invoked in the 1985 Shah Bano case, which involved a Muslim divorcee requesting maintenance from her husband – a stipulation that was guaranteed under constitutional law but not under Muslim personal law. The way this case eventually unfolded is largely representative of the ambiguity and failure to implement the ‘equal recognition’ secularism that India so strongly supported in 1950.

The Responses and Further Complications – Turkey

The incremental Islamization of Turkey finally resulted in the implementation of mandatory religious classes in school in 1982 – a controversial decree that was intended to assuage religious sentiment by demonstrating its “central and legitimate”[50] role in the Turkish public sphere. This was an attempt to preserve social harmony and accord, as well as guard the specifically defined relationship between religion and state from running into problems. However, the enactment of Islamist legislation as mentioned above created a further problem of ambiguity, whereby there was an increased tendency to view this as State-led and State-supported Islamization.[51]

The first issue to be dealt with was that of the burkha, which soon became “a matter of Turkish national security”[52] rather than a religious symbol or a controversy, because it represented a backward trajectory into anti-modernization

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that the Turkish state wanted to prevent. Moreover, the burkha was used in targeted advertisements by the Refah Partisi, which contributed to its ascension to a higher-level political issue. A 1991 ban on wearing the headscarf was put in place by the Constitutional Court, but this decision did not put the issue to bed. In the meanwhile, by 1994, the Refah Partisi had won mayoralties in Istanbul, Ankara and other major cities, followed by an astounding general electoral win in 1995 that put party leader Erbakan at the head of a coalition government.[53] In 1997, Turkey's National Security Council called for a ban on the headscarf, and it also instigated the collapse of the Refah Partisi government – the party was subsequently banned in 1998.

Interestingly, the decisions made within Turkey were not accepted at face value, and cases were lodged in both issue areas (the headscarf and the party) with the European Court of Human Rights. In the case of *Refah Partisi and Others v. Turkey*, the ban on the party for conducting anti-secular activities was reaffirmed by the European Court of Human Rights based on a perceived 'real' danger of anti-constitutional and anti-secular plans that the Refah Partisi would likely have implemented.[54] Soon after, in 2005, a decision was released in *Leyla Sahin v. Turkey*, where Sahin's claim to be allowed to wear her headscarf on university premises was denied, and the headscarf ban upheld by justifying that it was "appropriate when issued to protect the secular nature of the Turkish state." [55]

Once again, Turkey demonstrated a top-down approach to implementing secularism, this time with fortification from an international court of law that superseded even the state. This demonstrates an urgency and commitment to Western secularism, as expected. However, despite banning key party officials like Erbakan and Erdogan from politics until 2003, the Refah Partisi was able to reorganize itself into two groups and come to power once again as the AK or Justice and Development Party in 2002. Since then, despite the official ban on headscarves persisting, Prime Minister Erdogan's wife began wearing the veil and hence influencing the Islamist trend already sparked in Turkish society. While Cinar believes this has strengthened secularism by opening the imposed notion to debate and "transforming it from an ideological principle...to a widely endorsed norm of public and private life," [56] it has also had large negative consequences for the societal status of veiled women, who have been disenfranchised and are now systemically excluded from Turkish intellectual life.[57] Further, despite 2007 attempts to protest Islamist government rule, the proposed secular movement that attempted to rewrite the constitution remains ambiguous [58] and has relegated Turkey to a similar state when it comes to the approach to secularism as India found itself in for many years (and that persists to this day, as we will see). On this basis, it can be argued that Turkey now possesses a relatively more ambiguous perspective on secularism despite attempts to reinforce its restrictive approach and that this indicates a challenge to the carefully imposed principle of constitutional supremacy therein.

The Responses and Further Complications – India

India's situation becomes complicated with the consideration of multiple sets of personal laws and the desire to provide equal support to each faith represented within the population. While there is a sector of Indian politics that organizes itself around a Hindu-Muslim communal debate so as to rouse emotive issues,[59] the antithetical liberal sector has been relegated to just a name. The difficulty here arises because "religious and secular life are so pervasively entangled [in India] that a posture of official indifference cannot be justified either politically or constitutionally," [60] which makes equal treatment a difficult goal to achieve, as can be demonstrated through the understanding of *Mohammed Ahmed Khan v. Shah Bano*.

In 1978, Shah Bano Begum filed charges against her ex-husband, Mohammed Ahmed Khan, requesting monetary support in the form of a monthly maintenance fee, a request that was upheld by the Supreme Court under both Muslim Personal Law and the Indian civil code. However, this decision provoked a staunchly negative reaction among Muslim communities in India, as many saw this as an attack by a "high-handed" [61] Hindu judge who was unable to comprehend Muslim law. The societal pressure resulted in the passing of the Muslim Women (Protection of Rights on Divorce) Bill by the Indian National Congress-led government, which placed Muslim women solely under the purview of personal law and hence in essence overturned the Supreme Court ruling through a simple act of Parliament. This highlights India's most common paradoxical problem when it comes to secularism: "its simultaneous commitment to communities and to equal citizenship." [62]

This case does clearly demonstrate a judicial commitment to ensuring the secular nature of the state and reconciling

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religious law with personal law to move towards a somewhat more Western form of secularization. However, the difficulties in implementing this solution are evident in the influence held by social groups and communalist tendencies, and the eventual reversal of the decision demonstrates the Indian government's commitment to social harmony and appeasing social groups in the present at the cost of prolonging a permissive approach in the future. Prasad and Kumar indicate that communalism and the formation of political platforms on the basis of communal divisions is a universal trait of Indian political parties[63] and to change this characteristic requires a change in mindset that has not yet come to India.

Synthesis

In the two cases discussed above, a similar trajectory can be noted with regard to secularism. While the differences between Indian and Turkish secularism vis-à-vis the West has been detailed, it must be noted that Turkey's approach to its own culture after 1924 was more hostile due to its desire for Westernized modernization. The perception of Islam as the "backward, the uncultured and uneducated"[64] created a determination to modernize along a European model in Turkey that was entirely absent in India. This difference in legal tradition itself meant that Turkey had a universal civil code by 1926, whereas India's is still contested today and hence the effectiveness of imposing secularism was more successful in Turkey in the short-term. Further, when we see religious challenges to secularism arising in both countries, the Turkish solution often involves an appeal to a higher (European) court, whereas in India even the authority of the highest court of the land does not suffice to overcome societal tensions when it comes to religious affairs.

The restrictive approach to implementing secularism used in Turkey also ensured the success of the top-down approach, and it illustrates why Turkey's approach, initially rigid, is now only relatively more ambiguous due to a rise in Islamist ideology within political parties, whereas India's permissive approach has led to a complete incoherence in policymaking with regard to secularism. Since Turkey was influenced by Western ideas, it bears witness to the absolutism of the separation-model of secularism versus the flexibility of the Indian model. This absolutism is responsible for limiting the social repercussions of religious trends that is not possible when given flexibility, especially because of the lack of "genuine secular value and ethos"[65] in India. TN Madan sums up the Indian (and generally non-Western) dilemma by saying:

"...Indian secularists are unable to govern effectively because religion is too significant for most Indians and because the secularists themselves do not have a gut-level inclination towards noninterference, since secularism is inherently a Western concept."[66]

This raises the further question of secularism as a concept that can be exported without being transformed – bringing to the forefront Cinar, Roy, and Yahya's idea that it must be studied as a particularistic rather than a universal concept. The contextualization of secularism then means that its implementation as a constitutive element of the rule of law, and therefore of constitutional supremacy, must also differ between countries, especially between East and West. Turkey's failure to completely westernize its norms and values through an elite-driven effort is testament to the importance of cultural differences in affecting Non-Western perspectives on constitutional supremacy (especially when they involve how integral religion is to identity). Therefore, the non-Western approach to constitutional supremacy can be classified as more flexible and hence more malleable than the rigidly defined Western separation-model.

Conclusion

A modernized country like Turkey faces challenges to constitutional supremacy that emerge from within, but are met with opposition at both the state and international level because of its close relation and aspiration to the European Union. Moreover, these challenges are organized into political parties, and somewhat ordered, whereas in India religious challenges to secularism and constitutional supremacy stem from chaotic, widespread societal phenomena. In both cases, this dilutes the quality of democracy and the rule of law in the countries, but in the Turkish case, the attempt at Westernization has proved key in limiting the extent to which secularism is compromised. From this we can draw two large conclusions: firstly, that the Western form of secularism and hence approach to constitutional

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supremacy cannot be successfully imported by a non-Western country without significant changes, and secondly that the non-Western approach to said supremacy coming from religiously divided societies will necessarily be more flexible, less absolute and hence largely more vulnerable than their Western counterparts.

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[21] Lerner, "Permissive Constitutions," p. 619

[22] Ibid 618

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[24] Cinar, Roy & Yahya, *Visualizing Secularism and Religion*, p. 5

[25] Lerner, "Permissive Constitutions," p. 628

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