

CHAPTER: III

Concept of Secularism: An Indian Scenario

3.1 Historical and Cultural Over View of Indian Secularism

India became a secular state in the post- era, i.e. after becoming independent in 1947. However, the constitution that came in to force with effect from 26 the January, 1950 did not use the word secularism. In other words, India became a secular state more in spirit than in terms of political ideology. The word "secular" was added during emergency through an amendment. Thus, today our constitution is a secular constitution.

Secularism in India context was never clearly defined by either our constitutional experts or political ideology. There are several problems in defining secularism in the Indian context. Both during colonial and post -colonial period, the Indian society has been a traditional society dominated by various customs and tradition with deep religious orientation. For the liberal and progressive intellectuals, on the other hand, secularism meant total exclusion of religion from political arena. India

The development of the idea of; secularism' has been of a differed pattern in India. The idea has not been the product of a process of actual secularization of life, and second philosophical development had been different lines. Like other ideas of democracy, socialism and the likes, if developed as a response to the actual historic need of Indian society.

3.1.1 Origin of Indian Secularism

Indian secularism, in the sense of equal reverence for all religions, was not born on January 26, 1950 its history did not begin on January 26, 1950. It predates the Constitution, the freedom movement, the Moghuls, the Turks, the Maurya and the Asoka's. It predates the known and written history of India. It is part of the spiritual conviction of this country as expressed in the Vedas and Upanishads whose dates are speculated even today. Theology and not theocracy is the Hindu tradition. No king other than Ashoka the Great declared a State religion in this country. But Ashoka is still regarded as the model for peace and tolerance. The constitutional provisions on freedom of worship and injunction against the Indian state promoting or subsidizing any religion are not the creation of the Constitution but the product of centuries of

harmonious functioning of the Indian mind which is essentially and largely the Hindu genius. The Constitution of India merely recorded the timeless faith and conviction of the Hindus that every religion is sacred and there is no need for selection or elimination of any faith or religion. Even a non-believer's soul is as sacred as that of the faithful. This is based on the Hindu view that every living being is sacred.

So it is the Hindu psyche that guarantees equality to all faiths and not the provisions of the Constitution of India. How did the Hindu psyche react to the other faiths that came to India seeking refuge against extermination by the invading Islam and Christianity in their lands? The instances of Parsis and the Jews are highly instructive of the core of the Hindu psyche.

India is a pot-pourri of diverse religions, races and cultures. From antiquity, she has been receptive to different beliefs and nurtured both the native Dravidians and the invading Aryans. Even the Tatars, the Turks, the mogals and the Europeans left their imprint in the land by intermarrying with the locals. The blending of culture of natives and foreign elements led to development of composite culture and not any religious culture hence there has been a sort of unity with multiple diversities. The geographical location of the sub-continent has also acted as catalytic agent to promote unity.

The people of India, from heterogeneous groups had obviously little in common to forge a homogeneous identity. They differed in physique as well as in ideology and culture! The social order founded on caste system forced them to live in caste-compartment. Each temple, mosque, church, gurudwara, and vihar had its own place of inspire its believers. Sometimes, the religious texts of each denomination shared certain values but very often differed. This resulted in conflict, isolation and subjugation of certain groups. This gave rise to classes, castes and class wars and caste conflicts.

Before the dictum of Karl Marx that 'religion is opium for people', the whole world was under the dominance of different religions. To some of the people of India religion was and now also is sacred and above all other things. "Religion has been aptly described by Herbert Spencer as, "the weft which everywhere crosses the warp of history." This is true of every society. But religion has not only crossed everywhere

the warp of Indian history it forms the warp and woof of the Hindu mind.”¹ Not only Hindus but others also have had sacred codes laying down the social relation between man and man as well as man and God. There is no disagreement about the positive aspects of different religions. “But with all the good they have done, they have also tried to imprison truth in set forms and dogmas and encouraged ceremonials and practices which soon lose all their original meaning and become mere routine. While impressing upon man the awe and mystery of the unknown that surrounds him (human being), on all sides, they have discouraged him from trying to understand not only the unknown what might come in the way of social error. Instead of encouraging curiosity and thought, they have preached a philosophy of submission to nature, to established churches, to the prevailing social order, and to everything that is.

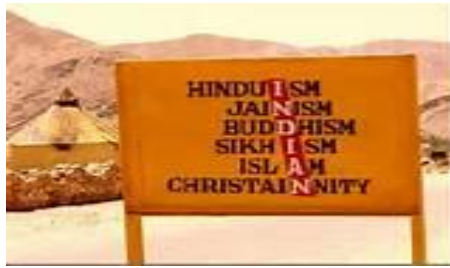
The belief in a supernatural agency which ordains everything has led to certain irresponsibility on the social plane, and emotion and sentimentality have taken the place of reasoned thought and inquiry.”² Religion in this sub-continent has also laid down a solid foundation for irrational, superstitious society, closing the doors for science and development, superstitious society, closing the doors for science and development, logic and reason in violation of one of the fundamental duties of every citizen of India, that is, ‘to develop the scientific temper, humanism and the spirit of inquiry and reform.’³

India has been the product of historic consequence of a series of events, never existed prior to the commencement of the Constitution of India. The new born State, India i.e., Bharat joined the family of sovereign republics on 26th January 1950. On independence the people of India constituting Hindus, Muslims, Christians, Sikhs, Buddhists, Janis, Parsees and others agreed to unite in nation-building in spite of their historical differences. The contents of the constitution of India are largely founded on the past.

¹ Report of the committee on the welfare of scheduled caste and s.t[1922-2000 called as kariamunda report] XIII Lok sabha

² Ibid

³ Ibid



All claimed that this is our house, we will maintain its dignity and will hand it down to posterity with pride as a solid unfired nation committed to universal humanism...The historical events, cultural ethos, aspirations of people and killing of thousands of innocent people during partition guided the minds of the constitution makers. To assure all the people the joint wisdom in the constituent Assembly accepted and declared India as a secular state and not a theocratic state, without making the use of expression 'Secular', anywhere in the body of the constitution.

3.1.2 Secularism and Religion in Ancient India

In his general survey and estimate of the ancient Indian polity and its achievements, Professor J.J. Anjaria concluded that ancient India had plural forms of polity. He observed:

Several types of states like republics, oligarchies, diarchies and monarchies were prevailing in India in ancient times, but eventually monarchy became the order of the day. This phenomenon was not peculiar to ancient India; it repeated itself in ancient Europe also where we find the republics in Greece and Italy being gradually supplanted by monarchies and empires.⁴

The meaning of secularism, it is believed, has emerged with sufficient clarity from the survey of historical development made earlier herein.

Secularism, as seen in the previous chapter, does not imply only separation of State and Religion. A holistic conception of secularism would include various other components like religious freedom, tolerance, a democratic conception of citizenship, equality, protection of fundamental human rights regardless of religious considerations. It is on the basis of such an interpretation of secularism that the

⁴ J.J Anjaria, the Nature and Ground of political obligation in the Hindu State,[Calcutta, Longman, Green and Company 1925] p, 231

historical setting of secularism in India is examined in this point. One school of thought argues that it is futile to look for the roots of secularism in India's past because throughout Indian history, religion and the State have been inextricably interlinked. But a critical analysis would reveal that this is too simplistic a formulation of a complex phenomenon. For certain factors can be identified in India's historical ethos which to some extent indicates a secular political order. Accordingly, this chapter purports to examine the State in a historical context. This short excursus into the historical basis of secularism in India assumes significance in order to comprehend the present scenario of secularism.

The ancient Indian State was characterized by a complex intermingling of religion and politics and of toleration and religious freedom. So far as institutional separation of State and religion is concerned, it was definitely not extant in the ancient Indian State, which was characterized by a pronounced religious orientation. Active promotion and patronage of religion was one of its chief functions. **Dharma** was the basis of the State. Dharma, it may be pointed out, was a much wider concept than religion. Religion constitutes only a part of Dharma, which includes law, morality, piety, duty virtue, etc. the Brahmins were very powerful and played an important role in the political structure.

The scriptures of the ancient period do reflect a conflict between religion and the State, but it was not of enormity as was witnessed in the West. Texts such as Aitarerya Brahman and Gautama Dharma sutra, assert the subordinate position of the king and exempt the Brahman's from taxation as also from capital punishment and warn the king of dire consequences if he does not bow before the priestly authority"⁵ In other texts of the period such as Tattiriya Brahman and Brihadaranyaka Upanishad, however. The independence of the kin from the priests is asserted. ⁶The conflict between religion and the State also lacked force because there was no operative ecclesiastical organization, as in the West, which could effectively challenge the authority of the State. There is, at the same time, little evidence to suggest that the religious authority attempted to usurp the powers of the king.⁷ this period is also not

⁵ A.S. Altekar, State and Government in Ancient India (Motilal Banarsidass, Benaras, 1955), pp.48-49.

⁶ Ibid., p.51

⁷ Q.Pankaj, Satete and Religion in Ancient India [Chug Pub, Allahabad 1983, p.190

devoid of religious conflicts at the mass level. Romila Thapar cites Hseun Tsang and Kalhana as referring to hostilities between the Shaivites and the Buddhists.⁸

The influence of the priests also declined somewhat around the 4th century B.C. for the importance of Vedic ritual and sacrifices declined. S. Abid Husain points out that “with all their influence over religious and social life, the Brahmins had little hand in administration or government. As purohits their main duty was to preside over the observance of religious rites. So the Hindu state though still a religious state in the sense that it was its duty to patronize Hindu religion and to enforce the religious laws, was practically free from the interference of the priestly caste and the process of its secularization had begun.”⁹ The authority of the priests was also checked by the theory of the divinity of the kings.¹⁰ Much of the King’s activity was, nevertheless, ordained by religion.

The nexus between the state and religion not only continued but grew stronger during the Mauryan period; Religion was, however, used for serving political ends.¹¹ Kautilya’s approach was representative of this tendency. He treated politics independently of religion, although religious consideration were not absent in his State.¹² At the same time, he subordinated religion for political purposes. In the Arthashastra, while not envisaging institutional separation of State and religion, he undermined the “theoretical basis of the promotion of religion by the state.”¹³ Panikkar remarks that the Arthashastra tradition represented “a purely secular theory of state of which the sole basis is power.”¹⁴

A closer nexus between religion and the State evolved in Asoka’s period. During his reign, propagation of Dhamma became a major function of the State.¹⁵ In spite of this there were certain factors in his reign, in particular his policy of toleration (as evinced in his Rock Edicts), which led to his being hailed as a secular ruler. The close nexus between religion and the State continued in the post-Maryann period, too.

⁸ Romila Thapar, “Communalism and the Historical Legacy: Some Facets”, in K.N. Panikkar, (ed.), *Communalism in India: History, Politics and Culture*, (Manohar, New Delhi, 1991), p.24

⁹ S. Abid Husain, *The National Culture of India* (National Book Trust, New Delhi, 1978), p.63.

¹⁰ D.E. Smith, *India as a Secular State*, (Princeton Univ. Press, Princeton, New Jersey, 1963), pp.59- 60.

¹¹ N.Q. Pankaj, op. cit., p.191.

¹² Ibid. p.54.

¹³ Ibid. p.191.

¹⁴ Ibid.

¹⁵ Ibid. pp.80-81.

The rulers of the Gupta period proclaimed a policy of religious tolerance, but also extended royal control over religion.¹⁶ The Gupta emperors upheld Brahmanism and at the same time supported Buddhism. They also allowed freedom to other religious sects.

The religious texts of the period too, proclaimed the ideal of toleration and religious freedom unequivocally. For instance, the Rig Veda propounds "एकम् सत् विप्रा बहुधा वदन्ति" ('Ekam sat vipra bahuda vedanti' - the truth is one; the learned may describe it variously). Further, "Behave with others as you would with yourself. Look upon all the living beings as your friends, for in all of them there resides one soul. All are part of that universal soul." And again, 'Ekayv Manushi Jati' (All human beings are of one race). The **Bhagavad Gita proclaims**, "In whatever way men identify with me, in the same way do I carry out their desires; men pursue my path, Partha, in all ways." Furthermore, "whatever form any devotee with faith wishes to worship, I make that faith steady."¹⁷

यदा यदा हि धर्मस्य ग्लानिर्भवति भारत ।
अभ्युत्थानमधर्मस्य तदात्मानं सृजाम्यहम् ॥



On the whole, the ancient Indian State was neither sacerdotal nor theocratic nor secular. The state was never dominated by religion as witnessed in the Western States, perhaps because there never was an established religious institution like the Church in the West. The function of the King embodying the temporal authority and the priest embodying the spiritual authority, were clearly separate and distinct, although the distinction was itself based on religious assumptions, such as the 'divinely ordained' system of caste. A close nexus did exist between State and

¹⁶ Ibid, p.197.

¹⁷ S.D. Sharma, "Secularism in the Indian Ethos," bhavan's Journal, Vol.37, Nos 7-9, 1990, p.20.

religion, but religion as understood in the wider context of Dharma. Freedom of religion existed and there was no imposition of any. Particular creed upon the people. Various religions were permitted to propagate their teaching and patronage was given to all. This is evidenced in the Rock Edict XII of Asoka which proclaims, "One who reverences one's own religion and to glorify it over all other religious, does injure one's own religion most certainly."¹⁸ Freedom of conscience existed since the ancient times.¹⁹ Judaism and Christianity had spread to India and there was no persecution of people professing these religions. Thus while institutional separation of religion and the State was non-existent, yet freedom of religion and toleration, two of the major components of secularism, were clearly discernible in the ancient Indian State.

The trend of a close linkage between religion and the State, coupled with a broad policy of toleration continued during the medieval period. During the period of the Delhi Sultanate, the State was Islamic in the sense that no open violation of Islamic law was permitted. Muslim divines were appointed to high offices. But at the same time, the theologian's were not permitted to dictate the policies of the State. Alauddin Khilji opined that "policy and Government is one thing, and rules and decrees of Islamic law are another. Royal commands belong to the Sultan, Islamic legal decrees rest upon the judgment of the Qazis and Muftis."²⁰ The rules during this period, as at other times in Indian history, were guided by political considerations in not upsetting the religious structure. A policy of broad toleration was generally followed although there were occasional lapses. Accordingly, the Brahmins were exempted from payment of Jiziya, though Firoz Tughlaq removed this exemption. The policy in times of peace permitted Hindus to practice their religion openly, but not in times of war. Other religions continued to exist and even prosper. It was during this period that the Sufi and Bhakti movements emerged. The mystics and saints of the two movements seem to have been influenced by each other. Saints such as Kabir, Chaitanya and Nanak emphasized the essential unity of all religions. This created an

18 S. Radhakrishnan, in his foreword to S. Abid Husain, op. cit., p.Viii.

19 D.E. Smith, op. cit., p.61

20 Mohammad Ghouse, *Secular, Society and Law in India* (Vikash, Delhi, 1973), p.22

atmosphere for the growth of a liberal ethos. Even the early Muslim rulers like Khalji and Firoz Tughlagh received Hindu religious leaders with honors and respect.²¹

3.1.3 The Religious Policies of the Medieval Indian State

The religious policies of the medieval Indian State ranged from tolerance to fanaticism with Akbar and Aurangzeb representing the two extremes. The institutional separation of State and religion was of course foreign even to the most liberal of religions. On the other hand, even the most fanatical of regimes is found to be characterized by broad policy of toleration to some extent.

Religious toleration and freedom of worship marked the State under Akbar. He had a number of Hindus as his ministers, forbade forcible conversions and abolished Jiziya.²² The most prominent evidence of his tolerance policy was his promulgation of 'Din-i-Ilahi' or the Divine Faith, which had elements of both Hindu and Muslim faith. That this was not imposed upon the subjects is obvious from the fact that there were few adherents to it. Along with this he emphasized the concept of 'sul-h-kul' or peace and harmony among religions. He even sponsored a series of religious debates which were held in the 'Ibadat Khana' of the Hall of Worship, and the participants in these debates included theologians from amongst Brahmins, Jains and Zoroastrians.²³ S. Abid Husain points out that "The most important characteristic of the new Indian nation which Akbar brought into being was that it was based not on the community of religion but on the citizenship of the same state."²⁴ About an Edict issued by Akbar against slavery's. Abid Husain observes, "Seen against the background of the fundamental policy that the state recognized the sanctity of individual liberty and the equality before law of all its citizens without any discrimination of class or creed."²⁵ This some of the components of secularism are clearly visible in Akbar's policies.

²¹ Ratnasekhara. "K.M. Panikar, India through the Ages, (Tilak, Wasan, Delhi, 1985), p.157-22. A tax levied solely upon non-Muslims.

²² S. Abid Husain, op. cit., p.21.

²³ H.G. Rawlinson, India: A Short Cultural History (Frederik A. Praeger Inc., New York, 1954), p.307.

²⁴ S. Abid Husain, op. cit., p.22.

²⁵ Ibid, p.96.

Even before Akbar, Babar had advised Humayun to “shed religious prejudice, protect temples, preserve cows, and administer justice properly in this tradition.”²⁶ Jahangir and Shahjahan, too, followed such a liberal tradition. Dara Shikoh, it is maintained, studies Hindu philosophy and attempted to find common grounds between Hindus and Muslims.

At the other end of the spectrum stands Aurangzeb, whose rule was characterized by persecution of Hindus. Yet historians assert that a kind of broad religious toleration is not absent even during Aurangzeb’s reign. He had a large number of non-Muslim mansabdars. Muslim law was not imposed upon the Hindus. There were no communal riots during this period. Keeping in mind the socio-economic and political context of his time, it is held that the imposition of Jiziya too, was not motivated by his religious fervor, but other considerations, primarily economic-emanating from the depletion of resources from his costly Deccan wars, too contributed to this policy. The political motivations of Jiziya are also evident from the treaty entered into by Aurangzeb’s son, Bahadur Shah, with the Rana of Mewar in 1681 whereby he agreed to abolish the Jiziya, as also to grant other favour in return for the latter’s support in a contest for the throne with Princes Azam and Akbar.²⁷ On the whole, Aurangzeb, it is held, subjugated religion to politics.²⁸

Obviously, even during the medieval period, it was not religion which dictated the policies of the State. Other considerations-political and economic-played an important role in this regard. This is evident in an analysis of a few of the main features of Muslim rule which are played up by communal historians to prove that Hindus were suppressed in this period. One such feature is the destruction and plunder of temples. The presumption is that this was done on account of the religious ideology of the ruler-Muslims being opposed to idol worship. However, the fact that such instances are not confined to Muslim rule alone proves that religion was not the sole

26 Mohammad Ghose, op. cit., p.22.

27 Asghar Ali Engineer, “Islam and Hinduism: Conflict or Confluence?”, *Mainstream*, Vol. XXVII, No.50, September 9, 1989, pp. 28-29.

28 “The Indian National Movement and Concept of Secularism”, in Bidyut Chakrabarty, (ed.) *Secularism and Indian polity*, (Segment, New Delhi, 1990), p.77

determinant of such a policy. Historians cite the examples of various Hindus Kings who indulged in destruction of temples. Kosambi says King Harsha of Kashmir (A.D. 1089-1101) “systematically melted down all metal images throughout the length and breadth of his kingdom, with just four exceptions.” Further, “the work was carried out under a special minister for uprooting gods (devotpatana-nayaka). Each image was publicly defiled by leprous beggars who voided urine and excrement upon it before dragging it through the state streets to the foundry. Not the slightest theological excuse was offered. The king did have a Muslim bodyguard of mercenaries, but went out of his way to offend them by eating pork.”²⁹ Subhatavarman, the Parmara ruler (1193-1210), attacked Gujarat and pillaged a large number of Jain temples at Dabhoi and Cambay.³⁰ It is also noteworthy that temples were primarily destroyed in enemy territory unless they became centers of conspiracy or revolt.³¹ There were also reported instance of Shaivite shrines and the persecution of Jains.³² Eminent historians like Romila Thapar and Harbans Mukhia Opine that temples were plundered, not because the rulers were “religious iconoclasts” but for their fabulous wealth, which also holds true for Hindu rulers destroying temples. Thus religion was not the sole motivating factor behind such destruction. A number of other factors came into play. Romila Thapar asserts that the building and destruction of temples and mosques which have been constructed under the patronage of the state must be seen in a political context.³³ Admittedly, vandalism on temples was perpetrated by Muslim rulers, but Hindu rulers too acted in a similar manner. This of course does not justify the vandalism, but highlight the fact that this was a “part of the political culture of medieval times.”³⁴

Another feature emphasized by the communal historians is that of the policy of forced conversions to Islam. The fact that conversion did occur is not refuted. It is

²⁹ Kosambi, quoted in Asghar Ali Engineer, “Islam and Hinduism: Conflict or Confluence?”, *Mainstream*, Vol. XXVII, No.50, September, 9, 1989, p.34.

³⁰ Harbans Mukhia, “Medieval Indian History and the Communal Approach”, in Romila Thapar, *Eted, Communalism and the Writing of Indian History*, (People’s Pub. House, New Delhi, 1993) p.34.

³¹ *Ibid.* p.34.

³² Romila Thapar, “Communalism and the Historical Legacy: Some Facets”, in K.N. Panikkar, (ed.), *op. cit.*, p.24.

³³ *Ibid.* p.26.

³⁴ K.N. Panikkar, *op. cit.*, p.6.

the factor of force which is contested. It is argued that conversions were the result of social circumstances. Harbans Mukhia writes, "There is no evidence, indeed, to suggest that the state engaged itself in converting the Hindus into Muslims on a mass level or in ferment, zealous effort to propagate the faith."³⁵ Romila Thapar reinforces this viewpoint when she says that the fact that Muslims remained a minority is sufficient evidence of lack of forcible conversions.³⁶ K.M. Panikkar admits, on the other hand, that forcible conversions were there, but they were few and the lot of the Hindus was not too hard.³⁷ Even where there was conversion, the converts continued to follow their age-old traditions and so cooperation and understanding characterized the relations between the lower strata of the two communities.

The imposition of jiziya upon Hindus is another aspect of Muslim rule which is cited in evidence of the non-tolerant policy of the Mughals. It is pointed out that while Jiziya was imposed upon Muslims, the 'zakat'. Again, if Hindus were suppressed, Muslims were no less so. Thus Ala-ud-din Khiji suppressed Hindu Zamindars but he took strong measures to suppress Muslim iqtadars.³⁸

The relations between the two communities at the social level cannot be generalized as such. But it can be said that the two communities did not form "exclusive and antagonistic categories" but cooperated in "culture life and social affairs"³⁹. Romila Thapar holds the view that the conflicts between the Hindus and Muslims were not conflicts between two monolithic communities but between sects of these communities.⁴⁰

The dissensions within the ruling classes are seen in a religious idiom and extended to the entire society. Medieval wars fought for political reasons are characterized as religious wars, for example, the battle between Maharana Pratap and

³⁵ Harbans Mukhia, "K.N. Panikkar, op. cit., p.6(People's Pub. House, New Delhi, 1993), p.32.

³⁶ Romila Thapar, "Communalism and the Historical Legacy: Some Facets", in K.N. Panikkar, (ed.), op. cit., p.27. It may also be noted that Asoka went all out to propagate Buddhism and convert people to Buddhism.

³⁷ K.M. Panikkar, *India Through the Ages*, (Tilak Wasan, Delhi, 1985)

³⁸ Harbans Mukhia, "Medieval Indian History and the Communal Approach", in Romila Thapar, et al, cit., p.28.

³⁹ Romila Thapar, "Communalism and the Historical Legacy: Some Facets", in K.N.Panikkar, (ed.), op. cit., p.24.

⁴⁰ Romila Thapar, "Communalism and the Historical Legacy: Some Facets", in K.N.Panikkar, (ed.), op. cit., p.25.

Akbar, between Shivaji and Aurangzeb. However, it was not religion but political compulsion, which provided the basis for support or lack of support to a particular ruler⁴¹. The attitudes of the rulers were dictated more by political interests and economic competition than by religious fervor or a liberal or fanatic disposition on the part of the ruler.

A critical analysis of this period of Indian history reveals that the medieval Indian State was definitely not theocratic. Theocratic character of the State would imply the use of State power for the promotion of a particular religion and suppression of others. This was not the case. Other religions continued to exist and even prosper. The emergence of the Bhakti tradition is one example. Again, unlike the West of the middle Ages, heretics were not persecuted, nor persecuted, nor was there any institution such as the Inquisition.⁴² Society was free of communal riots as they are witnessed today. On the whole, the medieval Indian State, rightly observes Harbans Mukhia, could be regarded as..." negatively secular, so to say, in that it subordinated religion to politics rather than politics to religion."⁴³

The actual idea of secularism as distinct from the toleration of the previous era came into India with the British. At the same time, however, their advent also brought Hindu-Muslim friction to the fore. Numerous reasons could be advanced for this, ranging from the divide and rule policy of the British to the revivalist trends within the socio-religious reform movements and later the Indian national movement

To a certain extent the policies of the British provide a historical basis for secularism in India. These policies constituted an attempted to combine three different roles. The commercial imperial objectives of the British Government dictated the policy of religious neutrality, its role as an Indian ruler compelled it to follow the traditional role of patron and protector of Indian religions and the Pressure from Christian missionaries compelled it to assume the role of a Christian Government.⁴⁴

41 Asghar Ali Engineer, "Tampering with History "Indian Express, Dec.8, 1992.

42. "Inquisition", in James Hastings, (ed.), Encyclopedia of Religion and Ethics, Vol. VII, (T&T Clark, Edinburg, 1971), p.330.

43. Harbans Mukhia, "Medieval Indian History and the Communal Approach", in Romila Thapar, editorial, op. cit., p.35.

44 D.E.Smith,op.cit,p.66f

The policy of religious neutrality meant to compulsory conversions as well as refraining from interference in social customs and traditions of the people. This policy was the result of a realistic assessment of the social situation on India.

Nevertheless, the British although inclined towards neutrality, pushed through a number of social reforms to remove social evils which were interlinked with religion. Thus in 1829, William Bentinck abolished the practice of sati or widow burning. The Caste Disabilities Removal Act was passed in 1850, permitting change of religion without consequent loss of inheritance. The most important reform from the standpoint of secularism was the introduction of secular education which came through Wood's Education Despatch of 1854, often called the Magna Carta of Indian education. Secular education for the nationalist leaders of the time was a safeguard against Christian missionary institutions and was also seen as a liberating force.⁴⁵ This acted as a vehicle for Western ideas and brought with it ideas of liberalism, scientific inquiry, rationalism, etc. which in turn led to the growth of the ideas of secularism and its penetration into the national movement.

Other policies of the British too had an impact in providing as historical basis for secularism in India. The British modified and codified the existing laws which were in egalitarian and discriminatory and gradually evolved a new system of laws which included uniform criminal laws. They also introduced the concept of rule of law. Most significant, however, was the introduction of the principle of equality before law, even while keeping the Europeans above this equality. Their religious neutrality, the establishment of the principle of equality before law and uniform criminal laws was indispensable for the development of India as a secular state. However, civil law continued to be differentially applicable and provided sufficient basis for communal animosities.

Following the mutiny of 1857, Queen Victoria's Proclamation confirmed the commitment to religious neutrality. But an over-all analysis of this period clearly reveals the use of religious disparities and dissensions in the pursuit of the policy of divide and rule to consolidate their power as well as to counteract the threat of political agitation. This policy of 'divide et imperia' played an important role in perpetuation of communalism and separatism.

⁴⁵ Satish Chandra, "The Indian National Movement and Concept of Secularism" in Bidyut Chakrabarty, op. cit., p.71

In accordance with such a policy of divide and rule, the British partitioned Bengal in 1905. Separate electorates were provided for Muslims through the Indian Councils Act of 1909, a provision which was extended to Sikhs, Indian Christians, Europeans and Anglo-Indians in certain provinces by the Government of India Act, 1919. Ramsay MacDonald's Communal Award of 1932 provided for separate electorates as well as reservation of seats for minorities, even for the depressed classes and this (as modified by the Poona Pact)⁴⁶ became the basis for representation under the Government of India Act, 1935.⁴⁷ This policy of divide and rule was greatly instrumental in exacerbating the communal divide, although Smith claims that, "The British obviously did not create the Hindu-Muslim communal problem; although they did exploit it for their own purpose from time to time."⁴⁸ The recognition of communal leaders as the real representatives of a community and the efforts to keep the Muslims out of the national movement by conceding their communal demands were aspects of this policy. All these measures encouraged separation and ultimately played an important role in the partition of India.

Thus, on the hand, the British laid the institutional framework for secularism and, on the other, contributed to religious divisions and dissensions through their policies which aimed at perpetuating their power through aggravation of communal tensions.

3.1.4 Multiculturalism and Secularism in India

Any study of secularism today would be incomplete without an analysis of the cultural ethos, for much of the discourse on secularism hinges around culture. This becomes all the more significant a various issues and problems are beings projected in cultural terms and context. A vital question in this regard pertains to the nature of Indian culture. Is it Hindu or composite? What are its implications for secularism in India? An inquiry into these issues acquires significance in view of the centrality of the concept of culture to the secular discourse.⁴⁹

⁴⁶ H.M. Seervai, Constitutional Law of India, Vol. I, (N.M. Tripathi, Bombay, 1991), p.9

⁴⁷ This provided for separate electorates with a specified number of reserved seats for Muslims, Europeans, Sikhs, Indian Christians, Anglo Indians and the Depressed Classes.

⁴⁸ D.E. Smith, op. cit., p.86.

⁴⁹ Rajni Kothari, Politics and the people: In Search of a Humane India, Vol. II, (Ajanta, Delhi, 1989), p.372.

Before going into a discussion of the nature of Indian culture, it would be valid to examine what is meant by culture. D.E. Smith cites a study giving 164 definitions of culture from the writings of various scholars of different disciplines. He remarks that, "A number of the definitions stress the idea that culture is a collective name for the material, social, religious, and artistic achievements of human groups, including traditions, customs, and behavior patterns, all of which are unified by common beliefs and values. Values provide the essential part of a culture and give it its distinctive quality and tone."⁵⁰ In a similar vein, S. Abid Hussain points out that "culture is a sense of ultimate values possessed by a particular society as expressed in its collective institutions, by its individual members in their dispositions, feelings, attitudes and manners as well as in significant forms which they give to material objects."⁵¹ Humayun Kabir, too, expresses a like elucidation of culture when he says that "Culture ... expresses itself through language and art, through philosophy and religion, through social habits and customs and through political institutions and economic organizations. Not one of them is separately culture but collectively they constitute the expression of life which we describe as culture."⁵² Obviously, religion forms an important part of culture. Equally apparent is the fact that religion is only one part of culture, not the whole of it. Thus religion is not the only determinant of cultural identity. This fact is also emphasized by Krishan Kant when he remarks that, "Every geographical entity known as a country has a separate cultural identifies; a shared religion does not mean identical cultures. The majority of the population of Ireland is Roman Catholic Christian; the same faith is followed in Italy, Poland and the Philippines but these four constitutes not a like⁵³ culture, thus constitution only religion but also art, architecture, philosophy, language, institutions, etc.

An analysis of the nature of Indian culture reveals two divergent views. One view propounded by the Bharatiya Janata Party (BJP) and its allies equates Indian culture with Hinduism; non-Hindu aspects are regarded as contaminating influences which need to be 'expunged'. Such a conception ignores the impact of other religious systems on Indian culture. It also ignores the impact of other components of culture viz. art, architecture, philosophy, language, etc. the protagonist of this view seek the

⁵⁰ D.E. Smith, op. cit., p.372.

⁵¹ S. Abid Husain, *The National Culture of India* (National Book Trust, New Delhi, 1978), p.3.

⁵² Humayun Kabir, *The Indian Heritage*, (Asia Pub. House, Bombay, 1955), p.38.

⁵³ Krishan Kant, "The Curse of Composite Culture", *The Sunday Tribune*, August 30, 1987, p.4.

roots of Indian culture in the ancient period of Indian culture and ethnicity.“ Cannot be said to be rooted in anything other than the Vedas.” And this is so, “not only because nothing order survives but also because nothing basically alien to them can be located in any part of the land.”⁵⁴ Advani emphasizes that India’s culture is essentially a Hindu culture⁵⁵ and claims that “emphasis on the composite character of Indian culture is generally an attempt to disown its essentially Hindu spirit and content.”⁵⁶ Kanayalal M. Talreja asserts that pseudo- secularists “have hatched a sinister conspiracy to destroy Hindu culture and Hindu civilization by introducing in the psyche of the nation, two malicious and mischievous concepts of “composite nation” and “composite culture”⁵⁷.

The other view regards Indian culture as composite culture,⁵⁸ enriched by the contribution of many different religions and traditions, which have been absorbed into the mainstream of Indian culture. Gandhiji regarded Indian culture as a fusion of various streams.⁵⁹ Jawaharlal Nehru gave a clear exposition of Indian culture as composite culture in his ‘Discovery of India’. He stressed the influence of Buddhism and Jainism on Indian culture, all of which led to the growth of composite culture in India. Smith, it may be mentioned, regards Indian culture as composite culture, with Hinduism as the “most powerful and pervasive element in that culture.”⁶⁰

A bird’s eye view of the Indian cultural ethos as it developed over the centuries reveals the essential elements of India’s culture and their contribution to the growth of secularism. Ancient Indian history bears testimony to the fact of invaders coming, setting down and ultimately being absorbed within Hindu society. Thus the Greeks, the Scythians, the Sakas, the Pallavas, the Kushans all came from outside India and became ultimately a part of the Hindu society. In the pre-Vedic culture,

⁵⁴ Girilal Jain, as quoted in SuKumar Muralidharan, “Hindutva and Perversion of Nationalism”, *Mainstream*, Vol. XXX, No.18, February 22, 1992, p.14.

⁵⁵ L.K. Advani was quoted in A.G. Noorani, “The way of the Law”, *Frontline*, Vol. 10, No.11, June 3, 1993, p.50

⁵⁶ Ibid.

⁵⁷ Kanayalal M. Talreja, pseudo-secularism in India, (Rashtriya Chetana Prakashan, Mumbai, 1996), p.366.

⁵⁸ The Construction of Religious Traditions and National Identity, (Sage, New Delhi, 1995), p.340.

⁵⁹ M.K. Gandhi, as quoted in P.C. Joshi, *Secularism and Development: The Indian Experiment*, (Vikas, New Delhi, 1995), p.187.

⁶⁰ D.E. Smith, op. cit., p.378.

nature and the Mother Goddess were worshipped. With the advent of Aryans, this underwent a change in that a number of Gods came to be worshipped. Theirs culture also had an impact on the rituals, the patriarchal and the matrilineal family systems, etc. ancient Indian thought, as seen in an earlier part of this chapter, provided one of the basis for development of secular outlook.

The later Vedic period saw the crystallization of the caste system. The culture of the period was also affected by Buddhism and Jainism. Buddhism, with its emphasis on humanity, equality, compassion and denouncing of social distinctions, and Jainism, with its stress on non-violence and equality, strengthened the secular ethos.⁶¹

Christianity reached India in 52 A.D.-more than 100 years before it spread across Europe. Islam, Judaism and Zoroastrianism also spread to India. These religious were accommodated and assimilated within the Indian tradition. Significantly, Christians in this period were still being persecuted in Europe. S.D. Sharma observes, "The advent of early Christianity and Islam in India was thus peacefully accepted, supported and ascribed to-not only out of a spirit of co-existence, but with a certain sense of identification."⁶²

Islam brought fresh cultural influences which are seen in the new styles of architecture, of miniature paintings, in language, etc. humayun kabir points to the traces of Persian influence in the palaces, forts and tombs of northern India during this period. He also emphasizes certain features which were alien to the ideals of Persian architecture. "Thought influenced deeply by Persian tendencies", he writes, "They have their basis in the traditions of ancient India and are unmistakably Indian."⁶³ The Bhakti and Sufi movements of this period are also indications of the synthesis at the religious level. In this regard special mention may be made of the names of Ramananda, Kabir, Nanak, Moinuddin and others, who represented the syncretists' trend in India. Their teachings were a fusion of Islam and Hinduism. The customs, conduct, fashions, festivals, etc., which evolved during this period are all indications of the growth of a common culture in India. The development of Urdu as the 'lingua France', translation of various Sanskrit works into Persian is other instances which

⁶¹ S.D. Sharma, op. cit., p.23.

⁶² S.D. Sharma, op. cit., p.23.

⁶³ Humayun Kabir, The Indian Heritage, (Asia Pub. House, Bombay, 1955), p.76

indicate the growth of a common culture. Humayun kabir pertinently remarks, “In a word the mentality of the Muslim and the Hindu was so fused in the various manifestations of Indian genius that anybody who takes pride today in the unadulterated purity of his Hindu culture or his Muslim heritage shows a lamentable lack of historical knowledge and insight.”⁶⁴

The impact of the British culture too, is not lacking. It could be seen in the sphere of education, scientific attitude, political institutions, such as representative Government, arousal of the desire for political equality and liberty, which took form in the Constitution of India, technological development as seen in the establishment of industries, railways and other means of communication, etc. Although the industries were mainly owned by Europeans, this was the beginning of the industrial progress on which India was to embark after independence. The British, says S. Abid Husain, gave “a new concept of individual and national freedom and a preliminary training in the democratic technique of public life.”⁶⁵

Culture, thus, is not something static, rather it is dynamic. It has always been changing, always evolving. Even in the ancient period, Indian culture was subject to a number of influences, all of which helped in its growth. Thus the Vedic culture is different from the Puranic culture. Yet there is an underlying continuity, which can be seen in some of the features continuing even today, such as the recitation of Vedic hymns by Brahmans. Similarly, the influence of Islam and the West can also be perceived in the contemporary Indian culture. The State is charged with the responsibility of promotion of culture and so “becomes a catalytic agent in the process of cultural synthesis which has been going on for centuries.”⁶⁶ Culture however, cannot be imposed by state appointed votaries. It has to evolve. Therefore to say that Indian culture is Hindu culture would imply a static concept of culture.

In the ultimate analysis, it would be in the fitness of things to say that Indian culture represents a fusion of various streams and it is composite in nature. Krishan Kant rightly opines that “All cultures in all countries are composite. There is no such thing as pure culture. During thousands of years of history various streams have intermingled and given shape to the culture of a country. All these contributions

⁶⁴ Ibid. p.65.

⁶⁵ S. Abid Husain, op. cit., p.122.

⁶⁶ D.E. Smith, op. cit., p.379.

throughout history go to make a syncretism culture of a country through the genius of the people as a whole.”⁶⁷ Indian culture thus is imbued with the spirit of accommodation, tolerance, co-existence and religious freedom, all of which in the words of Dr. S.D. Sharma “enriched, renewed and reiterated”⁶⁸ the secular ethos of India.

A few words on the relationship between politics, culture and democracy, for the three are interrelated and yet distinct, would be pertinent here. The Indian tradition of “absorbing different cultures, different religious, different traditions and making them a part of a plural ethos”⁶⁹ finds its counterpart in the democratic tradition, with its concepts of liberty and equality. The very fact of plurality, as a matter of fact, necessitates democracy, which in turn provides the necessary conditions for continuance of this plurality. “Democracy” observes Kothari, was a very good instrument for continuation of this tradition in a world that was changing to live with a number of other religious and linguistic, regional and ethnic identities.”⁷⁰ Likewise, culture impacts political and vice versa. As Narang pertinently observes, “while political processes derives its norms and values from general culture which is the integral ideation of life and gives meaning, coherence and intelligibility to man’s being as whole, this process also in turn seems to modify the culture environment so as to make it more amenable to its own sustenance.”⁷¹ Thus, while representative institutions and the idea of democracy, itself, may be said to be examples of westerns cultural influences, they were affected by Indian cultural traditions to give them a uniquely Indian look. The very interpretation of secularism as **‘sarva dharma sambhav’** as against the western interpretation of ‘separation of state and religion’ may be considered an appropriate example of culture effecting ideas and concepts.

In sum, it would be tenable to say that despite no institutional separation of religion and politics, the acceptance of secularism as the basis of the Indian Constitution did not represent a break from tradition; rather it constituted a

⁶⁷ Krishn kant , The Curse of Composite Culture" The Sunday Tribune, August30,1987,p.4

⁶⁸ S.D. Sharma.op.cit,p27

⁶⁹ Rajni Kothari, Politics and the People; In Seearchof a Humane India, Vol.II [Ajanta, Delhi, 1989], p.485.

⁷⁰ Ibid.

⁷¹ A.S Narsng, "A new Culture of India; A Culture of Politics", in Indu Banga,and Jaidev, [eds.], Cultural Reorientation in modern India,[Indian Institute of Advanced Study, Rashtrapati Nivas, Shimla,1996],p.80

continuation of some of the secular features which can be seen right from the ancient period. However, some of the challenges which persist in the post-independence period can also be traced to the past ethos. While an historical analysis has its relevance for understanding the present challenges encountered by secularism, nevertheless, it may be pointed out that the question whether India was secular or had secular concepts in the past is irrelevant. What is relevant is that India cannot survive as an entity, a nation in the absence of secularism as a basis feature of the Constitutional of free India.

3.1.5 The Indian National Movement and Secularism

Situation changed with the coming over of the nationalists on the scene likewise, two trends may be noticed in the national movement. While the basic ideology of the national movement was declaredly secular and provided a basis for the adoption of secularism in independent India, it was also not free of religious appeal. Throughout the national movement there is evidence of the leaders appealing to religious sentiments for attainment of political goals. Equally, both the Hindus and the Muslims laid emphasis on their separate identities and interest during this period. There was a parallel rise of communal organizations which engaged in competitive communalism. This encouraged the growth of separatist and communal tendencies which were used and accentuated by the British in order to perpetuate their power. These forces gained strength in spite of the basic secular ideology of the national movement and the leaders of the national movement were not able to effectively counter them. A brief account of the above stated trends assumes significance so far as the present study is concerned. Secularism in post-independence India and the challenges thereto cannot be analyzed without an understanding of the growth of these trends.

One of the bases for secularism in India was provided by the socio-religious reform movements of the nineteenth century, which also provided the initial impetus to nationalism. These movements sought to rid the society of irrationalism. These movements sought to rid the society of irrational elements by emphasizing rationalism and scientific temper while attempting to eliminate superstitions and obscurantism. However, these reform movements were of a socio-religious nature because some of the evils they sought to reform found legitimacy in religion. Because these reform

movements concentrated on their respective communities they also strengthened separatist tendencies.⁷²

During the initial years of the Indian national movement, the ideas of nationalism and secularism were interlinked for one represented a struggle against imperialism and the other a struggle against divisive forces and both were essential for a united free India. At the time of the mutiny of 1857 the Hindus and Muslims unitedly fought the British. The Indian National Congress formed in 1885, was a non-communal organization and its membership was not determined on the basis of religion. A number of Muslims were elected as Presidents of the Indian National Congress, and under the moderate leadership of people like Pherozeshah Mehta, Ranade and Gokhle, it clearly voiced secular objectives. But the beginning of the twentieth century witnessed a conflict between the moderates and the extremists, with both showing a different response to the ideology of secularism as the foundation for nationalism. The moderates accepted the policy of state, neutrality in religious matters, putting the nation above religion. The Hindu liberals were replaced by extremists like B.G Tilak, B.C Paland Aurobindo and the Muslim liberals Like Abdulkalam Azad.

The extremists, on the other hand, brought religion into play as an important factor in mass mobilization against the British. For instance, Tilak used Shivaji and Ganpati festivals for mass mobilization. Although an extremist, his social conservatism is reflected in his opposition to the Age of Consent Bill, as also Vithalbhai Patel's bill for validating and stressed that the ambition of every Hindu ought to be one of consolidation of all sects into one mighty Hindu nation.⁷³ He even combined the anti-cow killing agitation with the larger goal of mass mobilization for the national movement. Aurobindo Ghosh too regarded nationalism as a religion.⁷⁴

Aurobindo declared the Indian Nationalism was not, for him a creed a religion, or a faith .It was Santana dharma for him and he equated the growth or decline of the Indian nation with it. India was glorified as a Mother Goddess in this period. Smith points out that, "Aurobindo's religious symbolism was much more than vivid

⁷² The Oxford History of Modern India, 1740-1975, (Oxford Univ. Press, New Delhi, 1978), p.288.

⁷³ B.G. Tilak, as quoted in K.P. Karunakaran, Continuity and change in Indian Politics, (People's Pub. House, New Delhi, 1996), p.96.

⁷⁴ Aurobindo Ghosh as quoted in K.P. Karunakaran, op. cit., p.97.

imagery; he identified the country with its ancient faith so completely that patriotism and worship became indistinguishable.”⁷⁵ The cult of Durga or Kali became associated with revolutionary terrorism in Bengal. Lala Lajpat Rai and B.C. Pal too used religion for the same ends. The motive in utilization of religion for the attainment of political goals may have been laudable but the impact was one of introducing the idea of Hindus as a separate political entity and promotion of solidarity amongst Hindus.

The activities, Of the Extremists also hindered the Congress in attracting the Muslims. The Muslims, moreover, kept away from the Congress under the sway of leaders such as Syed Ahmed Khan. The fear of domination by the Hindus was a predominant factor in heightening Muslim communalism. This led to a deputation by Muslims under the Agha Khan to demand separate electorates for Muslims and later the formation of the Muslim League in 1906 with the British Government, safeguarding the rights of Muslims and to prevent the growth of ideas prejudicial to other communities.

The nexus between religion and politics got a new turn with the advent to Gandhiji, for he believed that “those who say religion has nothing to do with politics do not know what religion means.” Such a conviction was, however, rooted in his belief in the underlying truth and unity of all religions. At the same time, he also insisted that there should be no state religion.⁷⁶ His religion included the best in Islam, Christianity, Buddhism and Zoroastrianism and he constantly emphasized the religious, social and political unity of the various communities. This formed one of the basis of the secularism adopted in post-Independence India. He too, however, used religious symbols to give the national movement a mass base.

The use of religious slogans and symbols no doubt enthused the masses,⁷⁷ but it also led to the identification of Hindu revivalism with Indian nationalism. It was in this period that Hindu communal organizations, such as Hindu Mahasabha and RSS also took birth and played an important role in heightening communal tensions. It is significant to note that Savarkar was the first proponent of the two-nation theory in his

⁷⁵ D.E. Smith, op. cit., p.90.

⁷⁶ A. Appadorai, Indian Political Thinking in the Twentieth Century from Naoroji to Nehru, (Oxford, Madras, 1971), pp.131-32.

⁷⁷ K.Pkarunakaran, op.cit;p28

book 'Hindutva'. The ideology perpetuated by these organizations enhanced communalism and alienated the Muslims. This in turn led to rise to organize on a communal basis and reinforcing separatist tendencies. Muslims communalism, on the other hand, further strengthened Hindu communalism, thereby forming a vicious circle. It is noteworthy that Jinnah-later to become the architect of Pakistan-joined the Congress as a 'nationalist Muslim' in 1906 (he assumed the leadership of Muslim League in 1913) and was hailed as the ambassador of Hindu-Muslim unity after the Lucknow Pact of 1916.⁷⁸ He left the Congress on the pretext of opposition to Gandhi's mixing of religion and politics.

The Khilaft movement brought a dose of religious orthodoxy into the national movement, even though it brought the Muslims into the freedom struggle on a large scale. It further legitimized the intrusion on religion into the political sphere.⁷⁹ Here, again, it has been pointed out that Jinnah opposed the Khilafat Movement and "... warned Gandhiji not encourage fanaticism of Muslim religious leaders and their followers."⁸⁰

Muslim fears of domination by the Hindus were further enhanced with the introduction of the various Government of India Acts by the British Parliament, which provided for a representative Government and introduced limited franchise. Separatism, thus, kept increasing. This increased hostility was expressed through frequent clashes between the Hindus and Muslims in the 1920. Mushirul Hasan points out that "Communalism in the twenties. Was not confined to elite groups jockeying for position but affected the common people as well. This was clearly reflected in the recrudescence of large scale communal rioting in Bengal, Punjab, and the U.P."⁸¹

⁷⁸ The Lucknow Pact between the Congress and the League, it may be noted, confirmed the principle of separate electorates

⁷⁹ Bipan Chandra, *Nationalism and Colonialism in Politics in India, 1916-1928*, (Manohar, New Delhi, 1970), p.314..

⁸⁰ K.M.Munshi Hasan, as quoted in H.M.Seervai, op. cit., p.6

⁸¹ Mushirul Hasan, *Nationalism and Communal Politics in India, 1916-1928*, (Manohar, New Delhi, 1979), p.314.

Nevertheless, the sporadic outbursts of violence did not signify a division of society along communal lines, for Hindus and Muslims intermingled in daily life.⁸² Thus, two simultaneous trends—one of communalization and the other of intermingling of the common people—are clearly noticeable.

The gradually increasing communalization, however, resulted in the emergence of the two-nation theory which held that Hindus and Muslims constitute two nations. This had its natural consequence in the partition. The idea of partition was mooted by Iqbal and Chaudhary Rahmat Ali in 1930 and 1931 respectively and the demand was adopted by the League in 1940 on the basis of the two-nation theory. Paradoxically the ulema rejected the demand for Pakistan. The 1946 elections, based on separate electorates and limited franchise, were held in a communally surcharged atmosphere. The die having been cast, the process was irreversible. Significantly, communalists also helped in the adoption of secularism. Increasing communal demands of the communal organizations made it imperative for the Congress to emphasize its secular character and a secular state for India.

Cast, the process was irreversible. Significantly, communalists also helped in the adoption of secularism. Increasing communal demands of the communal organizations made it imperative for the Congress to emphasize its secular character and a secular state for India.

The Congress itself was not free of communal elements. While every effort had been made to give it a non-communal basis, yet it was a heterogeneous organization representing various viewpoints, so the presence of certain communal elements was in a sense inevitable. For instance, Pt. Madan Mohan Malaviya observes Bipan Chandra, “freely sailed between the Hindu Mahasabha and the Congress.”⁸³ Similarly, Gopi Chand Bhargava in Punjab, Bipan Chandra remarks, “was one day a Hindu communal representative in the provincial assembly and the next day a Congress and Gandhian leader.”⁸⁴ Congressmen unhesitatingly participated in the Shuddhi and Sangathan movements⁸⁵, while others participated in Tabligh and

⁸² Mushirul Hasan, “Competing Symbols and Shred Codes: inter-community relations in modern India”, in S. Gopal, (ed.), *Anatomy of a Conformation*, (Viking, New Delhi, 1991), p.104

⁸³ Bipan Chandra, op. cit., p.264

⁸⁴ Ibid. p.265.

⁸⁵ Tapan Basu, et al., *Khaki Short Saffron Flags*, (Orient Longman, New Delhi, 1993), p.10.

Tanzim.⁸⁶ The presence of communal elements within the Congress aided and abetted, on the ideology perpetuated by the communal organizations. The growing communalism and separatism had its ultimate impact in the partition of India.

Be the as it may, the ideology of the national movement, notwithstanding the occasional lapses and weaknesses, was primarily secular. The Indian National Congress which spearheaded the national movement avowed faith in secularism and in spite of some aberrations remained committed to this ideal. In accordance with this objective, it time and again, proclaimed the ideal of equality and religious liberty. In its Madras session of December 1926, it passed a resolution for freedom of religious faith and practice but also held that “no bill affecting the interests of a community would be introduced in a legislature without the prior approval of three-fourths of the elected representatives of that community.”⁸⁷ The Nehru Report of 1928 contained a section on fundamental rights and provided that “Freedom of conscience and the free profession and practice of religion are, subject to public order or morality, hereby guaranteed to every person.” It further provided that there would be no State religion and the State would not endow any religion nor would it give preference to any person on religious considerations. It also provided for joint electorates with a special provision for reservation of seats for Muslims where they were in a minority. At the Karachi session in 1931 the Congress adopted a resolution on fundamental rights, which included the right to freedom of religion, freedom of conscience, religious neutrality of the State, etc. and in 1932, at the Bombay session, the Congress committed itself to the protection of minority rights, including their culture, script and language.

The leadership of the national movement was, by and large, in the hands of secularist leaders. The influence of Gandhiji and other secular leaders such as Nehru and Bose, the presence of prominent leaders from the minorities, such as Maulana Abul Kalam Azad⁸⁸, Dadabhai Navroji, Asaf Ali, and Badruddin Tyabji non-communal character of the Congress and the national movement and provided a basis for secularism. An over-all analysis reveals that the concepts of religious freedom and tolerance have existed in Indian society since ancient times. The British gave these a

⁸⁶ These were the Muslim counterparts of the shuddhi and sangathan movements

⁸⁷ Mohammad Ghose, op. cit., p.31.

⁸⁸ Abdul Kalam Azad, *India Wins Freedom*, (Orient Longman, New Delhi, 1988), p.116.

definite direction by creating institutions which furthered the ideal of secularism. Nonetheless, political compulsions of the British necessitated a policy of divide and rule which encouraged separatism and communalism. Such separatism was enhanced by the activities of communal organizations as also by the revivalist trends within the national movement. The Congress also clearly failed to articulate a policy which could combat such tendencies. At the same time, secularism formed the basis ideology of the national movement. This is reflected in the various resolutions and declarations issued from time to time. Secularism also infused the thinking of the nationalist leaders, such as Gandhi and Nehru and had an obvious impact on their policies. The partition of India in itself provided one of the historical bases of secularism in that it effectively showed the impact of communal policies and propaganda.

Thus, 1947 was a year of triumph as well as tragedy. Triumph in the attainment Of Independence. Tragedy in the rivers of blood flowing alongside. On the bedrock of partition, the violence and bestiality accompanying it arose the modern secular Indian Republic guaranteeing liberty and equality to all its citizens.

3.2 The Constitutional Ideal of Secularism

The historical and cultural ethos of India, its plural society, and the social turmoil and political upheaval accompanying independence formed the backdrop for the adoption of secularism as the cornerstone of the Constitutional setup.

3.2.1 Making of a Secular Constitution

After the independence of India on August 15, 1947, the Drafting Committee was appointed by the Constituent Assembly on August 29, 1947. It was charged with the duty of preparing a Constitution in accordance with the decisions of the Constituent Assembly. The Government of India Act of 1935 supplied a large part of the basic framework to work out the new Constitution. However, important principles and constitutional provisions were adopted mostly from the constitutional systems of Great Britain and United States. Part III of the Indian Constitution which deals with fundamental rights, including the provisions dealing with the Indian form of secularism as given in articles 25 to 28 have been adopted mostly from the secular provisions of the of United States Constitution.

However, at the time of drafting of the Constitution and during the debates which took place in the Constituent Assembly, the members of the Constituent Assembly refused to add the terms “secular” or “secularism” either in the Preamble of

the Constitution or in the articles dealing with the secular provisions of the Constitution. At that time these terms had a compelling sense of atheistic connotation, especially as it was in usage in the Western countries. Therefore, the Constituent Assembly omitted their usage in the Constitution. This calls for explanation. We provide it in the following sections.

3.2.2 The Omission of the 'Secular' in the Constitution

On December 13, 1946, Mr. Jawaharlal Nehru moved the Objectives Resolution in the Constituent Assembly, which was passed on January 22, 1947. The Objectives Resolution gave expression to the ideals and aspirations of the people of India. Its principles were to guide the Constituent Assembly in its deliberations in making the Constitution. The principles embodied in the Objectives Resolution were incorporated into the Preamble of the Constitution of India. Some of the provisions of the Objectives Resolution read:

- (1) This Constituent Assembly declares in its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and draw up for her future governance a Constitution...
- (2) Wherein all power and authority of the sovereign Independent India, its constituent parts and organs of Government, are derived from the people; and
- (3) Wherein shall be guaranteed and secured to all the people of India, justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
- (4) Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
- (5) Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations, and
- (6) This ancient land attains its rightful and honored place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of the mankind.⁸⁹

It is surprising to note that the Objectives Resolution did not mention the terms 'secular state' or 'secularism' even though clause (5) of the Resolution was

⁸⁹ Constitutional Assembly Debate vol.i-p. 59

definitely secular in character. The terms did not occur in the long speech Mr. Jawaharlal Nehru delivered at the time of moving the Resolution in the Constituent Assembly.⁹⁰ They were also not referred to by Dr. B. R. Ambedkar, the Chairman of the Drafting Committee, in his speech given at the time of introducing the Draft Constitution in which he highlighted the salient features of the Draft.⁹¹ The terms, moreover, did not find a place in any part of the Constitution. The omission of the words 'secular' and 'secularism' are not accidental, but deliberate. The reasons for the omission would become clear when we access the debate on secularism, which took place in the Constituent Assembly.

3.2.3 The Constitutional Assembly Debate on Secularism

An analysis of the provisions of the constitution which reflect its secular character is presented in this topic in the back drop of the Constituent Assembly Debate.

The concept of secularism as expounded in the constitution. Constituent Assembly declares its firm and solemn resolve to proclaim India as an independent sovereign Republic wherein shall be guaranteed and secured to all the people of India,

- Justice, social, economic and political;
- Equality of status, of opportunity and before the law;
- Freedom of thought, expression, belief, faith, worship, vocation, association and action subject to law and morality;
- Adequate safeguards for minorities backward classes and tribal area and depressed and other backward classes.....This was before the Constitution of India was finalised and the provision in the Constitution relating to Fundamental Rights given final shape. Though the secular character of the Constitution was emphasized, yet the Constitution of India,

A perusal of the Constituent Assembly debates clearly reveals the general understanding amongst members of the Assembly that India was to be a secular State. They repeatedly emphasized the secular foundation of the Indian State.⁹²

⁹⁰ Ibid p.62,f

⁹¹ CAD.Vol.7 p.p -33-34

⁹² C.A.D., Vol. VII, No.20, p.823

3.3 The Approach and View of Different Indian Leader regarding Secularism Gandhi's Concept of Secularism

Nehru defined secularism as a state policy of Gandhi, on the other hand defined secularism in the context of social and personal attitudes. Gandhi's interpretation of secularism stemmed from his being a highly religious person and a truly religious person would respect all religion since the essence of religion, according to him, is brotherhood and peace. Therefore Gandhi defined secularism as respect for all religion – sarva dharma sambhav.

Vinoba Bhave, a saint and spiritual guru of Mahatma Gandhi was once asked, 'what do you prefer-Dharma Nirapekshta' or Sarva dharma Sambhava? [Neutrality towards religion or equal tolerance of all religion] He replied, I uphold "' Sarva Dharma sambhava". Once such an attitude comes, all controversies. Ideological struggles over legal interpretations would be redundant. Though philosophy or Anekantavada, Jainism clearly accepts different dimensions of truth. As social reformer Mahatma Phule puts it. "Even if there are as many religions as human beings on earth, it does not peaceful coexistence if right conception of truth is adopted." Ideal Like: Vasudhaiva Kutumbakan" would flow only through such attitude. Gandhi being the most religious man, it was not difficult for him to appreciate ultimate truth. Which all religion teaches? Thus his religiousness was never an obstacle to be secular. Thus true secularism does not mean absence of religion or neutrality towards religion it only means not to allow one particular religion to dominate over others, to have equal respect for all religions and to uphold harmony amongst all. Ideal scope of religion and nature of secularism is rightly defined in our constitution.

Nehruvian dharma-nirapeksata and Gandhian sarva-dharma-sambhava present the two most significant models of secular ideologies that were subsumed into the national consensus, where 'they are frequently mistaken for or conflated with each other'. There were others too, like Tagore with his deep humanism and Lohia with his committed socialism that by and large supported rather than undermined this consensus. Eventually the various tensions and contradictions between these diverse 'secularism' were also fused or rather confused".

Gandhi on religion and the secular state: "Religion and state will be separate, I swear by my religion, I will die for it, but religion is my personal affair. The state has nothing to do with it. The state will look after your secular welfare,

health, communication, foreign relations, currency and so on, but not your or my religion. That is everybody's personal concern".

The notion of the unity of god was at the heart of Gandhi's attitude towards interreligious relationship, which led him to acknowledge communal harmony as a cornerstone of his political philosophy and programmed. He rightly realized that without Hindu-Muslim unity, Indian civilization could not survive Gandhi's concept of religion and practice of Hinduism were diametrically opposed to that advocated by the Hinduism were diametrically opposed to that advocated by the Hindu communalist headed by the Rashtriya Swyamsevak sangh. It is true Gandhi asserted that religion not be separated from politics. In the last 66 years, the Indian intelligentsia has continued to raise the slogan: "separate religion from politics". The sad part of this story is that is has failed to tell the ordinary people and the middle-classes how it could be done. What is desirable may not necessarily be achievable. Perhaps this demand for separation of religion from politics is being confused with the demand for the separation of church from the state, as has happened in the process of secularism in the West where the state and the church entered into a prolonged struggle for power over everyday life. Gandhi dared to aim at the impossible – Hindu – Muslim amity. Gandhi was aware of the gulf between Hindus and Muslims in India and wanted to bridge it. By 1950 in an article he asked, "it is not a fact that between Mohammedans and Hindus there is a great need for ... tolerance?"⁹³

Dr.P.B.Gajendragadkar, the former Chief Justice of India,

The observation of Dr. P.B. Gajendragadkar, the former Chief Justice of India, seems to resonate with the mind of the makers of the Constitution. He commented: The omission of the word 'secular' or 'secularism' is not accidental, but was deliberate. It seems to me that the Constitution-makers were apprehensive that if the words 'secular' and 'secularism' were used in suitable places in the Constitution, they might unnecessarily introduce, by implication, the anti-religious overtones associated with the doctrine of secularism as it had developed in Christian countries ...making religion almost irrelevant... That is why the Constitution makers deliberately avoided

⁹³ M. K Gandhi, Young, India 6-10-1921[Gandhi versus Hindutva. Bindu puri, Tachelka Magazine,18/9/2004

the use of the word 'secular' or 'secularism' in the relevant provisions of the Constitution.⁹⁴

3.4 The Inclusion of the Term 'Secular' in the Preamble

The secular nature of the State in India is obvious from the aims and objectives of the Constitution as spelt out in the preamble. However, as we have seen, to avoid possible anti-religious impression that the term 'secular' might connote, it was omitted from the Preamble and other parts of the Constitution. The test of the original Preamble reads

"We, the people of India, have solemnly resolved to constitute India into a sovereign democratic republic..."

This word was introduced in the Preamble by the Constitution (Forty-Second Amendment) Act 1976 which came into force on 3 January 1977. The Indian Constitution enacted in the year 1950 did not, before the 42nd Amendment, contain the word "secular" or "God" in it. The word "God" is to be found only in the Third Schedule of the constitution

By the 42nd Amendment, the opening words were replaced by the following:

"We, the people of India, have solemnly resolved to constitute India into a sovereign socialist secular democratic republic." The word "socialists" as added to emphasize the existing constitutional commitment to the goal of socio-economic justice. The intention of the "socialist" was not to set up a vibrant throbbing welfare state.

The Constitution as enacted did not contain the word "secularism" at all. It only spoke of freedom of religious faith and of the State of India immunized from religion. It was Mrs. Indira Gandhi who introduced the word "secularism" in the preamble of the Constitution in the year 1976. The word "secular" was also added in the same Amendment Act. This word highlights that the state has no religion of its own and all persons shall have the rights to profess, practice and propagate religion of their own. This right has been further guaranteed by the fundamental Rights in Articles 25-28. The expression also signifies that the constitution does not recognize does not permit mixing of religion and state power. Both must be kept apart. This is

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P.B. Gajendragadkar, Secularism and the Constitution of India, op.cit., p. 52.

constitutional injection. The both constitutional Amendment Act.1993 was enacted for separation the religion from politics. Secularism is not the absence of \religion as defined by Webster Dictionaries. Secularism is more than passive attitude of religious tolerance. It is a positive concept of equal treatment to all religions.

It is true that the word 'secular' did not first occur either in Article 25 or 26 or in any other Article or Preamble of the Constitution. By the Constitution (42nd Amendment) Act, 1976, the Preamble was amended and for the words 'Sovereign Democratic Republic' the words 'Sovereign, socialist, secular, Democratic Republic' were substituted.

The Forty-Second Amendment was the most comprehensive and most controversial amendment made in the Constitution. The statement of objectives and reasons given in the Bill for the Forty- Second Amendment Act 1976 indicated that the said amendment was required inter alia “to spell out expressly the high ideals of Socialism and Secularism.”⁹⁵ When the Bill was moved for discussion in both Houses of the Parliament, the members questioned the Parliament’s power to amend the Preamble of the Constitution. However, no one was opposed to the inclusion of the term “Secular” in the Preamble.

Sri P.G. Mavalankar, for instance, argued that the Preamble could not be amended. He said,”if you put the words today ‘socialist’ and ‘secular’ in the Preamble, I am afraid...some people might say remove the word ‘democracy’. Already, the substance has gone, the word may go next time.”⁹⁶ **Srimati Indira Gandhi**, the then Prime Minister, spoke for the reasons to amend the Preamble. She emphasized: The founding fathers of our constitution and of our country had intended Indian society to be secular and socialist. They have guided our laws all these years. All we are doing now is to incorporate them in the Constitution itself for they rightly deserve to be mentioned there. The specific mention of this fact in the Preamble will provide the frame of reference to the people, to the Government, to the judiciary and to the world.⁹⁷

⁹⁵ D.Paras. Indian Constitutional Amendment From First to Forty –Fourth [New Delhi, Oxford University, press/1.B.HPublishing Company,1980],p.219

⁹⁶ R.L. Chaudhry, The Concept of Secularism in Indian Constitution[New Delhi, Concept Publishing House.1987],p.112

⁹⁷ R.L. Chaudhari, The Concept of Secularism in Indian Constitution (New Delhi, Concept Publishing House, 1987), p. 112.

3.5 The Constitutional Implications of Secularism

3.5.1 Positive Content of Secularism

All religions are equal to the sovereign democratic republic of India. State as defined in Article 12. There for is no "State Religion "as is in Pakistan and other Islamic countries .i.e. Islam is "state religion" there, India has none. It has all Religion in India are of India. Islam is religion in India as is Hindu. None superior, none inferior. Both are superior both inferior but not or never, one against the other or one over the other "Fraternity is what Preamble cherishes; There can be no fraternity beyond what it is practiced in Islam. Fraternity and Islam are interchangeable of Christianity means" service and kindness" and Pity are specialties of traditional Hindu religion. Hindu is one who cherishes Ahinsa [non violence]. Ahinsa "parmo Dharma" is what sanatan Hindu Dharm proclaims "**Styamev Jayate**"[truth alone wins] in crucial slogan.

As will be seen below, there is a blend of secular and religious elements within the text of the Constitution and it is this admixture that defines and determines the contours of secularism to be acted upon by the State and the religious freedom to be exercised by individuals and communities in modern India. We are a secular nation, but neither in law nor in practice there exists in this country any 'wall of separation' between religion and the State - the two can, and often do, interact and intervene in each other's affairs within the legally prescribed and judicially settled parameters. Indian secularism does not require a total banishment of religion from the societal or even State affairs. The only demand of secularism, as mandated by the Indian Constitution, is that the State must treat nil religious creeds and their respective adherents absolutely equally.

India is a pluralistic society and a country of religions. It is inhabited by people of many religions. The framer of the constitution thus desired to introduce the concept of secularism, meaning state neutrality in matter of religion .They also wanted to confer religious freedom on various religious groups .Religion has been a very volatile subject in India both before and after independence. The constitution there for seeks to ensure state neutrality in this area. Religious tolerance and equal treatment of all religious groups are essential part of secularism.

Secularism in India does not mean irreligion. It means respect for all faith and religions. The state does not identify itself with any particular .India being a secular state, there is no state or preferred religion as such and all religious groups enjoy the

same constitutional protection without any favour or discrimination. Article 25 to 28 of the Indian constitution offer certain right relating to freedom of religion not only citizen but also as such; all religion are treated alike and enjoy equal constitutional protection without any favour or discrimination. No specific protection has been accorded to any religious groups as such. However, the policy of non- interference with religious secular right of the citizen, or the state power to regulate socio-economic matters.

The word “secularism” used in the preamble of the Constitution is reflected in provisions contained in Articles 25 to 30 and Part IVA added to the Constitution containing Article 51A prescribing fundamental duties of the citizens. It has to be understood on the basis of more than 66 years experience of the working of the Constitution. The complete neutrality towards religion and apathy for all kinds of religious teachings in institutions of the State have not helped in removing mutual misunderstanding and intolerance inter se between sections of people of different religions, faiths and beliefs. ‘Secularism,’ therefore, is susceptible to a positive meaning that is developing understanding and respect towards different religions. The essence of secularism is non-discrimination of people by the State on the basis of religious differences. ‘Secularism’ can be practiced by adopting a complete neutral approach towards religions or by a positive approach by making one section of religious people to understand and respect religion and faith of another section of people. Based on such mutual understanding and respect for each other’s religious faith, mutual distrust and intolerance can gradually be eliminated. Study of religions, therefore, in school education cannot be held to be an attempt against the secular philosophy of the Constitution

Various provisions of Indian Constitution contemplate the secular nature of India. Article 25-28, 29 -30, to 14, 15, 16, and 17 as well as to art .44 and 51A. These provisions promote the idea of secularism and by implication prohibit the establishment of a theocratic state. The state is under an obligation to accord equal treatment to all religions and religious sects and denomination.⁹⁸

3.5.2 Is India Truly Secular

It is interesting to note that there is no agreed and precise meaning of ‘Secularism’ in our country. A secular state’ in the Indian context means one, which

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M.P.Jain Constitution of India Ed, New Delhi Wadha and compny Nagpur, 2013.

protect all; religion equally and does not uphold any religion as the state religion. The Sanskrit Phrase: Sarva Dharma Sambhava" is the most appropriate Indian vision of secular state and society. But ,it should not be forgotten that the word :secular" has not been defined or explained under the constitution either in 1950 or in 1976 when it was made part of the preamble. India is multi-religious society and the survival of such a society is possible only if all religions are given equal treatment without any favour or discrimination. The Word: secular" was not there in our constitution when it actually came in the being .It was subsequently incorporated in to the preamble of the constitution by the 42nd Amendment Acts of 1976. The formal inclusion of the adjective terms; secular ' is mainly the result of the meeting out the exigencies of the prevailing circumstances, requirement of party politics and ideological window dressing. In view of the various Articles appearing in part III of the constitution. It can be said that India was already a secular state.

3.6 Theory and Practice of Secularism

A brief review of the literature on secularism reveals the vast variety of shcollaring discover on the subject as well as the lack of argents emergent scholars on whether India as a secular state are not . It future reveals the diversity of opinion on the appropriateness of secularism, as a concept, has been variously interpreted. The term secular has, on the one hand, been contrasted with the sacred or the spiritual as against the worldly; and, on the other, is interpreted as a trend or condition continuing over a period of time.

A very comprehensive study of the Constitution of India and, also of the social and cultural conditions in India with a view to determining whether India is a secular State has been made by D.E. Smith in India as a secular State noticed earlier. It has been rightly regarded as a pioneering study on the subject. Contrary to popular understanding, Smith does not assert that India is a secular state. To the question whether India is a secular state, his answer is a qualified 'Yes'. The reason why he does not answer in the negative is that he poses the question, in this author's opinion, wrongly, as: what is the meaning of the term 'secular state' in the Indian context? There were several features of the Constitution which were strongly suggestive of secularism. The prevalent cultural indicators were supportive of secularism.

Till the 60s significantly, the there was no major work on secularism in India .A comprehensive study of the secular state in India was under taken by Pro..D.E Smith in 1963, first enumerating a conceptual frame work smith proceed , on this bans

to analysis and which as its problems. He concluded that India is and would in all probably remain secular state and is hopeful that the 'present anomalies would disappear in the,...'. He however discount the possibly of an upsurge of Hindu communal force, The most important problems confronting the secular state in India which the identifies are communalism, extensive state interference in Hindu religion institutions prostitute of personal law in the legal structure, and basic definition of secular state.

Narendra modi said his idea of secularism is "India First' will forgive 'Mistake' of a government if it serves them well."My definition of secularism is simple: 'India First'. Whatever you do, wherever you work, India should be the top priority for all its citizens," Modi said as he took to video conferencing to address the Indian-American community on Sunday. "Country is above all religions and ideologies," he argued and asked people to follow the same.

3.7 Representation of the People Act 1955 and Secularism

The acceptance of this goal of secularism, the Court further declared, is not merely the result of a historical legacy and a necessity for unity and integrity” ... but also as a creed of universal brotherhood and humanism. It is our cardinal faith. Any profession and action which go counter to the aforesaid creed are a prima facie proof of the conduct in defiance of the provisions of our Constitution.”

The Court upheld the right of the State to make laws regulating the secular affairs of temples, mosques and other places of worship and math's as also power of the parliament to form and rationalize personal laws.

It unequivocally forbade any political party from mixing religion with politics. The Constitution, the Court held, requires not only the State, but the political parties as well, to be secular in thought and action. Further, no political party or organization may fight election on the basis of a religious plank, which would result in erosion of the secular philosophy of the Constitution. Such a party or organization would be deemed guilty of following an unconstitutional course of action.

The contention that Section 123(3) of the Representation of the People Act did not prohibit a candidate from seeking votes in the name of a religion to which he did not belong was refuted by Justice Sawant in this case. He declared “... assuming that the interpretation placed by the learned counsel is correct, it cannot control the content of secularism which is accepted by and is implicit in our Constitution.”

The decision of the Court in the Manohar Joshi and Yeshwant Prabhoo cases, wherein the Court had occasion to expound on the meaning of Hindutva also has significant implications for secularism in India⁹⁹. It is contended that the Court in these cases delivered a “mixed message” to the cause of secularism and has perhaps inadvertently legitimized the Hindu right’s interpretation of secularism. In Manohar Joshi v. Bhaurao Patil, the court held that” ... the word ‘Hindutva’ by itself does not invariably mean Hindu religion and it is the context and the manner of its use which is material for deciding the meaning of the word ‘Hindutva’ in a particular text.” The Court further declared, “In our opinion, a mere statement that the first Hindu state will be established in Maharashtra is by itself not an appeal for votes on the ground of his religion but the expression, at best, of such a hope.” Again in Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte the court¹⁰⁰ held that “no precise meaning can be ascribed to the terms ‘Hindu’, ‘Hindutva’, and ‘Hinduism’, and no meaning in the abstract can confine it to the narrow limits of religion alone, excluding the content of Indian culture and heritage... the term ‘Hindutva’ is related more to the way of life of the people in the sub-continent. It is difficult to appreciate how in the face of these decisions the term ‘Hindutva’ or ‘Hinduism’ per se, in the abstract, can be assumed to mean and be equated with narrow fundamentalist Hindu religious bigotry, or be construed to fall within the prohibition in sub-sections(3) and / or (3-A) of section 123 of the R.P. Act.”

3.8 National Flag, Anthem September & Emblem



⁹⁹ Brenda Cosmmin and Rtana Kapur" Secularism: Bench - Marked by Hindu Right "Economics and political Weekly, Vol.XXXI38 September 21 pp.26113 ff.

¹⁰⁰ (1996) 1 SCC It may be noted that in this case both Bal Thackeray and Yeshwant Prabhoo were held Guilty of corrupt practice under the Representation of the People act Section 123(3)

The National Flag of India with its saffron, green and white colors and the Buddhist wheel of dhamma (faith) is seen by many Indians as religious symbolism, though legal texts do not specify this implication. India's National Anthem is more conspicuously religious. Drawn from a Bengali-language song, it invokes the Supreme God: The National Emblem of India is an adaptation from Ashoka's pillar at Sarnath super scribed with the Vedic expression Satyameva jayate (truth alone triumphs) in Devnagari script. The emblem is used on all official stationery and seals of the government of India. It also appears on government publications, coins and currency notes.

3.9 The Opinion of the Scholars

The inclusion of the term 'Secular' in the Preamble by the Forty- Second Amendment Act of 1976 became a matter for debate among constitution experts, political scientists and judges. Professor S.V. Kogekar opined that the inclusion of the term 'secular' in the Preamble is "only a recognition"¹⁰¹ of the secular nature of the Indian State as enunciated in the various relevant provisions of the Constitution. Sri H. Swaroop commented that the inclusion of the term, Socialism, Secularism and Integrity, in the Preamble "are three jewels, which make the nation's most important manifesto a real document of a socio-economic revolution."¹⁰²

Justice R.A. Jahagirdar¹⁰³ and Justice Robert D. Baird¹⁰⁴ were of the opinion that the addition of the term, secular, in the Preamble is superfluous because it does not add anything new to the secular nature of the State in India as already provided in the relevant provisions of the Constitution. Dr. D.D. Basu, another expert of the Indian Constitution, commented that a clarification to the meaning of the secular provisions of the Constitution would have been much more beneficial than adding technical word, 'secular', in the preamble.¹⁰⁵

¹⁰¹ S.V. Kogekar, Revision of the Constitution: R.R. Kale Memorial Lectures (Poona, Gokhale Institute of Politics and Economics, 1976), p. 13.

¹⁰² H.Swaroop, New Jewels in the Constitutions Preamble; in Secular Democracy, Vol.X. NO1&2[January1977],p.28

¹⁰³ R .A. Jahagirdar, "Secularism under the Indian Constitution", in The Secularist, vol. II, No. 66 (November-December 1980), p. 145.

¹⁰⁴ Robert D. Baird, Religion in modern India (New Delhi, Manohar Publications, 1981), p. 391.

¹⁰⁵ D. D. Basu, Constitutional Law of India, third edition (New Delhi, Prentice- Hall of India, 1983), p.3.

Justice Shelat¹⁰⁶ opines that secularism in India is a recent development arising out of Indian setting and problems, but India has not yet managed to attain the good of secular state. He bases his conclusion on a study of the historical setting the constitutional provision and judicial decision.

The concept of secularism and its problem and prospects have also been studied by Mohamad Ghouse, against a back drop of communalism and communal riots, casteism, the tactics and commitments of political parties and the attitude of the Hindu and Muslim to secularism. He studies the contents and extent of religion freedom and the judicial process employed the case on that freedom.

At the same time he makes a comparative study on Indian and American rules of decision. The author concludes that though the constitution cherishes the ideal of secularism. The caste and religion-oriented behaviors of the people the reliance on secretariat loyalties by the political parties and the existence and emergence of communal organization of the political processes.

In Gajendragadkar's view the Indian Constitution concept of secularism recognizes the relevance and validity of religion in life but seeks to establish a rational synthesis between the legitimate functions of religion and those of the state. The Indian constitution and therefore the Indian state do not have a position of anti-God on anti-religion or irreligion; it treats all religions alike, it respects all faiths and religions and does not identify itself with any particular religion.

The possibility that the Indian state may levy taxes for promotion of secular and religious bodies, the fact that it proclaims State holidays on the days connected with religious observations, festivals, and ceremonies of different religions, the practice of the Head and Ministers of the State visiting places of worship of all religions, and the use of religious symbols by the state – all these also appear to indicate to the position of equal treatment and equal respect for all religious in India. Notwithstanding all this, it is better to drop the term secularism from our thought processes because of a number of reasons.

Firstly, if secularism as equal respect to all religions means the recognition of the relevance and validity of religion, and if it involves active practice of religion, then there is no point in retaining that term. It is, in that case, better to say that the

¹⁰⁶ J.M. Shelat, *Secularism: Principles and Applications*, (N.M. Tripathi, Bombay, 1973).

State or Society or Nation is religious; to say so would be more candid, less confusing, and less circuitous.

Secondly, the equal respect to all religions is mostly a passive idea; its purpose can be and has been negative. Its purpose has been to see to it that the religious beliefs do not have any significant effect on the rule or power of the state. It thinks of the place or role of religion primarily in the context of the actual or potential conflict in a multi-religious society. Is the question of secularism not relevant in the state and Society where only one religious community, such a question is not relevant in such a society? But it remains relevant in the sense that such a society still faces the question as to whether it would be run on religious morals or not. To put it differently, the state may give equal treatment to all religions and yet the religious or spiritual ethos may not actively influence its affairs, decisions, and functioning.

The question of religion ought to be considered more actively and positively in the sense of promoting socially beneficent influence of religious understanding and tolerance. The state and society must actively be founded and run on the cosmic religious world-view or the basic common quintessential core of all religions of the world. Then only the tension, conflict, and violence between the state on the one hand and the individual, society, and Nature on the other can be eliminated. It is not enough to think about secularism only from the point of view of communal differences which is only one of the problematiques of the society.

The Indian state, accordingly, should not be not only anti-God and anti-religion but also a religious or neutral to religion. The positions such as "... the state has to discharge its functions in its own sphere uninfluenced by any consideration of religion", and "matters of personal law clearly fall under the secular category and have to be dealt with by the state in modern times (because) ... with the arrival of democracy, the age of commentators has come to an end and the age of legislators has begun" (Gajenragadkar, 1971) are not proper. The equal respect to all religions of the Indian Constitution can be called a "synthetic secularism" which seeks to obliterate and significance of the sacred in our thinking. The Indian state and society must recognize and accept the man's inner need to believe in the seekers, God, sacred things, spirituality, and religious faith.

Thirdly the secularism is not understood by most or the people in the sense Gajendragadkar sees s enshrined in the Indian constitution. Gajendragadkar's interpretation of the position of the constitution is rather generous and it is based on

the earlier absence of the word secular from the constitution. However, as said earlier, the word secular was inserted in the Constitution by the 42nd Amendment. Further, the 45th Amendment lays down that the term secular means that all religions command equal respect and recognition from the state. This clearly is a passive position. Moreover, the constitution is indeed a very imperfect medium to determine the actual perceptions of the people on any subject. The ideology and policy of secularism has created the Constitution notwithstanding, an environment and ethos of anti-religion, or the fear of religion, or religious attitudes in the minds of people, particularly the highly “educated”, the elite, and the youth in India. This is shown by the constant cry in all types of circles for the separation of religion and politics. Contrary to the spirit of Constitution, the politicians, the intellectuals, and others have worked to create, and have succeeded in creating, a “rigid wall of separation between the state and religion”.

Similarly, there is now an atmosphere wherein the issues are posed as if the constitution forbids us from being religious and from adopting religious ways and manners in the conduct of the affairs of the state and state-related (affiliated) organizations and institutions. It is thought that we have failed to be secular if a person belonging to a religious organization or order is admitted to or invited to a public institution, or if the public institution celebrates the birthday of some religious personality or some saint. It has come to be widely accepted that since India is a secular country, the religion may be practiced privately or individually, but it cannot play any direct, active, and important role in the public or social life, and in the affairs of the nation. The ethos nurtured by secularism in India has been such that a reference to or a talk of or a practice of religion tends to cause a fear of ridicule and embarrassment. The religious matters are characterized by a defensive attitude, an apologetic feeling, and a skeptical or an antagonistic stance.¹⁰⁷

Upendra Baxi expressed his views “Secularism” in the Indian Constitution connotes: (i) The State by itself, shall not espouse or establish or practice any religion; (ii) public revenues will not be used to promote any religion; (iii) the State shall have the power to regulate any „economic, financial or other secular activity“ associated with religious practice; (iv) the State shall have the power through the law to provide for „social welfare and reform or the throwing open of the Hindu religious institutions

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P.B. Gajendragadkar, *Secularism and the Constitution of India*, op.cit, p. 52.

of public character to all classes and sections of Hindus; (v) the practice of untouchability outlawed by Article 17; (vi) every individual person will have, in that order, an equal right to freedom of conscience and religion; (vii) these rights are however subject to the power of the State through law to impose restrictions on the ground of „public order, morality and health“; (viii) these rights are furthermore subject to other fundamental rights in . Part III.”

The preamble to the Indian Constitution clearly demonstrates resolve of the Indian people to constitute India as a secular state although the word „secular“ was inserted in the Constitution by the Constitution (Forty- second) Amendment Act, 1976. The Constitution nowhere defines the word „secular“.¹⁰⁸

In the opinion of H.M. Seervai, “Secular may be opposed to religious in the sense that a secular State can be an anti-religious State. In this sense, the Constitution of India is not secular, because right to freedom of religion is a guaranteed fundamental right”. Realizing need to define the word „secular“ the Constitution (Forty-fifth) Amendment Bill, 1978 proposed an amendment in Article 366 (1) stating that the expression "Republic" as qualified by the expression "Secular" means a republic in which there is equal respect for all religions.¹⁰⁹

3.10 The Supreme Court and Secularism

The constitutional provision have raised problem of interpretation. On the whole, the supreme court has interpreted these provision with a view to promote inter-religious amity, harmony and accord .The court has ,on whole ,leaned towards the minority groups and has conceded to them certain rights over and above the majority rights.

Is India, a secular State was never considered as an irreligious or atheistic State. It only means that in matters of religion it is neutral. It is the ancient doctrine in India that the state protects all religions but interferes with none.

The constitution definitely expressed its attitude toward religion in Article 25-28; 29(2), 30 (together with Article, 15(1).1+6[2] the implications of each of which have received interpretations from the highest tribunal .i.e. the supreme court, in various cases, The supreme court had explained the Secularism and the secular

¹⁰⁸ Upender Baxi Constitutional Law of India

¹⁰⁹ Seervai H.M., Constitutional Law of India, Universal Law Publishing Co. Pvt. Ltd., 4th Edition, Vol. 1, II,III.p. 277.

character of the Indian constitution through its important judgments, Eminent jurists also expressed their views on the concept of secularism.

In Kesavananda Bharati head of Edneer math in Kerala¹¹⁰ (1973) the Supreme Court said that the Constitution has certain ‘fundamental features’ constituting ‘its basic structure’, the core that was beyond the amending powers of the Parliament. Keshvananda timely established that the Supreme Court was unmatched in authority when it came to constitutional matter. Supreme Court significantly broadened the scope of its judicial review by assuming the power to scrutinize all constitutional amendments - not just those affecting fundamental rights. If the parliament has had an unfettered right to amend the constitution, the Supreme Court had said coextensive power to review and

Secularism was cited as one such basic feature. Kesavananda bhatri case which was decided by the full constitutional bench of judges on April 24, 1973. By a water- thin majority of 7-6, the Supreme Court held that the power to amend the constitution under Artical368 could not be exercised in such a manner as to destroy or emasculate the fundamental feature of the constitution. In identifying the features, which are fundamental and thus non amendable in the constitution was this statement- ***A secular state, that is a state in which there is no state religion.***

Two years later (1975) in the case concerning the election of Indira Nehru Gandhi¹¹¹ the Court said that secularism was inalienable from the Constitution and the polity established under it. In those two cases the Court did not elaborate on the nature of secularism as there was no occasion for it. But from the one or two sentences in the two judgments (Shelat and Grover JJ. in Kesavananda Bharati and Chandrachud J. in Indira Nehru Gandhi) it appears that the Court was referring, in the abstract, to the first principles of western secularism that prohibit the State to have any religion of its own and give the individual the freedom of conscience and the right freely to profess, practice and propagate religion. After Kesavananda Bharati and Indira Nehru Gandhi the Supreme Court reiterated in a number of decisions that secularism is a basic feature and a part of the basic structure of the Indian Constitution and it could not be in any way undermined either by any legislative enactment or by any executive action. The observations concerning secularism are made in vastly different contexts

¹¹⁰ Keshvanand Bharti V. state of Kerala AIR1972, SC 146

¹¹¹ Indira Gandhi V. Rajnarayan

and sometimes seem to convey different meanings of secularism. Here I do not propose to refer to each such decision. Suffice to note here that this line of decisions reached its high point in Bommai's case.¹¹²

In Bommai the Court was called upon to consider the constitutional validity of the presidential proclamations issued under Article 35, 622 of the Constitution dismissing the governments of several States. Among the States hit by the presidential proclamation were Rajasthan, Madhya Pradesh and Himachal Pradesh. The reports of the Governors of the three States, that formed the constitutional basis for the Presidential Proclamation, inter alia stated that the governments of those States had extended active overt and covert support to communal organizations and individuals, greatly aiding them in the demolition of the Babri Masjid, the medieval mosque in the North Indian Town, Ayodhya¹¹³. After the demolition, the three State Governments made no secret of their abetment in the act but on the contrary took pride in the fact in their public utterances. According to the Governors' reports, the constitutional machinery in those States had failed. But the undeniable fact was that each of the three dismissed governments enjoyed clear majority in their respective Assemblies. The presidential proclamation was, therefore, assailed as an attack on democracy.

But the Court was firm and unyielding in the defense of secularism. Seven out of the nine Judges constituting the Bench resolutely reiterated the view that secularism was the basic feature of the Constitution and in case a State Government acted contrary to the constitutional mandate of secularism or, worse still, directly or indirectly, subverted the secular principles, that would be tantamount to failure of the constitutional machinery and the State Government would make itself.

In an early case after the commencement of the Constitution a court had examined the US principle of the 'wall of separation' between religion and State and Concluded that there are provisions in the Indian Constitution which are 'inconsistent with the theory that there should be a wall of separation between Church and State' - Narayanan Namboodripad v. State of Madras¹¹⁴.

¹¹² S.R.Bommai and Others V. Union of India and Others (AIR 1994 SC, 1918).

¹¹³ Ayodhya

¹¹⁴ AIR 1955 Mad 385

In the leading case of S.R Bommai v. Union of India (1994)¹¹⁵ various judges of the Supreme Court of India individually explained the significance and place of secularism under the Constitution in very meaningful words sampled below:

- (i) The Constitution has chosen secularism as its vehicle to establish an egalitarian social order. Secularism is part of the fundamental law and basic structure of the Indian political system.
- (ii) Notwithstanding the fact that the words 'Socialist' and 'Secular' were added in the Preamble of the Constitution, the concept of secularism was very much embedded in our constitutional philosophy from the very beginning. By this amendment what was implicit was made explicit.
- ii) Constitutional provisions prohibit the establishment of a theocratic State and prevent the State from identifying itself with or otherwise favouring any particular religion
- (iv) Secularism is more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions.
- (v) When the State allows citizens to practice and profess their religion, it does not either explicitly or implicitly allow them to introduce religion into non-religious and secular activities of the State. The freedom and tolerance of religion is only to the extent of permitting pursuit of spiritual life which is different from the secular life. The latter falls in the exclusive domain of the affairs of the State.

In this case the meaning and content of secularism were dealt with at length by the Supreme Court. Religious tolerance, equal treatment of all religious groups and protection of their life and property and of the places of their worship have been held to be an essential part of secularism enshrined in our Constitution. From the point of view of the State, the religion, faith or belief of a person has been held to be immaterial. For the State, all are equal and all are entitled to be treated equally. Preference or promotion of a particular religion, race or caste, which necessarily means a less factorable treatment of all other religions, races and castes, does not permit of equal treatment. Only the eschewing of the religion, faith or belief of a person from its consideration altogether while dealing with him, his rights, his duties and his entitlements would permit the realizing of the Constitutional promises of

¹¹⁵ S.R.Bommai and Others V. Union of India and Others (AIR 1994 SC, 1918).

social justice, liberty of belief, faith or worship and equality of status and of opportunity. Secularism, it was emphasized, “is thus more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions.” The Court further held that, “The acts of a State Government which are calculated to subvert or sabotage secularism as enshrined in our Constitution, can lawfully be deemed to give rise to a situation in which the government of the State cannot be carried on in accordance with the provisions of the Constitution” and any step inconsistent with the Constitutional policy would be unconstitutional.

The Constitutional provisions, the Court emphasized, by implication prohibit the establishment of a theocratic State and further prevent the State from either identifying itself with or favoring any particular religion or religious sect or denomination, the State having been enjoined to accord equal treatment to all religions and religious sects and denominations. Thus, the mixing of religion with any secular activity of the State is forbidden. Tolerance of religion does not make India a theocratic State. For ‘When the State allows citizens to practice and profess their religion, it does not either explicitly or implicitly allow them to introduce religion into non-religious and secular activities of the State. The freedom and tolerance of religion is only to the extent of permitting pursuit of spiritual life which is different from the secular life. The latter falls in the exclusive domain of the affairs of the State.’”

The acceptance of this goal of secularism, the Court further declared, is not merely the result of a historical legacy and a necessity for unity and integrity” ... but also as a creed of universal brotherhood and humanism. It is our cardinal faith. Any profession and action which go counter to the aforesaid creed are a prima facie proof of the conduct in defiance of the provisions of our Constitution.”

The Court upheld the right of the State to make laws regulating the secular affairs of temples, mosques and other places of worship and math's as also power of the parliament to form and rationalize personal laws.

It unequivocally forbade any political party from mixing religion with politics. The Constitution, the Court held, requires not only the State, but the political parties as well, to be secular in thought and action. Further, no political party or organization may fight election on the basis of a religious plank, which would result in erosion of the secular philosophy of the Constitution. Such a party or organization would be deemed guilty of following an unconstitutional course of action.

In Aruna Roy v. Union of India the Supreme Court¹¹⁶ has ruled that the concept of secularism is not endangered if the basic tenants' of all religions all over the world are studied and learnt, Value-based education with help the nation to fight against fanaticism; ill will violence are learnt.

In 2002 a PIL (Public Interest Litigation) was filed questioning the Curriculum for School Education framed by the National Council for Educational Research and Training on the ground that it was heavily loaded with religion and the contents of the Vedas. It was contended that the inclusion of religion, Sanskrit, Vedic Mathematics, Vedic Astrology etc. in the courses of study for the schools was contrary to secular principles. The curriculum prepared by the NCERT, was, therefore, bad as it offended one of the fundamental features of the Constitution. Dharmadhikari J. one of the members of the three-judge Bench wrote a separate, though concurring judgment in which he discussed in some detail about the true nature of secularism. He observed that the doctrine of the State's neutrality towards all religions was a narrow concept of secularism. He further observed that, the policy of complete neutrality towards religion and apathy for all kinds of religious teachings in institutions of the State had not done any good to the country. The real meaning of secularism in the language of Gandhi is "sarva dharma samabhav" meaning equal treatment and respect for all religions, but we misunderstood the meaning of secularism as negation of all religions". In the Aruna Roy case the Court upheld the constitutional validity of the national curriculum overlooking the fact that what were included in the curriculum were not religious teachings of all kinds but only of one particular kind. It also unfolded, on the authority of Gandhi, a view of secularism that one would find it very difficult to reconcile with Gandhi's idea on religion and State.

In Aruna Roy the Court held that though the curriculum mentioned the subject as 'Vedic Astrology' its contents were actually in the nature of 'Vedic Astronomy' and hence, its inclusion in the school course was not unjustified. Two years later it upheld the teaching of Vedic Astrology (Jyotir Vigyan) too as graduate and post-graduate (B.Sc. and M.Sc.) courses in different universities. The Court did not accept the submission that the prescription of JyotirVigyan as a course of study had the effect of "saffron sing" education or that it in any manner militated against the concept of

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AIR 2002 SC.3176

secularism which is part of the basic structure of the Constitution and is essential for the governance of the country.¹¹⁷

In 2005 an organization representing a section of the Jain community approached the Court seeking a direction to the Central Government to notify “Janis” as a minority community. The Court not only firmly rejected the prayer but also expressed its strong disapproval of the very concept of ‘minority’. Calling it a baggage from India’s history, the Court noted, “Muslims constituted the largest religious minority because the Mughal period of rule was the longest followed by the British Rule during which many Indians had adopted Muslim and Christian religions...” It further observed that the concept of “minorities” was the result of the British policy of divide and rule that first led to the formation of separate electorates and reservations of seats on the basis of population of Hindus and Muslims and finally led to the partition of India and formation of a separate Muslim State of Pakistan. The Court pointed out that India was a democratic republic which had adopted the right to equality as its fundamental creed and hence, the Constitutional ideal should be the elimination of “minority” and “majority” and the so called forward and backward classes. The meaning and scope of secularism was again examined by the Supreme Court in M. Ismail Faruqui v. Union of India.¹¹⁸ Reiterating that the concept of secularism is part of the basic structure of the Constitution, the Court held it to be one facet of the right to equality “woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution.”

In State of Karnataka v. Dr. Pravin Togadia¹¹⁹ reported at the Apex Court observed that welfare of the people is the ultimate goal of all laws and State action, and above all the Constitution. They have one common object that is to promote the well-being and larger interest of society as a whole and not of any individual or particular groups carrying any brand names. It is inconceivable that there can be social well-being without communal harmony, love for each other and hatred for none. The core of religion based upon spiritual values, which the Vedas, Upanishad and Puranas were said to reveal to mankind, seem to be “Love others, serve others, help ever, hurt never” and “Servae Jana Sukhino Bhavantoo”.

¹¹⁷ Aruna Roy V. Union of India. AIR 2002 SC.3176

¹¹⁸ M. Ismail Faruqui v. Union of India.

¹¹⁹ State of Karnataka Vs. Dr. Pravin Togadia (2004) 4 SCC 684

Rajesh Himatlal Solnki v Union of India,¹²⁰ Dismissing a petition purportedly filed in public interest with costs, a Division Bench of the Gujarat High Court in a recent decision has declared that the "offering of the prayer to the earth at the time of foundation laying ceremony cannot be termed as non-Secular action if 'manav dharma' is to be understood in its real sense in furtherance to the principles of secularism to be observed by our nation."

The High Court culled out the legal principles relating to the meaning and ambit of 'Secularism', as propounded by the Constitution of India and went on to examine the various dimensions of 'dharma' and 'religion' which were not anti-thesis to secular but on the contrary were founding stones to human spirit and tolerance in public life to hold that celebrating the foundation of a new building, which essentially was the reason behind 'bhumi-pujan' could not be said to be anti-secular. "Offering of prayer by any person for betterment of everybody cannot be termed as any activity or any action resulting into non-Secular activity".

The true meaning of the word "secular" can be termed as based on principles of "Vasudeva Kutumbakam". If to be understood in context of religion, it can be said that let the religion allowed to be followed by those who wants to follow.

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Rajesh Himatlal Solnki v Union of India 2011 GLR.782.