SECULARISM AND FREEDOM OF RELIGION IN INDIA - CONTEMPORARY ISSUES AND CHALLENGES

Dissertation submitted to National Law University and Judicial Academy, Assam

in partial fulfilment for award of the degree of

MASTER OF LAWS /

ONE YEAR LL.M. DEGREE PROGRAMME

Submitted By

KRISHNA CHANDRA KUMAR

UID: SM0221015

1st Year & 2nd Semester

Supervised by

DR. SHAILENDRA KUMAR

Assistant Professor of Law

National Law University and Judicial Academy, Assam

July, 2022

SUPERVISOR CERTIFICATE

This is to certify that **Mr. KRISHNA CHANDRA KUMAR** has completed his dissertation titled **"SECULARISM AND FREEDOM OF RELIGION IN INDIA -CONTEMPORARY ISSUES AND CHALLENGES"** under my supervision for partial fulfillment of LL.M DEGREE PROGRAMME at National Law University and Judicial Academy, Assam.
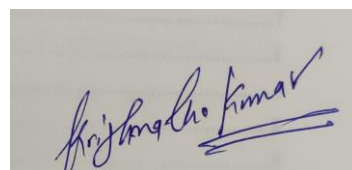
Date: 11 July, 2022

DR. SHAILENDRA KUMAR

Assistant Professor of Law

National Law University and Judicial Academy,

Assam

DECLARATION

I, **KRISHNA CHANDRA KUMAR**, do hereby declare that the dissertation titled **SECULARISM AND FREEDOM OF RELIGION IN INDIA - CONTEMPORARY ISSUES AND CHALLENGES** submitted by me for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M. DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bona fide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

Date: 11 July 2022

KRISHNA CHANDRA KUMAR

UID: SM0221015

National Law University and Judicial Academy, Assam

TABLE OF CONTENTS

ACKNOWLEGEMENT

No great feat can be accomplished without the right environment, able guidance, hard work and perseverance. Valuable contributions were drawn from great legal luminaries throughout the writing process. Their assistance deserves recognition and my sincere gratitude.

I owe much to **National Law University and Judicial Academy, Assam** for blessing me with a rare academic patronage. It is my heartfelt duty to acknowledge my gratitude to **Dr. Diptimoni Boruah**, Head of the Post Graduate course, for her support in the making of this dissertation. I extend my deep and sincere gratitude to my revered supervisor **Dr. Shailendra Kumar**, Assistant Professor of Law, NLUJA, Assam for his continuous guidance and wisdom. He has not only discharged his formal duties of a supervisor but has also contributed substantially in a masterly manner towards the accomplishment of this work.

Besides my supervisor, I would like to thank all the faculty members, library staff and non-teaching staff of NLUJA, Assam for their constant encouragement and cooperation. This acknowledgement would be incomplete without extending gratitude to my family members and friends for their endless love, support and encouragement in my academic endeavours, which has always been invaluable.

Date: 11 July 2022   KRISHNA CHANDRA KUMAR

UID: SM0221015

National Law University and Judicial Academy, Assam

TABLE OF CASES

TABLE OF STATUTES

LIST OF ABBREVIATIONS

1.	AIR	All India Reporter
2.	Art	Article
3.	Bom.	Bombay
4.	C.P. I	Communist Party of India
5.	C.P.I (M)	Communist Party of India (Marxist)
6.	CJI	Chief Justice of India
7.	Consti	Constitution
8.	CPC	Civil Procedure Code
9.	D.P.S. P	Directive Principles of State Policy
10.	Ed.	Edited
11.	F. R	Fundamental Rights
12.	GOI	Government of India
13.	Govt.	Government
14.	H C	High Court
15.	ICC	International Criminal Court
16.	ICCPR	International Covenant on Civil and Political Rights
17.	ICESCR	International Covenant on Economic, Social and Cultural Rights
18.	IPC	Indian Penal Code
19.	J.	Justice
20.	Ltd.	Limited
21.	M.H.	Maharashtra
22.	M.P.	Madhya Pradesh
23.	Pvt.	Private
24.	S C	Supreme Court

25.	SCC	Supreme Court Cases
26.	SCR	Supreme Court Report
27.	U.K.	United Kingdom
28.	U.P.	Utter Pradesh
29.	UCC	Uniform Civil Code
30.	UDHR	Universal Declaration of Human Rights
31.	UOI	Union of India
32.	USA	United States of America
33.	Vs.	Versus
34.	W.B	West Bengal

Chapter 1

1.1 Introduction

For centuries, religion plays a very important role in all human societies. Religion, religious institutions, and religious practices consist of such a dominant force that they have been used as the instrument of social control. Institutionalized religion from ancient times was operated as a holistic authority that is respected by the state. It is manifest that religion, religious practices, and religious institutions are considered as holistic superior authority. The word "secularism" is derived from the Latin word "saeculum" which means "of a generation, belonging to an age"[1]. Earlier there was not any linkage between the word secular and religion. The word originated in late medieval Europe where the government do not indeed do anything with matters that are pure of religious beliefs and rituals. While the "concept of secularism" has extensive historical roots, British reformer George Jacob Holyoake first used the term in the nineteenth century.[2] The term secularism did not have any universally adopted definition. The word 'secular' in general context is understood as opposed to the "religious" and when it comes to the meaning of the "secular state" in a political context the word can and has taken on diverse connotations in many nations depending on the historical and social context, political philosophy, and perceived needs of a given nation. The concise definition is given by the French scholar Jean Bauberot precisely offers the perfect explanation of the term 'secularism'. Andrew Copson translated the definition and observed that "A secular society, according to Bauberot, has three important components:

1. The separation of religious institutions from the institutions of the state.
2. Freedom of conscience for all individuals, circumscribed only by the need for public order and the respect of the rights of other individuals.
3. No discrimination by the state against individuals on the basis of their beliefs"[3].

In the Indian context, Dr. S. Radhakrishnan has described it as "We hold that no religion should be given the preferential status of unique distinction ... No group of citizens shall

---

[1] Susan Bilynskyj Dunning, '*Saeculum*' (OCD Online, DOP November 2017) <https://oxfordre.com/classics/view/10.1093/acrefore/9780199381135.001.0001/acrefore-9780199381135-e-8233 > accessed 02 May 2022.
[2] Steven Conn, 'Secularism, Past and Future' (Origins.OSU.EDU) < https://origins.osu.edu/review/secularism-past-and-future. > accessed 27 April, 2022.
[3] Ibid.

arrogate to itself rights and privileges that it denies to others. No person should suffer any form of disability or discrimination because of his religion but all alike should be free to share to the fullest degree in the common life . . . Secularism as here defined is in accordance with the ancient religious tradition of India"[4].

Another appropriate interpretation of the term "secularism" in the Indian context is given by the apex court which has stated that 'Secularism' means religious tolerance and equal treatment to all religions[5]. There is a separation between Devine law and Human law when we follow the concept of secularism. When a state claims to be a secular state means it divorces human law from the religious and moral foundation.

The supreme court has stated that "although the Idea of secularism may have been borrowed in the Indian constitution from the west, it has adopted its own unique brand of secularism based on its particular history and exigencies"[6]. The concept of secularism has deep roots in Indian society as it has existed since ancient times. From ancient times people's lives in our country are heavily influenced by religion. Our ages-old scriptures such as the Upanishads expounded the philosophy of "Sarva Dharma Sambhava", Dr. Morale, and Dr. Pawar states that "it means respect for all belief systems"[7]. It is "Sanatan Dharma's" fundamental quality, Dr. Morale and Dr. Pawar were of the view that "only that has kept India together and made the country religion-neutral irrespective of the fact that India has never been a mono-religious society"[8]. As a result of its recognized history, India is a multi-religious and multi-cultural country. From Chandragupta Maurya to Ashoka about 2300 years ago and Harsh Vardhan about 1400 years ago to Mughals and Colonial-era accepted as well as patronized different religions. Even the Ellora cave temple which was built between the 5th and 10th centuries demonstrates how different religions may coexist and how diverse faiths can be accepted. All these historical invasions, wars, and incursions from Aryans to Mughals contributed to our country's religious and cultural diversity. Indian society is perhaps the world's most "multicultural" and "multi-religious civilization".

---

[4] Bipin Chandra, *India after Independence* (1st edition, Murari Lal & Sons Publications, 2009) 49.
[5] *S. R. Bommai v. Union of India*, (1994 3 SCC 1).
[6] *T. M. A. Pai Foundation V. State of Karnataka,* (2002 8 SCC 481).
[7] Dr. Suhas R. Morale & Dr. Dilip S. Pawar, *Indian Politics and State* (1st edition Chandralok Prakashan, 2006) 279.
[8] Ibid 284.

India is a land of varied cultures and it consists of people having different beliefs and religions. Religion is a significant factor in India. The majority of the makers in modern India have shaped the word "secularism" in the manner our country existed in history and was tolerant towards religions. It is evident from Indian history that our country even after being a Hindu majority state was very religious neutral and tolerant towards the other religious practices and that gave birth to the religions like Buddhism, Jainism, Sikhism, etc, and allowed Islam and Christianity to develop. Secularism safeguards people's religious and moral values as well as their tradition, in addition to protecting their freedom as believers and nonbelievers. It is necessary for the development of a society in which individuals of different religions may coexist in harmony. The principle also assures that all religious organizations are treated equally and democratically. Our country's struggle for independence from British rule strengthened our religious neutrality and tolerance towards other religions. During the freedom struggle, people from different religions came together to fight against the oppression of the Britishers. However, Britishers tactically divided secular Indian society into religion different way, and the effect of this division Britishers ultimately resulted in the bifurcation of India between two dominions i.e., "India and Pakistan", and later on the third one Bangladesh. The religious harmony which existed in India was disrupted with the bifurcation of Pakistan from India, and it resulted in the creation "Islamic republic of Pakistan" which choose to be a non-secular state, still, our country chooses to remain secular. India embarked to treat its citizens equally and decided that the state would not construct its citizenship and nationality based on religion. It is apparent not only from the country's religious neutrality but also from our religious diversity that the country decided to remain tolerant toward all different religions and beliefs. Religious toleration is of prime importance in the model of Indian secularism. Because religious toleration has been a crucial concept of Indian historical tradition, and that's the reason behind India being a multi-religious and multi-cultural society.

When the Indian constitution was being framed, one question that came up was whether the word "secular" should be added to the document. It was Prof. K. T. Shah who came up with the idea and intervene during the "constituent assembly debate" demanding the word "secular" to be added to the preamble. But the same was rejected by the constituent assembly. Two very important framers of the Indian constitution, Pt. J. L. Nehru and Dr. B. R. Ambedkar opposed the idea to incorporate the term 'secular' into

the original document. While the word was not inserted and dropped from the original constitutional document but the "members of the constituent assembly" agreed on the nature of the Indian state, which is based on secular principles. Later on, in the year 1976, the Indira Gandhi-led government, despite the reluctance portrayed by the constituent assembly during the drafting of the constitution added the word 'secular' to the preamble of the constitution as a part of the 42nd amendment. This amendment made explicit what was implicit earlier.

The Indian Constitution guarantees "the freedom of religion" and by the virtue of the 42nd Amendment Act[9] added the word "secular" to the preamble which provides that the state is religion-neutral. The absence of state religion constitutes the best principles of civilized living, as life in society is based on equality coupled with freedom for all communities which are living in this society. India's secularism does not only mean that there is the absence of state religion but also that it would see all the religions with an equal eye and provide protection to all different religious groups[10]. It also advocates for "the elimination of discrimination based on religion, culture, caste, language, colour, place of birth, or any combination of these factors"[11]. The right to religious freedom is a recognized human right[12]. "Universal Declaration of Human Rights"[13] through its articles 2, 7, and 8 deals with "the freedom of religion". That Art. 18 is pivotal which provides that "Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, worship and observance". Further "the International Covenant on Civil and Political Rights"[14] through its crucial Article 18 guarantees all individuals "the right to freedom of thought, conscience, and religion". It is an inalienable human right that gives an individual the liberty to worship the god of his choice. India guarantees "Religious Freedom" as Fundamental Rights to individuals by virtue of part III of the Indian Constitution. Art. 25 to Art. 28 provides for the "right to religion" to person, means it confers rights not just to citizens but also on the persons. As a result, the "right to religion" is granted to

---

[9] 1976.
[10] The Constitution of India Act 1950, Art. 25,26 and 29.
[11] The Constitution of India Act 1950, Art. 15.
[12] The Universal Declaration of Human Rights 1948, Art 18 & International Covenant on Civil and Political Rights 1966, Art 18(1).
[13] 1948.
[14] 1966.

both citizens and non-citizens. Further Art. 15 and Art. 16 deal with discrimination on the basis of religion, it provides that no person should be discriminated against on the basis of religion. Individuals are free to practice their own religious practices but these religious freedom rights are not absolute. It is limited when it comes to the larger interest of society. Certain restrictions are imposed upon religious freedom rights so that every individual would be able to enjoy this freedom with reasonable limits. Whenever there is any transgression between individuals/religious groups with the religious freedom of persons from other religious faith, states quickly intervene to maintain social order and peace. But again, the question arises whether those restrictions are fair or not, how much limitation is reasonable, and is there unnecessary intervention by the state. The Apex court in *"St. Xavier's College v. the State of Gujarat"*[15] observed that "India is a secular state, secularism eliminates god from the matter of the state affairs, and ensures that none shall be discriminated against on the ground of religion". If the state unreasonably intervenes through its various powers to the religious freedom rights of individuals or to any religious matter which threatens the secular character of India and if the act of the state is in a clash with the individuals, then the dispute is to be settled by the Indian Judiciary amicably and peacefully considering the belief/sentiments of all the people concerned. Our country is known around the world for its religious diversity because it is the birthplace of numerous religions such as Hinduism, Buddhism, Sikhism, and Jainism. In India one of the most indispensable parts of our practices and community is religion and thereafter India because of this is called, 'The land of spirituality and philosophy' all over the world[16].

In the *"S. R. Bommai"* case the supreme court held that "secularism" is part of the "Basic Structure" of the constitution. Justice Ramaswamy observed that "secularism does not mean anti-God and it is at times essential to stay in the free society. Secularism represents faiths born out of the exercise of rational faculties. It enables people to see the imperative requirements for human progress in all aspects and cultural and social advancement and indeed for human survival itself. It also not only improves the material conditions of human life but also liberates the human spirit from the bondage of ignorance, suppression, irrationality, injustice, fraud, hypocrisy and oppressive

---

[15] AIR 1974 SC 1389.
[16] Chandani Rajkishore & Ms. Renuga C, 'A Study on Secularism Concept in India That Attained Its Objective' [2018] 120 (5) International Journal of Pure and Applied Mathematics <https://acadpubl.eu/hub/2018-120-5/5/426.pdf> accessed 27 April 2022.

exploitations"[17]. The most distinguishing characteristic of Indian secularism is that it provides for equitable treatment for all religious groups and encourages religious tolerance.

As per a recent survey, 79.8% of India's overall population belongs to the Hindu religion, 14.2% are from the Muslim Community and the remaining 6% of the population belong to the Christian, Sikh, Buddhist, and Jains. Hindus make up the large majority of the population in our country, but Hinduism is not accorded a specific place in society[18]. Dr. S. Radhakrishnan in his book "Recovery of Faith" has explained the image of secularism in India as follows "we hold that not one religion should be given preferential status. … This view of religious impartiality, or comprehension and forbearance, has a prophetic role to play within national and international life"[19]. In India, the lack of a state religion provides equal opportunity, recognition, and protection to all religions. But because of the various hurdles that exist in the country, it becomes difficult to practice religious freedoms and all these hurdles became an immense threat to the secular structure of this country.

The hatred between the communities mainly Hindus and Muslims has surged to such a level that there are increased instances of communal violence, mob lynching, and hate speech against another religion. This enmity has resulted in the loss of life of so many innocent people and is thereby growing deeper day by day. There is a need of the hour for these communities to understand that the progress of India is being blocked due to such hatred.

The peculiar conditions which exist in contemporary India are creating hurdles for the concept of secularism and because of that reason the term 'secularism' could not achieve its precise and truest sense. All these hurdles become a threat to the secular structure of a country and it creates situations where religious freedom rights become vulnerable.

---

[17] *S. R. Bommai v. Union of India*, (1994 3 SCC 1).

[18] Stephanie Kramer, 'Key findings about the religious composition of India' [2021] Pew Research Centre <https://www.pewresearch.org/fact-tank/2021/09/21/key-findings-about-the-religious-composition-of-india/#:~:text=Hindus%20make%20up%2079.8%25%20of,most%20of%20the%20remaining%206%25> accessed 27 April 2022.

[19] Dr. S. Radhakrishnan, *Recovery of Faith* (first published 1956, Penguin Publishers, 1984) 34.

1.2 RESEARCH PROBLEM

Despite the fact that the word "Secularism" is added to the Constitution through the 42nd amendment act of 1976, it is not being able to be accepted in its truest sense[20]. India is a land of "varied cultures" and "vast diversity" and is called the World's most diverse country for a reason. India has no official religion and guarantees Freedom of Religion through various Fundamental Rights. However, all that have not achieved the desired results, the gap is ever ranging and despite all the guarantees and frameworks, it is still a distant dream to achieve the true intent of the word enshrined in the Constitution[21].

All the famous communal violence/religious killings like the famous Ayodhya Dispute, Moradabad riots 1980, Nellie Massacre 1984, Anti-Sikh riots 1984, Gujrat riots of 1985, Bhagalpur violence of the year 1989, Godhra killings of 2002, and recent West Bengal violence of 2020-22, etc shows that secular character of the country is becoming vulnerable. Further, the anti-conversion laws passed by the nine-state assemblies i.e., U.P., Rajasthan, Gujrat, M.P., Chhattisgarh, Odisha, Arunachal Pradesh, Uttarakhand, and Jharkhand on grounds of the larger interest of society have some menaces in practice and limiting religious freedom rights. Also, some unreasonable interference by the government in personal laws and practices is curbing the religious freedoms of individuals/religious groups. "In spite of the fact that India is considered and invariably accepted as a secular state, secularism is not a settled issue"[22].

There are varied reasons behind it like party politics, communalism, religious fanaticism, etc that still pose a threat to achieving the goal of 'Secularism'.

---

[20] Vivek Salathia, 'Secularism and Indian Constitution- Is the Secular Character of Indian Democracy Under Threat' [2016] IALSNET
<https://www.ialsnet.org/meetings/constit/papers/SalathiaVivek%28India%29.pdf> accessed 28 April 2022.
[21] Ibid.
[22] Dr. Suprita Dash, "Origin and Evaluation of Secularism in India", Volume 22, Issue 7, Ver. 8v, IOSR-JHSS (2017), P. 05-09

1.3 HYPOTHESIS

The term secularism has not achieved its true sense because of certain political, cultural, and religious hurdles that exist in India. Secularism and freedom of religion have not been given much importance because of the varied reasons and peculiar conditions that exist in various parts of the country. Secularism in India only exists in its formal sense and not in its substantive sense. It is expected from the parliament to come up with policy and adequate legislation promoting secularism in all spheres of public life.

1.4 RESEARCH QUESTIONS

1. Whether the Indian Constitution is secular in Nature?
2. What is the mechanism enshrined in the constitution which promotes Secularism?
3. What are the most common criticisms levelled towards India's secularism?
4. Whether there are any issues and challenges to Religious Freedom Rights and Secularism in Contemporary India?

1.5 RESEARCH METHODOLOGY

 The researcher has adopted a doctrinal research methodology for conducting research on the topic. The research will analyse primary as well as secondary sources of materials related to the research problem. The primary source of materials includes case laws, Acts, policy documents, constitutional assembly debates, etc, while textbooks, journals, and online material include the secondary source of the research materials. The methodology used in the present study is in accordance with the research problem, research objectives, and research questions.

1.6 SCOPE AND LIMITATION OF RESEARCH

The scope of this research is to understand the concept of secularism in India in its purest form. "The Constitution of India" provides various protection to the concept of religion but because of the various contemporary issues and challenges country faces serious hurdles to its secular nature. In this paper, the researcher would highlight those problems and would try to find out the solutions to those. Therefore, to conduct present Doctrinal Research the research would prefer various primary and secondary documents, various reports, various articles published in journals, and newspapers, and the online information available on the websites.

1.7 OBJECTIVE OF THE RESEARCH

1. The goal of the proposed research is to garner the idea of secularism

2. To trace the historical background of Secularism in India

3. To understand the provisions of the constitution in relation to secularism in India

4. To discuss and analyse the difficulties faced by Secularism in Modern India

5. To suggest the potential solutions and give recommendations to overcome the difficulties faced by Secularism in Modern India.

1.8 LITERATURE REVIEW

"J. M. Shelat, *Secularism: Principles and Applications*, N. M. Tripathi Private Ltd., 1972"

The author in his work studies secularism in India in the backdrop of the historical setting, the constitutional provisions, and judicial decisions. He claims that, like any other institution, India's secularism is partially a result of its history and traditions and partly an inevitable response to the events and developments that overtook the nation during the time of its independence and constitution-making. Several people have questioned India's commitment to secularism. Some people have argued that the idea of a secular state is a direct replica of the western model and owes nothing to Indian history and tradition; instead, they claim that it is only a problematic hybrid type to the extent that it deviates from the western model. Such criticism is described by the author as "neither valid nor proper." His argument is that understanding India's historical context, the issues that the constitution's framers faced, and studying the final product in the context of the principles governing the concept of a secular state and their application are necessary for understanding the true nature of Indian secularism.

"Mohammad Ghouse, *Secularism, Society and the Law in India,* Vikas Publishing House, 1973"

The author has done extensive research on the Constitution's guarantees of our fundamental rights to freedom of religion and culture. In this book, he looks at a few practical concerns that are strongly related to secularism, such as communalism, communal rioting, religious institutions, exercising one's faith, entering temples, the reverence of places of worship, and personal law reform. Ghouse concludes that religion need not be "banished from our lives". He asserts that "society needs religion; religion can enrich and ennoble our lives". However, he anticipates that religion will deal "not with dogmas and rituals but with the larger ideals of life," in which capacity, he says, religion would not be in opposition to modernization initiatives. Casteism, communalism and riots, political party strategies and stances, and Hindu and Muslim attitudes toward secularism all serve as backdrops for his study.

"P. C. Chatterjee, *Secular Values for Secular India*, Manohar Publishers and Distributors, 1995"

This work by Chatterjee examines the current challenges that Indian secularism is facing. In order to recognise and limit the legitimate demands of both religion and secularism, he strives to define the right realms of religion and secularism in private and public life. To identify the values that can be accepted in a secular society and those that must be rejected, the author compares Vedantic Hinduism, Buddhism, Islam, and Sikhism. Additionally, the author makes an effort to set boundaries for the application of conscience freedom.

"Bipin Chandra, *India after Independence*, Murari Lal & Sons Publications, 2009"

This book examines India's struggles and accomplishments in light of its century-long struggle for independence and colonial legacies. It demonstrates how distinctively Indian experience in the Third World combines development with democracy and civil freedoms by accomplishing this. Seeking the broadest agreement possible, as well as how the core principles of Nehru's foreign policy and political and economic agenda were created. Integration of the princely states, linguistic rearrangement of the states, mainstreaming of the tribal peoples and addressing regional imbalances were crucial to the effort to unite the country. Other difficult topics covered in this article include India's foreign policy, party politics in the federal government and the states, the Punjab issue, the rise of communalism, anti-caste politics, and untouchability. There are in-depth examinations of the Indian economy, covering the Green Revolution, extensive land reforms, and developments since 1991.

"Bipin Chandra, *Communalism in Modern India*, Har-Anand Publications Pvt. Ltd, 2015"

The celebrated book of Bipin Chandra deals with the historical development of communal politics leading to the partition of India. It is a comprehensive exploration of the roots of communalism in the colonial period.

"K. N. Pannikkar, *The Concerned Indian's Guide to Communalism*, Penguin Books India, 1999"

Pannikkar's edited work is thought-provoking and incisive. It challenges us to create a truly secular identity for ourselves in the twenty-first century and raises the issue of where we stand on communalism at the end of the millennium.

"Ashutosh Varshney, *Ethnic Conflict and Civic Life: Hindu and Muslims in India,* Yale University Press, 2003"

Varshney's work makes it clear that the causes of communalism are primarily political, created by the deliberate actions of those who are interested in fleshing out a politics of vilification of the 'other' and creating a homogeneous social identity where none exists. He uses the method of comparative sociology, identifying six cities as his field-three that riot prone and three peaceful to prove his point.

"D. E. Smith, *India as a Secular State,* Princeton University Press, 1963"

Smith in this work has undertaken a detailed analysis of India's secular state. First developing a conceptual framework, he proceeds with the growth of majoritarian communalism in the post-independence period, to analyse and evaluate secularism in India; its achievements as well as its problems.

"V. P. Luthera, *The Concept of The Secular State and India,* Oxford University Press, 1965"

Luthera in this work proceeds from a much narrower definition of "secularism" viz. "separation of State and religion" and categorically asserts that India is not and cannot become a secular state. To him, India is a jurisdictional State.

"P. B. Gajendragadkar, *Secularism and the Constitution of India,* University of Bombay, 1970"

Gajendragadkar J. in this work studies the nature of secularism as it is included in the Indian Constitution in the background of India's history, tradition, and development of social thought. He also makes a comparative study of corresponding provisions of various constitutions of the world.

"S. L. Verma, *Theory of Positive Secularism,* Rawat Publications, 1986"

This piece of writing by Varma is an intellectual reaction to the issue of nationalism, separatism, radicalism, and a possible breakup of the nation. Verma asserts that all of these have put tremendous strain on the processes of developing the state and the nation. In light of this context, he offers a theory of positive secularism and advocates amending the constitution to include it.

"G. S Sharma (Ed.), *Secularism: It's Implication for Law and Life in India*, N. M. Tripathi, 1966"

The publication includes papers presented during a seminar sponsored jointly by the Indian Law Institute and the Education Commission, Government of India. The author makes an effort to comprehend the intricate interaction of elements that led to the demise of secular forces and, as a result, the triumph of communalism. The authors of this volume have attempted to outline how India's secularism will develop in the future.

"Ruchi Tyagi, *Secularism in Multi-Religious Indian Society*, Deep and Deep Publications, 2001"

The Author of this work emphasises that secularism should be defined at three levels: the individual, society, and the state in the context of multi-religious India. Because India is a Muti religious society that consists of people from different sects and in that context, secularism should be defined at the above-mentioned three levels.

"Brenda Cossman and Ratna Kapur (Ed.), *Secularism's Last Sigh? Hindutva and the (Mis) Rule of Law*, OUP India Publisher, 1999"

The authors of the book argue that "Hindutva" cannot be isolated from its appeal to religion or from its attack on the legitimacy of "religious minorities" as they investigate the debate over the legal definitions of secularism and Hindutva. Basically, in this work authors aims to investigate the legal debate regarding the definitions of secularism and Hindutva. Additionally, it looks at the state of "secularism in India" and makes the case for a more vibrant, democratic view of secularism that can better foster tolerance.

"Rajeev Bhargava's (Ed.), *Secularism and its Critics*, OUP India Publisher, 1999"

In this book by Bhargava, the reader is given a detailed introduction to some of the secular thought theories that are popular both in the West and India. The genuine nature

of secularism in India is also a major topic covered in the book. The book summarises a range of opinions expressed by different authors on the topic of secularism. The work is a reflection of the present secularism debate, with opinions ranging from the necessity of a secular alternative to a focus on the necessity of secularism.

"Niraja Gopal Jayal, *Democracy and the State: Welfare, Secularism and Development in Contemporary India,* OUP India Publisher, 1998"

Examining the three main objectives of independent India—welfare, secularism, and development—the interaction between the state, society, and democracy in India throughout the 1990s is explored in this Book and it has been done through a detailed case study.

"P. C. Joshi, *Secularism and Development: The Indian Experiment*, South Asia Books, 1995"

the Author's work analyses the different concerns that are at the heart of the current conversation on secularism and the issues that have arisen. It also demands a shift in perspective and behaviour in order to successfully implement secularism in India.

"Neera Chandhoke, *Beyond Secularism: The Rights of Religious Minorities*, OUP India Publication,1999"

One of the most urgent, unsettling, and perplexing issues of our day is secularism. The concept of secularism has been shown to be insufficient for addressing the intricate and unique issues facing Indian society, as this book explains. The author argues that in order to defend minority identities that are currently being attacked by majoritarianism, we must go beyond the conventional definition of secularism. It also discusses in-depth related political themes like democracy, equality, and rights as well as the theoretical flaws of secularism and its alternative, tolerance.

"Nalini Rajan, *Secularism Democracy, Justice: Implication of Rawlsian Principles in India,* SAGE Publications Private Ltd., 1998"

The author talks about the benefits and drawbacks of increased democratic involvement, the need for "positive discrimination" to counteract social backwardness, the role of the self and universality in achieving human agency, and secularism and the need for a "uniform civil code". She uses the John Rawls framework to examine four

crucial facets of Indian reality today: secularism, democracy, social justice, and agency. She comes to the conclusion that the threat posed by religious fanaticism and state persecution can only be defeated by the people, organized into numerous social movements.

"N. S. Gehlot (Ed.), *Politics of Communalism and Secularism: Keeping Indians Divided*, Deep & Deep Publications, 1993"

In a multireligious country like India, the author emphasises the importance of secularism. Additionally, it makes the case that because communalism has received direct or indirect backing from the political and ruling elites, it has come to be seen as ritualistic and institutionalised. For the purposes of building voter bases and gaining power, secularism and communalism are both exploited.

"P. S. Ramu, *Secularism: Precept and Practice,* Secular Foundation Publication, 2000"

The author makes an effort to identify the philosophical roots of secularism in ancient Indian thought, from the Vedic era to contemporary culture. His writings aimed to portray secularism as a progressive way of thinking that has a positive impact on how people behave in social situations.

"Manjari Katju, *Vishva Hindu Parishad and Indian Politics,* Orient Black swan Private Ltd., 2010"

One of the key groups in the "Hindutva movement", the VHP, is given a thorough historical background by the author. It focuses on the VHP's evolution into an active mass organization serving as a catalyst for the mobilization of service providers and urban middle classes, and religious leaders for the development and promotion of a strong Hindu nation from a loosely knit body of Hindus aiming at maintaining and promoting Hindu dharma.

There are more articles in addition to these works about secularism that have been printed in a variety of journals, newspapers, etc. The current study aims to use all of these writers' findings to the extent that they are pertinent to its principal focus, viz. Secularism and Freedom of Religion in India: Contemporary Issues and Challenges

Chapter 2

Evolution of Secularism in West

It's crucial to comprehend how secularism initially emerged in the west before going into the specifics of the early Indian response to it. What kind of thing was it, and how did it evolve?

2.1 Ancient Era

Aristotle was the first great political philosopher who contributed to the origin of the idea of secularism. What he intended was not a radical separation of politics from ethics. He did, however, contend that they should be kept apart at least for analytical purposes. As described by Sabine "at the beginning of book III of Politics, Aristotle had discussed the virtue of good man and the virtue of a citizen and had treated their non-identity as a problem. In the closing pages of the Nicomachean Ethics, he takes for granted that they are not identical and presents the problem of legislation distinct from the study of the noblest form of ethical ideals"[23].

The dualism between the spiritual and the temporal was explicitly acknowledged by Christianity in medieval times. The famous slogan was "Render unto Caesar the things which are Caesar's, and unto God the things that are God's".[24]

The establishment of Christianity as the official religion came about following Constantine's conversion to the religion. After this time, Christians (who had previously been persecuted) began to victimize non-Christians.

Pope Gelasius I, introduced his theory of the Two Swords in the fifth century. The concept was that the state would uphold "peace, order, and justice" in temporal concerns while the church would look out for the people's spiritual interests. The issue of the relationship between the Church and the State was not resolved. Conflicts

---

[23] George H. Sabine, *A history of Political Theory* (1st edition, Oxford and TBH Publishing House Co., 1973) 110.

[24] "The response of Jesus when his enemies tried to trap him by asking whether it was right for the Jews, whose nation had been taken over by the Roman Empire, to pay tribute to the Roman emperor. He took a Roman coin that would be used to pay the tribute and asked whose picture was on it; his questioners answered, "Caesar's." The reply of Jesus implied that in using Roman coins, the Jews accepted the rule of the Romans, and so the Roman government had the right to tax them, as long as the Jews were not compromising their religious duties. Jesus' more general point was, give to worldly authorities the things that belong to them, and to God what belongs to God."

between the succeeding Popes and the Emperors did occur during the medieval era notwithstanding the notion of the Two Swords.

2.2 Medieval Period

"Pope Gregory VIII" and "Emperor Henry IV" engaged in a well-known conflict in the eleventh century. They both made the other feel inferior. In the 13th century, around, the king of France, Philip the Fair, clashed with the Pope. In the struggle for temporal supremacy, Philip's imposition of taxes on the French clerical class marked the state's first significant win over the Church. The process of the state over church winning out was further emphasised by the establishment of autonomous sovereign states throughout Europe and the Reformation. Marsilius of Padua was one of the most important intellectuals of the fourteenth century "who contributed to the idea of the secular state. The idea of Papal sovereignty was strongly opposed by Marsilius. He was antagonistic to the Church because he was an Italian patriot. According to the Sabine He wrote not to defend the empire but to destroy the whole system of papal imperialism… he went further than any other medieval writer in placing the church under the power of the state".[25]

Marsilius underlined that the clergy, like all other classes, is only one segment of society. He created a clear separation between "Divine" and "Human Law" in his Defensor Pacis. He asserted that, in contrast to human law, which is the collective will of citizens, divine law is a command of God. The actual difference was that Human Law was a mandate, and anyone who disobeyed it would be subject to a penalty or punishment in this world.

Marsilius emphasised that the consequences of the Divine Law were not an earthly punishment but rather a punishment in the afterlife. In his opinion, Divine Law is not derived from Human Law but rather clashed with it. He argued that "there should be no coercion in matters of faith or religion"[26].

In the late fifteenth and early sixteenth century, Machiavelli established a clear-cut separation between the "Church" and the "State". He was undoubtedly against the

---

[25] Sabine (n 23) 273.
[26] Ibid 274.

"Church of Rome" because he believed that the Church was responsible for keeping Italy divided.

He was interested in one single end and this was political power. He was indifferent to all other ends. He condemned the rulers who allowed their state to deteriorate. In his scheme of things, there was no sanctity of means, provided one's ends were desirable.

In the sixteenth century, the Protestant Reformation took place. After this movement, the Christians were divided into Roman Catholics and Protestants. While Roman Catholics were a minority in England, they were a majority in France. Due to this, the state had to adhere to a policy of religious tolerance toward the two Christian faiths. However, for a long time, such tolerance was not a widespread practice throughout all of Europe.

John Locke emphatically expressed the view that "the religion is outside the jurisdiction of the devil government"[27]. The Catholic Church and Atheists, however, were not included in Locke's view of religious toleration.

2.3 Post Medieval Period

Western society underwent a significant secularisation in the seventeenth century. According to Toynbee, this occurred as a result: "Science replaced religion as the paramount interest and pursuit of the leading spirit in the western society".[28]

The American republic's establishment was an attempt at secularism outside of Europe. The delegates at the Constituent Assembly at Phila-Delphia had avoided the addition of a "Bill of Rights" in the Constitutional document. It wasn't until the Constitution's ratification campaign that the issue of a "bill of rights" being included in the Constitution came to light. The Presbyterians were against the Constitution's ratification because they were concerned about the potential of established churches in the various states. Baptists opposed it because the constitution did not provide sufficient safeguards for religious freedom. Following the 1st, Amm. to the "Bill of Rights", which was ratified in 1791 and stated the following: "Congress shall make no law regarding an establishment of religion, or prohibit the free exercise thereof". This amendment made it illegal for the state to have any special ties to a particular religion.

---

[27] Alexander Moseley, 'John Locke: Political Philosophy (Internet Encyclopaedia of Philosophy) https://iep.utm.edu/home/about/ accessed> 11 June 2022.
[28] Arnold Toynbee, *An Historian's Approach to Religion* (Oxford University Press, 1956) 184.

Similarly, it was forbidden for the Church to meddle in state affairs. The First Amendment's protections for the "right to freely practice one's religion" were expanded by the fourteenth Amendment to the Constitution (1868). There were many reasons why the Americans demanded the "separation of the Church and the State" at the time of the establishment of the Republic. The main justification for this demand was that the majority of the earlier immigrants originated in England, where religious toleration was more prevalent than anywhere else in Europe. Moreover, a vast number of individuals who had settled in the U.S.A. had migrated because they were seeking refuge from the religious persecution that they had suffered in Europe. The majority of Americans at the time, however, adhered to liberal and pluralistic beliefs and standards. Secularism was a by-product of liberalism and religious pluralism. There was also a call for the Constitution to allow for not only broad religious tolerance but also tolerance of atheism. All of these elements combined to produce a scenario for which the establishment of secularism was the best course of action.

The American Congress was forbidden by the "Bill of Rights" from creating a specific Church. There was a separation between the "Church" and the "State". But the complete separation was not feasible. The boundary between the Church and the State was not made crystal clear, and it is still unclear today. In fact, the exact changing relationship between the Church and the State has been changing throughout history and even now a certain kind of obscurantism remains.

France is another nation where secular ideology predominated. In his book "The Spirit of the Laws", the French philosopher "Montesquieu" challenged the notion of religious uniformity in government. Voltaire wrote extensively against the racial and religious discrimination prevalent at the time. Additionally, Rousseau was against exclusive, oppressive forms of religion. The orthodox Catholic Church was overthrown during the French Revolution. In France, the separation of the Church from the State became distinctly evident after the 1870s.

In the middle of the nineteenth century, Karl Marx altogether gave a new interpretation to religion. He was a militant atheist. Along with rejecting religion, he thought that it was a powerful social force that was pro-conservative. He asserted that religion serves as a tool for the exploiter class. Religion provides imaginary satisfaction. According to Marx, "Christianity with its distinction between the soul and the body imparts to men

a double life and offers the imaginary joys of heaven as a solace for the real misery of this life"[29]. He condemned "religion as the opium of the people".

According to Marxist theory, religion is like opium because it suppresses class consciousness. The Marxists have advocated for the creation of a secular state since Marx, one that will recognize not just the equality of all religions but also complete equality between religion and irreligion. The essence and principles of secularism should be discussed at this time. Regarding the nature of secularism, there are essentially two points of view. The Marxist tradition informs the first viewpoint. The tradition of liberal democracy informs the second viewpoint.

In the Marxian tradition, secularism refers to perfect equality between all forms of religion (including irreligion). It signifies not just the division of the Church and the State but also the total submission of the former to the latter. The liberal democratic tradition, which does not desire total subjection of the Church to the State, stands in stark contrast to the Marxist notion of secularism. In the liberal tradition, religion is not condemned. It just intends for religion to take a back seat.

In the liberal democratic perspective, there are three fundamental components of secularism. The three components, according to Smith, are the connection between the

1. "Religion and the Individual.
2. The State and the Individual.
3. The State and the Religion."[30]

According to Smith "the relationship between religion and the individual means that the individual is free to think about and discuss with others the relative claims of other religions, and to arrive to his decision without any interference from the state. The relationship between the state and the individual, or the second component, indicates that the secular state sees the individual as a citizen rather than as a member of a certain religious group"[31]. According to the third component, religion and the state operate in fundamentally separate spheres of human activity, each with distinct goals and strategies. The promotion, regulation, direction, or other interference in religion is not the function of the State, just as political power is not the sphere of the Church.

---

[29] Thomas A Kempis, *The Limitation of Christ* (The Catholic Primer, 2004) 66.
[30] D. E. Smith, *India as a Secular State* (1st edition, Princeton University Press, 1963) 4.
[31] Ibid.

Chapter 3

Evolution of Secularism in India

In this chapter, it is proposed to trace the evolution of secularism in India. A historical overview of the connection between religion and state/politics in India from ancient times is being attempted. Later on, the concept of secularism how evolved and shaped its own unique form even after being the product of the west is attempted.

3.1 Secularism in Pre-colonial India

The concept of "secularism" has deep roots in Indian history as it has existed since ancient times. What existed in India was not the same concept of secularism as understood in the west. The first important characteristic of the notion of secularism is that religion should be separated from politics/state. The second is that every individual should have the "freedom to practice and profess their own religion" and the third is that no individual/religious group should intervene or hamper the rights of the other one (tolerance of the individuals from one community toward the others). These are the characteristics of the state who claims to be a secular one. From the history of India, it is evident that strong religious toleration existed in ancient Indian society. This religious tolerance tradition is crucial because it served as a forerunner to the rise of secularism. In the sense that it amounted to taking the view that all religions might coexist, the religious toleration policy was a form of secularism. It can be said that secularism in its full-fledged form has not existed in ancient and medieval India. It existed in a dormant and embryonic state. During this time period, there were aspects of secularism that, given adequate backing, could have developed into full-fledged secularism.

Religion has always been important in ancient India. Although the head of the state i.e., "King" did follow its own religion it allowed a tolerant atmosphere throughout the state for different religions. People from different faiths than the king's religion were allowed to practice their own religion because of the prevailing atmosphere of religious tolerance.

Although religion had great influence over the state, and the king was strongly tied to religion, it would not be fair to say that the Vedic period was a "theocracy". In Brihadaranyaka Upanishad it is stated that the king was the supreme in the society and

next to him was Brahmana (Priest)[32]. So, in the Vedic period, one could say that the supreme position was with the king while the priests had a very respectable position as they used to render spiritual help to the king. The king as supreme authority had the power and right to expel the priests if they tended to become impudent or for any other reasons.

After the study of ancient history, it could be said that India's history of secularism began with the 5th century B. C. protest movement by Charvakas, there were three movements which were secularist and materialistic philosophical movements combined with Buddhism and Jainism. They all disregarded Veda's authority and the significance of faith in a deity.

The king's divinity was continued to be recognized with the passage of time. However, the Brahmana's grip on the governmental apparatus began to wane in the fourth century B. C. as the study of politics and temporal matters become more important. The distinction between politics and religion become more important.

The writer Kautilya was the one who separated religion and politics. Kautilya in his work "Arthshastra" stipulates that "positive law began to be differentiated from religious and traditional customs and the school of politics began to assert that the former was more essential than the latter"[33].

The king was revered as Dharma's Protector and Enforcer. Although religion and politics started getting separated and Kautilya advocated for the notion, during his era all religions; Hinduism, Jainism, and Buddhism flourished alike.

It would not be improper to say that people in are following different religions since times immemorial and the rulers were inclined towards making a tolerant environment where different religions could be practiced with peace and harmony. From Gupta kings to Ashok and Akbar, everyone had followed the notion of tolerance towards different religions due to their state policies and kept religious sects and practices away from intolerant forms. However, there were frequent incidences of forceful conversion to

---

[32] A. S. Altekar, *State and Government in Ancient India* (7th Reprint edition, Motilal Banarasidass Publishers, 2016) 53.
[33] Ibid 55.

Islam during the rule and invasion by tyrant rulers like Aurangzeb who imposed religious tax "Jizya"[34].

3.1.1 A Secular Approach to Existence, according to Charvaka

Brian Duignan has stated that "Indian philosophy has the peculiarity of weaving within itself thoughts of different and, often, contradictory nature. There were six astik (believing) and six nastik (non-believing) schools of Indian philosophy in the past. The six astik schools were Nyaya, Vaisesika, Samkhya, Yoga, Purva Mimamsa, and Uttara Mimamasa. The six nastik schools were Charvaka, Jainism, and the four schools of Buddhism, namely, Vaibhasika, Sautrantika, Yogachara, and Madhyamika"[35].

"Charvaka, also called Lokayata, a philosophical Indian school of materialists who rejected the notion of an after world, karma, liberation (moksha), the authority of the sacred scriptures, the Vedas, and the immortality of the self[36]". It was created as a reaction to exploitative society and the excesses of Brahmin clergy, "Charvaka dismissed necessarily all the beliefs in everything which constituted specific subject matter related to religion and philosophy. It had a place for neither God who controls the universe nor the conscience that guides man. The absence of the transcendent in Charvaka might be the reason for its also being called Lokayata-darsana, meaning philosophical school restricted to the experienced world or secular".[37] It was based on a completely factual and rational understanding of reality.

Charvaka however didn't gain any political acceptance & was thereafter lapsed gradually while being hedonistic released by widespread polytheism. The notion of Charvaka couldn't continue further "due to the dominance of Brahmanism over religion, culture, society as well as politics. With Brahmanism, Veda became a supreme authority and thereafter the notion of separation of faith (Shabda, Shruti) and reason (Yukti) became inadmissible. True knowledge, therefore, couldn't be attained rationally and truth became mystical and available to a privileged few i.e., Brahmins"[38]. Charvaka, "Buddhists" and "Jains" were labelled as "nastiks" or unbelievers, and

---

[34] "It was type of religious tax which was paid by non-Muslim population to their tyrant Muslim rulers".
[35] Brian Duignan, 'Charvaka India Philosophy', (Encyclopaedia Britannica Online, November 2018) <https://www.britannica.com/topic/Charvaka/additional-info#history> accessed 16 May 2022.
[36] Ibid.
[37] M. Hiriyanna, *Indian Philosophy* (5th Reprint edition, Motilal Banarasidass Publishers, 2000) 193.
[38] Ibid 194.

thereafter were isolated from the mainstream. Even Brahmanism sustained itself to prevent members from other castes from being educated. They did this through the usage of Sanskrit in a limited manner coupled with keeping the fact that "higher knowledge was unattainable by other castes. Even major religions were divided into two storeys namely the upper one which was nondualistic and attainable by high caste members alone and the lower ones which were polytheistic and a part of a popular form of Hindu religion. The higher was considered the real and the lower the lesser real dominated by myths and phenomena"[39]. "Brahmanism" kept each level in hand by asserting the validity of the Vedas. "The Charvaka secular ideology was, in comparison, to Brahmanism, a lower world-view caught up with the present world and far-removed from the true reality that the Upanishads declared"[40]. "Charvaka", therefore, lapsed gradually prior Brahmanism mounted. The human reason which was considered capable to know the all reasons which through a secular state could be achieved was not new to a state like India.

Politically, "religious tolerance" was not unique to India's modern era when secularism flourished. Traces of the same were also founded in the ancient Indian era irrespective of it stood assessed to the extent as to how far these implemented religious policies fell in line with the concept of modern secularism[41]. Two great revolutionaries were born in India at the same time that philosophy was emerging in the west in the 5th century B. C. called "Vardhamana Mahavir" and "Siddhartha Gautama". Both of them were from the "Kshatriya" caste and denounced caste and racial injustice endorsed by Brahmanism. Jainism was founded by Mahavira and Buddhism was founded by Buddha. The birth and flourishment of the Jain and Buddhist religions had a revolutionary impact on the Indian environment, its best outcome was that Sudras (lower caste people according to the varna system) gained power and governed in some areas[42]. As per Dr. Mukherjee, "In any case sixth and fifth centuries B.C. hold out strange phenomena before us, - Kshatriya chiefs founding popular religious sects which

---

[39] Hiriyanna (n 37) 195.
[40] Ibid., 196.
[41] J. K Chopra, *History of Modern India Culture* (1st edition, Unique Publishers, 2009) 22.
[42] Kolluru Suryanarayana, "Emergence of Sudras as Ruling Power and Its Impact on Medieval Andhra" (1995) Vol. 56 Proceedings of the Indian History Congress 333.

menaced the Vedic religion, and Sudra leaders establishing a big empire in Arya-vart on the ruins of Kshatriya Kingdoms[43]".

3.1.2 Glance of Secularism in Mauryan Era

The Mauryas favoured sects that were not strictly religious. However, they never strike Brahmanism seriously. In terms of secularism, "Buddhism is best known in India for its most devoted follower, Emperor Ashoka, whose religious practices are among the most similar to modern humanist values"[44]. In 300 B.C., "Chandragupta Maurya died. Bindusara was his successor, and following his death in 273-272 B.C., Ashoka inherited as king in 269-268 B.C"[45]. He converted to Buddhism at the end of his Kalinga war because of a traumatic experience, and after uniting the entire subcontinent under his era, India experienced one of its few periods of peaceful administration.

The great Ashoka used the word "Dhamma" which for him means "a code of ethical behaviour and the benefits thereof[46]". The Dhamma of Ashoka has been taken as a synonym for Buddhism, the state religion. However, Ashoka had no intention of establishing a Buddhist state. Dhamma was intended to foster a mentality in which social responsibility was valued highly. Furthermore, because the concepts of Dhamma were essentially ethical and moral values, they were acceptable to members of all faith sectors. Ahsoka placed a lot of emphasis on religious tolerance. His notion of tolerance was divided into two categories: tolerance of individuals and tolerance of their views and thoughts. He described it this way:

"Consideration towards slaves and servants, obedience to mother and father, generosity towards friends, acquaintances and relatives, and towards priests and monks…"[47].

His tolerance was based on the regulation of one's speech, so as not to glorify one's own sect or denigrate another at inappropriate moments. Honouring another man's sect, according to Ashoka, strengthens one's own sect's power while also benefiting the people from another sect. Although Ashoka's religious tolerance policy appears to

---

[43]Chitrarekha Gupta, "Social Processes: Modes and Pattern of Social Change in Early India" (1999) Vol. 60 Proceedings of the Indian History Congress 19-50.

[44] Yelle RA, "Was Aśoka Really a Secularist Avant-La-Lettre? Ancient Indian Pluralism and Toleration in Historical Perspective" (2022) 56 Modern Asian Studies 749

[45] Chitrarekha Gupta, "Social Processes: Modes and Pattern of Social Change in Early India" (1999) Vol. 60 Proceedings of the Indian History Congress 19-50.

[46] Romila Thapar, *Asoka and the Decline of the Mauryas* (3rd edition,Oxford University Press, 1982) 189.

[47] Ibid 225.

follow secularist ideas, his proclamation of Buddhism as the official religion does not. The foundation of a stable state, according to Ashoka, was religion.

In the conclusion, one could say that although "Ashoka's religious policies were not purely secular-oriented but they do resemble secularism in practice in their laws of religious freedom, religious tolerance, and respect for all religions"[48].

3.1.3 Signs of Secularism in Gupta's period

During the Gupta dynasty, there was still a climate of religious tolerance. The Gupta period was the time when Hindu culture became firmly established. Hinduism was the most popular religion at the time. Buddhism also thrived as well and was Hinduism's main competitor. In practice, however, most aspects of Buddhism have been absorbed into Hinduism to the point where Buddhism has been classified as a Hindu sect. Many monarchs in the Deccan and South India adopted Jainism.

The Gupta dynasty's monarch was a strong supporter of Hinduism. During this time, a large number of Hindu holy writings were compiled or rewritten. The Puranas and Smritis as we know them now were written during this time period. The Brahmanas chronicled historical traditions in the Puranas which became sacred books for Hindus. During this time, the Brahmans were in a strong and effective position. The Brahmans kept their power by seeing themselves as the sole heirs to Aryan customs and by monopolising knowledge through their educational system. The Brahmanas enjoyed the dominant place in the society still they held the second position to the Kshatriyas.

The Gupta rulers respected Hinduism, but they also let other religious sects conduct their religious affairs as they saw fit. They were hardly restrained at all. In fact, it was at this time that "Buddhism spread throughout Central Asia and China"[49]. Many Buddhists from India travelled to China in great numbers to propagate their faith. It was under the impact of Buddhism that in c. 379 A.D. Buddhism was declared the state religion in China. This is crucial because, despite being patronised by Indian rulers, this religion did not establish a theocratic state in India, but it was embraced as the state religion in China and other countries.

---

[48] Thapar (n 46) 206.
[49] Rama Shankar Tripathi, *History of Ancient India* (10th Reprint edition, Exotic India Publishers, 2014) 313.

Buddhism eventually lost ground in India but gained a stronger foothold in other parts of Asia. Hinduism and Jainism still enjoyed a dominant position in India. Although, Hinduism enjoyed support from royalty during the Gupta dynasty still the notion of religious tolerance was deeply ingrained in the society's customs and conventions.

After all the study of Gupta rulers' toleration of the religions and non-interference towards other sects. practices it would not be improper to say their era had an environment for secularism. Tolerance towards other sects. is one of the most important features of secularism, on the basis of this toleration and non-interference all the different faiths existed together during the Gupta dynasty.

3.1.4 King Harshavardhana's humanitarian approach to religions

Buddhism, Brahmanism, and Jainism were the main religions during the reign of Harshavardhana[50]. But from these three, Brahminism and Jainism were not popular as Buddhism. Buddhism was given royal support. Other religions, on the other hand, thrived without the state interfering in their internal affairs. It has been convincing, demonstrated by Rawlinson who points out: "Harsha and his family had a strong leaning towards Buddhism, and Buddhist establishments were generally endowed. But for reasons of state, the emperor was eclectic in his religion and paid equal respect to Siva, the Sun (Surya), and Buddha".[51]

"The Chinese traveller Hiuen Tsang had highly impressed King Harsha, who had been drawn to the Hinayana school of Buddhism"[52]. This enraged the Brahmans, who even hired a criminal to assassinate king Harsha. However, this conspiracy was discovered by King Harsha. Many Brahmans were arrested, and it says a lot about Harsha's humanity that he only punished the ring leaders. The others were forgiven and expelled from the state.

Furthermore, the assembly convened at Prayaga, in which Harsha distributed all of his wealth to various religious factions, enhances the claim of his religious tolerance policy. All of this demonstrates the ruler's kindness to different religions. This kindness and tolerance towards other religions prevailed during the rule of King Harsha but later on, it got disturbed by the arrival of Turks.

---

[50] Ibid 311.
[51] H. G. Rawlinson, *India: A Short Culture History* (Fredrick A. Prager Publishers, 1967) 112.
[52] Ibid 116.

3.1.5 Muslim rulers' approach toward other religions

With the foundation of the Delhi Sultanate, the entire landscape of Indian life changed radically. The state was governed by Quranic rules; therefore, it may be considered a theocracy in that sense. "The Ulema (Muslim theologians) became a political voice which could not be disregarded or disobeyed. The sultan (king) was required to demonstrate respect for Islamic institutions, particularly the Ulema, at least apparently"[53].

The Sultanate adhered to the Sharia, Islam's fundamental law, as interpreted by the Ulema. The Sultan was a representative of the Caliph, yet he operated on his own. However, the Sultan's ultimate authority was questioned because, in the end, he had to rely on Islam for support. He was required to follow Sharia law and Islamic traditions in public.

The Brahmana's political and economic dominance was weakened under Muslim rule. Brahman land grants were curtailed, and they were now compelled to pay taxes.

During the Sultanate period, Islam was the main religion, and the Sultanate was described as theocratic. Other religions were allowed to exist and even grow under the theocratic state, as seen by reform movements in Hinduism like as the Bhakti movement[54]. Similarly, "the Sufi movement among Muslims contributed to bringing Islamic culture closer to the rest of society"[55]. An era of intermingling between the two sects started. This period influenced the Mughal period in Indian history.

Islam and Hinduism both underwent substantial religious development during the medieval period. Hinduism appears to have had an influence on Islam's mystics. Some Hindu social customs were absorbed by Islam.

3.1.6 Akbar's Era

Akbar is considered the king who truly established Mughal Sultanate. "He ruled from 1556 AD to 1605 AD. In addition to Hinduism, Buddhism, and Jainism during the time Christianity, Zoroastrianism, and Sikhism were also practiced which pushed Muslim

---

[53] Tripathi (n 49) 244.
[54] 'Bhakti Movement' was to correct the various shortcomings of the traditional Vedic cultures like it wanted to eradicate caste domination from the Hindu religion.
[55] "Sufi Movement" was to remove the orthodox practices in the Islam sect.

rulers to make policies suitable for them too"[56]. In terms of his policies toward the various religions practiced in his empire, Akbar stood above all other Muslim monarchs.

In the beginning, Akbar was influenced by Shiva's teachings and Persian poets' mysticism. However, the Sadr (minister of religious endowments) and "the Qadis" (religious judges) of Akbar's religious authorities were Sunnis. Akbar was a Sufi follower who visited to Sufi retreats at Ajmer and Sikri.

By a smart blend of tolerance, charity, and force, Akbar secured the support of the Rajput, the most combative Hindus. He married a Hindu Rajput princess in the year 1562. Hindus were welcome in his court, and they were even awarded prestigious Mansabs[57]. In his "Ibadat Khana" (prayer hall), which was built by him in his newly formed capital, Akbar preferred to have dialogues with individuals of other religions. These discussions were attended by religious leaders of all sects. Akbar wanted to show that he was not prejudiced against any faith. It is known from the Declaration (Mahzar) of 1579, which established him as a religious arbitrator. In 1582, Akbar established the "Divine Faith (Din-i-Ilahi)" as a new form of religion. However, as evidenced by the reality that only a small number of courtiers really adopted the religion pronounced by him, Akbar did not impose it on his subjects. Akbar sought to establish the concept of Sulh-Kul, or religious peace and concord. He ordered the translation of significant Hindu scriptures and epics like as the Atharva Veda, Ramayana, and Mahabharata so that they may be widely read and absorbed by Indians of all backgrounds. He forbade the slaughter of cows and other animals considered sacred by Hindus, and he observed a number of non-Islamic customs. All of this does not, however, suggest that Akbar was anti-Islam. This, on the other hand, proves that he was not a Muslim fanatic. He practiced and believed in a variety of religions. Jawaharlal Nehru named him "the Father of Indian Nationalism" because of his policies of inclusivism, religious tolerance, and inter-religious respect, as well as his efforts to build an empire built on unity and equality[58].

---

[56] Tripathi (n 49) 256.
[57] The Mughal system of administration was officially known as "Mansab." The higher the Mansab, the more authority and privileges it possessed.
[58] Chopra (n 41) 24.

Akbar prohibited the "forced conversion" of battle detainees in 1562. Akbar revoked the "pilgrimage tax" in 1563, prompting Hindus across India to build a slew of temples. Furthermore, the Jizya tax[59] on Hindus was abolished by Akbar in 1564. Only Muslims had previously been considered citizens. However, both Hindus and Muslims were granted citizenship by Akbar. His policy prohibited political distinction based on religious beliefs. Though all his laws and orders were based on reasons religion was not divorced from the state as per the western concept of secularism. However, during his rule, he tried to prevent the Islamic religious authority from dominating his religious practices. Akbar did not let the fundamental and communal forces influence his decisions in any manner. Akbar was willing to take religious support for his "syncretistic" and "rational religious policies" by elevating himself much above clerics of Islam, obtaining his own recognition as a popular judge on the day of decision, and adjusting his legislation so that they are consistent well with Quran.

As a result, it may be stated that Akbar's religious ideology of "religious tolerance" and freedom stemmed from his syncretistic, liberal, rational, and pluralistic viewpoint. His integrated viewpoint stopped him from taking side with any one group, allowing him to promote mutual regard and goodwill among his people. His pluralistic stance stemmed from his comparative analysis of various faiths, and also his own belief in the strength and value of rationality in comprehension and decision. On these considerations, it is reasonable to conclude that, while Akbar's Regulations did not fully comply to all aspects of "modern secularism", they did contain the "secular seeds" of state-sanctioned religious freedom and dignity.

After him in matters of religion, Akbar's successor, Jahangir, and his grandson Shahjahan followed Akbar's approach. However, it was Shahjahan's eldest son, Dara Shikoh (1615-1659), who was particularly interested in Hindu philosophy and mystical activities. He put immense effort to try to find out common ground between Hindus and Muslims. The orthodox Muslims were against it and claimed that his ideology would be a threat to the religious integrity of Islam. The Muslim community felt aggrieved and they went against the Dara Shikoh's policy of religious toleration. Dara Shikoh's brother, Aurangzeb (1658-1707), benefited from the situation and declared him a "heretic".

---

[59] It was a Tax collected by the Islamic rulers from the non-Muslims for safeguarding them.

Aurangzeb overturned Akbar's religious tolerance notion. Aurangzeb was to the core of an orthodox "Sunni Muslim". During his era, his state was governed by the "Hanafi school of Islamic law". Aurangzeb moved away from the Shara at the start of his rule, issuing Farmans prohibiting the destruction of extant temples. New temples, however, were not permitted to be constructed.

Aurangzeb changed his stance in 1665 and ordered the temple of Somnath to be destroyed. A number of other temples were afterward demolished. The renowned Vishwanath temple in Banaras and some temples in Mathura were among them. He did not only demolish the temples but also built mosques in their place. This policy was continued during his rule.

The reimposition of Jizya was another example of Aurangzeb's communal policy. He was mad keen on turning India into a Dar-ul-Islam country[60]. On this basis, it can be said that Aurangzeb was a fanatic ruler and his state was theocratic. He did mean to and did in actual practice reversed Akbar's policy of religious tolerance which has been an important religious and cultural tradition of Indian history.

3.2 Secularism during British rule

Colonial rule brought Western secularism to India. Firstly, the Portuguese arrived in India at the beginning of the 17th century, followed by the "Dutch", the "French", and the "British". These "East India companies" came to India with the motive of trade but later they started colonializing the land. A rivalry soon arose among them and except for the British East India company others had to flee. The nature of the British rule in India was distinct from all earlier invasions of the nation. Previously, changing kings meant just changing dynasties. The earlier conquests did not have the same impact on India as the British rule did. British reign in India had a huge impact on India's social and cultural life.

The Crown gave the Company authority to "adopt laws and ordinances for the sake of administration in 1657, and to penalize or fine individuals who did not follow the laws. It was mandated that laws be formed in line with reason and England's laws, statutes,

---

[60] Dar-ul-Islam is a Muslim term that refers to a land that is only inhabited by Muslims. Only after a massive conversion of Hindus to Islam could India become Dar-ul-Islam. This was not only a display of religious intolerance, but it was also unworkable because Hindus made up the majority of India's population.

and customs".[61] The Company's legislative powers are historically significant since they set the groundwork for the establishment of the Indian constitution. The commencement of a systematic legal system and courts was established by the Charter of 1726. In three presidencies i.e., "Madras, Bombay, and Calcutta the Common Law, as well as the Statute Law, were imposed. Because the English Law could not be applied to the Indian environment, it was not fully and quickly implemented. As a result, it was determined that adjustments to English law were required to suit the Indian environment".[62]

A Governor-General office was founded in 1773, with "Warren Hastings", the Bengal governor, as the first "governor-general of India". "The 1784 India Act" established a British government section that was in charge of the Company's political, military, and financial activities in India. The First Indian Law Commission was established in 1834 in compliance with the Charter Act of 1833. The most renowned member of the Commission was Lord Macaulay. The Draft Indian Penal Code was created as a result of his work. "The Indian Penal Code", which superseded the earlier criminal legislation, the "Code of Civil Procedure", the "Code of Criminal Procedure", and other laws, was also prepared by this Commission.

The British Government's secular policies are expressly stated in the "Charter Act of 1833". "Section 87 of the Act" provides that "no Indian subject of the Company in India was to be debarred from holding any office under the Company by reason of his religion, place of birth, descent, and colour".[63] The person who converts to another religion then his property was confiscated in those days, according to both Muslim and Hindu rules. The Commission recommended in its report that the principle of not depriving anyone of their property rights due to conversion to another religion be implemented throughout India. In 1850, a law was created that gave legal support to this viewpoint.[64] As a result, this Act is also known as the "Freedom of Religion Act" and the "Caste Disabilities Removal Act" due to the freedom and liberty it provided an individual to pick a religion without being enticed or forced to do so. In the laws that the English enacted in India, "the influence of Renaissance individualism and

---

[61] V.D. Mahajan, *Modern Indian History* (17th edition, S. Chand & Co. Ltd., 2004) 643.
[62] Daya Shankar Dubey & Rajesh Tandon, *Constitutional History of India* (Allahabad: Allahabad Law Agency, 1985) 18.
[63] Mahajan (n 61) 247.
[64] Dubey and Tandon (n 62) 102.

humanism, reformation of privatism and freedom, and Enlightenment belief in reason and human rights can all be seen, all of which contributed to the promotion of secularism in India's social and political context"[65].

Because of the disunity of religion, culture, kingdom, caste, race, and language, the British were successful in invading this large country. However, the unification of India under the British administration was a crucial effect of colonization. This unification of India under one authority also aided the nation's later democracy and rebirth as a republic.

The true foundations of secularism were laid down under British rule. For one thing, pre-British India had religious tolerance rather than secularism. The arrival of the British in India promoted secular ideas. The East India Company officials were the ones who introduced the western ideas and the concept of secularism to India.

The foundations of the "Modern India" state were also laid during the "British administration". The idea of liberalism, the spirit of inquiry, the spirit of rationality, and the scientific temper came to be adopted by the British-educated middle-class intelligentsia as the outcome of our interaction with the British. They began to examine their religious beliefs, behaviours, and customs. They also began to question the dominant social ideologies, habits, and institutions. They began to distinguish between Human Law and Divine Law, as well as "between loyalty to their religion and loyalty to the state"[66]. In these and other ways, the British contributed to the emergence, expansion, and development of secularist views in India.

The essence of British rule in India was viewed in two ways by Britishers. The British conquest of India was viewed by Christian missionaries as a divine dispensation. They saw this conquest as a chance to convert large numbers of Indians to Christianity. They sought the assistance of the British government in their activities.

The advocates of the second viewpoint can be considered as the "traditionalists", "who were opposed to mass-scale religious conversions and were against radical changes in social and cultural lives of Indians"[67]. They felt that British control in India could only be maintained with the help of the Indian people. They believed that even simply

---

[65] Ibid 165.
[66] Ibid 168.
[67] Ibid 170.

government would not be beneficial to Indians if it clashed with the people's habits and character. The school was opposed to the "use of state power" to convert Indian people to Christianity. They were advocates for religious tolerance. The missionaries, on the other hand, felt that spreading Christianity in the country would benefit Britain's colonial ambitions. Their only option was to scorn the "indigenous religions". As a result of their actions, the gulf between rulers and the ruled has increased. But the missionaries' attempts to Christianize India were unsuccessful. However, their attempts had far-reaching indirect implications. The backlash against these attempts intensified India's religious renaissance, which has social, cultural, and religious components as well.

The west began to exploit India effectively. Christianity and modern ideology had a very significant impact. A few Indian intellectuals were swept away by western influence, and some were converted to Christianity. However, the majority of them responded to the western influence by ushering in a new intellectual awakening in India. The spirit of the nineteenth-century Indian renaissance was born from this new intellectual awakening. Many socio-religious movements arose as a result of the Renaissance. "There were two essential elements of this renaissance. These elements were first, the rise of the rational view of life and its application to the physical as well as the metaphysical world. Secondly, there was also, in a limited sense, the rise of the scientific temper"[68]. These factors aided the emergence and growth of secularism in India.

The many socio-religious movements of the nineteenth century made significant contributions to the establishment of secularism's foundations and the contact with the British aided in the development of a secular tendency in India. There were many "social" and "religious" reformers at the time. supported this secular trend. These reformers sought social reform by attacking blind faith, religious ceremonies, and superstitious customs. They contributed to the creation of a national feeling. They also advocated for secular education rather than religious indoctrination in schools. The advent of secular western education sparked a tendency in favour of a rational outlook on life and aided in the development of scientific temperament.

---

[68] Ibid 176.

Secularism as a notion did not exist in India and was imported from the West. The Benthamite radicals were mostly responsible for bringing secularism to India[69]. It was presented in India in three different methods. First, that group of Indians who travelled to Britain or any other European country were attracted to the secular thought of western intellectuals and took their views back to India. Second, many British-educated Indians were exposed to the secular concepts of the Benthamite radicals as well as other literature by western secular philosophers. Third, certain "British officials who were disciples of Bentham or other western secular intellectuals brought secularism to India. People like Bentick, Metcalfe, and Macaulay had a secular vision and wished to see India transform quickly. They wanted India to undergo significant social reforms. In the end, they desired to modernise India in the same way that the West had done"[70].

Bentick introduced far-reaching social reforms which implemented sweeping changes. In India, he was the one who instituted secular education. He codified the laws that resulted in the separation of Human and Divine Law. He aimed to eliminate significant disparities in the administration of justice between Indians and Englishmen.

The process of secularisation in India began under the liberal imperialism of the days of Bentick, Metcalfe, and Macaulay. It was also during this time that the concept of secularism began to pervade Indian intellectuals' ideas. They reacted to the idea, and some of them agreed with it.

The 1857 mutiny was a major setback in India's secularisation effort. The British traditionalists dominated British opinion on the Indian stage after the mutiny. In 1858, following the Sepoy Mutiny, the Crown declared that she would seize control of the governance of India. As a result, Lord Canning was selected by the Crown as India's first Viceroy and Governor-General. On November 1, 1858, Lord Canning held a Durbar at Allahabad to announce the Crown's accession of the Government of India. Among the many declarations in the proclamation was the one below, which is significant in the history of secular politics i.e., "Firmly relying ourselves on the truth of Christianity an acknowledging with gratitude the solace of religion, we disclaim alike the right and the desire to impose our convictions on any of our subjects. We declare it to be our royal will and pleasure that none be any wise favoured, none molested or

---

[69] Ranbir Singh and Karamvir Singh, 'Secularism in India: Challenges and it Future' (2011) Vol. 72 The Indian Journal of Political Science 501-509.
[70] Ibid

disqualified by reason of their religious faith and observances; but that all shall alike enjoy the equal and impartial protection of the law, and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure".[71] This declaration prohibited government officials from interfering in India's religious matters. The preservation of India's cultures, traditions, and customs were safeguarded. Between the British and the Indian subjects, equality was created. The advent of English Law in India shaped the relationship between politics and religion along secular lines in such a way.

After the mutiny, a doctrine of religious tolerance took the place of secularism, which, as we have seen, has played a significant role in India's religious and cultural history. However, despite the British doctrine of secularism having been reversed, the idea of secularism had been entrenched in India and could not be eradicated. Once the notion had taken root, it was here to stay. Different Indians reacted to the concept of secularism in various ways.

The concept of Indian secularism involves religious tolerance as a vital component. It is so because religious tolerance has long been an important part of Indian history. Furthermore, India is a multi-religious and pluralistic society. As a result, religious tolerance is a need of the situation.

There were two distinct streams of Indian responses to secularism in the early nineteenth century. One reply came from the conservatives, while another came from some who believed that western progressivism was what contemporary India should strive towards. Conservatives are referred to as orthodox or revivalists in various contexts. Liberals, progressives, and even radicals describe the second group of Western Reformists.

3.2.1 Raja Ram Mohan Roy's reformative steps toward Secularism

When it comes to the adoption of western thought of secularism one cannot forget the contribution of Raja Ram Mohan Roy. He was considered by many the "father of modern India". He sowed the seeds of secularism in modern India. In India, he was a religious reformer who paved the way for others to follow. He campaigned for social

---

[71] As cited by Mahajan (n 61) 270.

reforms and argued that they might be implemented with the state's assistance. In addition, He spoke in favour of bringing western education to India. He made the case that secular education was so much more important for Indians than strictly religious learning.

"Raja Ram Mohan Roy" criticised the British government's decision to build a Sanskrit college in India in the year 1823. Instead, he insisted that the institution be used to teach a broad and enlightened system of education that included mathematics, natural philosophy, chemistry, anatomy, and other important sciences in English. He emphasised in his letter to Lord Ahmerst on English instruction that: "no improvement can be expected from inducing, young men to consume a dozen years of the most valuable period of their lives in acquiring the niceties of Vyakarana or Sanskrit Grammar. Neither can much improvement arise from such speculations as the following which are the themes suggested by Vedanta. In what manner is the soul absorbed in the Deity? What relation does it bear to the Divine Essence"[72].

Ram Mohan Roy argued that concluding that whatever is immoral must necessarily be invalid is incorrect. He used numerous examples to demonstrate that there is a distinction between law and morality. Human law, he believed, was distinct from Divine law. Human law was distinguished from divine law by the fact that it was not founded on religious or moral principles. Moreover, the sanctions for the enforcement of the Human law were also not religious or moral. We know that one of the significant elements of secularism is the distinction between Human law and Divine law. We separate human law from theological and moral grounds as we move toward secularisation. It is in this sense that Ram Mohan Roy made a distinction between law and morality and it was a further step in the direction of secularism in India. He was well aware of the difference between law and morality, and he preached this concept throughout his life. It helped to formulate the basic foundations of western secularism in India.

---

[72] Fatima, Tausif, and Tousif Fatima. "Women's Rights and Hindu Law of Inheritance: The Approach of Rammohun Roy" Proceedings of the Indian History Congress, vol. 70, 2009, pp. 643–48. JSTOR, http://www.jstor.org/stable/44147711. Accessed 7 Jul. 2022.

3.2.2 Swami Dayanand Saraswathi's approach towards secularism through Arya Samaj

He was one of the renowned social reformers in India. Swami vehemently opposed western notions and attempted to resurrect the ancient Aryan faith. But he was neither a traditional Hindu nor even a reconstructionist. He spoke out against post-Vedic Hinduism's evils without fear. He was called the "Luther of India" because of his vigorous social reform efforts. He made contributions to India's secularisation drive through the Arya Samaj, which he established. He campaigned for social reforms, secular education, and nation-building, among other things. All of these factors contributed to the secularisation process, and Arya Samaj can be considered a secular movement in this aspect.

When describing the virtues of Europeans, he pointed out that "some of the factors that have contributed to their success include

1. The custom of child marriage does not prevail among them.
2. They give their boys and girls sound training and education.
3. They choose their own life partners.
4. They sacrifice everything, their wealth, their hearts, their lives, for the good of their nation".[73]

It is clear from this account that the Europeans' virtues were not due to their religious beliefs. They were advanced because they had undertaken significant social reforms. They had a good educational system, and they had finally formed a sense of nationalism for which they were willing to sacrifice their own self-interest.

Dayananda instilled the spirit of inquiry and logic into the religious realm. He was a social reformer as well as a theological reformer. "It is true that he wanted social reform to be carried out through a reinterpretation of Hindu religious texts and traditions"[74]. However, the fact that he was a militant social reformer indicates that secularism played a significant role in Swami Dayananda's thinking and deeds. In addition to religious teachings, he highlighted the importance of secularisation. He was not opposed to western science and secular education being introduced into India, but rather advocated

---

[73] Tony Ballantyne, *Orientalism and Race: Aryanism in the British Empire* (Palgrave Macmillan Publishers, 2001) 169-87
[74] Ibid.

for it. The "D. A. V's (Dayanand Anglo-Vedic Institutions)" played a major part in offering "secular education" to Hindus after Swami Dayananda's death. Swami Dayananda's greatest contribution to secularism was his strong nationalism preaching and practice. His Arya Samaj made a significant contribution to the nation-building process. He did use religion as a basis for national sentiment during this process. The Arya Samaj did believe in Hindu-Muslim cooperation and in this manner helped in the process of secularisation.

3.2.3 Swami Ramakrishna and Vivekananda

Swami Ramakrishna and his great disciple Swami Vivekananda thought India had a spiritual message for the rest of the world. They insisted on the need of religious instruction. The Ramakrishna Mission, on the other hand, was active in social work and reform. It emphasised that man is God and that God is within him. Vivekanand justified even the caste system as good and recognized idolatry as useful for those who need idols.[75] He did, however, interpret these ancient customs in a way that was compatible with western ideas of social and religious equality. His concern for the impoverished and oppressed was a role that can be seen as part of the secularisation process. Although the Ramakrishna Mission recognised the caste system, it denounced the injustices that it brought with it. In this way, their social reform operations have been just as aggressive in fighting religious obscurantism as western reformists have been. In the words of Vivekananda: "Wherever you go there will be caste. But that does not mean that there should be these privileges. They should be knocked on the head… I am a fisherman, you are a philosopher, but I have the same God in me as you, have in you. And that is what we want, no privileges for anyone, equal chances for all."[76] Vivekananda also pleaded with the people of India to forget the internal differences which existed between them and to make their nation strong. This emphasis on nation-building was also a part of the process of secularization.

In short, we can say that the notion of a secular state as we understand it these days has a long history. It is a legacy of the western political tradition. What existed in ancient and medieval India was an atmosphere of religious tolerance. Considerable liberty in

---

75 Swami Medhananda, 'Was Swami Vivekananda a Hindu Supremacist? Revisiting a Long-Standing Debate' (2020) 11(7) MPDI Journals < https://doi.org/10.3390/rel11070368> accessed 20 May 2022.

[76] Vivekananda, *The Complete Works of Swami Vivekanand* (Vedanta Prints, 2003) 245-46

religious matters existed in ancient India. This feature of religious liberty is one of the most fundamental characteristics of a secular state. Another element of secularism that we find in ancient India is that politics was separated from theology as far as the fourth century before Christ in Arthasastra. This is crucial because, in the west at the time, politics was regarded as a branch of theology. Other considerations were pushed to a secondary position in Arthasastra since it was focused on the problem of power and religion.

The arrival of Britishers in India brought about some significant changes in the socio-religious climate of the time. They introduced new ideas and concepts such as secularism and nationalism. A feeling of national awakening was felt throughout the boundaries of India.

3.3 Indian National Congress's attitude toward advancing the idea of secularism

It was with the founding of the Indian National Congress that the seeds of secular Nationalism were laid down. The moderates dominated the Indian National Congress for the first twenty years. The moderates' view regarding the importance of religion in political activities and deeds influenced India's move toward the western concept of secularism. They also pushed the idea of secularism and fostered the secularisation movement in India due to the role and contribution they played. Although there were many moderates, the researchers propose that only five of them be discussed, as they are the most famous representatives of the moderate viewpoint: Dadabhai Naoroji, Sir Ferozshah Mehta, Justice M.G. Ranade, and G.K. Gokhale.

3.3.1 Dadabhai Naoroji

In the early decades of the Nationalist Movements, he was one of the most prominent moderate leaders. He is popularly known as "the Grand Old Man of India". He was a key figure in the secularisation of Indian politics and made significant contributions to the country's secularisation process. Dadabhai Naoroji is often regarded as India's first secular nationalist. Through nationalism, he discussed secularism. His idea of secularism was that Politics and religion should not mix. He even went so far as to say that religion must be subservient to politics. He used this view in propounding his concept of secular nationalism. Dadabhai Naoroji was a fervent believer that India could achieve "Swaraj (self-rule)" only after seeing the need for an extensive political unification of all Indians of various religions and cultures and classes. According to his

own words: "All the people in their political position are in one boat. They must sink or swim together. Without this union, all efforts will be vain".[77]

According to Lallubhai "Dadabhai Naoroji recognized that what had existed in India prior to the entrance of the British was imperial unity and that the process of nation-building had only begun with the arrival of the British. In his presidential address in 1886, he pointed out that a meeting of the kind that took place in the sessions of the Indian National Congress was not possible either during the Hindu period or during the Muslim period of Indian History".[78]Indian Nationalism was symbolized and represented by the I.N.C. in its sessions, and people from various sects participated in that sessions. Such participation was not even possible in the era of one of the best Hindu rulers' kings "Vikramaditya". In his Era, there was no feeling of nation-building rather it was empire-building. Dadabhai Naoraji pointed out that "even Hindu Nationalism was not possible under the rule of Vikramaditya because even Hindus of different provinces of his kingdom could not have collected and spoken as one nation. Dadabhai also pointed out that the extent of the Muslim empire was even greater than that of the Hindu emperors. He highlighted that even under Akbar, a session such as the Indian National Congress assembly could not cross religious barriers"[79].

Dadabhai Naoroji attempted to foster national patriotism based on nonreligious considerations. He saw that the British rule in India had devastating economic effects on all Indians. So that the people of India could come forward and unite together against the British rule in India on the grounds that they had caused them all economic disaster.

According to the aforementioned story, Dadabhai Naoroji is credited with introducing the Western concept of secularism to modern India. One of the main reasons he appreciated British rule in India was that it introduced the concepts of nationalism and secularism. It is these ideas to which Dadabhai Naoroji fully subscribed. It would be relevant here to point out that the researcher is not merely concerned with the views of the various leaders on religion and politics but also making a brief attempt at their involvement in the secularisation of Indian politics. All these imminent thinkers came up with some components which aided in India's secularisation process. In the light of

---

[77] Dadabhai Naoroji, Poverty and Un-British Rule in India (London, Swan Sonnenschein and Company, 1901) 97.
[78] Chunilal Lallubhai(ed.), Essays, Speeches, Addresses and Writings of the Hon'ble Dadabhai Naoroji (Caxton Printing Press, 1887) 332
[79] Ibid 335.

all those components researcher would examine the contribution of Dadabhai Naoroji and other thinkers in the field of secularism.

"Dadabhai Naoroji belonged to a minority community of India yet he and his ideologies were acceptable to the people belonging to different religious sects of India. He clearly demonstrated the secular nature of his personality. He promoted the cause of secularism in India in different ways. Like he had fundamental faith in the idea of religious toleration"[80]. He made use of this atmosphere of religious toleration in consolidating and strengthening the process of secularization in India. His idea of secularization implied and represented nationalism, anti-imperialism, and anti-communalism. He pleaded to the people of India that they should subordinate their loyalty to their religion at the altar of their devotion to their nation.

Dadabhai Naoroji stood for secular education and social reforms. In fact, He lauded British authority in India for introducing secular education and for aiding in the adoption of social changes, especially among Hindus.

3.3.2 Pherozeshah Mehta

He also belonged to a Parsee family-like Naoroji. He was known as the "Lion of Bombay". He was the president of the Indian National Congress at its Calcutta session in 1890. According to Mody "he had friends among leaders of different religious communities of India. He wanted Indians to be loyal to India irrespective of the fact whether one was a Parsee, a Christian, a Muslim, or a Hindu. He went further and said that a Parsee would be a better Parsee or a Muslim would be a better Muslim or a Hindu would be a better Hindu, the more he was attached to his country and more he was bound in brotherly affection to all the children of the soil. He said that we must consider ourselves Indians first, then Hindu, Christian, or Muslim afterward"[81].

Although he belonged to the minority community yet he rose above religion and pleaded for secular nationalism. He recognised that India is a multi-religious society and that Indian nationalism could not be built on religious grounds. The problem was if nationalism in India was to be raised on religious grounds, the question that will arise would be on which religion? If Indian nationalism were to be raised on the Hindu

---

[80] Ibid.
[81] Homi Mody, *Sir Pherozeshah Mehta: A Political Biography* (Asia Publishing House, 1963) 123

religion, the Muslims would be alienated and vice-versa. In the Indian context, it was very clear that there was no alternative to secularism.[82] This is what Sir Pherozeshah Mehta pleaded for. It was because of his secular approach that Gokhale went to the extent of saying that "he would rather be wrong with Pherozshah Mehta than to be in the right without him".

3.3.3 Justice Mahadev Govind Ranade

He was another important leader who advocated for the notion of secularism. He is widely regarded as a great patriot, religious reformer, renowned jurist, eminent economist, and accomplished historian. Ranade's secularism manifests itself in a variety of ways. His secularism took on a new dimension when He promoted secular patriotism, particularly unity between Hindus and Muslims, in an effort to secularise Indian politics. He emphasised the significance of Hindu-Muslim cooperation and the virtue of religious tolerance in his speech at the Indian Social Conference in 1899. Ranade argued that Hindu-Muslim cooperation is essential for Indian nationalism to flourish. He emphasised that Hindu-Muslim harmony was conceivable and achieved under the reign of Akbar. However, under Aurangzeb's reign, there was a climate of religious intolerance. Because of that, the Hindus and Muslims got a feeling of separation from each other, which was the primary cause of the Mughal Empire's demise.

It was crucial that this not happen again in the interest of national unity. He believed that Indians should learn from their past. They need to learn about Akbar's accomplishments. They should try to follow Akbar's techniques. The people of India, on the other hand, should avoid doing what Aurangzeb did and should be aware of the grave dangers of preaching what Aurangzeb preached. "In his speech to the social conference, he said that: No progress is possible unless both Hindus and Mahomedans join hands together, and are determined to follow the lead of the men who flourished in Akbar's time and were his chief advisers and councillors, and sedulously avoid the mistakes which were committed by his great-grandson Aurangzeb. Joint action from a sense of common interest, and a common desire to bring about the fusion of the thoughts and feelings of man so as to tolerate small differences and bring about concord

---

[82] Ibid 125.

were the chief aims kept in view by Akbar and formed the principle of the new divine faith formulated in the Din-ilahi".[83]

Even after this lengthy statement from Ranade, the researcher is inclined to quote him again because what he stated was and continues to be highly important in the cause of secular nationalism. In his words "Every effort on the part of either Hindus or Mahomedans to regard their interests as separate and distinct, and every attempt made by the two communities to create separate schools and interest among themselves, and not to heal up the wounds inflicted by a mutual hatred of caste and creed, must be depreciated on all hands. It is to be feared that this lesson has not been sufficiently kept in mind by the leaders of both communities in their struggle for existence and in the acquisition of power and predominance during recent years. There is at times a great danger of the work of Akbar being undone by losing sight of this great lesson that the history of his reign and that of his two successors is so well calculated to teach.[84]

Ranade's secularism also included the introduction of "rationality and the spirit of inquiry" into the sphere of religion. He was a great critic of Hindu orthodoxy and Hindu revivalism. Even in the sphere of religion, he refused to accept the Hindu religious leaders' authority. Religion and religious rituals would be acceptable to him only if they passed his reason test. He wasn't afraid to mock Hindu religious and social traditions that he thought were blatantly illogical.[85]

Ranade was essentially a revolutionary, and he contributed significantly to the secularisation of Indian politics through progressive changes. In comparison to religious instruction, he preferred secular education. He observed that while Hindus talked about spiritual growth, they neglected secular well-being. They were traditional and fatalist as a result of their religious upbringing. He stressed how Hindus had fallen behind in terms of national wellbeing during the last three thousand years. It was because of the emphasis on religious instructions that secular well-being had been ignored. Ranade admired the British rule in India mainly because it gave secular education, secular culture, and secular values. He felt that with the support of British

---

[83] Quoted in C.Y. Chintamini, *Indian Social Reform* (Thompson and Company, 1901) 122.
[84] Ibid., 123.
[85] M.G. Ranade, *The Miscellaneous Writings* (Sahitya Academy,1915) 190.

rule, Hindus and Muslims would be able to catch up to the people of Western Europe in terms of education.

Ranade also made a very valuable addition to secularism by vehemently advocating for an increase in the size and scope of the government. He pleaded that there should be a transfer of power and functions from the religious field to the field of the state.

As can be seen from the foregoing narrative, Ranade's secularism had numerous facets, and he made a significant contribution to the process of political secularisation by advocating for religious tolerance and Hindu-Muslim cooperation as the foundation of Indian nationalism. He spoke in favour of a secular education system. He promoted secular principles while opposing religious orthodoxy and fatalism.

3.3.4 Gopal Krishna Gokhale

He hailed from a Brahman family in Maharashtra. He was elected to the "Bombay Legislative Council" in 1889. Later, in the year 1905, he became a member of the Imperial Legislative Council. He came from an orthodox Brahman household, yet he was an agnostic in his religious beliefs.

Gokhale believed in and preached secular nationalism for India. Religion and politics were separated from him. He chooses not to employ religion to instil nationalistic feelings in India. He argued that using religion as a foundation for nationalism in India would be harmful. For Gokhale social and political work was more important because he was not interested in the so-called religious work at all. He wanted to build national consciousness, the spirit of public life, political education, unity between different "religious communities", and "secular education" of various kinds. All of this aided India's secularisation trend.

Another notable feature of Gokhale's secularism is that he never supported the concept of distinct electorates for Hindus and Muslims. He did not believe that religion should be the base of representation. He agreed to community representation as a concession, but the idea of separate electorates, which gets to the root of secular nationalism, was unacceptably radical for him.

Rationality and the spirit of inquiry initially appeared in the sphere of religion. It liberalized religion. Religion's liberalisation and rationalisation paved the ground for the rationalisation of Indian society, especially Hindu society. In fact, because existing

social practices and social relationships were built on religious orthodoxy and superstition, secularism in India could not be achieved without social reforms. The introduction of rationality and the spirit of inquiry, as well as these forces, contributed to the secularisation of politics. In the Indian situation, secularism and nationalism came together. That was why, despite the fact that secularism harmed people's religious orthodoxy, there was widespread agreement on the notion of secularism.

The idea of secularism was common to all the moderate leaders of the Indian National Congress. They believed and argued that nationalism must be raised on secular grounds. They also sought a divorce between religion and politics. They thought that using religion to foster nationalism was harmful and would cause a division in Indian society. Their religious dedication was overshadowed by a newfound love for their country. For them, Nationalism, anti-imperialism, and anti-communism were indicated by and expressed by secularism. Another aspect of their secularism was that they emphasised secular education in preference to religious instructions.

To sum up we must that all these potential leaders introduced the concept of secular nationalism initially. They promoted interreligious harmony as a means of preserving India's diversity. They were proponents of religious tolerance. They contributed to the development of a sense of patriotism that trumped religious allegiance. In fact, we could say that they were the first secularists of modern India.

3.3.5 Jawaharlal Nehru

"Nehru was a leading champion of a non-communal, Secular State"[86]. The definition of a secular state according to Jawaharlal Nehru is one in which "the state protects all religions but does not favour one at the expense of others and does not itself adopt any religion as the state religion."[87] His idea of secularism strengthens the country to move forward towards the secularization and modernization.

3.3.6 Mahatma Gandhi

Gandhi also like others adopted a non-communal perspective when it came to Indian politics. But he had a different vision of a secular state for India than Nehru and others did. "Secularism for Gandhi did not mean religiosity but the spirit of religious tolerance

---

[86] N. D. Palmer, *The Indian Political System* (Houghton Mifflin Company, 1971) 109.
[87] Quoted by D. E. Smith, *Nehru and Democracy* (Orient Longmans, 1958) 150.

which he postulated on the basis of universalistic ethics of Hinduism itself. His conception of Indian polity was entirely non-communal and yet non-secular, in the strictly western sense of the term"[88]. In his autobiography, Mahatma Gandhi stated, "those who say that religion has nothing to do with politics do not know what religion means"[89].

3.4 Bifurcation of India on the Basis of Religion (Creation of Pakistan)

Indians requested more specific political reforms since they weren't happy with the way politics were currently being conducted in their nation. The British government responded with the Indian Council Act of 1909, also known as the Morley-Minto Reforms. The size and responsibilities of India's legislative councils were increased by this Act. It also included provisions for the Legislative Council elections. The provision of a separate Muslim electorate, reserved seats for Muslims in the Indian Legislative Council and provincial Councils, and the right of Muslims to vote for both "regular seats" and "reserved seats" nonetheless included representation on the basis of religion.

India's representative system issue was made more difficult by the Reforms of 1909. Tragically, it had negative effects. Community strife increased as a result. "Communal electorate made the communities more conscious of their separateness and minorities tended to develop a not merely high distrust of the majority but also a persecution complex"[90]. "Indians were politically divided into communal compartments, thwart the growing national unity. The seeds of Pakistan were sown"[91].

The Act of 1909's changes thus fell short of what the Indian people wanted. The opposite happened—it led to new issues. In order to secure the demands made by the Muslim League for Indian self-government, the Indian National Congress was forced to embrace the communal electorate in 1916, despite the fact that it was against the organization's philosophical beliefs. A system of dyarchy and partial responsible administration in the provinces was established by the Act of 1919, also known as the "Mont-Ford" reforms. However, the 1919 Act also established a separate electoral system for Sikhs in Punjab. Then, the Ramsay Macdonald's Award of 1932, also known

---

[88] Singh Yogendra, *Modernization of Indian Traditions* (Thomson press Ltd. 1973) 115.
[89] M. K. Gandhi, *An Autobiography, or the Story of my Experiments with truth* (Fingerprint Publishing, 2009) 126.
[90] S. P. Aiyer, *Studies in Indian Democracy* (Allied Publishers Pvt. Ltd., 1965) 81.
[91] K.M. Munshi, *Indian Constitutional Documents* (Bhartiya Vidya Bhavan, 1967) .3.

as the "communal Award," expanded the concept of a separate electorate to include Anglo-Indians, Christians, Europeans, members of the Depressed Classes, and Scheduled Castes. This communal award cut at the very root of Indian Nationalism. "The award was the manifestation of Avery's sinister policy of exploiting the communal differences to the benefit of the British Empire"[92].

The Poona Pact, which was signed on September 25th, 1932, dissolved the separate electorate for the Depressed Classes and gave them a specific assurance of more seats in the provincial legislature. The distinct electorate for the other communities, however, remained the same. "The Government of India Act" of 1935 sought to establish the "Federation of India, but it also recognized the mandating of communal representation. In India, communalism was encouraged by the system of separate electorates for the various communities, which encouraged the formation of those groups' own political entities. Communal representation, as a result, became an integral part of the Indian political system"[93].

Mohammed Ali Jinnah initially supported Indian nationalism and the unity of Hindus and Muslims. Because Jinnah believed in secular nationalism, he approached life's political issues from a secular perspective. "He emphasised that people should forget religious differences. They may not abandon their religion but should learn to separate politics from religion"[94]. Up till 1920, Jinnah remained a nationalist and member of Congress. He afterward announced his resignation from Congress and took on the role of Muslim spokesperson. "He started denying and contradicting whatever he had said before"[95].

He began claiming that the Muslim League is the sole organisation that speaks for Muslims in India while he was the Muslim League's head. Jinnah introduced his renowned "Two-Nation Theory" at the Lahore Muslim League meeting in 1940. Many nationalist figures criticised the "Two-Nation Theory," including Gandhiji, Nehru, Rajagopalachari, and Maulana Azad. However, the Muslim League Leaders steadfastly upheld it, and in the end, India attained national freedom—but only after the country was divided between India and Pakistan.

---

[92] D. C. Gupta, *Indian National Movement* (Vikas Publication, 1970) 167.
[93] Ibid 174.
[94] Dr. Moin Shakir, *Khilafat to Partition* (Kalamkar Publication, 1970) 181.
[95] Ibid 184.

Chapter 4

Secularism under the Constitution of India, 1950

India achieved independence on August 15, 1947, and on January 26, 1950, the Free India Constitution became operative. Since then, the idea of "Secularism" has taken on a special significance in India's politics and constitutional law. The constitution seeks to establish an independent, socialist, secular, and democratic republic in India.

The original Indian Constitution does not use the word "secular". However, as a result of the 42nd Amendment Act of 1976 to the Constitution, this word has now been added to the preamble. In light of this, the Preamble of the Constitution, the articles of Fundamental Rights, and the Directive Principles of State Policy all reflect the spirit of secularism. Like many contemporary States, India has embraced the idea of the secular state. According to this theory, the state is completely divorced from religious dogmas rather than being either religious, irreligious, or antireligious. In matters of religion, the state is impartial. Although the fundamentals of secularism are shared by practically all states, the definition of secularism varies depending on the circumstances in each state. For instance, "the separation of church and state" is recognised in the US. In the United Kingdom, it is acknowledged that both the people and the government have secular outlooks and attitudes toward religion. American design is accepted in France. Secularism is of the Marxian tradition, which is anti-religious in nature, and is hence prevalent in the USSR.

4.1 Attempts to add word secular in the constitution

Throughout the discussions in the "Constituent Assembly", many of the participants frequently used the word "secular". Moreover Prof. K. T. made repeated attempts to incorporate the term "Secular" in the Constitutional Document.

The first attempt by K. T. Shah took the form of "an amendment to clause (I) of Article 1 of the draft constitution. He moved to insert in clause (I) of Article 1, the words Secular, Federal, Socialist so that the amended Article would read as follows: India shall be a Secular, Federal, Socialist Union of States"[96]. According to Prof. K. T. Shah, the inclusion of the term "Secular" will aid India in avoiding the "communalism" and "sectarianism" that it has historically encountered. Additionally, by forbidding

---

[96] Constitutional Assembly Debates, Vol. VII, Amendment No.98, On 15th November, 1948, P. 399.

interference from the state's authority, it will guarantee justice and equality[97]. The proposal was rejected for two reasons by "Dr. Ambedkar", the chairman of the draft committee. First and most importantly, "the constitution shouldn't alter current social and economic structures. These are the matters which must be decided by the people themselves according to the time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether". Secondly, "that the amendment was superfluous since the goals of socialism have found a place in the provisions relating to the Fundamental Rights and Directive Principles, therefore, it is unnecessary to accept the amendment"[98]. Additionally, H. V. Kamath stated that the amendment proposed by Prof. K. T. Shah was inappropriate. If at all, the Preamble should be the only place the phrases "Secular and Socialist" appear. The Constituent Assembly ultimately rejected the amendment proposed by Professor K. T. Shah.

The second attempt by K. T. Shah took the form of a suggested new article. Article 18 (A), stated: "The State in India being a Secular shall have no concern with any religion, creed or profession of faith, shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union"[99].

Prof. Shah proposed a notion of neutrality regarding the relationship between the State and religion. His "second amendment" was rejected without discussion by Constituent Assembly.

As a result, Prof. K. T. Shah sought to amend the Draft Constitution to explicitly state that the State is secular but was unsuccessful in his efforts. The amendment to the Constitution that would have added the word "Secular" was rejected by the Constituent Assembly. As a result, it wasn't mentioned in the Constitution's Preamble or in any of its clauses.

---

[97] Ibid 400.
[98] Constitutional Assembly Debates, Vol. VII, Amendment No. 98, On 15th November, 1948, P. 402.
[99] Constitutional Assembly Debates, Vol. VII, Amendment No. 566, On 3rd December, 1948, P. 815-16.

4.2 "Hindu State" or "Secular State"

There were two opposing viewpoints when the Draft Constitution was being discussed in the Constituent Assembly: one supported the "Hindu State" and the other the "Secular State". In the first section, the idea of a secular state was attacked, and it was said that secularism had no significance following the country's division, and that country must be titled the "Hindu State" in the same way that Pakistan had turned Islamic.

In the Constituent Assembly, Loknath Misra stated "if you accept religion, you must accept Hinduism as it is practised by an overwhelming majority of the people of India"[100].

A large number of other Constituent Assembly members supported a secular state and voiced their opinions on the secular state and secularism concepts.

Chaudhari Ranbir Singh pointed out that "our aim to-day is to set up a Secular State – nondenominational State, our object of establishing a Secular State in this country would remain merely an unrealised dream if we decide to provide safeguards on the grounds of religion"[101].

Hussain Imam held the following views "Secular State does not mean that it is anti-religious State. It means that it is not irreligious but non-religious and as such, there is a world of difference between irreligious and non-religious"[102].

Tajmal Hussain argued that "this is a Secular State and a Secular State should not have nothing to do with religion---. We should not, being a Secular State, be recognised by our dress. If you have a particular kind of dress, you know at once that so and so is a Hindu or a Muslim. This thing should be done away with"[103].

"H. V. Kamath" said that "after all, the State represents all the people, who live within its territories and therefore, it cannot afford to identify itself with the religions of any particular section of the population. But Sir, let me not be misunderstood when I say that a State should not identify itself with any particular religion, I do not mean to say that State should be anti-religious. We have certainly declared that India would be a

---

[100] Constitutional Assembly Debates, Vol. VII, P. 822.
[101] Ibid 289.
[102] Ibid 546.
[103] Ibid 818-19.

Secular State, but to my mind, a Secular State is neither a Godless State nor an irreligious nor an anti-religious State"[104].

"Lakshmikanta Miatra" explained that "by Secular State, as I understand it is meant that the State is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith---- The State is not going to establish patronise or endow any particular religion to the exclusion of or in preference to others and that no citizen in the State will have any preferential treatment or will be discriminated against simply on the ground that he professed, a particular form of religion"[105]

"L. Krishnaswami Bharti" has pointed out that "It is not at all inconsistent with the Secular nature of the State. After all, the State does not interfere with it. Religion will be there. It is a personal affair and the State as such does not side with one religion--- To say that some religious people should not do propaganda or propagate their view is to show intolerance on our part"[106].

"K. M. Munshi", also regarded that "A secular State is not a Godless State. It is not a State which is pledged to eradicate or ignore religion. It is not a state which refuses to take notice of religious beliefs in this country"[107].

Thus, the concept of secularism as enshrined in our Constitution was very vividly explained by the Members of the Constituent Assembly. It seems that they were, by and large, agreed on the issue of adopting a "Secular" rather than a "theocratic" or "Hindu" State for India.

4.3 Why did Secular State have opted?

For a variety of reasons, the Indian Constituent Assembly chose the Secular State. The Secular State was accepted "in order to strengthen the foundation of democracy. An authoritarian State could well be Hindu in India, as it is Islamic in Pakistan, but Indian democracy would have undermined its foundations if it had opted for the denominational state"[108].

---

[104] Constitutional Assembly Debates, Vol. VII, P. 825.
[105] Ibid 831.
[106] Ibid 834.
[107] Ibid 1057.
[108] Ayyub Abu Sayeed, *Socialism Democracy and Secularism* (National Book Trust of India, 1965) 54.

Shelat has pointed out that "denial of Secular principles would have not only jeopardised the territorial integrity and sovereignty of the new state but would have disrupted the democratic structure that was about to be set up after a long and arduous struggle"[109].

The Secular State was opted for "because of the tradition of religious tolerance from the time of Asoka"[110].

Wadhava has explained that "The Concept of Secular State introduced in the Indian Constitution for safeguarding the interests of religious minorities. A theocratic State because of its commitments to one particular religion would have been harmful to the religious minorities. The Concept of the Secular State was adopted in view of the religious diversity of the Indian Society"[111].

It should be noted that the reason the constitution's framers supported secularism was that they had an unpleasant experience with the country's division on the basis of religion. Secularism was therefore seen as beneficial and important for India. Similar to this, choosing a particular faith to serve as the State religion was challenging in a nation like India due to its wide range of religious practices. Secularism was therefore seen as a practical answer to the problem of religious pluralism and religious minorities. The secular state was a counterbalance to the Hindu state, which would have been a theocracy, which is an outmoded notion of "secularism" that was accepted in the Indian Constitution because it was thought to be progressive and supportive of democracy.

4.4 Why the term "Secular" was omitted?

Despite the fact that India's Constituent Assembly chose to create a "secular state", the word "secular" was not included in the first Constitution document. So, the question of why the word "Secular" was omitted arises. The Constituent Assembly does not provide a response. However, several writers on the "Constitution of India" and "Secularism" have made an effort to respond to this query. As Smith has stated, "the inclusion of such an article in the Constitution, however, laudable the intention behind it, would certainly

---

[109] J. M. Shelat, *Secularism; Principles and Application* (N. M. Tripathi, Pvt. Ltd., 1972) 90.
[110] B. Kuppuswamy, *Social Change in India* (Vikas Publishing House, Pvt. Ltd., 1979) 411.
[111] M. M. Sankhdher, *Framework of Indian Politics* (Gitanjali Publishing House, 1983) 36.

have produced a conflict with Article 25 which permits extensive State intervention in matters connected with the religion in the interest of social reform"[112].

Luthera has noted that "The omission of the term secular was because the Constitution makers did not intend India to be a secular state in the proper sense of the term"[113].

Ayyub Abu Syeed said that the non-inclusion of the term "Secular" was due to "ancient scriptures did not make mention of it. And probably the more important reason was that they (makers of the constitution) associated this word with a spirit of antagonism towards everything that, is signified by religion"[114].

Thus, one could assert that the non-inclusion of the term "Secularism" or "Secular State" in the draft Constitution was intentional but in light of several factors, like the variety of religions and the impact of religion on Indian culture. Likewise, this became due to the anti-religious connotation attached to the concept of secularism. The term "Secular" was omitted because the "Indian Constituent Assembly" had no desire to build a barrier separating the state from religion. Instead, it has enacted a constitution that recognises both the right to practice one's religion freely and the state's right to regulate that right for reasons such as public order, morality, and other considerations.

4.5 Preamble and the Secular character of the Constitution

The Constitution of India signifies its nature as a Secular Constitution and it provides for the establishment of a Secular State. The concept of "secularism" is incorporated in the "preamble" to the Constitution of India.

The text of the original preamble is as follows "WE, THE PEOPLE OF INDIA having solemnly resolved to constitute India into a SOVEREIGN DEMOCRETIC REPUBLIC and secure to all its citizens: JUSTICE, social, economic and political, LIBERTY of thought, expression, belief, faith and worship, EQUALITY of status and opportunity and to them all, FRATERNITY assuring the dignity of the individual and unity of the Nation".

Thus, the "Preamble" to the constitution expresses that, India will be a "Sovereign Democratic Republic". It is important to note that the word "secular" was not

---

[112] Smith (n 26) 101.

[113] V. P. Luthera, *The Concept of Secular State and India* (Oxford University Press, 1964) 62-63 and 152.

[114] Sayeed (n 87) 48-49.

mentioned in the preamble. Parliament passed the 42nd Amendment Act, 1976 that has added the term "Sovereign" to the preamble.

The amended preamble read thus- "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens- JUSTICE, social, economic and political, LIBERTY of thought, expression, belief, faith and worship, EQUALITY of status and opportunity and to promote among them all, FRATERNITY assuring the dignity of the individual and the Unity and integrity of the Nation"[115].

The 42nd Constitutional Amendment Act[116] when passed by the parliament, it may be noted that by this time emergency had been imposed. The emergency was declared on June 25, 1976. As a result of this, the opposition leaders were in jail. There was also press censorship. In the climate of oppression and fear, free and open debate over the amendment bill was not possible.

The amendment in the preamble was also a controversial issue. However, it must be noted that the insertion of the term "secular" in the preamble was not criticised or opposed, it may be because of the aforesaid reasons. Still, an objection was raised on technical grounds, it was argued that the preamble could not be amended since it was dated and not technically a part of the Indian Constitution.

"Shri P. G. Mavlankar", raised the point that "can we change the Preamble which was passed on 26th November 1949 and that was specifically mentioned in the Preamble--- the Preamble is the part of the Constitution, not strictly, though undoubtedly is the key of the constitution, as the Hon. Law Minister rightly said. Therefore, if you put the words today Socialist and Secular in Preamble, I am afraid a time will come when some people might say remove the word democracy. Already, the substance has gone, the word may also go next time"[117].

While defending the changes in the Preamble, Srimati Indira Gandhi, said that "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

---

[115] 42nd constitutional amendment Act 1976.
[116] 1976.
[117] Debates Before Lok Sabha, Fifth Series, Vol. 65, No. 3

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"[118].

India opted for a secular state, without designating it so, either in the Preamble or in other provisions of the Constitution. Therefore, the affirmation of the secular state was not strong enough to give its effects in reality. It had to be expressed in a clear manner. This is done by the "42nd Constitutional Amendment Act 1976, which added the word secular to the Preamble". One could argue that while the idea of a secular state and a secular society was recognised conventionally before 1976, they are now accepted constitutionally.

The adoption of the word "Secular" to the "Preamble of the Constitution" is unquestionably significant because it significantly expands upon the purposes of the Constitution that were originally stated there. The people can now demand that the government work toward achieving that secularism goal.

The proclamation that India is a secular State could potentially be the most effective tool in the fight against communalism. It will be also useful for maintaining national unity. Similarly, Secularism is the only alternative for religious minorities in India. This is due to the fact that only the secular state refuses to give any religion special treatment. India became a secular state as a result of this constitutional amendment, which puts it in line with other progressive nations around the world.

However, it must be pointed out that only the insertion of the word "secular" is not adequate. To prevent misunderstandings during the implementation and advancement of government policies, it must be properly defined. The 42nd Amendment Act[119] has only added the term "secular" to the preamble but does not define it. This could be considered a flaw in this constitutional amendment.

Thus, the "preamble to the constitution" now indicates the Secular character of the "Indian Constitution". It also shows how Secularism is being given great importance in the Constitution. The preamble is a grand declaration of the ideas and objectives which the Indian people have set before themselves.

---

[118] Ibid.
[119] 1976.

4.6 Indian Citizenship and its Secular Nature

The character of Indian citizenship must be discussed in order to understand the idea of Indian secularism. This is due to the fact that the ideal of Indian citizenship also includes the concept of secularism.

The concept of citizenship is based upon the notion that the individual, not the group is the basic unit. Citizenship is the relationship between the individual and the state in which the state imposes duties and responsibilities upon the individual and in turn, the individual gets rights and privileges sanctioned by the state.

In relation to citizenship in India, it should be noted that the Constitution left it up to the parliament to decide how citizenship is acquired and terminated without providing specific rules. In light of this, the parliament passed the Citizenship Act of 1955. Articles 5 to 11 which are embodied in Part- II of the Indian Constitution, and the provisions in the Citizenship Act[120] give a clear picture of Indian Citizenship.

Indian citizenship does not depend on an individual's religion or their belonging to a particular community, as is made clear by the constitutional provisions of citizenship. As a result, it can be seen that the constitutional provisions relating to citizenship confirm the secular nature of the Indian constitution and state.

Mr. Shelat has remarked that "Articles 5 to 7 of the Constitution which deals with the Citizenship are altogether Secular in character having nothing to do with race, religion or creed. --- The provision for the universal adult franchise, irrespective of race, religious creed or sex makes the secularity of the citizenship potent and purposeful"[121].

Similar to this, the Indian Constitution does not allow for citizenship to be divided into categories such as "First Grade Citizens" who belong to the majority group and "Second Grade Citizens" who belong to minority communities, etc. Even though some political leaders use this terminology when referring to citizenship and citizens, it is incorrect in light of the constitution. Justice Gajendragadkar has observed that "there is one class of citizens in India and not two classes. Hindus, Muslims, Christians, Jews, Parsis, and

---

[120] 1955.
[121] Shelat (n 109) 95.

all others who are citizens of this country can claim the same Citizenship without the slightest doubt"[122].

4.7 Right to Equality and Secularism

The constitutional provisions relating to the Right to Equality could be used to identify the Secular nature of the "Indian Constitution". The "right to equality" is covered under Art. 14 to Art. 18 of the "Indian Constitution". The purpose of these articles is to guarantee the establishment of a "secular state" in India. Equal rights in the political, social, and economic spheres of life are also fundamental tenets of Indian secularism.

4.7.1 Equality Before Law

The right to "Equality before the law" is guaranteed in Art. 14 of the "Indian Constitution". Article 14 says that the "State shall not deny to any person equality before the law or the equal protection of the law within the territory of India".

These two phrases - "Equality before the law" and "Equal Protection of the Laws" are not of the same meaning. In fact, they denote different ideas. "Equality before Law is a negative concept". "It implies that everyone is equal before the law and absence of any special privileges in favour of any person, and equal subjection of all classes to the ordinary law of the Land"[123]. "Equal protection of Laws is a positive concept. It implies equal treatment in equal circumstances". In the words of Shukla, "the rule is that like should be treated alike and not unlike should be treated alike"[124]. The Supreme Court in the case of *Chiranjitlal Chaudhary V. The Union of India*[125] defined "equal protection means equal protection under equal circumstances".

4.7.2 Prohibition of Discrimination on various grounds

No individual should be discriminated against on grounds of "religion, race, caste, sex or place of birth" as provided in Art. 15 of the "Indian Constitution". Clause (1) of Article 15 provides that "the state shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. Clause (2) No citizens shall on grounds only of religion, race, caste, sex, place of birth, or any of them be subject to any disability, liability, restriction, or condition with regard to (a) access

---

[122] P. B. Gajendragadkar, *Secularism and the Constitution of India* (University of Bombay, 1971) 55.
[123] Ibid.
[124] V. N. Shukla, *Constitution of India* (Eastern Book Company, 1982) 30.
[125] AIR 1951 SC 41.

to shops, public restaurants, hotels and places of public entertainment or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public. Clause (3) Nothing in this Article shall prevent the state from making special provisions for women and children. Clause (4) Nothing in this article or in clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizen or for the scheduled castes and the scheduled tribes"[126].

From the wording of Article 15, it is clear that it is just to provide an understanding of the term, and it is having a very wider scope. However, the "rights under Article 15 are available only to a citizen of India". In this context, it is explained that "the constitution does not forbid discrimination by the state on grounds of religion. The principle of religious non-discrimination embodied in Article 15 (1) is that the state cannot discriminate against any citizens on the sole basis of their religion. It can, however, discriminate on religious grounds provided that, it is accompanied by another ground. Further, the state can make religion the sole basis of discrimination amongst its citizens when making special provision for the advancement of the scheduled castes and scheduled tribes"[127]. Providing clause 4 of Article 15, it has been observed that "a preferential treatment can validly be given because the socially and educationally backward classes need it, so that in the course of time, they stand in an equal position with the more advanced section of the society"[128].

The general guarantee contained in clause (1) of Article 15 is illustrated in the various other provisions of the constitution. For example (1) Equality of opportunity in matters of employment is provided in Article 16 (2). (ii) Article 325 provides that "No person to be ineligible for inclusion in, or to claim to be included in a special electoral roll-on ground of religion, race, caste, or sex. It means that there shall be one general electoral roll for every territorial constituency for election to either House of the Parliament or the House or either House of the Legislature of a State". (iii) Universal Adult Suffrage is provided in Article 326. (iv) The provision is made for maternity relief for women workers in Article 42. (v) Provision of free education for children is made in Article 45.

---

[126] The Constitution of India 1950, Part III.
[127] Luthera (n 113) 80.
[128] Shukla (n 124) 55.

(vi) Measures for the "prevention of exploitation" of children are explained in Article 39 F".

Similarly, there are some special empowerment provisions pertaining to certain classes that have been made in "Part XVI of the constitution". Art. 330 "provides for the reservation of seats for the schedule castes and the schedule tribes in the house of people".

Art. 33 "provides for reservation of Anglo-Indian Community in the House of people by nomination".

Article 332 makes a provision for "the reservation of seats for the scheduled castes and scheduled tribes in the Legislative Assemblies of the state".

Article 333 provides for the representation of "the Anglo-Indian Community in the Legislative Assemblies of the States".

Grant of such special privileges to some backward communities for an almost indefinite period would create conflict with the other people who have no such privileges. And this would hamper the integration of the different special classes and communities. Thus, it is evident from the preceding discussion that, "clause 4 of Article 15, and the provisions contained in Articles 330 to 334 are inconsistent with the concept of secularism as explained in clause I of Article 15 of the Indian Constitution"[129].

4.7.3 Equality of Opportunity

Article 16 of the Indian Constitution guarantees "Equality of Opportunity in matters of Public Employment. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment. (4) Nothing in this article

---

[129] Luthera (n 92) 80.

shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. (4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. (4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year that are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent. reservation on the total number of vacancies of that year. (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination"[130].

It is to be noted that the "right guaranteed under Article 16 is available only to the citizens of India and it ensures economic equality by giving equality of opportunity in matters of public employment"[131]. But because of the provisions of reservation as it is made in "clause 4 of Article 16", the principles of "equality of opportunity" have lost their significance. In this context, Smith has observed that "when the scope for equality of opportunity is reduced to three posts out of ten, the modern concept of the individual as the basic unit with the state is in grave peril. This kind of arrangement produces a state composed of castes and communities, not individuals. It may affect a static kind of justice but it does not lead to a dynamic society or a truly secular state"[132].

4.7.4 Abolition of Untouchability

Abolition of Untouchability is explained in Article 17 of the Indian Constitution. This Article says "Untouchability is abolished and its practice in any form is forbidden. The

---

[130] The Constitution of India 1950, Part III.
[131] Smith (n 30) 121
[132] Ibid 146.

enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with the Law".

This Constitutional provision may be regarded as a revolution because it abolished the age-old institution of Indian society. It also indicates the Secular character of our constitution. Abolition of Untouchability is definitely important because with this provision social equality will be promoted which is necessary for the creation of a Secular society.

While considering the constitutional provisions of 'Untouchability', Dr. Luthera posed a question as to whether a secular state can ban untouchability from religious places? Can it throw open the religious institutions including places of worship? --- To persons to whom these institutions are closed according to the tenants of their religion or to whose entry the constituted authorities of these institutions have a serious objection? --- Luthera has answered these questions. He said "The performance of such functions by the state as far as the religious institutions are concerned, is not consistent with the concept of the secular state. The reason for this answer is not far to seek. In a secular state, the nature of relations between the church and its believers is to be settled between themselves. The church has a right to enforce its discipline among its members. --- But here, the state regulates the relations between the church and its believers. It interferes with the internal affairs of the Hindu religious institutions, which is contrary to the very object of secularization of the state aims to secure"[133].

Although inspired by the western notion of secularism, India has its unique form of secularism. This is one area where the Indian Constitution differs from the Western Constitution. Due to the fact that secularism in India originated in a different historical setting than any of the Western States, it cannot be claimed that it is wholly based on any of those states. In India, there was no similar religious institution to the Church that directly dominated government policy and administration like in western states. Therefore, there has never been a State-Church dispute in India. However, castes, languages, and a number of other factors have split Indian society, which has a long history of religious tolerance. One of India's most serious problems has been and

---

[133] Luthera (n 113) 105-8.

continues to be communalism. Due to all of these reasons, secularism in India is perceived very differently than it is in the West.

Indian secularism, to put it simply, is the absence of a state religion and the protection and equality of all religions. As a result, the secularism of India does not outlaw prevalent religions. "It is not anti-religious. At the same time, it is not religious. Similarly, it does not, however, prevent the state from giving financial assistance to the educational institutions sponsored by the Church or other religious associations. Equally, the state reserves to itself, and has sometimes exercised, the right to interfere in the religious practices of various communities in the interest of their peaceful co-existence and cultural development"[134].

Indian secularism acknowledges both the idea of a secular state and the religion of the people. The constitution contains references to the coexistence of "religion" and a "secular state," particularly in parts III and IV, which address fundamental rights and directive principles of state policy, respectively.

Similar to this, since the constitution came into effect, numerous political figures, authors, journalists, and others have stated that India is a secular state or that India has embraced secularism as its official national policy due to the constitution's character.

Even with constitutional guarantees and repeated declarations, the question of whether India is a secular state still arises. Or does India practice secularism? is questioned. Different people hold different views regarding this.

In this study, it is argued that the Indian constitution supports a secular state and recognises the idea of secularism. However, in light of the state and society in India, various changes are made to the concept of secularism. The secularism practiced in India is not exactly modelled after that practiced in the West. In accordance with the Indian history of religious tolerance and freedom, the secularism enshrined in the country's constitution has been modernised. However, it must be highlighted that some of the constitutional provisions are not only insufficient but also go against secularism values. These are the positive limitations imposed by the constitution itself for the protection of the greater interest of the society and to curb the unlimited exercise of freedom which would hamper the freedom of others.

---

[134] A. B. Shah, *Secularism in India* (Lalvani Publishing House, 1968) 1.

Chapter-5

Freedom of Religion and Secularism or Protection of Minorities and Secularism

Freedom of religion constitutes the basis of Indian Secularism. Therefore, the place and role of religion in Indian society and the Constitutional Law of India observe detailed consideration.

Historically, India has been a land of many religious sects. In this country, people cling to their religious faith at all costs. To them, religion is the dearest object. They live for religion and die for it. It is revealed at the time of the partition of the country and then after in many communal riots in independent India. The influence of religion on the mind of the people in India is so great that it is rarely absent in the thinking of a large number of people. Therefore, every problem more or less is mixed wite religion.

5.1 Freedom of Religion and Secularism

"The framers of the Constitution of India have recognised the relevance of religion in life. They have made Constitutional provisions guaranteeing the right to freedom of religion in Articles 25 to 28 of the Indian Constitution. These Articles of the constitution form the basis of Indian Secularism. These provisions also explain one of the objectives of the Constitution declared in the preamble, to secure to all its citizens --- liberty of faith, belief, and worship"[135].

The right to freedom of religion is explained in Articles 25 to 28 of the Constitution. With reference to these rights, it can be noted that they are available not only to the citizens of India but to all persons including aliens. Similarly, like other Fundamental Rights, the rights to freedom of religion are not absolute and subject to limitations prescribed in the constitution itself. It may also be noted that the Articles relating to the rights to freedom of religion start with limitations and rights are explained subsequently. The Articles relating to other Fundamental Rights explain the right first and the limitation subsequently.

5.1.1 Religious Freedom for Individuals

The Constitution of India has guaranteed Freedom of Religion to an Individual. Article 25 provides "(1) Subject to public order, morality and health and to the other provisions

---

[135] Ibid 196.

of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law— (a) regulating or restricting any economic, financial, political, or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus"[136].

Thus, "Article 25 (1) of the Indian Constitution" provides the freedom of conscience, the right to freely profess, the right to practice, and the right to propagate one's own religion. It should be noted that the Indian Constitution also places restrictions on the freedom of religion. The limitations include public order, morality and health, and the other provisions of part- III of the Constitution. Similar to how the state might limit a person's freedom of religion, it can also control secular or nonreligious activities that can be connected to a person's religious practices. Like-wise, the freedom of religion is also subject to the power of the state to make legislation for the social welfare or throw open the Hindu Religious Institutions to all classes and sections of Hindus. If there is a conflict between the freedom of religion and the constitutional limitations on it, then religion has to yield and public order, morality, health, etc., would prevail. Thus, the Indian constitution seeks to maintain a balance between the freedom of religion and the powers of the state. It was raised whether or not state restrictions and limitations might be placed on one's ability to exercise their right to freedom of Conscience. The Bombay High Court while dealing with the question in *"Narasu Appa Mali Case"*[137] was of the view that "there is a sharp distinction which has to be drawn between religious faith and religious practices. The state protects the religious faith and beliefs only and not the religious practices. If the religious practices run contrary to public order, morality and health and fundamental rights or a policy of social welfare upon which the state had embarked then such religious practice must pave way for the public good".

5.1.2 Religious Freedom of Denomination

The Constitution of India has also guaranteed the right of freedom of religion to the religious denominations. Article 26 of the Constitution reads as follows: "Subject to

---

[136] The Constitution of India 1950.
[137] *State of Bombay Vs. Narasu Appa Mali*, AIR 1952 Bom 84.

public order, morality and health, every religious denomination or any section thereof shall have the right— (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law".

To consider this Article 26 in more detail it can be said that, it provides the corporate or collective freedom of religion, without which the mere freedom of religion of an individual becomes meaningless. The reason is that man does not live alone. He is a member of various groups, institutions, and society at large. Thus, Article 26 is a corollary of Article 25 of the constitution.

The right provided in Article 26 falls into two parts, the one dealing with the religious institutions and their religious affairs and the other concerning the property which is not essentially a religious matter of religious institutions. The right under this Article is "subject to the limitation of public order, morality and health and the law of the state". The state can enact the law for the purpose of regulating the property of religious institutions. Bombay Public Trust Act[138] and Madras Religious Charitable Endowment Act[139] can be mentioned as examples.

While considering Article 26, two points can be mentioned. The first is relating to expenses to be incurred on religious observance and the second is concerning the acquisition of denominational property by the state.

On the first point, it is observed that "the scale of expense to be incurred in connection with the religious observance would be a matter of administration of property belonging to the religious denomination and can be controlled by a Secular authority in accordance with any law laid down by a competent legislature, for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies. On the second point, it is observed that the religious denomination can own and acquire property and administer them in accordance with the law, but that does not mean that the properties owned by them cannot be acquired. Therefore, their right to administer that property ceases because it

---

[138] 1950.
[139] 1951.

is no longer their property. The article does not interfere with the right of the state to acquire the property"[140].

In this connection, Smith has also argued that "the right of collective freedom of religion guaranteed by Article 26 does not provide the kind of protection from the state interference which is found in the West, the United States for example"[141].

Similar to the freedom of speech under Article 25, the freedom of religion under Article 26 is open to judicial interpretation primarily due to the ambiguity of some terminology and expressions employed in the constitutional provisions. This has limited considerably, the autonomy of religious institutions and increased immensely the powers of the state in the internal affairs of the religious institutions. The religious authorities in India have to yield to the authorities of the state, especially because they have no well-organized institutional pattern like that of Churches in the western countries and they are not constitutionally separated from the state.

5.1.3 Freedom as to payment of Taxes for Religion

The "Secular character" of "The Indian Constitution" is also expressed in Article 27 which says "No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion and maintenance of any particular religion or religious denomination".

The Article explains that the public fund collected by taxation should not be spent in the favour of any "specific religion" or "religious dominion". This Article prohibits the state from levying taxes for religion. However, it is to be noted that, it is applicable, only in levying taxes and no fees or contributions.

To explain this article in more detail, it can be said that Article 27 defines the relationship between the State and Religion in general matters of financial aid by the State. The State cannot compel the individual to pay taxes for religion or religious denominations. This Art., however, has been invoked in many cases in the "High Courts and Supreme Court of India", because, the various States have passed laws for the purpose of regulating the administration, and management of the properties and funds of the religious and charitable institutions.

---

[140] Shukla (n 102) 151.
[141] Smith (n 30) 113-14.

To meet the expenses of supervisory functions, the States have also levied taxes or fees at a certain percentage of the income by the religious institution. These Acts of the various States have been challenged in the Court. For example, in the case of "*Shri Jagnath Ramanuj Das V. State of Orissa*"[142], the Orissa Hindu Religious Endowments Act, 1939, was challenged, because Section 49 of this Act, provided the "contribution for meeting the expenses of the commissioner and the officer and servants under him". In this case, the court regarded that "the contribution was a Fee and not a Tax".

But in "*Commissioner, H.R.E. Vs. L. T. Swamiar*"[143] case, "the Supreme Court held that the contribution levied under the Madras Hindu Religious and Charitable Endowment Act, 1951 was in the nature of a Tax and not a Fee. The reason stated was that the contribution was not for special purposes and the amount raised went to the consolidated fund of the State".

In "*Suresh Chandra Vs. Union of India*"[144], the validity of the program of the celebration of the 2500th Anniversary of Mahavira was challenged on the ground that it is in contravention of Article 27. But the Court did not accept the contention of the petitioners and held that there was no infringement of Article 27.

In "*Bashir Ahmed Vs. State of West Bengal*"[145], case it was held that "the creation of an education fund under section 27 of the W.B. Wakf Act, 1973, for the exclusive benefit of the Muslim boys and girls did not amount to levy or tax for the promotion of a particular religion. It did not also amount to the maintenance of that religion".

Thus, it is clear that whether a particular amount charged under particular legislation is a "tax" or a "fee" is a matter of controversy and it is to be decided by the court. While explaining Article 27, Smith remarked that "the Indian Constitution forbids only taxation for the benefit of any particular religion. Non-discriminatory taxes for the benefit of all religions would be perfectly constitutional. Such an arrangement would, in fact, be in accord with the general tradition of the Hindu State. However, it would seriously undermine the Fundamental Principle of separation of State and Religion, as it has here been defined"[146].

---

[142] AIR 1954 SC 400
[143] AIR 1954 SC 282.
[144] AIR 1975 Delhi 168.
[145] AIR 1976 Calcutta 142.
[146] Smith (n 30) 129.

5.1.4 Religious Instruction in Educational Institutions

The "Secular character" of the Indian Constitution could be identified in Art. 28 which outlaw the religious instructions imparted in completely state-maintained Educational Institutions. The complete text of the article read as follows: "(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds. (2) Nothing in clause (1) shall apply to an educational institution that is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto".

From the wording of the Article, it becomes clear that the question of religious instruction is considered in "three different types of educational institutions". Firstly, the educational institutions are completely maintained by the state, or in other words, the Government Educational Institutions. Secondly, the educational institutions which are established under any "endowment" or "trust" and which require imparting of "religious instructions", and thirdly, the educational institutions which are "recognised by the state and which receive aid from the State".

In respect of the first type of educational institution, religious instruction is completely prohibited and in the second type of educational institution, there is no prohibition on giving religious instruction. Here, the example of BHU and AMU can be mentioned. These universities have been established by the respective endowments and require that instruction be imparted in "Hinduism" and "Islam" respectively. It is to be noted that, these universities are administered by the Central Government. In the third type of Educational Institution, religious instructions may be imparted or religious worship may be conducted but it shall not be made compulsory in other words, it shall be with the will of an individual and if an individual is minor, then the parents have to allow.

Smith, pointed out that "the principle involved in Article 28(3) is that the State cannot become a party to the active propagation of religion in state-aided institutions, by permitting compulsory religious instructions"[147].

However, in the opinion of Justice Jahagirdar, this is not enough. He says "A denominational institution, if it receives aid out of state funds should not be permitted to indulge in religious instruction or religious propaganda even though, such instruction or propaganda even though, such instruction or propaganda is not compulsory for all the students of the institution. When such religious instruction or religious propaganda is carried on by schools which receive state assistance in the fund it necessarily means that to that extent there is a dent in the Secular character of the State of India"[148].

Thus, the "Indian Constitution does not totally forbid the state from granting aid to educational institutions which require to impart religious instructions. Article 28 of the Indian Constitution seeks to maintain both, the secular character of the state and the religious character of the Indian society. The first is demonstrated by the government educational institutions prohibiting religious instruction and the other is shown by the denominational institutions permitting them to impart religious instructions, even though, they receive aid from the State. It is as Panikkar describes the Indian state by becoming Secular has not become irreligious"[149].

To conclude the discussion on the constitutional provisions relating to the freedom of religion it may be observed that, these provisions reveal the fact that, Secularism and religion can co-exist, and Indian Secularism is not anti-religious. On the contrary, it respects all religions. This is described as the doctrine of "Sarvadharma Samabhav". It must, however, be noted that this doctrine is very vague and it strengthens the religious belief of the different communities. Its result is that each religious community becomes self-conscious of its distinctive identity. This doctrine of "Sarvadharma Samabhav" is also contrary to the western concept of secularism in which, the political system is considered to be independent of religion.

---

[147] Ibid 132.

[148] R. A. Jahagirdar, "Secularism under the Indian Constitution" (1980) II 66 The Secularist 142.

[149] K. M. Pannikkar, *Foundation of New India* (George Allen and Unwin Ltd., 1963) 167.

5.2 Protection of Minorities and Secularism

Our country is a "multi-religious" and "multi-lingual State". Therefore, it consists of many sects which compos of minorities on the basis of "religion, language, culture, race, caste, etc". It becomes essential to protect the interests of these minorities. Therefore, the Constitutional provision is made in Articles 29 and 30 of the Indian Constitution. In this context, "Gajendragadkar" has pointed out that "the provisions of these two Articles indicate that while providing for common Secular Citizenship and guaranteeing common Fundamental Rights and imposing fundamental obligations on all citizens alike the constitution-makers were conscious of the fact that, religious or linguistic minorities needed protection in respect of their language, script, and culture and they did not hesitate to make appropriate provisions on that behalf"[150].

Articles 29 and 30 of the Indian constitution are very unique and specific in the sense that, in the constitution of the USA no such provisions could be traced. It is observed that "these provisions make our State more secular than even the United States of America"[151].

The text of these two Articles read as follows: Article 29- "(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them".

Article-30 "(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (1A)[152] In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause. (2) The State shall not, in granting aid to educational

---

[150] Gajendragadkar (n 122) 64.
[151] D. D. Basu, *Introduction to the Constitution of India* (Prentice-Hall of India Pvt. Ltd., 1983) 111.
[152] Inserted by the Constitutional (Forty-fourth Amendment) Act, 1978.

institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language".

The protection under Article 29 is dual. In the first place, it guarantees the right of a religious or linguistic minority to conserve its language, script, or culture, and secondly "it protects an individual citizen against the discrimination on the ground of his religion, race, caste or language"[153].

The right of minorities to establish and administer educational institutions is guaranteed in Article 30 of the constitution. This right, though independently mentioned, is in fact a corollary to the right guaranteed in clause I of Article 29. The Article covers both pre-constitution and post-constitution institutions. This has been held in connection with the Kerela Education Bill, 1957[154]. But the important point to note is that the term "Minority" is not defined in this Article or elsewhere in the Constitution. In this context, it is stated that the expression "minority" in Article 30 "refers to any community which is numerically less than fifty percent of the population of a particular state as a whole. A community that is a minority in a specific area of the state through a majority in the State as a whole would not be treated as a minority for the purpose of this Article. A minority could not also be determined in relation to the population of the state"[155].

Clause (1A) has been inserted in Article 30 to safeguard the property belonging to an educational institution established and administered by a minority. According to this provision, full compensation has to be paid if the state seeks to acquire the property belonging to the Minority Educational Institution.

Clause (2) of Article 30 is "a prohibition against discrimination by the State. The State shall not, in granting aid to the Educational Institutions discriminate against any institution on the ground that, it is under the management of a minority, religious or linguistic"[156].

Here, it must be pointed out that the right of the minorities to establish and administer their own Educational Institutions and to receive State aid is subject to regulation by the educational authorities of the state to prevent maladministration and to ensure a

---

[153] The Constitution of India Act 1950.
[154] AIR 1958 SC 956.
[155] Shukla (n 124) 158.
[156] The Constitution of India Act 1950.

proper standard of education. But these regulations cannot be such as to destroy the right of minorities to administer their institutions.

Similarly, it is to be noted in this context that the rights of the minorities have not been changed even after the 44th Constitutional Amendment of 1978, which repealed Article 31, and as a result of this, "all persons and the Educational Institutions of majority community have lost their Constitutional right to compensation for acquisition of their property by the State"[157]. But the property belonging to the educational institutions established and administered by the minorities cannot be acquired by the State without payment of such compensation as would safeguard their right to exist. This is guaranteed by clause (1A) in Article 30 of the Constitution.

Thus, it is clear from the nature of these Constitutional Provisions that, the rights conferred on religious and linguistic minorities are fundamental rights and they are justiciable and can be enforced by the court. This Constitutional protection of "the rights of minorities clearly indicate the unique feature of the Indian Constitution and its Secular character. Johari describes it as humanist Secularism"[158].

Despite this constitutional protection given to minorities, it is also necessary to see whether it creates vested interests in them because, it may lead to strengthening communal forces which are certainly a threat to both, the national interest and secularism. The "humanist Secularism" may turn into "communalism" if the protection given to the minorities is used by them wrongly or for parochial purposes. It would also be the misuse of the term "Secularism" if it is interpreted to mean appeasement of minorities. In this case, it will encourage communalism in India.

---

[157] Ibid.
[158] J. C. Johari, *Indian Government and Politics* (Vishal Publications, 1977) 285.

Chapter 6

Uniform Civil Code

The Secular character of the Indian Constitution is also explicit in the Directive Principles of State Policy, especially, in the Directive Principle, relating to the "Uniform Civil Code".

Article 44 of the Indian Constitution specifically enjoins that "the state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India". Further, the constitution of India empowers the Parliament as well as the state legislatures through Entry 5 of List III in the concurrent list, of the 7th schedule to legislate on marriage, divorce, inheritance, and other matters of personal status.

Despite the aforementioned constitutional provisions and 72 years after the Constitution came into effect, the central government has made no attempt to put this Directive Principle into practice. Justice Deepak Gupta in "*Jose Paulo Coutinho Vs. Maria Luiza Valentina Pereira & Anr"*[159] remarked that "It is interesting to note that whereas the founders of the Constitution in Article 44 in Part IV dealing with the Directive Principles of State Policy had hoped and expected that the State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territories of India, till date no action has been taken in this regard. Though Hindu laws were codified in the year 1956, there has been no attempt to frame a Uniform Civil Code applicable to all citizens of the country despite exhortations of this Court in the case of *Mohd. Ahmed Khan vs. Shah Bano*[160] and *Sarla Mudgal & Ors. vs. Union of India & Ors*[161]". Further he noted that "Goa is a shining example of an Indian State which has a uniform civil code applicable to all, regardless of religion except while protecting certain limited rights". The Union Territory of the Goa is the only example which has enforced the Uniform Civil Code. However, "The State of Uttarakhand on 27th May 2022 formed an expert committee headed by the retired Supreme Court Judge Ranjana Desai for the examination and implementation of the Uniform Civil Code in the State"[162].

---

[159] Civil Appeal No. 7378 SC (2010).
[160] (1985) 2 SCC 556.
[161] (1995) 3 SCC 635.
[162] Sparsh Upadhyay, 'Uttarakhand Government Forms Expert Committee to Examine & Implement Uniform Civil Code in State' (LiveLaw,28th May 2022) < ivelaw.in/news-updates/uttarakhand-government-forms-expert-committee-examine-implement-uniform-civil-code-200324> accessed 2nd July 2022.

In fact, the provision for Uniform Civil Code is consistent with the Secular character of our State. As Basu points out, "the object of this article is to introduce a 'Uniform Personal Law' for the purpose of national consolidation. It proceeds on the assumption that there is no necessary connection between religion and personal law in a civilized society"[163]. But unfortunately, we still have separate laws of marriage, divorce and inheritance, and succession for each religious community. These laws are generally described as 'Personal Laws' of the particular community, for example, 'Hindu Law' of Hindus, and 'Mohammedan Law' of Muslims.

6.1 Historical Retrospect

The Personal Laws came to be applied during the Muslim rule and then British rule in India. It may here be noted that the personal laws were applied as a matter of policy and not as a matter of religion. There were also some reforms and codifications of them. For example, there was legislation to prohibit the practice of 'Sati' (1833) and the Practice of Child Marriage. There was also a law to permit widow remarriage (1856). There was a Code of Civil Procedure (1861). There were enactments like the Indian Succession Act (1865), Indian Divorce Act (1869), the Special Marriages Act (1872), the Parsi Marriage and Divorce Act (1936), and the dissolution of the Muslim Marriage Act (1939), etc. However, the British government, by and large, followed the policy of non-interference in the religious affairs of the Indian people. Therefore, they generally applied the traditional laws of different communities.

Similarly, it was considered natural for Hindus to be governed by Hindu Laws and Muslims to be governed by Mohammedan laws. This policy helped to maintain the importance of personal laws. However, it should be noted that the concept of personal law is certainly medieval and it has no place in the modern State.

6.2 In the Constituent Assembly

The constitution of India in Article 44 emphasises the importance of introducing a Uniform Civil Code throughout the territory of India. But there is strong opposition to this and it is mainly from the Muslim Community. This is clear from the debates in the Constituent Assembly at the time of discussion on the Constitutional Provision of 'Uniform Civil Code' and then in the parliament when attempts were made to reform

---

[163] D. D. Basu, *Commentary on the Constitution of India* (Vol.2, S. C. Sarkar and Sons, 1962) 135.

the personal laws of Hindus. The main reason underlying the opposition is that personal laws are regarded by the orthodox people as part and parcel of the religion of their respective communities. Therefore, they argue that any reform in the personal laws means interference in matters of religion.

This issue was considered at length in the constituent assembly. Both, the opponents and the advocates of the Uniform Civil Code express their views. Generally, the Muslim Members in the constituent assembly opposed the provision for the Uniform Civil Code and they attempted to safeguard the Muslim Personal Law.

Mohammad Ismail Sahib, (Madras) stated that "a secular state should not interfere with the personal law of a people which was part of their faith, their culture and their way of life. He claimed that the European countries including Yugoslavia protected the Musalmans in the matter of family law and personal status"[164].

Naziruddin Ahmed argued that abrogation of personal law should not be treated as a measure of social reform. He pointed out that even the British, who enacted various Acts and Civil Procedure Code and the Criminal Procedure Code did not interfere with certain Fundamental Personal Laws[165].

Pocker Sahib Bahadur disclosed that he had received many pamphlets from various organisations including the Hindu organisation explaining that such interference would be most tyrannous[166].

K. M. Munshi, Alladi Krishna Swami Iyer, and Dr. Ambedkar, who were members of the drafting Committee of the constitution replied to the objection raised on the issue of the Uniform Civil Code. K. M. Munshi stated that "nowhere in advanced Muslim countries the personal law of each minority been recognised so sacrosanct as to prevent the enactment of a Civil Code. Take, for instance, Turkey or Egypt. No minority in these countries is permitted to have such rights". --- He accepted that there are many Hindus who do not like a Uniform Civil Code. However, he pleaded for divorcing religion from Personal Law and asserted that the enactment of the Uniform Civil Code

---

[164] Constitutional Assembly Debates, Vol. VII, P. 540-41.
[165] Ibid 551-543.
[166] Ibid 544-546.

would come Within Article 25(2) and it would not violate religious freedom guaranteed in that Article[167].

Alladi Krishna Swami Iyer pointed out that even during the British period, there were some enactments relating to the various branches of the Hindu and Muslim Law. He also explained the enactments of codes on matters of Personal status in European countries[168].

Dr. Ambedkar pointed out that, there were various Uniform Codes, and the only province the Civil Law has not been able to invade so far is marriage and succession. He further argued that Shariat Law was not applied throughout the territory of India and all the Muslim Law and enactment was made for that purpose. He further explained that he realised the feeling of the Muslims and asked them not to read too much in this Article. He assured the Muslims that even if a Common Civil Coded was enacted its application would be voluntary[169].

6.3 Reforms in Hindu Law

After the Independence, the Government attempted to reform the Hindu Law and passed legislation in the field of marriage, divorce, adoption, and succession. In this connection, the Special Marriage Act of 1954, may be mentioned. The supporters of this Act described it as the 'Uniform Civil Code of Marriage' and a step towards the Uniform Civil Code for all citizens contemplated by the Constitution. On the other hand, the critics of this Act contended that this was communal legislation by a secular state.

The orthodox Muslim also criticised this enactment. Mohammad Ismail, President of the Indian Union Muslim League appealed to all Muslims to observe April 29, 1955, as 'Shariat Law Preservation Day'. In this connection, it should be noted that the acceptance of this enactment was voluntary.

Considering the need for greater uniformity in the sphere of Hindu Law first, the government intended to introduce the Hindu Code as one comprehensive legislation but because of the opposition from the orthodox Hindus, its main parts were introduced as

---

[167] Constitutional Assembly Debates, Vol. VII, P. 247-48.
[168] Ibid 549-50.
[169] Ibid 550-52.

separate bills which were enacted differently, namely- Hindu Marriage Act, 1956, Hindu Succession Act, 1956, Hindu Adoption and Maintenance Act, 1956.

The enactment of this legislation was criticised both in the parliament and in public meetings. The critics pointed out that, the legislation would be detrimental to the interests of the Hindu religion. They also criticised it on the ground that, it would violate the freedom of religion. Some critics pointed out that, this policy of the government would postpone the evolution of the Uniform Civil Code for an indefinite time. It was also argued that the government intended to move in the direction of a Uniform Civil Code for all citizens, why attempts are made to reform the Hindu Law alone? Why the Muslim Law is kept unreformed? Why direct Uniform Civil Code is not introduced?

Why a Uniform Civil Code not has been introduced? Mr. Pataskar, the Law Minister was asked in the parliament and he replied that even these bills would apply to 85% of the people and would thus, constitute a big step towards uniformity[170].

Jawaharlal Nehru expressed that; personal laws are not in consonance with the idea of the Secular State. But he also felt that a Uniform Civil Code could not be brought about all at once, and it was better to take the first step by reforming the personal law of the Hindus. He thought that this would prepare the ground for Uniform Civil Code.

In this context, it may be observed that the appeasement policy of the government and the strong opposition from the orthodox Muslims are the reason for retaining the Muslim Personal Law un-reformed. In fact, for implementing the Directive Principles of the Uniform Civil Code, the funds are not required, and it is, we find lacking in the government.

It is true that, after the independence, the government enacted legislation to reform the personal laws of the Hindus. But the question arises whether these reforms were truly Secular in nature or whether they were free from the clutch of religion. It is remarked that 'Although this legislation substantially eliminated the diversities in Hindu law as applicable in various parts of the country. It did not wholly Secularise the law. --- these laws are not Secular. They still reflect the influence of religion"[171].

---

[170]Quoted by Smith (n 30) 290.
[171] S. P. Sathe, 'Secular Uniform Code' (1982) 78 The Secularist 126.

6.4 Objections

The opponents of the Uniform Civil Code generally raised two objections. Firstly, it would violate the religious freedom guaranteed in Article 25 of the Indian Constitution, secondly, it would violate the right to conserve culture guaranteed in Article 29 (1) of the Indian Constitution.

So far as the Muslim Law is concerned, it is observed that 'A Muslim who wants to take plural wives or to divorce his wife unilaterally for no reason or any reason or does not want to maintain his divorced wife, is engaged neither in professing nor in promoting or propagating his religion. Therefore, there is no violation of Article 25, if the Muslim Personal Law is reformed or amended. Similarly, 'neither polygamy and unilateral right to divorce, nor non-maintenance of divorced women and disinheritance of orphaned grandchildren can be identified with the Muslim culture'. It does not, therefore, violate Article 29 (1), if there is an amendment or abrogation of the Muslim Law[172].

In this connection, it is to be noted that, Islamic countries like Turkey, Pakistan, and Bangladesh have either abrogated or reformed the Muslim Law. But it has not destroyed their cultural identity and religious freedom. Then, how it would affect in reverse in the case of India, is difficult to understand. Thus, it is clear that neither reform nor replacement of the personal law by the Uniform Civil Code violates Articles 25 and 29 (1) of the Indian Constitution.

Some Muslim writers and reformers support the view of reforming the Muslim personal law. Noorani says "the personal law of Muslim in a Secular set up needs reform, but not abrogation by a Uniform Code. The latter is as easily demanded by the Parochial minded as indeed, it is by the Secular minded"[173]. Mr. Engineer, also argues that the Uniform Civil Code is not possible immediately. In his opinion, "the first step, therefore, should be to either ban or strictly regulate the practice of Polygamy and Unilateral Divorce. As the nature of Muslim Marriage is Contractual a clause restricting

---

[172] Mohammad Ghous, *Secularism, Society and Law in India* (Vikas Publishing House Pvt. Ltd., 1973) 227.

[173] A. G. Noorani, 'Secularism and Muslim Personal Law' (1967) Vol. 8 Opinion 30.

the husband from taking a second wife can be inserted in the marriage agreement. Suitable provision can also be made in respect of Divorce"[174].

The judiciary while bridging the gap between Law and Society has passed various judgments declaring the rules to bring Uniformity to Society. In the year 2017 the Supreme Court in the case of "*Shayara Bano Vs. Union of India*"[175] struck down instant 'triple talaq' and held that the practice is unconstitutional, arbitrary, and not part of Islam. Later in 2019, the parliament passed "The Muslim Women (Protection of Rights on Marriage) Act"[176] which makes the instant pronouncement of triple talaq "Void and Illegal".

Similarly, the Karnataka High Court in the case of "*Ezazur Rehman Vs. Saira Banu*"[177] while delivering an order in the year 2021 held that "Un-remarried Ex-wife incapable of maintaining herself has right to maintenance beyond Iddat period".

From the above discussion, it may be concluded that the diversity of personal laws in India is against the spirit and letter of the Constitution that guarantees equality before the law and equal protection of the law. A Uniform Civil Code is, therefore, an urgent necessity, if the Indian citizen desires the benefit of equality which is the most vital principle enshrined in the Constitution of India. The Uniform Civil Code is also a must for establishing a Secular Social Order. However, it may not be possible to enact the Uniform Civil Code immediately. Secularization, that is to say extracting the Personal Laws from the clutch of religion is essential before Uniform Civil Code is made. The process of the Secularization of personal laws may be useful in evolving some common rules acceptable to all communities and this will be a good start toward the Uniform Civil Code, in the future.

---

[174] A. A. Engineer, *Islam-Muslim-India* (Lok Vangmay, Pvt. Ltd., 1975) 116.
[175] AIR 2017 9 SCC 1 (SC).
[176] 2019.
[177] Writ Petition No.3002 of 2015.

Chapter 7

Constitution on Cow-Slaughter

The Directive Principle relating to the prohibition on cow slaughter has often been discussed in relation to Indian Secularism. The reason is that the Directive Principle given in Article 48 of the Constitution has raised controversy since its inclusion in the Constitution of India.

7.1 Constitutional Provision

The text of Article 48 read as follows: "Organisation of agriculture and animal husbandry The State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle". And Article 48(A) says about "Protection and improvement of environment and safeguarding of forests and wildlife -The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country".

It is clear from the text of the Article that the directive for taking steps to prevent the slaughter of animals is quite explicit. It clearly explains that there shall be a ban on the slaughter of cows, calves, and other milch and draught cattle. "The protection does not extend to the cattle but which at one time were milch or draught cattle but which have ceased to be such. This has been held by the court in *M. H. Qureshi Vs. the State of Bihar"[178]*.

7.2 Controversial Issue

Though the Directive Principle in Article 48 is quite explicit, it has raised controversy since its adoption in the Constituent Assembly and later in the Legislatures of the States as well as in the Parliament. It has also invoked some cases in front of the court when some of the states enacted laws prohibiting the cow-slaughter in accordance with this Directive Principles of State policy. The question of a ban on cow slaughter also created a threat to Secularism and national integration in India.

---

[178] AIR 1958 SC 731.

The slaughter of cows, particularly by the Muslims has long been a source of Communal tension and conflict. Similarly, on this issue, we find, there were mass agitations and 'fast unto death, by persons like Vinoba Bhave and Shankaracharya of Puri. It is on the demand for All India Legal Ban on Cow-slaughter, that Nehru was prepared to stake his Prime Ministership.

Here, it would not be out of place if a brief reference to Gandhiji's view on this issue is made. In a letter to Nehru in 1925, Gandhiji wrote 'Cow protection to me, --- means protection to the weak, the helpless, the dumb and the deaf. On another occasion, he described himself as a worshiper of the cow whom I regard with the same veneration as I regard to my mother'. But he accepted the right of Muslims for slaughtering cows as it was essential to maintain communal harmony[179].

On the issue of a total legal ban on the Cow-slaughter Gandhiji said "the Hindu religion prohibits Cow-slaughter for the Hindus not for the world. The religious prohibition comes from within. Any imposition from without means compulsion. Such compulsion is repugnant to religion. India is the land not only of the Hindus, but also the Muslims, the Sikhs, the Parsis, the Christians and Jews, and all who claim to be Indian and are loyal to the Indian Union, if they can prohibit cow slaughter in India on the religious grounds, why not the Pakistan government prohibit, says idol worship in Pakistan on similar grounds? --- Jut as Shariat cannot be imposed on the Non-Muslims, the Hindu Law cannot be imposed on non-Hindus"[180].

It is clear from the above views that, Gandhiji was for the protection of the cow, but he was against the legal ban on cow slaughter, as it would be an injustice to the non-Hindu community.

7.3 In the Constituent Assembly

The debate in the Constituent Assembly on the issue of a ban on cow slaughter shows that it was a subject of much controversy. Some orthodox Hindu members in the Constituent Assembly insisted on the separate provision for banning cow slaughter, because, the cow is regarded as 'Gomata' and 'Kamdhenu' by the Hindus, who constitute a majority in the country.

---

[179] Quoted by Dr. Neeraj, *Nehru and Democracy in India* (Metropolitan Book Co., Pvt. Ltd., 1972) 201.
[180] Quoted by A. B. Shah, *Cow-slaughter, Horn of Dilema* (Lalvani Publishing House, 1967) 14.

Pandit Thakurdas Bhargava (East Punjab), stated that "She (Cow) was associated with Lord Krishna (a Hindu God) and was regarded by the Hindu sages and 'rishis' as very sacred". It was also pointed out that "even during the Muslim Rule, Babar, Humayun, Akbar, Jahangir and even in the reign of Aurangzeb, cow-slaughter was not practiced in India"[181].

Seth Govinddas stated that "cow protection is not only a matter of religion with us, it is also a cultural and economic question". He further asked that "the Muslims should come forward to make it clear that, their religion does not compulsorily enjoin on them the slaughter of the cow. --- The Prophet never took beef in his life. This is a historic fact"[182].

But some of the members of the Constituent Assembly belonging to the minority communities criticised this Constitutional provision. They argued that this Article had a religious significance and a concession to the religious sentiments of the majority would be provided by this Article. The members belonging to the minority asked the Hindu Members in the Constituent Assembly to state their intention in clear terms, which they have disguised in other forms, such as Organisation of Agriculture, economic benefits, etc.

Syed Muhammad Saiadulla (Assam), in the Constituent Assembly, said "there ought to be no compulsion in the name of religion. I, therefore, do not like to use my veto when my Hindu brethren want to place this matter in our Constitution from a religious point of view. I do not also want to obstruct the framers of the Constitution; I mean the Constituent Assembly if they come out in the open and say directly 'this is part of our religion'. The cow should be protected from slaughter and therefore, we want its provision either in the Fundamental Rights or in the Directive Principles. But those who want to put in on the economic front, --- do create a suspicion in the minds of many that the ingrained Hindu feeling against cow slaughter is being satisfied by the backdoor"[183].

But another Muslim member Mr. Z. H. Lari (United Province), said "I for one can say that this is a matter on which, we will not stand in the way of the majority if the majority wants to proceed in a certain way, whatever may be our inclinations. We feel- we know

[181] Constitutional Assembly Debates, Vol. VII, P. 569.
[182] Ibid 571-72.
[183] Ibid 578.

that our religion does not necessarily say that, you must sacrifice cow --- I would not class it as interference with my religion"[184].

On the discussion in the Constituent Assembly, Sinha remarked that "apparently, the orthodox too did not want to be charged as non-Secular". They lacked the courage of their conviction and were afraid to avow openly their religious principles[185]. It is also argued that "the Constituent Assembly adopted this ill-conceived Article in order to respect the sentiments of the Hindu Members who constituted a majority --- and this in spite of the fact that Gandhiji had clearly stated his opposition to a legal ban on cow slaughter[186].

7.4 Government's Policy

Since the Constitution of India came into force, the question of a ban on cow slaughter by legislation has been raised on a number of occasions. The Hindu Communal Parties like Jana Sangh, Hindu Mahasabha, Ram Rajya Parishad, and a few congress members attempted legislation prohibiting cow slaughter. Mr. Seth Govind Das, a member of the Congress party introduced the Indian Cattle Prevention Bill in the Lok Sabha in 1952. It was discussed at length and several times. The views expressed in the parliament were similar to that of the Constituent Assembly.

It makes clear that the Union Government was not prepared to enact such legislation. On the contrary, Nehru declared that he was prepared to stake his Prime Ministership on this issue. Finally, at the time of voting on the Bill, 95 members voted against it and only 12 for the motion[187].

On the issue of legislation for putting a ban on Cow-slaughter, Nehru argued that it was a matter of state governments to deal with, not the centre because the matter falls within the jurisdiction of the state governments. He also stated that this issue should be considered from a practical and economic point of view and there should not be a religious or sentimental approach. He regarded it as a misapplication of religion with regard to cows. He criticised the opposition parties for exploiting the religious

---

[184] Constitutional Assembly Debates, Vol. VII, P. 577.
[185] V. K. Sinha, *Secularism and Indian Democracy, in Secularism in India* (Lalvani Publishing House, 1968) 40.
[186] A. B. Shah, 'religion and the Indian Constitution', The Secularist 35 (1975) 112.
[187] Quoted by Smith (n 87) 171.

sentiments of the masses. Nehru held that any such concession to the majority community would constitute a grave danger to the Secular basis of the State.

7.5 Legislations to Ban Cow-Slaughter

In pursuance of this Directive Principle, States like Utter Pradesh, Bihar, Madhya Pradesh, and Maharashtra, enacted laws prohibiting the slaughter of cows and all categories of bovine cattle including buffaloes. The validity of these laws was challenged before the Supreme Court in "*M. H. Qureshi Vs. State of Bihar*"[188]. The petitioner claimed that the said Acts violate their Fundamental Rights guaranteed under Articles 19(1) (g) and Article 25 of the Constitution. The Supreme Court analysed the evidence and took into account several other facts and recognised that there was a religious element involved in these enactments putting a ban on cow slaughter, but held that it did not deprive the petitioner of pursuing their occupation. It was observed by the court that it did not deprive the petitioner of pursuing their occupation. It was observed by the court, that the Fundamental Right must prevail over the Directive Principles. As regards the violation of the Fundamental Rights guaranteed under Article 25 and the claim of the petitioners about the religious practice of cow slaughter on the occasion of Bakri Id Day; the court pointed out that, the Muslim religious texts did not make it obligatory to sacrifice a cow on their religious days such as Bakri Id day and that it is optional for a Muslim to sacrifice a goat for one person of a cow or camel for seven persons. The court also pointed out, the policy of the Mughal Emperors prohibiting the slaughter of cows. The court maintained that "the total ban on the slaughter of cows of all ages is quite reasonable and valid and it is in consonance with the Directive Principles laid down in Article 48"[189]. Since the Act passed by the Bihar Legislature prohibiting the slaughter of all bovine cattle, the court struck down the part of its provision as invalid. Similarly, the court in its judgment has criticised the policy with regard to the maintenance of useless cattle by the establishment of 'Gosadans'[190].

7.6 Objections

Among the writers on this issue, Prof. A. B. Shah opposed the total ban on cow slaughter on three grounds. Firstly, democracy does not give the majority even if it were

---

[188] 1959 SCR 629.
[189] *M. H. Qureshi Vs. State of Bihar* 1959 SCR 629.
[190] Luthera (n 113) 142.

ninety-nine percent strong, the right to Act in a manner that would either undermine democracy or interfere with the right of other groups to live in their own way --- a total ban on the slaughter of cows would be undemocratic even if there were only one beef eater in the country. Secondly, there is no evidence that a majority of Hindus themselves really want cow slaughter to be banned. The demand of a few high caste members of the intelligentsia cannot, in the absence of other evidence, be taken as a demand of the majority of Hindus. Indeed, the evidence, if anything is to the contrary --- The Indian peasant has been selling dry cows to the butcher for the simple reason that, he cannot afford to maintain them. Thirdly, even if a majority of Hindus were to support this demand, how would it justify them imposing their own religious belief on others?[191].

To conclude the discussion of this point, it can be said that, though the constitutional provision for prohibiting the slaughter of cows and other cattle is clear, it has created a problem as special emphasis has been laid on 'Cow' which has some religious reference and significance in the religion of Hindus. It would not have created a problem either constitutional or political if the word 'Cow' was not mentioned in the article. In fact, there is no need for it, because the 'milch cattle' includes the cow, and the intention of this Directive Principle was to organise agriculture and animal husbandry on modern and scientific lines.

Similarly, it is, but difficult to understand why the Supreme Court has treated 'Cow' differently from other animals. It may be argued that the provision for directing the state for making legislation to ban cow slaughter is inconsistent with the secularism and secular character of the State in India. Therefore, this provision (Article 48) needs reconsideration.

---

[191] A. B. Shah, *Challenges to Secularism* (Nichiketa Publication, 1968) 15-17.

Chapter 8

Contemporary issues and challenges to Secularism.

Though the constitution of India accepts the concept of secularism and provides for a Secular State in India, Indian Secularism is confronted with several serious challenges. As the nature of Indian Secularism is different from western Secularism, its problems are also very different from that of Western Secularism. It is pointed out that "the theory of the Secular State in India, raises many problems unknown to western political experience such as separate electorate for the various religious communities, communal personal laws, the caste system, agitation for laws banning cow slaughter and so forth"[192].

It should be noted in this context, that the problems of Indian Secularism are the result of total Indian life. Therefore, a solution to them is to be found in the Indian situation. In the words of Smith "Indian Solution must be found for Indian problems"[193].

The challenges to Indian Secularism are many and complex. They can be listed and discussed as follows: 1) Communalism, 2) Casteism, 3) Party politics, 4) Obscurantism.

8.1 Communalism

Of all the challenges, Communalism is the most serious challenge to Secularism in India. It is unfortunate, that despite having a Secular Constitution, and even in the fourth decade of our independence, our country has not been able to free itself from communal conflicts. Communalism not only exists but has increased. Now it seems that communalism pervades the whole country.

8.1.1 What is Communalism?

The discussion of communalism as a challenge to Secularism can be started with its definition. D. E. Smith defines 'Communalism' as the tendency of religious groups to function as such in politics[194]. Communalism is also defined as "Strong allegiance to one's own ethnic group rather than to the society as a whole"[195]. It is also defined as "an insistence on the special interests of the community and its preference for its

---

[192] Smith (n 87) 182.
[193] Smith (n 30) viii.
[194] Smith (n 87) 173.

[195] Brij Mohan, *India's Social Problems* (Indian International Publications, 1972) 30.

tenets"[196]. Saksena points out, "Communalism is the affirmation of a religious community for attaining or retaining power, social, political or economic or all of them. It can be parochial but certainly not national[197].

Who is responsible for communalism is difficult to determine? Some persons put the blame on the Muslim and other accuses the Hindus, and some other persons blame the Britishers for it. It is argued that "the roots of communalism do not lie in the medieval history of India"[198].

Dr. Moin Shakir has pointed out that "the problem of Communalism in India, is a 'gift of Islam'. The history of Muslim Communalism dates back to the advent of Islam and the Indian repose to it was that of resurgent nationalism. The Muslims even after the independence has refused to change"[199].

But, according to Dutt, the British had created the communal problem. He has argued that "prior to British Rule, there is no trace of the type of Hindu-Muslim conflicts associated with the British Rule, and especially, with the latest period of British Rule. There were wars between states which might have Hindu or Muslim Rulers, but these wars at no time took on the character of Hindu-Muslim antagonism. Muslim Rulers employed Hindus freely in the highest position and vice-versa"[200].

But some other writers do not support this view. Prof. A. B. Shah, as pointed out that, "the British encouraged and exploited the Separatist sentiments, but they certainly did not create it"[201]. Justice Shelat has also explained that the British did not create the communal problem. They only exploited the social and religious contradictions between the two communities and diverted those contradictions into politics using them for their own purpose"[202].

---

[196] Misra Dina Nath, *R.S.S., Myth and Reality* (Vikas Publishing House Pvt. Ltd., 1080) 123.
[197] R. N. Saksena, *Indian Social Thought* (Meenakshi Prakashan, 1981) 133.
[198] Ghouse (n 172) 27.
[199] Dr. Moin Shakir, *Politics of Minorities* (Ajanta Publications, 1980) 13.
[200] R. P. Dutt, *India To-day* (Manisha Ltd., 1970) 455.
[201] A. B. Shah, 'Gandhi and the Hindu-Muslim Question' (1970) Quest, January-March 21.
[202] Shelat (n 109) 81-82.

8.1.2 Communal Organisations

The communal and Cast feelings of the Indian people were used by the Britishers, certainly for their own political purpose. The Britishers started it with the introduction of a separate electorate for the Muslims. The Indian Council Act, 1909, introduced a separate electorate as was demanded by the Muslim League (1906) which was the first communal organisation for safeguarding the interests of the Muslims. Later on, other Muslims Organisations came up, for example, The Jamat I-Islami (1941), the Majlis-e Mushawart (1964), and the Muslim Majlis (1968). Regarding these Muslim Organisations, Dr. Moin Shakir has observed that "these organisations view the Muslims as a monolithic well-knit and homogeneous community and consequently characterised the religious and cultural problem as identical. --- Muslim organisations are basically conservative and Fundamentalist in their ideological posture and political approaches. The manipulation of religion and religious idiom reinforces communal identity and solidarity. --- Their manifestos betray a deliberate effort to ignore the economic problems of the Muslim masses. Their opposition to socialism or communism is the salient feature of their economic doctrine"[203].

During the course of time, the "Hindus, the Sikhs, the Christians, and the untouchables" set up their own communal organisations. The Hindu organisations include the "Hindu Mahasabha" (1907), and the "Rastriya Swayam Sevak Sangh" (1925). The "Hindu Mahasabha" was organised to protect the interest of the "Hindus and Hindu Nationalism" against the "Muslim league". The British Government utilized the communal organisation for its own purpose. The Indian National Congress opposed the system of a separate electorate but it failed, on contrary, the result was that the Muslims were alienated from the congress and the differences between the "Congress" and the "Muslim League" increased, and finally it caused the partition of the country, creating independent Pakistan and India.

It was expected that the creation of Pakistan would solve the problem of communalism. But the expectation has not been realised. It is argued that "the basis of partition was enmity between Hindus and Muslims. The creation of Pakistan gave it a permanent constitutional form and made it much more difficult to solution"[204].

---

[203] Dr. Moin Shakir, 'In the name of Islam' (1984) The Illustrated Weekly of India, March 29.
[204] Maulana Azad, *India Wins Freedom* (Orient Longmans, 1959) 225.

Even today, the wall of distrust and suspicion has not been demolished. there are many people among the "Hindus, the Muslims, and the Sikhs" who are still trying to keep up the spirit of communalism. The Constitution of Independent India abolished the system of separate communal electorates, but communalism still survives in a new form that is evident throughout the entire electoral process.

8.1.3 Communal Riots

Communal loyalties give birth to communal conflict. In pre-partition India, there were several communal riots, and they persisted even after India gained its independence. Contrarily, it appears that communal violence has ingrained itself into everyday life in India. It is important to distinguish between the pre-partitioned and post-independence communal riots in this perspective. The pre-partitioned communal riots were unplanned, and a large number of people took part. The post-independence communal riots are planned and include the employment of modern tactics. In terms of how long communal riots last, there are differences as well. Before, riots would last two to three days, but now they last for weeks or even months. Communal violence can be seen in places like Punjab, Ajodhya, Bengal, and Bihar.

The report of the Union Home Ministry explains that from 1954 to 1960, there was a trend against communal riots. In 1961, the situation was sharply reversed. Communal riots have been occurring at relatively short intervals. As a matter of fact, the number of communal riots has increased. In this context, it should be noted that the riots are not just between Hindus and Muslims, but also between Hindus and Sikhs, Christians, Buddhists, and other religious groups.

The list of communal riots is very lengthy. The major riots can be mentioned. The riots occurred in West Bengal, Bihar, Orissa, Assam, Punjab, Uttar Pradesh, Madhya Pradesh, Maharashtra, and other states at various places.

Even though communal riots and violence are usually irregular, they nonetheless frequently lead to the deaths of several hundred people and significant losses in both public and private property. It worsens the issue of maintaining law and order in society. In the end, everyone suffers, including the perpetrators. It fosters a climate of mistrust and annoyance among the people. Thus, communal violence and riots represent one of the biggest challenges to India's democracy, secularism, and national unity.

8.1.4 Causes of Communal Riots

Cow-slaughtering, Holi celebrations, religious processions, music in front of mosques, the destruction of idols and temples, Azaan over loudspeakers, blasphemy, disparaging other religions' gods, and goddesses, Hindu-Muslim marriage and divorce relations, and other things are the immediate causes of Communal riots. But the root cause is the communal politics of communal organisations.

The linguistic conflicts, the issue of official language in a State, the place of temples, and the different economic progress of the different communities are also the causes of riots between the Hindus on the one hand and the Sikhs, Christians, Jains, and other communities on the other hand. The policy of 'Reservations' is also a cause of agitation and violence among the different communities of the Hindus. The recent agitation for and against the 'Reservation Policy' in Maharashtra and Haryana i.e., Jaat and Maratha agitation may be cited in this context.

Thus, communal violence includes many things, such as communal conflict, personal rivalries, economic and social conflicts, political issues, communal politics by the communal organisations, rumors, provocations, policies and their implementation by the government, encouragement by the neighbouring and other foreign States.

8.1.5 Eradication of Communalism

How to eradicate communalism from Indian life is a difficult problem. There can be no single solution for it. The fight against communalism must be multi-dimensional. Many political scientists and writers have suggested different remedies to solve the problem of communalism.

Dr. Luthera has suggested that 'if communalism is to be eradicated, a beginning has to be made from the Constitution itself. There is need to amend it so as to make the enactment of the communal Laws illegal'[205].

In the opinion of Mr. Setalvad, education with a Secular bias can play in reducing the impact of the forces of communalism and sectarianism. --- Only sustained and effective co-operation between the State and citizens in a system of education with a clear bias

---

[205] Luthera (n 113) 86.

towards Secularism can wear off these narrow and sectarian loyalties[206]. Mr. Dalwai considers that "the only answer to the communal problem in India is Secular integration of all the people of India[207].

To meet the challenge of communalism, it can be suggested that, as communalism is a way of thinking, it is necessary to reorient the thinking of the people of our country. The people should be educated that the problems of life cannot be solved by religion. They must be educated to treat religion strictly as their personal matter and to oppose the mixing of religion with politics. They should be made Secular. If more people believe in Secularism rather than communalism, perhaps, fewer communal riots would take place all over the country.

It is also very essential to create a mental climate of trust and harmony among the various religious communities, and for this education and enlightenment of the people are needed. Certainly, the communal parties and organisations are at the forefront of communal violence, therefore, such parties and organisations need to be banned by the law. The Government also must function as a really Secular Government. Its functions should not be associated with any single religion. Frequent references to religious majority and religious minority should be avoided by all persons in the government and politics.

---

[206] M. C. Setalvad, *Secularism in India* (Bombwala and Chaudhari Edited, Aspect of Democratic Government and Politics, Atma Ram and Sons, 1968) 63.
[207] Hamid Dlawai, *Muslim Politics in Secular India* (Hind Pocket Books, 1968) 109.

8.2 Casteism

Caste is the most important aspect of Indian culture after religion, and it has played a significant role in stifling the development of secular movements there. Indian Society and as Nehru observed, "a caste-ridden society is not properly Secular"[208].

8.2.1 Caste System

The Institution of caste has been one of the exclusive characteristics of Indian Society, especially Hindu Society since early ages, and in spite of great changes in the history of India, the caste system continued to be an important feature of social life in India, and in the course of time, it has also become an important factor in the politics of the country.

The roots of the caste system are very deep. The ancient 'Varna' Scheme is supposed to be the basis of the caste system, though both are different Concepts. 'Varna' scheme includes four groups The Brahmin, The Kshatriya, the Vaisya, and the Sudras. And 'This four-fold division is only ideological and is not in any manner based on the facts of the social system[209]. The 'Varna' scheme was not rigid as it was based on occupation. The caste system, on the other hand, refers to endogamous kingship groups and social institutions, and it includes several hundred castes and sub-castes. The Hindu caste system is also looked upon as a divine institution with religious sanction. However, basically, caste is a social institution, whose membership is largely decided on the basis of birth. A man is born into a caste and he dies in it if he is not excluded from it. Man's individual efforts do not change his position in the caste. Caste is the basis of an individual's social status and social relationships in society. The Hindu caste system is hierarchical and it creates social inequalities in society. This is well-known to all.

Originally caste was associated with a specific occupation and village community and village economy. But during the British period, it has undergone profound changes and became more flexible as a result of industrialization and modernization. The British Government also passed some laws affecting the caste system. During this period, the caste system lost many of its traditional features.

---

[208] Quoted by Smith (n 87) 151.
[209] K. M. Panikkar, *Hindu Society at Cross* Road (Asia Publishing House, 1967) 29.

8.2.2 Caste and Reservation

After the independence of the country in 1947, casteism again went through profound changes. The Constitution of India accepts equality as its basic principle and enforces it by recognising the individual as the unit of power operating through a system of universal adult franchise. The Constitution has also abolished untouchability which was the most undesirable and inhuman feature of the caste system. The Constitution also makes discrimination and exploitation on caste, and communal grounds punishable. But the Constitution itself provides for a kind of protective discrimination for those sections of the society which are backward and downtrodden. The principle of reservation has been incorporated in Part-XVI of the Constitution, in which the provision has been made for the reservation of seats for the Scheduled Castes and Scheduled Tribes in the House of People, in the Legislative Assemblies of the States, in the services of the Government and Institutions. They are also given all types of facilities and special scholarships for education.

It may here be noted that the reservation was extended to the Scheduled Caste and Scheduled Tribes. Economically backward communities, in the Hindu and the weaker sections in the non-Hindu communities, were left unprotected. Naturally, it was resented by the people who were excluded from the reservation. The First Amendment to the Indian Constitution in 1951, introduced a new clause in Article 15 which empowered the State to take steps for the advancement of any socially and educationally backward classes of citizens.

On this policy of reservation, it has been argued that the "greatest harm has been done by the attempts of both Central and State Governments to define economic, social and educational needs in terms of the caste group and to extend aid on that basis. --- This approach has been served only to perpetuate and attenuate caste consciousness and has resulted in grave injustice in many cases in which, there is no co-relation between caste, status, and economic need"[210].

In the opinion of Balraj Madhok, the reservations given to the Scheduled Castes and the Scheduled Tribes in the Constitution have created vested interests in the perpetuation of the caste system. Before such reservations came, there was going on an

---

[210] Smith, (n 30) 496.

imperceptible process of change of castes. The people belonging to the lower caste tried to upgrade their social status with the improvement in their economic and education conditions[211].

Regarding the caste and reservation policy, it can be said that the privileges attached to castes have encouraged casteism since the caste is proving very beneficial to the persons belonging to the backward castes. Not only this, there is a general desire for enrolment in the list of scheduled Castes and Backward Classes even among those who are advanced and who have rejected the caste system for other purposes. Thus, the reservation policy, instead of removing the caste distinctions has maintained it, and has encouraged social tensions which retard the process of social integration. It has also created obstacles to achieving the object of a caste-less society in India.

In view of the principle of equality, it is necessary to maintain a balance between the claims of the individual who is not a member of the Scheduled caste and Scheduled Tribes and the individual belonging to these castes. There should not be an encroachment upon the rights of other sections. The economic status of the individual and not the caste status should be the consideration for concessions and preferences. The distinction based on caste should be deleted from the Constitution of India.

8.2.3 Caste and Politics

Along with freedom and the acceptance of a democratic system of Government, with the "universal adult franchise" a new era has started in the prospect of caste in India. Caste started to play an important role in the politics of the country. The democratic methods have given new strength to castes and caste organizations. It is as Jaya-Prakash Narayan declared in 1960 that under the present system "caste has become the strongest party in India"[212].

Morris Jones describes "Politics is more important to castes and castes are more important to politics than before. He further says the top leaders may proclaim the goal of a casteless society, but the newly enfranchised rural masses know only the language of traditional politics which so largely turns about caste"[213]

---

[211] Balraj Madhok, *Indianisation* (S. Chand and Company, 1970) 30-31.
[212] Quoted by Smith (n 30) 327.
[213] Morris Jones, *THE Government and Politics of India* (B. I. Publications, 1974) 64-65.

Politics in India, without studying caste in that particular State, particularly at the State and local level, it is impossible to comprehend. Reddy, Kammas, and Velama in Andhra Pradesh, Okkaligas and Lingayats in Karnatak, Nayars and Ezhavas i in Kerala, and Maratha and Brahmins in Maharashtra. Banias and Patidar in Gujrat, Bhumihars, Kayasthas and Rajput in Bihar, Jats, and Brahmins in Uttar Pradesh, are dominating castes in these States. Castes included in Scheduled Castes. are also important in the politics of some of the States. There are some parties that are organised to represent castes. "D.M.K., in Madras, Republican Party and Dalit Panther in Maharashtra" are examples in this context.

There are also some castes organisations at the village, district, and State levels. They function as a pressure group and 'vote Banks' during the elections. The other parties which are not organised on the basis of caste, also consider the caste factor in distributing the tickets and allotting the Constituencies for elections. The election campaign and then voting is also under the influence of caste.

The political parties have their election manifestos advocating Justice, liberty, Equality, a Socialist Society, a Casteless Society, etc., but in practice, Political Parties use tactics of caste, religion, language, region, etc.

Thus, the election process in India has done much to encourage casteism. It is, however, necessary to note that the influence of caste is not alike in all States and at all levels. Recent election studies have revealed that the influence of caste is stronger at the village and district level and lesser at State and national level.

It may be because there cannot be a Ministry of a particular caste. The political necessity has imposed the need for co-operation among the different caste groups.

The continued and increased influence of caste in almost all directions of life is bound to weaken the Secular and democratic character of the Indian State. Casteism is also a powerful barrier to emotional integration which is very essential for Secularism in India.

It has been argued that "if non-discrimination between the castes has to be achieved it is only possible by pulling up different caste members together within a class, where

equal opportunity and status prevails for all. But can caste ever emerge into class?"[214]. It seems more or less definite that there is no such possibility. Not only this, there is no chance of the caste hierarchy being abolished in Indian society any time soon unless the protection based on caste is changed through Constitutional Amendments. Greater emphasis on economic rather than caste factors should be given. This will be more rational and practical.

8.3 Party Politics

Party-Politics, especially of communal nature has also created a hindrance in the way of Secularism in India. India has a multi-party system. But right since the independence, there is a dominance of one or two-party in the country. Earlier the Congress Party played a dominant role, the current Bhartiya Janata Party is the dominant party both at centre and in many of the States in India. The opposition party has always been weak in India.

8.3.1 Development of Political Parties

The Indian National Congress which was founded in December 1885, was the first Political Party in India. The foundation of the Congress was the most remarkable event in India's history. In the beginning, the Congress was the organisation for political reforms, but as time passed it became the instrument of India's struggle for independence. The Congress was the national organisation from its inception. It was also by and large Secular in outlook and its organisation was not communal, as its membership was open to all the people irrespective of religion, faith and caste, etc.

The Indian National Congress was to separate religious values from political objects. "The object of the Congress was not the establishment of a Hindu state, but the establishment of Secular State, in India"[215]. The Congress stood for Secularism, but its Hindu Phraseology and the radiosity of many of its leaders and their programs created doubts, distrust, and uneasiness among them some the Muslims in India.

In 1905, the Partition of Bengal opened a new phase in the politics of the country. Nationalism based on religion sprang up. In 1906, there came into being a communal party namely the All-India Muslim League which launched the separatist movement

---

[214] Ramesh Thaper (ed), *Inter Caste Tension: Tribe Caste and Religion* (The Mac Millan Co. of India Ltd., 1977) 67.
[215] S. H. Patil, *The Congress and Princely States* (Himalaya Publishing House, 1981) 128.

with the blessing of the British. The Membership of the Muslim League was opened to the Muslims only and it was to safeguard the political rights and interests of the Muslims in India.

As a reaction to the "Muslim League", the "Hindu Maha-Sabha" was established in Punjab as a provincial organisation in 1907 and its All-India Organisation came into being in 1915. The Hindu Maha-Sabha stood for the protection and promotion of the interests of the Hindus. It was for Hindu culture and 'Hindu Rashtra'. Thus, the Hindu Maha-Sabha became a communal political party of the Hindus as the Muslim League was for the Muslims. Regarding the political situation during this period, it has been observed that "in British India, communal and Secular forces were competing with one another for securing the support and loyalty of the people. The Muslim League and the Hindu Maha-Sabha looked at the problem from the communal angle. Their interests were limited. They were appealing to the communal interests of the communities. Congress stood for Secularism. It looked at the problem. from a non-communal angle. Its objectives were based on general interests. It appealed to the people in the name of unity, Secularism, nationalism democracy, and Federation"[216].

Then, there came into being some organisations and political parties such as Rastriya Swayam-Sevak Sangh (1925), Communist Party (1928), Scheduled Caste Federation (1932), and Congress Socialist Party (1934).

After independence, in addition to the old political parties, many other new parties were formed. These political parties include - Bhartiya Jana Sangh, Praja Socialist Party, Socialist Party, Samyukta Socialist Party, Swatantra Party, Bhartiya Kranti Dal, Bhartiya Lok Dal, Congress (Organised) Party, Congress for Democracy, Janata Party, Congress (I). Party and Dalit Majdoor Kisan Party, Aam Aadmi Party, Rastriya Janta Dal etc. There were many mergers and splits into these political parties and even now the same process is continued.

8.3.2 Classification and Nature of Political Parties

Indian Political Parties after the independence can be classified loosely into 'National Parties' and 'Regional Parties', 'Secular Parties'. The National Parties include the Congress (I.), the Congress (S.), Bhartiya Janta Party, Communist Party of India, Communist Party Marxist, Aam Aadmi Party, etc. Regional parties include Dravid

---

[216] Ibid.

Munnetra Kazhgam, Akali Dal, Republican Party, Peasants, and the Workers Party, Forward Block, Vishal Haryana Party, and others.

It may be pointed out that, since independence, many regional parties have sprung up in the country. These parties represent the interests of a particular region or particular group. Some of the regional parties even desire and struggle for a separate independent state. Originally, D.M.K., for 'Dravidstan' and Akali for 'Khalistan' may be cited. The demand for 'Khalistan' by the Sikh extremists ultimately caused the assassination of Prime Minister, Mrs. Indira Gandhi, on 31st October 1984, who did not remove the assassin, Beant Shing and Satwant Shing, from the personal security staff, in the name of 'Secularism'.

Secular Political Parties in India include the parties like Congress (I)., Congress (S.), Bhartiya Janata Party, C. P. I., C.P.M., D.M.K.P., etc. These political parties are Secular in the sense that, their membership is open to all people irrespective of their religious and caste loyalties.

These political parties are not identified with the interests of a particular religion or caste group and they are for the general welfare of the nation. The policies. of these political parties do not conform to the principle of some particular religion. But what is their practice? Even these parties play communal politics for achieving and safeguarding their political interests. It has been remarked that "the known Secular parties are not very Secular in terms of composition and working"[217]. No party can be called truly Secular unless it denounces communalism of any type for political purpose.

Despite the Secular character of the Constitution, in India, there is a number of communal parties and organisations. The Hindu communal parties and organisations include The Hindu Maha-Sabha, The Ram Rajya Parishad, Bhartiya Jana Sangh, Bhartiya Janata Party, Rastriya Sway Sevak Sangh, Vishwa Hindu Parishad. These political parties and the organisations among the Hindus believe in extreme nationalism, or more or less 'Hindu Nationalism'. They also advocate 'Hindu Rastra' and 'Indianisation'. In this sense, they are communal and opposed Secular State. The Example of 'Shiv Sena', a political party of Maharashtra may be mentioned here. Chief

---

[217] Dr. Shakir (n 170) 103

Mister Udhhav Thackeray's government[218] collapsed because he denied the Hindutva Ideology, which is the core principle on which the Party was formed.

Among the Muslims, the communal parties and the ganisations are, the Muslim League, The Jamat-e-Islami, The Muslim Majlis, The Jamiat ul-ulema-Hind, The Shia political Conference, The Majlis i. Mushwart, All India Majlis-e-Ittehadul Muslimeen. These parties and the organisations are for the protection of the interests of the Muslims only. They stood for Muslim culture in India. Therefore, they are communal in their object and outlook.

Among the Sikhs, the Akali Dal stands for the promotion of the interests of the Sikhs in India. It is both a regional and communal party.

In the context of communal parties and organisations, it may be noted that they do not represent the whole of the respective community. A section of the Hindus, Muslims, and Sikhs is represented them.

Similarly, it is very difficult to make a distinction between 'Secular' and Communal parties each party considers itself to be Secular and blames the other party to be 'Communal'. It is also interesting to note that, a political party becomes 'Secular' or 'Communal' in view of political interests and party alliance during the elections and framing of the Ministries.

8.3.3 Secularization of Political Parties

At present, many political parties have made rapid progress towards the Secularization of their policies and programs. Their election manifestos give importance to the issues like protection and preservation of democracy, stability in the country, the integrity of the nation, fight against communalism, industrialization, economic development and providing maximum employment, fight against corruption and purity in administration, enforcement of the Directive Principles, and establishment of social and economic democracy, Greater concessions to the weaker section -in the society, protection to the interest of the minorities, decentralization of power, non-alignment in the international affairs.

---

[218] 2022.

They pledge to preserve the Secular Democratic State in India. But almost all the parties plan their election strategy and carry-on election campaign on communal lines and make compromises with the communal factors. Their practice does not conform to their ideological affiliations including 'Secularism'. In other words, the political parties and their leaders are Secular in words, not in action.

It has been observed that 'whatever the claims of political parties, their behaviour in regard to the promotion of Secularism have been unhealthy, rather nefarious. None of them has ever allowed Secularism to take precedence over its political interests'[219].

In conclusion, it can be said that the communal parties and organisations are conservative and reactionary. They mobilise political opinion from the point of view of either religion, caste, language, etc. Therefore, they pose a serious threat to Secular politics and create obstacles to the success of Secularism in India.

It is true that the communal parties do not possess effective leadership and they have a microscopic amount of popular support, but their existence is not a healthy sign in the Secular State of India. Therefore, there should be legal restrictions on the political parties to make communal or religious demands and the political parties should not be allowed to make the representation of religious affairs and propagate communalism. It is also necessary that the people should be adherent to Secular principles in the politics of the Country.

8.4 Obscurantism

Indian Secularism is also confronted with Obscurantism. Despite the progress in almost all directions of life obscurantism still persists. In all religions, there are obscurantist elements that create obstacles in the way of the evolution of human and dynamic social order. It is because of obscurantism the people give importance to customs and traditions rather than reason.

In the context of Indian Society, it may be pointed out that, there are obscurantists in all the communities. The Indian people in general whether Hindus, Muslims, Sikhs, etc., are traditional in their outlook, and see many of the things in their traditions and customs. They look backward rather than forward. They are unwilling to accept new ideas. It is due to the obscurantist element that orthodox Muslims are opposed to any

---

[219] S. L. Sikri, *India's Developing Constitution* (Pradeep Publication 1980) 39.

change in the traditional way of life and the Muslim personal law. And the orthodox Hindu demands a total ban on Cow-slaughter. The worse thing is that even the persons in the high position of the Government, are also under this influence. Every public function of the Government is accompanied by 'Bhumi Pujan' and recitation of 'Mantras'. Lakhs of rupees are spent from the public and private funds on sacrificial rituals such as 'Yagnyas', 'Havans' and 'Puja', and other religious functions.

All these factors have slowed down the growth of Secular forces and created a threat to Secularism in India. If this situation is to be changed, it needs a strong renaissance movement for increasing the importance of the Secular forces in society.

8.4.1 Solutions

It is evident from the preceding discussion that, the challenges to Indian Secularism are varied and complex. They are partly because of some Constitutional Provisions which are contrary to the principles of Secularism and partly as per the nature of Society in India, which is based on traditional religious and social values. Therefore, the challenges to Secularism need to be tackled by the measures like Constitutional amendments, the Secularization of Indian Society, and modernization in every sphere of life. Similarly, this task cannot be left to the Government alone. It requires everybody's efforts and co-operation from everybody.

Justice Gajendragadkar, observed that "the plant of Secularism is a very delicate plant, and if it has to grow on the Indian Soil, it must be watered and tenderly nursed by all Secularist in the country with care and dedication. It is hands of faith that are needed for the achievement of this task and these hands of faith must be supplied by the intellectuals of to-day"[220].

In order to solve the problems of Secularism in India, education with a Secular bias can play an effective and valuable role. For this, education must be controlled by the State and completely separated from religion.

To solve the problem of communalism it has been suggested that the Indian Government should introduce a course in comparative religion as a part of the educational curriculum at the secondary stage. This would enable Hindus and Muslims and others to understand the comparative merits and demerits of the different religions.

---

[220] Gajendragadkar (n 122) 109.

Much of the religious animosity in India is born of sheer ignorance and the Government must take early steps to remove it.

It may be pointed out that a comparative study of different religions is not sufficient. There should not be separate educational institutions for the Hindus, Muslims, Sikhs, and others, because this makes them separatist and communal in outlook. It may also be pointed out that, the educational change at the institutional level is not enough. The people, in general, should be educated and trained in a Secular way of life. It means that they should be taught to make a distinction between their personal life as an individual and their public life as a citizen and to consider economic, and political problems without religious and caste loyalties.

The political parties and their leaders also have to show by their behaviour that they are Indian first and afterward the Hindus, Muslims, Christians, and Sikhs, etc. This is because of the fact that the common masses are impressed and influenced much more by what they see in action than, what they hear in speeches. Therefore, the leaders and the politicians should first reform themselves. There should also be restrictions on political parties taking up communal and religious demands and making religious appeals to the people. In view of Secularism, the political parties should not propagate communal ideology.

It has already been stated that India is a multireligious, multi-caste, multi-racial and multi-lingual country. Therefore, there are bound to be some minorities that create conflict between themselves and the majority community. The Indian Constitution has safeguarded the religious, lingual, and cultural interests of the minorities. But there has been since the beginning, animosity between the majority and the minorities, and now the Constitution has raised a Constitutional Wall of discrimination between the majority and the minorities. Therefore, there is distrust among them.

In this situation, the majority group has a great responsibility to induce security and confidence amongst the minorities, and the minorities too, cannot evade their responsibility to be co-operative with the majority. It has been argued that "A Secular State demands that while the majority is tolerant and accommodative, the minority, in turn, should reciprocate and avoid alienation and segregation"[221].

---

[221] A. T. Philip and K. H. S. Rao, *Indian Government and Politics* (Sterling Publishers Pvt. Ltd., 1981) 291.

Thus, the Secular attitude on the part of the Hindu alone is not sufficient to create an atmosphere conducive to Secularism. It is a collective responsibility of both the majority and the minority Communities. The concerted efforts by them will safeguard Indian Secularism from the evils of communalism, Casteism, and Sectarianism.

The supreme need of the hour seems to be the multiplication of the Secular Citizens. The citizen will be Secular in the sense that, he keeps his religious faith strictly within personal bonds and he does not allow his religion to intrude upon others, and in public life.

There is also a need to create an atmosphere conducive to Secularism by accepting modernisation in every sphere of life. Technological development increased industrialization, and economic growth is also necessary because the present communal riots are not only due to religious differences but also because of economic differences among the different communities in India.

Indian Secularism needs a society with the people having a Secular attitude toward the solution of economic, social, and political problems, facing the nation. There is a need to accept Secularism as social philosophy and as a way of life.

Chapter 9

Conclusion and Suggestions

9.1 Conclusion

The foregoing analysis of the provisions in the Constitution of India clearly shows that the Constitution of India enunciates Secularism through its innumerable provisions and establishes a Secular State. It may, however, be observed that the Indian Concept of Secularism and Secular State is very different from the Western Concept of Secularism. Therefore, the Concept of Secularism as embodied in the Constitution of India, cannot be viewed in the sense in which, it is conceived in Western Countries. It is to be understood in the context of the Indian State and Indian Society.

A. Tradition of Religious Tolerance

In India, the Secular State has a firm historical basis. Indian State never became a theocratic State. The State in India at every stage followed the policy of Religious Toleration which now forms the basis of Indian Secularism. The Hindu kings in Ancient India followed the policy of Religious Tolerance and allowed different religions to flourish. Then the State during the period of Muslim Rule in India, was not also theocratic, as it was not completely based on Islam. But the Muslim kings with some exceptions like Akbar were intolerant and followed the policy of forcible conversion to Islam. Later on, the British Government in India, by and large, followed the policy of religious neutrality. However, it can be said that it was not perfect neutrality, as the British Government enacted various laws affecting the religious life of the Indian people.

B. National Movement

The National Movement for the independence of India can also be called Secular in its objects and principles. However, in the final stage, separatist tendencies emerged, and 'Muslim Nationalism' and 'Hindu Nationalism' started functioning. This development retarded the growth of Secular nationalism, and ultimately the country was partitioned in 1947, on the basis of religion.

C. Constitutional Provision

The Constituent Assembly of India discussed at length and finally adopted the Secular State for India. However, the Indian Constitution before the 42nd Constitutional Amendment Act in 1976 did not contain the word 'Secular'.

The Constitution of India at present in its Preamble describes India as a "Sovereign, Socialist, Secular, Democratic Republic". Thus, a theocratic State is just not established by the Indian Constitution. The Constitution does not prescribe any religion as the State Religion. In India, neither Hinduism nor Islam or any other religion has been recognised as a religion of the State. The State in India gives equal treatment to all religions. It respects all religions. This is called "Sarvadharma Sambhav". This doctrine is an integral part of our tradition. It must, however, be noted that this doctrine is very vague and certainly, contradictory to the "Western Concept of Secularism" which recognises the divorce of the "religion" and the "State".

D. Citizenship

The Secular character of the Constitution is also explicit in the Nature of Indian Citizenship which is not based on the religion or caste of the Individual. However, the factors like the Constitutional Provisions relating to the reservations of seats in the "Lok Sabha and in the Legislative Assemblies in the States, on the basis of castes and the policy of reservation" in the Government services and Educational Institutions, and the prevailing practice of personal laws have weakened the ideal of Secular Citizenship.

E. Equality

Equality in the "political, social and economic aspects of life", can be called one of the basic features of Indian Secularism. The Constitution of India provides for 'Equality' in Articles 14 to 18. However, the principle of equality has been compromised in various fields in view of 'Protective Discrimination' in favour of the Citizens belonging to Scheduled Castes and Scheduled Tribes and other Backward classes. This policy of 'Protective Discrimination' has strengthened the caste consciousness and retarded the growth of Secularism in India.

F. Freedom of Religion

It is a significant feature of Indian Secularism that it recognises the relevance of religion in human life. It is not anti-religion. On the contrary, it respects all religions. The freedom of religion constitutes the essence of Indian Secularism. The "right to freedom of religion" consists in Art. 25 to 28 of the "Indian Constitution". The Constitution guarantees the freedom of conscience, practice, profession, and propagation of religion (Article 25). It guarantees freedom to establish religious institutions and manage and administer their affairs; to hold, acquire, and administer properties (Article 26). The Constitution also gives freedom as to payment of taxes for the promotion of any particular religion. (Article 27) and freedom as to attendance at religious instructions or religious worship in certain educational institutions (Article 28). But all these rights are subject to the restrictions imposed by the State. These restrictions relate to public order, morality, health, etc. These Constitutional provisions indicate that the Indian Constitution contemplates coexisting religion and secularism and strives to establish an equilibrium between religious freedom and state authority.

G. Protection of Minorities

Protection of various "religious and cultural and linguistic minorities" is another feature of Indian Secularism. It can be traced in Articles 29 and 30 of the Constitution. These Articles guarantee the cultural and educational rights of the minorities in India. The minorities are given fair and just treatment. These constitutional provisions establish India as a Secular State. The minorities protect Secularism from the attack of a single dominant majority community. But sometimes, the minority itself may create a threat to Secularism, as it is evident from the Muslims and the Sikh communalism in the country. However, from the Constitutional point of view, the provision relating to the freedom of religion and the protection of the rights and privileges of the minorities indicate the liberal character of Indian Secularism.

H. State-Religion Relationship

In the context of the State-Religion Relationship, it may be noted that the Constitution of India does not separate the State from Religion. It does not set up a wall between them, it rather breaks the 'Wall of Separation between the State and Religion. The State in India often intervenes in religious matters, such as financial administration of religious denominations, entry of Harijans in the Hindu Temples, the modification of

Personal Laws, etc. In India, it is legal for the state to support educational institutions that must provide religious instruction. However, the Indian Constitution makes India a 'Secular State'. 'Secular' in the sense that, it does not provide for an official State-Religion and guarantees religious freedom to the individual as well as to religious institutions. The State does not give preference to one religion as to another religion.

I. Sovereignty of the People

The Constitution of India vests the sovereign power in the people and not in God, or in the high Priest of any religion. Similarly, the laws are passed by the Parliament elected by the people and they do not require any divine sanction. The Constitution of India does not prescribe any religious test for holding the office as the Head of the State, as it is prescribed in the United Kingdom, Pakistan, Sweden, Syria, Thailand, etc. The sovereignty of the people is expressed in the principle of universal adult franchise irrespective of religion, caste, creed, religion, etc.

J. Challenges to Secularism

The Concept of Secularism as embodied in the Constitution of India is the product of India's own political, social, and religious, conditions and it is to be implemented in the Indian Society which is full of diversity and which is basically religious. The majority of the people of India are superstitious and obscurantist. In India, there are many castes and religions which have been exploited by the politicians of different political even parties after the independence of India. As a result of this, Indian Secularism is confronted with many challenges. such as communalism, casteism, obscurantism, etc., and there are many inconsistencies in it.

To conclude it would be fair to say that Secularism is of great significance in view of India's social, economic, and political framework. Secularism can meet the demands of a multi-religious, multi-culture, multi-caste, and multi-lingual society like India. Secularism is essential for fostering ties between people of different communities in India. It seems to be the most effective cementing force in this context. The Concept of Secularism is also relevant to the process of nation-building. It is a thread that has been binding us and keeping us united as a nation. Its increased influence will eradicate communalism and sectarianism from the country. It is a powerful antidote against communal conflict in the country. Secularism is also important from the point of view of enjoying Fundamental Rights which are conferred by the Indian Constitution. It is

revealed from the experiences of many States in the world that religion cannot be the basis of the State in modern times. Therefore, there is no alternative to Secularism. It is the only sound course to follow. And for this reason, any political party governing the country or aspiring for the power in future accepts Secularism as its policy or claims itself to be Secular. Thus, Secularism in India is the need of the Society and the country as a whole. It is essential for peace, unity, integrity, and progress of the nation. Therefore, the Secular character of the Indian Constitution and Indian State must be preserved at any cost. The future of Indian Secularism seems rather dim, because of the predominance of communalism, casteism, obscurantism, and other obstacles in the existing situation. It may, however, be pointed out that, there is no possibility of a theocratic State in India. This is because of the fact that the minorities -Muslims, Christians, Sikhs, and others would like the Indian State to be absolutely Secular in every respect as a guarantee for their protection and progress. The majority, the Hindus would also accept Secular State, as it is tolerant since antiquity. Certainly, there are some revivalists among the Hindus who believe and advocate the concept of a "Hindu State", but they are small in number and their parties and organisations are not dominating in the politics of the country. Thus, there is no possibility of a "Hindu State" in India.

It is true that there are certain communal parties and organisations which do not adhere to Secularism, but they are too weak to capture political power and declare India a theocratic state based on a particular religion.

Secularism in India has won the battle so far and it will not be defeated in the future. It must, however, be noted that Secularism in India is a basic aspect of a democratic State, and its success depends upon the strength and weakness of democracy in India. The strength of democracy itself depends upon the realization of the values of liberty, equality, and fraternity in the life of the people. In this sense, it is startlingly true that democracy in India also is not yet safe.

The recent unfortunate happenings in the Punjab, Assam, Gujarat, Madhya Pradesh, Uttar Pradesh, Rajasthan, and other States, as well as the Union Territories in India, have created a grave threat to Indian democracy. Like Indian Secularism, the Indian democracy at present is confronting many challenges such as regionalism, separatism, linguist, casteism, communalism, terrorism, and foreign aggression. These challenges

can be eradicated by building up a strong 'Democratic' and 'Secular' Society in India. Certainly, this is not an easy task, and it cannot be left to the Government alone. The earnest endeavour by both, the Government and the people is needed to safeguard the Secular Democratic State in India.

9.2 Answering the Research Questions

(I) Whether Indian Constitution is secular in Nature?

The foregoing analysis of the provisions in the Constitution of India clearly shows that the Constitution of India enunciates Secularism through its innumerable provisions and establishes a Secular State. India is officially a secular state thanks to the 42nd Amendment Act of 1976, which inserted the word "Secular" into the preamble of the Constitution. One could easily claim that the country is secular in nature in the formal sense.

(II) What is the mechanism enshrined in constitution which promotes secularism?

The Constitution of India even before the 42nd Amendment has by convention practiced its secular characteristic and its various Articles and provisions have promoted Secularism. The researcher in the abovementioned chapters has dealt in detail with all the mechanisms and provisions which promote secularism. The prohibition of discrimination on the basis of religion, special protections for the minority community, to promotion of fraternity as per the preamble, and a state having no religions are some main mechanisms that promote secularism in India.

(III) What are the most common criticisms levelled towards India's secularism?

Indian secularism is not in the sense of western secularism. Indian Secularism has its own uniqueness, that has been criticized by various thinkers and sometimes supported. Some most levelled criticism is that the majority of the people of India are superstitious and obscurantist. In India, there are many castes and religions which have been exploited by the politicians of different political even parties after the independence of India. As a result of this, Indian Secularism is confronted with many challenges. such as communalism, casteism, obscurantism, etc., and there are many inconsistencies in it.

(IV) Whether there is any issue and challenges to the Religious Freedom Rights and Secularism in Contemporary India?

India has followed the concept of religious tolerance since ancient times which fosters the country in becoming the most diverse in culture and religion. However, India after Independence followed the path of secularism and for that, it provided in the constitution various safeguards protecting the freedom of religion and religion less state signifying the secular character of the country. The term secular got added after the 26 of enforcement of the constitution too explicit that the country is secular. However, because of the hurdles like party politics, communalism, casteism, and other issues which are very prevalent in the state the secular nature of the country and religious freedom rights are frequently violated. All these issues and challenges became a grave threat to secularism and freedom of religion in the country.

9.3 Findings

The term secular is added to the preamble of the Constitution through the 42nd Amendment Act 1976 which signifies that formally India is a secular state. However, the pragmatic execution of Secularism, in the substantive sense of the term by the state has not been successful. All the hurdles that exist in the country like communalism, casteism, party politics, obscurantism, etc. are preventing the State to achieve the true sense of the word 'Secular'. It could be said that India is a Secular country only in the formal sense and because of the above-mentioned issues India is still struggling to become a secular state in the formal sense. All hurdles are still prevailing as the gravest threat to the secular character of the country.

India's secular character has its own uniqueness different from the west. One of it is that State is not completely separated from religion, there is no wall of separation between these two. The constitutional provisions themselves provide for the interference of the state in matters of faith and religion. This is criticized widely as an anti-secular approach. Due to the above-stated findings, it can be concluded that the hypothesis has been proved.

9.4 Suggestions

The answer to the challenges to Indian Secularism and the inconsistencies in it can be found in building up a Secular Society in India. It means that society will be based on Secular values of life and the social life and the institutions in the society will be free from the hold of religion. The Secular Society can be created through Secularization.

There is also a need to amend the Constitution, so as to make it more Secular in character.

a. The Government should make a policy to advocate for secular ideals in education.

b. Religion-related matters should not be brought up in the discharge of public duty by any government officials or political leaders.

c. To eliminate ambiguity and provide a clear understanding of the term, "Secularism", it should be defined in the constitution, or a specific Article defining the true character of India as a secular state should be added.

d. It is necessary to promulgate the Uniform Civil Code.

e. Strong laws must be passed to ensure fair trials and quick convictions in cases of rioting, hate crimes, and racial bias.

f. It is also essential to accept the Concept of Secularism as a social philosophy rather than as a mere political ideology. For this, the state should strive to create awareness among the people through education. Government attitude and behaviour should promote industrialization and economic growths which could eradicate fundamentalism and communalism.

Therefore, the Secular Constitution and the State are not sufficient to uphold Secularism in India, a Secular Environment is Required. The idea of secularism, which is inscribed in the Indian Constitution, would only exist as a philosophical and constitutional term in the absence of "Secular Society".

BIBLIOGRAPHY

BOOKS, ENCYCLOPEDIAS AND MANUALS

Dr. Suhas R. Morale & Dr. Dilip S. Pawar, *Indian Politics and State* (1ˢᵗ edition Chandralok Prakashan, 2006).

J. M. Shelat, *Secularism: Principles and Applications* (N. M. Tripathi Private Ltd., 1972).

Mohammad Ghouse, *Secularism, Society and the Law in India* (Vikas Publishing House, 1973).

P. C. Chatterjee, *Secular Values for Secular India*, (Manohar Publishers and Distributors, 1995).

Bipin Chandra, *India after Independence* (Murari Lal & Sons Publications, 2009).

Bipin Chandra, *Communalism in Modern India*, (Har-Anand Publications Pvt. Ltd, 2015).

K. N. Pannikkar, *The Concerned Indian's Guide to Communalism* (Penguin Books India, 1999).

Ashutosh Varshney, *Ethnic Conflict and Civic Life: Hindu and Muslims in India,* (Yale University Press, 2003).

D. E. Smith, *India as a Secular State* (Princeton University Press, 1963).

V. P. Luthera, *The Concept of The Secular State and India* (Oxford University Press, 1965).

P. B. Gajendragadkar, *Secularism and the Constitution of India* (University of Bombay, 1970).

S. L. Verma, *Theory of Positive Secularism,* (Rawat Publications, 1986).

G. S Sharma (Ed.), *Secularism: It's Implication for Law and Life in India* (N. M. Tripathi, 1966).

Ruchi Tyagi, *Secularism in Multi-Religious Indian Society*, (Deep and Deep Publications, 2001).

Brenda Cossman and Ratna Kapur (Ed.), *Secularism's Last Sigh? Hindutva and the (Mis) Rule of Law* (OUP India Publisher, 1999).

Rajeev Bhargava's (Ed.), *Secularism and its Critics* (OUP India Publisher, 1999).

Niraja Gopal Jayal, *Democracy and the State: Welfare, Secularism and Development in Contemporary India* (OUP India Publisher, 1998).

P. C. Joshi, *Secularism and Development: The Indian Experiment* (South Asia Books, 1995).

Neera Chandhoke, *Beyond Secularism: The Rights of Religious Minorities* (OUP India Publication,1999).

N. S. Gehlot (Ed.), *Politics of Communalism and Secularism: Keeping Indians Divided* (Deep & Deep Publications, 1993).

P. S. Ramu, *Secularism: Precept and Practice* (Secular Foundation Publication, 2000).

Manjari Katju, *Vishva Hindu Parishad and Indian Politics* (Orient Black swan Private Ltd., 2010).

George H. Sabine, *A history of Political Theory* (1st edition, Oxford and TBH Publishing House Co., 1973).

Alexander Moseley, 'John Locke: Political Philosophy (Internet Encyclopaedia of Philosophy) https://iep.utm.edu/home/about/ accessed> 11 June 2022.

Arnold Toynbee, *An Historian's Approach to Religion* (Oxford University Press, 1956).

Thomas A Kempis, *The Limitation of Christ* (The Catholic Primer, 2004).

A. S. Altekar, *State and Government in Ancient India* (7th Reprint edition, Motilal Banarasidass Publishers, 2016).

Brian Duignan, 'Charvaka India Philosophy', (Encyclopaedia Britannica Online, November 2018) <https://www.britannica.com/topic/Charvaka/additional-info#history> accessed 16 May 2022

M. Hiriyanna, *Indian Philosophy* (5th Reprint edition, Motilal Banarasidass Publishers, 2000).

Chitrarekha Gupta, "Social Processes: Modes and Pattern of Social Change in Early India" (1999) Vol. 60 Proceedings of the Indian History Congress.

J. K Chopra, *History of Modern India Culture* (1st edition, Unique Publishers, 2009).
Romila Thapar, *Asoka and the Decline of the Mauryas* (3rd edition, Oxford University Press, 1982).
Rama Shankar Tripathi, *History of Ancient India* (10th Reprint edition, Exotic India Publishers, 2014).

H. G. Rawlinson, *India: A Short Culture History* (Fredrick A. Prager Publishers, 1967).

V.D. Mahajan, *Modern Indian History* (17th edition, S. Chand & Co. Ltd., 2004) 643.
Daya Shankar Dubey & Rajesh Tandon, *Constitutional History of India* (Allahabad: Allahabad Law Agency, 1985).

Tony Ballantyne, *Orientalism and Race: Aryanism in the British Empire* (Palgrave Macmillan Publishers, 2001).

Vivekananda, *The Complete Works of Swami Vivekanand* (Vedanta Prints, 2003).

Dadabhai Naoroji, Poverty and Un-British Rule in India (London, Swan Sonnenschein and Company, 1901).

Homi Mody, *Sir Pherozeshah Mehta: A Political Biography* (Asia Publishing House, 1963).

C.Y. Chintamini, *Indian Social Reform* (Thompson and Company, 1901)

M.G. Ranade, *The Miscellaneous Writings* (Sahitya Academy, 1915)

N. D. Palmer, *The Indian Political System* (Houghton Mifflin Company, 1971)

Singh Yogendra, *Modernization of Indian Traditions* (Thomson press Ltd. 1973).
M. K. Gandhi, *An Autobiography, or the Story of my Experiments with truth* (Fingerprint Publishing, 2009)
S. P. Aiyer, *Studies in Indian Democracy* (Allied Publishers Pvt. Ltd., 1965).

K.M. Munshi, *Indian Constitutional Documents* (Bhartiya Vidya Bhavan, 1967).

D. C. Gupta, *Indian National Movement* (Vikas Publication, 1970)

Dr. Moin Shakir, *Khilafat to Partition* (Kalamkar Publication, 1970)

V. N. Shukla, *Constitution of India* (Eastern Book Company, 1982)

D. D. Basu, *Introduction to the Constitution of India* (Prentice-Hall of India Pvt. Ltd., 1983)

Mohammad Ghous, *Secularism, Society and Law in India* (Vikas Publishing House Pvt. Ltd., 1973)

A. A. Engineer, *Islam-Muslim-India* (Lok Vangmay, Pvt. Ltd., 1975)

V. K. Sinha, *Secularism and Indian Democracy, in Secularism in India* (Lalvani Publishing House, 1968).

Brij Mohan*, India's Social Problems* (Indian International Publications, 1972).

Misra Dina Nath, *R.S.S., Myth and Reality* (Vikas Publishing House Pvt. Ltd., 1080).

R. N. Saksena, *Indian Social Thought* (Meenakshi Prakashan, 1981).

Dr. Moin Shakir, *Politics of Minorities* (Ajanta Publications, 1980).

Maulana Azad, *India Wins Freedom* (Orient Longmans, 1959).

Hamid Dlawai, *Muslim Politics in Secular India* (Hind Pocket Books, 1968).

Balraj Madhok, *Indianisation* (S. Chand and Company, 1970).

Morris Jones, *THE Government and Politics of India* (B. I. Publications, 1974)

Ramesh Thaper (ed), *Inter Caste Tension: Tribe Caste and Religion* (The Mac Millan Co. of India Ltd., 1977).

S. H. Patil, *The Congress and Princely States* (Himalaya Publishing House, 1981).

S. L. Sikri, *India's Developing Constitution* (Pradeep Publication 1980).

A. T. Philip and K. H. S. Rao, *Indian Government and Politics* (Sterling Publishers Pvt. Ltd., 1981).

INTERNATIONAL INSTRUMENTS

1726 - The Charter Act

1784 - The East India Company Act

1833 - The Charter Act

1789 - Constitution of United State

1791 - Bill of rights, USA

1909 - The Indian Council Act

1919 - The Government of India Act

1935 - The Government of India Act

1948 - Universal Declaration of Human Rights

NEWSPAPERS

The Indian Express

The Hindustan Times

The Times of India

The Hindu

The Quint

HYPERLINKS

Susan Bilynskyj Dunning, '*Saeculum*' (OCD Online, DOP November 2017) <https://oxfordre.com/classics/view/10.1093/acrefore/9780199381135.001.0001/acrefore-9780199381135-e-8233 >

Steven Conn, 'Secularism, Past and Future' (Origins.OSU.EDU) < https://origins.osu.edu/review/secularism-past-and-future >

Stephanie Kramer, 'Key findings about the religious composition of India' [2021] Pew Research Centre <https://www.pewresearch.org/fact-tank/2021/09/21/key-findings-about-the-religious-composition-of-india/#:~:text=Hindus%20make%20up%2079.8%25%20of,most%20of%20the%20remaining%206%25>

Chandani Rajkishore & Ms. Renuga C, 'A Study on Secularism Concept in India That Attained Its Objective' [2018] 120 (5) International Journal of Pure and Applied Mathematics <https://acadpubl.eu/hub/2018-120-5/5/426.pdf>

Vivek Salathia, 'Secularism and Indian Constitution- Is the Secular Character of Indian Democracy Under Threat' [2016] IALSNET <https://www.ialsnet.org/meetings/constit/papers/SalathiaVivek%28India%29.pdf>

Alexander Moseley, 'John Locke: Political Philosophy (Internet Encyclopaedia of Philosophy) https://iep.utm.edu/home/about/ accessed>

[1] Brian Duignan, 'Charvaka India Philosophy', (Encyclopaedia Britannica Online, November 2018) <https://www.britannica.com/topic/Charvaka/additional-info#history>

Fatima, Tausif, and Tousif Fatima. "Women's Rights and Hindu Law of Inheritance: The Approach of Rammohun Roy" Proceedings of the Indian History Congress, vol. 70, 2009, pp. 643–48. JSTOR, http://www.jstor.org/stable/44147711

Swami Medhananda, 'Was Swami Vivekananda a Hindu Supremacist? Revisiting a Long-Standing Debate' (2020) 11(7) MPDI Journals < https://doi.org/10.3390/rel11070368>

Sparsh Upadhyay, 'Uttarakhand Government Forms Expert Committee to Examine & Implement Uniform Civil Code in State' (LiveLaw,28th May 2022) < ivelaw.in/news-updates/uttarakhand-government-forms-expert-committee-examine-implement-uniform-civil-code-200324>