

## **CHAPTER – III**

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## **1. Introduction**

The idea of secularism was first self-consciously discussed by nationalist leaders like Dadabhai Naoroji, Surendranath Bannerji, Pherozshah Mehta and Gopal Krishna Gokhale who were engaged in the twin tasks of fighting British colonialism and developing a blueprint for a united Indian nation. It became especially relevant for them as a tool to combat the disruptive communal forces which later resulted in the partition of the subcontinent. Subsequently secularism and the idea of a secular state were seriously proposed as a national policy with two specific purposes – first, to combat communalism and second to provide a basis for the development of a socio-political framework for the democratic functioning of the state and for the integration of various religious communities into a harmonious society. The framers of the Indian constitution were certain that secularism and the secular state do not necessitate the elimination of religion. The important place held by religion in Indian society and its pluralistic character helps to develop religious toleration in terms of equal regard for all religions that is ‘sarva-dharma samabhava’ and this idea was projected as a desirable tool for achieving national integration<sup>1</sup>.

The term secular<sup>2</sup> has been derived from the Latin word ‘seculum’ which means an age, an indefinite period of time or the present age. The word secular in its dictionary meaning stands for “things not spiritual, civil and not ecclesiastical and for things not concerned with religion”. The secular state says D.E. Smith “is a state which guarantees individual and corporate freedom of religion, deals with the individual as a citizen irrespective of this religion is not constitutionally connected to a particular religion nor does it seek either to promote or interfere with religion”. The Indian state is secular in the sense that its constitution guarantees full religious liberty to all individuals and groups and forbids discrimination against any citizen on grounds only of religion, and caste. It is just as well that it is not secular in the western sense of complete separation between church and state, for it reserves to itself the right to intervene in the interest of necessary social reforms in matters which customarily come under the preview of religion.

## **2. Secularism in the West**

The secular state in the west was the answer to a twofold problem – first separation of church and state in Europe was in part an arrangement to curtail the political power of the ecclesiastical hierarchy and second, the secular state in the west was found to be the best

guarantee of the preservation of religious liberty. Scholars have traditionally traced the beginnings of secularism to the doctrine of two swords<sup>3</sup>, advocated by Pope Gelasius I (6<sup>th</sup> century), which asserted the separation of two powers – the church and the state. The same distinction, albeit in a religious context, was made by Saint Augustine (early 5<sup>th</sup> century), between the “city of god” and the “city of man”. But it was Saint Bernard (12<sup>th</sup> century), who first asserted that the function of clergy was pastoral and not temporal, and that they should restrict themselves to the spiritual guidance of humanity. Marsilio of Padua (13<sup>th</sup> century) affirmed that the church has no power to coerce, punish or forgive sins. The real beginnings of secularism must be found in the spirit of Reformation in 16<sup>th</sup> century. Martin Luther’s advocacy of the individual’s right and the autonomy of secular power became important tenets of secularism.

Secularism is, above all, a product of the renaissance and enlightenment. The most important factor which inspired the secularist thinking of the period was the rapid growth of science and technology. Astronomy of Copernicus (16<sup>th</sup> century), Galileo (17<sup>th</sup> century), Newton (late 17<sup>th</sup> century and early 18<sup>th</sup> century) and Laplace (late 18<sup>th</sup> and early 19<sup>th</sup> century) demolished the biblical cosmology and world-view. Science of biology especially Darwinian theory<sup>4</sup> of evolution (19<sup>th</sup> century) demolished another dogma regarding the entire human race descending from a common ancestor Adam. The empiricism of Locke (17<sup>th</sup> century), Bacon and Hume (18<sup>th</sup> century), the rationalism of Descartes (17<sup>th</sup> century), Kant (18<sup>th</sup> century), the utilitarianism of Bentham (18<sup>th</sup> century), and Mill (19<sup>th</sup> century) and the positivism of Comte (19<sup>th</sup> century) provided the intellectual framework for the development of a secularist ideology. The philosophers affirmed the autonomy of reason<sup>5</sup>, the importance of empirical experience and the need for free enquiry.

Scholars like G.J.Holyoake<sup>6</sup> defined secularism as a simple philosophy which affirmed concern for life in this world, as articulated by the humanists and positivists alike. Secularism affirms the worth of this worldly existence, the independence of scientific knowledge and human happiness as the only legitimate aims of social institutions. He described secularism as a “way of thinking” and as being concerned with “issues that can be tested in this life”. In the recent work, ‘A Secular Age’, Charles Taylor<sup>7</sup> has reconstructed the process through which the phenomenological experience of what he calls “the immanent frame” becomes constituted as an interlocking constellation of the modern differentiated cosmic, social and moral orders.

## **2.1 Historical Foundation of Secularism in the Western World**

The rise of Christianity produced a new set of relationship unknown to the ancient world, and led to the problem of church and state. From its inception Christianity recognized and taught a basic duality – the spiritual and the temporal, each with its appropriate loyalties. Inevitably the loyalty of the people towards state came into conflict with their loyalty of god. Under the Edict of Milan<sup>8</sup> (AD. 312 or 313), a great step toward freedom of religion was taken with the provision that “ liberty of worship shall not be denied to any, but that the mind and will of every individual shall be manage divine according to his own choice”. The most important theory which sought to define the jurisdiction of each other was that expounded by Pope Gelasius I in the fifth century. His doctrine of the two swords implied the dual organisation of human society – church to conserve spiritual interests and to mediate eternal salvation, and the state to maintain peace, order and justice in temporal affairs. Modifying the original idea of the two swords, the papalist later insisted that all authority, spiritual and temporal, was originally given to the church, retaining the spiritual power, the church handed down the temporal authority to be exercised by the state.

Henry IV, like his predecessors, did not hesitate to sell high ecclesiastical appointments to the highest bidder. Pope Gregory VII, on the other hand, claimed greater authority for the clergy but by the end of the 13<sup>th</sup> century, the papacy was confronted theoretically by a universal emperor and also by an independent king. The rise of independent sovereign states produced a politically fragmented Europe which successfully challenged the papacy’s temporal claims. The Reformation later intensified this fragmentation by the introduction of religious diversity. One of the most influential thinkers to contribute to the idea of the secular state was Marsiglio of Padua. Living in the 14<sup>th</sup> century, Marsiglio defended the independence of secular rule as good and necessary. He developed a theory of secular government based upon the conceptions of the Italian city-states. In England and France religion became essentially a matter of inner spiritual faith and experience and freedom of conscience was restored. John Locke’s Two Treatises of Government which became the Bible of modern liberalism laid great stress on the individual’s “life, liberty and property”, upon which a legitimate government would not dare to encroach. In New York, New Jersey Maryland and Georgia the state-church separation was established. Finally in Rhode Island, Pennsylvania and Delaware the influence of the institution of church has been distinctly reduced.

The pattern of church-state relations which evolved in America was transplanted from Europe<sup>9</sup>. The Calvinist (Puritans) who came to Massachusetts Bay in 1628 established a theocratic type of polity similar to Calvin's Geneva. Although they came to the new world they seek religious liberty for them. In Virginia and other southern colonies the established church of England was largely controlled by the state. The colony of Rhode Island was founded by Roger Williams in 1636 demanded the separation of church and state and freedom of conscience of the individual. Other great exponent of religious liberty was Quaker William Penn, who founded the colony of Pennsylvania who widely demanded religious toleration and strict state-church separation in the colony. Locke's<sup>10</sup> idea of rationalism influenced the American world too. It reduced the dogmatism and fanaticism of religious groups and individual's freedom of conscience were upheld which resulted in church-state separation. James Madison and Thomas Jefferson were prominent leaders in the agitation for separation of church and state in Virginia, and their efforts met with full success by 1786. Separation was achieved in the states in 1833 with the deestablishment of the church from worldly affairs. Jeremy Bentham's reforms envisaged religious liberty, equality in citizenship rights to establish democratic order in the society. J.S. Mill's great essay *On Liberty* became a classic statement of the liberal creed and buttressed freedom of religion, individualism and utility of the individual at all cost. In England, in the established churches, the bishops and archbishops are appointed by the Prime Minister; who preside as voting members of the House of Lords. The church was however disestablished in Wales, in 1920.

In France prior to reformation the monolithic Roman Catholic faith had its influence over the life of the people where the monarchy is based upon the religious justification of Roman pope. Gradually, the monarchy had established a largely autonomous political and administrative structure. Since the Concordat of 1516, the power was shared between the king and the Pope for the appointments in the upper clergy. With the Gallic movement<sup>11</sup>, autonomy of the French Catholic Church was restored which freed the church from the direct rule of the Pope. At the same time the spirit of the French enlightenment influenced the nobility, the bourgeoisie and the philosophers like Voltaire directly attack the Roman Catholic Church. In 1787, Louis XVI specified in article one, "The Roman Catholic religion alone will continue to enjoy public worship in our realm", but it was resisted by Protestants and finally article ten of "Declaration of the right of Man and the Citizen", proclaimed the principle of religious freedom. The eighteenth-century philosopher Montesquieu<sup>12</sup> in his

famous work, *The Spirit of Laws*, forcefully attacked the notion that there ought to be religious uniformity in a state. The French Revolution overthrew the established Catholic Church along with the hated monarchy and demarcated the distinction between liberty and tolerance and established a new cult of rationalism and reason. In the year 1804, in France and in USA the date of the Civil Code was declared which finally culminates in the year 1905 with the establishment of a neutrally religious state and the law of separation of church and state.

The separation in France had an immediate effect elsewhere in Western Europe, and Geneva and several other Swiss states soon adopted similar policies. The German Weimer Republic of the 1920s adopted the principle of the separation of church and state, although the states maintained their own religious establishments, and continues to do so. In Netherland, Belgium, Australia, Newzealoand, South Africa, Latin America and France church –state separation followed and religious liberty was granted to all individuals. The law passed in 1789 declared that all members whether Jews, Turks, Chinese would enjoy freedom to practice their own religion and finally equality and full citizenship were granted to all members of the society. Hence in the western world secularization follows a dynamic path to emancipate all secular principles from clerical ecclesiastical control. The boundaries between the religious and the secular are rigidly maintained, aiming to marginalize everything religious from secular public sphere.

## **2.2 Distinguished Features of Western Secularism**

### **1. Declaration of Rights and Religious Freedom**

The state ensures all earthly pleasures<sup>13</sup> to the people in a secular state and therefore considers all the people to practice their own religion freely. It was marked by institutional fragmentation or dissociation that is Catholicism was no longer remained an inclusive institution to exaggerate its influence in the society rather had to confine itself in its religious activities.

### **2. Recognition of Legitimacy**

Religion the foundation of morality, still remain as a useful tool in the society. Secularism is an idea that implies that there is a basic agreement between religious morality and common social morals. The state officially recognized several religions and their freedom to profess and practice their religion in the way they want. State is bound to satisfy the ‘religious

needs' of the people belong to different religious community and work towards the moral well being of the country. Within the framework defined by law, the state therefore guaranteed freedom to various religions. While generally upholding religion, the state liked to see itself as an impartial arbiter. The state took over from the church the power for the registration of births, deaths and marriages and this is a revolutionary step of the state. The Catholic Church received subsidies paid by the state. State attempted to protect the rights of the citizens and the power of Church was curtailed from all earthly affairs.

### 3. Secular Education

Education of the people is considered as an indispensable corollary of universal suffrage<sup>14</sup>. Educational laws were passed in 1872 to develop an educational system devoid of any religious influence. More freedom were given to state to make access in higher education and in 1883 educational system became fully operational, ensuring education to women mainly to freed the women from the influence of Roman Catholic Church. Finally education became secular and compulsory in nature and the expenditure of the schools and college teachers would be given from the state fund.

### 4. Freedom of Religion

The state guaranteed each citizen freedom of conscience and allowed each one to assemble with others in various religious societies<sup>15</sup> or associations, with a legal private and public status. Hence we can opine that the conception of a secular state was not produced in a vacuum rather it's a movement to establish rationality and freedom of individual from the bondage of ecclesiastical authority. Freedom of religion, citizenship and separation of state and religion is the basic feature of western secularism.

## **3. Historical Foundation of a Secular State in India**

### **Ancient India**

In India, secularism in its widest sense stands for tolerance. Indian secularism subscribes to the Hindu philosophical tenet that all religion has elements of truth and no religion can claim the monopoly of truth. Hinduism has never put forth the claims that it alone is the true religion<sup>16</sup>. The spirit of toleration is the foundation of the theory of Indian secularism. Hinduism was never a militant religion rather it is an essence; a way of life. After Sankara, Sanatan Dharma had become formal and ritualistic. The atmosphere throughout ancient

India was more or less tolerant and state promotes religious liberty to all. In ancient India the promotion of Dharma<sup>17</sup> (law, duty, morality, and religion) was regarded as the foremost aim of the state. In promoting Dharma the Hindu kings built temples, granted them large endowments and exercised strict supervision over their affairs. The religiously tolerant Hindu state<sup>18</sup> which patronized all sects impartially provided one of the historical bases of secularism. A clear cut distinction was made in ancient Indian polity between the functions of priest and king. The Vedic king discharged no priestly functions but look upon the welfare of his subjects. The Brahman ordained a spiritual authority<sup>19</sup> and he alone could perform the sacrifices and utter the sacred incantations. The Kshatriya caste provided to the rulers and the warriors, although in course of time a few non-Kshatriya dynasties were founded. While the Brahman stood at the top of the caste system, spiritually superior to the Kshatriya, his valid function was the priestly office only; his superior position gave him no direct authority in matters of government. This tradition supports one aspect of secularism. The supremacy of dharma<sup>20</sup> was the central conception in early Hindu political thought. Kautilya's secularism<sup>21</sup> did not envisage the institutional separation of state and religion, the patronage and regulation of temples was simply another area of state administration. However, the Arthashastra did undermine the theoretical basis for the promotion of religion by the state.

### **Medieval India**

The society established by Mohammed in the seventh century A.D was an integrated religio-political community<sup>22</sup>. It gave no recognition either in theory or in practice to the distinction between spiritual and temporal. The classical Islamic polity did not exist during the Muslim rule in India - the Delhi Sultanate (1211-1504) and the Mughal Empire (1526-1757). Peter Hardy<sup>23</sup> opined that the Muslim ruler sometimes depends on the religious guidance of the ulama or the spiritual authority. The religious policy of the Indian Muslim rulers ranged from a tolerance and syncretism of Akba<sup>24</sup> to the bigotry and fanaticism of Aurangzeb. The public worship of Hindu idols was generally forbidden and Hindus were not allowed to build new temples or repair old ones. Sometimes rulers like Feroz Shah Tughlaq would desecrate temples upon the conquest of new territory as a symbol of the victory of Islam<sup>25</sup>. On some pious occasions a particular Muslim king like SikandarLodhi, would have a fit of religiosity and desecrate or destroy even existing temples in peaceful times. In 1669, Aurangzeb issued a general order for the destruction of all Hindu temples and schools. During the sultanate and later under Aurangzeb, many Hindus were forcibly

converted to Islam. Shah Jahan appointed a superintendent of converts charged with special responsibility for making converts. The attempt was made by Aurangzeb to exclude all Hindus from government posts. Hindus were constantly reminded of their inferior status in an Islamic state.

In marked contrast, Akbar followed a policy of broad religious tolerance and equality of treatment for all his subjects. He forbade forcible conversions to Islam and permitted Hindus, Christians and Shia's to make converts also. Akbar gave official encouragement to the spirit of tolerance<sup>26</sup> where the Muslim theologians and scholars, as well as Sufi mystics, came and expounded their teachings. S. Abid Hussain<sup>27</sup> wrote that the new Indian nation which Akbar forged was based, "not on the community of religion but on the citizenship of the same state". It is certainly true that the emperor did much to create what we would call now a 'common citizenship', with equal rights for all irrespective of religious differences. In this respect Akbar's state came much nearer to the modern conception than the Hindu state, which was religiously tolerant, and dealt with people with legal and administrative matters according to caste status.

### **Modern Era (The British Period)**

The British East India Company began as a commercial enterprise, but in course of time became a vast colonial power exercising all the functions of government. The religious policy of the European trader-government ruling over millions of Hindus and Muslims was non-interference<sup>28</sup> in the religious life of the country and its subjects. As Britain's Indian empire expanded, British followed a policy of religious neutrality. Lord William Bentinck<sup>29</sup> struggled for abolition of sati with Raja Rammohun Roy to remove superstitious belief from Hindu society and to ensure civil rights, justice, equality and individual freedom which is part of secular society. They want to restore universal toleration and to respect all religion but giving the supremacy of the state (political authority) first priority. One of the great contributions made by the British Raj was the establishment of the principle of equality before the law. The introduction of a uniform civil law was an indispensable foundation for the development of a secular state. There were definitely two points of view regarding this legislation. The British government upholds the "Freedom of Religious Act"<sup>30</sup> a measure which established the great principle that a person could not be deprived of his civil rights because of his profession of any religion. Government would be neutral and aid all educational institutions to impart education exclusively secular in nature<sup>31</sup>.

In the latter half of the century, the role of the British government has changed and they adopted policies to create communal tensions in India which blurred the picture of secular context<sup>32</sup> by encouraging the policy of separate electorate for each religious community. Towards the end of the nineteenth century, the first small concessions were made by the British to the Indians to participate in the legislative process. Against a background of mutual distrust created by the British within the two communities, both communities demand separate electorates<sup>33</sup>. In 1906 the Agha Khan headed a Muslim deputation which presented its demand for separate representation to Lord Minto, the then governor general. The Indian Council Act of 1909 provided for separate Muslim electorate in most of the major provinces. Muslim seats were reserved in the Indian Legislative council and the provincial councils, and only Muslims could vote for candidates for these seats. In 1916 the Indian National Congress and the Muslim League, enjoying a brief period of harmonious relations<sup>34</sup>, concluded an agreement regarding the representation of Muslims in the various legislative councils. The agreement, known as the Lucknow Pact, confirmed the principle of separate electorates. The Government of India Act which finally emerged in 1919 accorded communal representation not only to Muslims but to the Sikhs in the Punjab and to Europeans and Anglo-Indian Christians. In addition, a definite proportion of seats were reserved to non-Brahmins in Madras and for Marathas in Bombay. The 1930 report of the Indian Statutory Commission stated that the Montagu-Chelmsford evaluation of granting separate electorates were theoretically wrong, harmful in practice, but politically necessary in favour of the Indian Muslims. The Round Table Conferences<sup>35</sup> in London (1930-1932) failed to resolve the question of the number of seats for each community and Act of 1935<sup>36</sup> and Mac Donald's Communal Award, specified the reserved seats for the minority community. The system of separate representation undoubtedly stimulated the further growth of communalism which culminated in the partition of the sub-continent.

### **3.1 Distinguished Features of Indian Secularism**

We have sought to identify that religious tolerance is the basis of India's secularism. The three distinguished features are –

#### **1. Secularism as a National Ideology in India's Freedom Movement**

Early political activists like Dadabhai Naoroji, Surendranath Bannerji, Pherozshah Mehta and Gopal Krishna Gokhale were inspired by the liberal thinkers of the west like. They advocated the concept of moral foundations of political authority. Justice, generosity and

humanity alone constitute the golden link which holds the political structures together. Political power has to be freed from the perversities of biases, unfounded and misleading prejudices and from the defecets of their class and position. S.Bannerji accepted the purifying and enabling role of high moral idealism in politics. Gopal Krishna was committed to the philosophy of reason, spiritual and moral liberation, and universal tolerance. Naoroji condemned the unnatural financial and economic policy of the British rulers. He thus built up a theory of economic foundations of Indian nationalism. Surendranath Bannerji, Ranade opined that in India the religious ideals are low and thus the socio-economic and political bondings were low and the Indians thus lacked in political consciousness and apparently comprehensive conception of 'swadeshism'<sup>37</sup> could not develop in Indian soil. Rabindranath Tagore emphasised on the empirical human values of love, harmony and peace. He was thus a prophet of humanism and universalism. He believed that it was India's destiny to evolve unity in the midst of diversities. He formulated and sponsored a moral approach to politics. According to Aurobindo, secularism is the form of liberation (mukti) of the individual self from the bonds of earthly life. Aurobindo Ghosh combined the western ideas of patriotism and nationalism with the religious symbolism of Hinduism. In Maharashtra, Tilak promoted the celebration of Shivaji festivals which became the vehicles of nationalist expression.

The Indian National Congress was established in 1885 and this later formed the sphere head of the freedom struggle<sup>38</sup>. The INC leaders like W.C.Bonnerji and other Congress creed like Dadabhai Naoroji, Mahadev Govind Ranade, Pherozshah Mehta, Surendranath Bannerji and Gokhale shared the view that INC was a national body. Its aim was to improve economic condition of the people and to make people aware of the political condition and their exploitation by the British which hampers nation's advancement. Hence they gave a comprehensive conception of swadeshism which was not only a political and economic movement but a moral and spiritual movement for the liberation of the energies of the nation. According to M.N.Roy, the essence of secularism is not to give every citizen an option to choose which religion he wants to follow, but an option to escape the bondage of religion. According to him secularism is not a political institution; it is a cultural atmosphere<sup>39</sup> which advocates a democratic and ethical society.

In 1920, the congress came under the control of M.K.Gandhi, whose nationalism had deep roots in religious faith. Gandhi used religious terminology to explain the objectives of the nationalist movement. In the future, India would become Ram Rajya, the kingdom of

Rama, a golden age of peace and prosperity. Gandhi declared that his Hinduism included all that he knew to be best in Islam, Christianity, Buddhism and Zoroastrianism. Gandhi strove unceasingly for Hindu-Muslim unity and convinced that ultimately both religions were true and valid. His deepest conviction was that god, truth and ahimsa were all one and the same. Satyagraha (therefore, non-violent resistance) was thus based on Gandhi's personal religious faith, but as a political device it was employed by many thousands who did not share the faith. Gandhi's leadership of the INC gave it a somewhat Hindunized appearance, but his constant emphasis on the religious, social and political unity of the various communities helped to lay the foundation of the secular state. According to Gandhi the state must be so organized that all religions can peacefully co-exist. In order to ensure this, the function of the state must be non-religious and the state must deal with people as individual and not as members of religious communities. Thus according to Gandhi's ideology religion and politics were not incompatible, rather they were complementary<sup>40</sup> to each other and hence he believed in the synthesis of religion and politics. Hence the concept of secularism in India meant an all inclusiveness<sup>41</sup> of all religions together and hence the nationalist or the freedom fighters used secularism as a national ideology<sup>42</sup> that is they gave a clarion call to all religious community to fight together for the cause of freedom of the nation.

## 2. Secularism Paves the Path for Hindu Renaissance

The introduction of western education, with its emphasis on scientific attitude and rationalism, created an impact upon the sensitive minds of the intelligentsia. Raja Rammohun Roy, the father of modern India and Indian renaissance fought all the way from the burning Ghats of Calcutta to the Privy Council in London to eradicate sati and dowry. He stood for the abolition of sati, education of women, prevention of child marriages and polygamy, codification of laws, and separation<sup>43</sup> of judiciary and executive. The evolution of secularism in the ethical thought was associated with the practical endeavor to promote social reform and civil and religious liberty. Justice M.G. Ranada and his Parthana Samaj stood for breaking of the caste system, and he introduced widow-marriage, abolition of child marriage and encouragement of women's education. Ranade stood for a synthesis<sup>44</sup> of the best elements in Hindu, Islamic and western civilizations on the basis of rationalism. Swami Dayananda Saraswati on the other hand advocated the supremacy of Vedic culture in all spheres of life. Swami Vivekananda<sup>45</sup> stood for the revival of certain aspects of Vedic culture but also for the liquidation of economic poverty, political servitude and educational backwardness of the masses. Syed Ahmed Khan was a typical Muslim aristocrat who had

very little rapport with the Muslim masses. But he was keen that his community should adopt western education and western liberal values and ways. The first Muslim college called Mohammedan Anglo-Oriental College was established in Aligarh by Syed Ahmed Khan, which later on transformed into Aligarh Muslim University in 1920. His primary interest was to remove the prejudices and to modernize the community and hence with the help of the British government he remains successful in modernizing and imparting western education in the newly setup schools and colleges.

### 3. Secularism as the Means to Combat Communalism

Syed Ahmed Khan forbade his co-religionist to participate in the nationalist movement largely because he needed the support of the colonial power for the upliftment of the community. Jinnah repeatedly claimed congress as purely a Hindu organisation<sup>46</sup>. British policy of separate electorates further intensified communal consciousness<sup>47</sup> and created an atmosphere of mistrust and hostility within Congress organization and among the League members. All India Muslim league was given separate electorates for Muslims in the year 1909. Muslim seats were reserved in both central and provincial councils for which only Muslims could vote. This system of separate electorates undoubtedly strengthened the consciousness of separate identities<sup>48</sup> in various religious groups, and thus encouraged communalism. Gradually a new brand of Hindu communalism developed as represented by Hindu Mahasabha and Rashtriya Swayam Sevak Sangh. While the Muslim league criticized INC as a Hindu Organisation, Hindu Mahasabha declared it to be treacherous to the Hindus. Hindu Mahasabha president Veer Savarkar developed the concept of Hindutva for the first time. It supposedly referred to a people who are united by the bonds of race, religion and culture. The aim of the Hindu Mahasabha was the maintenance, protection and promotion of the Hindu race, Hindu culture and Hindu civilization and the advancement of the glory of the Hindu rashtra (nation). RSS was another Hindu fundamentalist<sup>49</sup> communal organization which affirmed the idea of a Hindu nation and M.S.Golwalkar asserted that Hindus were one nation from which non-Hindus were automatically excluded. To the Muslim League leaders<sup>50</sup> INC were an organization of temporal interest and an organization to meet political interests of the Hindus. In this circumstance Md. Ali Zinnah tried to inculcate the seeds of separation within the community members which later intensified in the outbreak of communal riots<sup>51</sup> and the demand for separate state – Pakistan.

To the INC leaders like Dadabhai Naoroji, Surendranath Bannerji, Gopalkrishna Gokhale, national identity and the interests of the nation as a whole were all inclusive which transcended the differences of religion, caste, language etc. The secular ideology<sup>52</sup> of the congress leaders focused on nation and its territory which includes all the inhabitants of India, irrespective of their religions or any other differences. Gandhi stated that national integration or the sense of national identity could be achieved only if Indians set aside their religious identities and joined hands in the freedom struggle. Mahatma's efforts to integrate the "the lower", caste Hindus into the larger Hindu society, as well as his efforts to bring the Muslims and the other religious minorities into the national mainstream were expressions of nationalist, humanitarian perceptions which were shared by nationalist leaders to a large extent. This approach implied a total rejection of communalism<sup>53</sup>, but openly accepted the desirability of religious tolerance and importance of religion in a person's life. On the other hand, religious identity was not important for Nehru who emphasized a secular national identity rather than peaceful coexistence of different religious communities. Thus Indian nationalism was based on the perception that a nation is constituted by a people who share a common life, a more or less common culture, common everyday problem and endeavor together to achieve common goals of freedom, democratic rights and a just social order.

### **3.2 Distinction between Western and Indian Concept of Secularism**

Secularism is a belief system that rejects religion or the belief from the affairs of the state. The principle of separation of church and state and of keeping religion out of the public realm is defined as secularism. Collin's National Dictionary defined secularism as an 'ethical doctrine' which advocates a 'moral code', independent of religious beliefs and considerations. Western secularism has become a fact of life, a result of long struggle between two organized power – the church and the state which ultimately established the power of state in worldly affairs. Indian secularism remains an ideal or a value to be realized which aims to divorce politics from religion.

In the west secularism implies the principle of rationalism<sup>54</sup> and human reason, to unravel the mysteries of the world and to guide man in positive direction. The idea of rationalism developed in Greek thought and renaissance resulted in the rejection of the ecclesiastical authority to mould the lives of the people. The concept or the principal of autonomy is a second important aspect of western secularism. The idea implies the

centrality of man as the supreme end of his actions. Secularism in the west means a separation of organized religion from organized political power. In this sense secularism is a universal normative doctrine, with a fixed content. Harvey Cox<sup>55</sup>, in his 'The Secular City' and in his 'The Secular: Secularization and urbanization in a Theological perspective' opined that "the Biblical vision of man find its radical interpretation as man is feeble and weak, which has been rejected and instead stood forth the idea that reason had already made nature autonomous and a more intellectual leap as needed to make man morally and political autonomous". In west, secularization becomes a process of mans increasing involvement with his earthly life and his concern with his present situation, rather than his pre-occupation with his destiny which lies in eternity.

Secularism in Indian context means first, 'dharmanirapakasata' or impartiality to religion and secondly, 'sarva dharma sama bhava'<sup>56</sup> or equal respect for all religions based on the principle of accommodation of all religions. To be precise, we must say Indian secularism is not so much philosophy advocating reverence of all 'dharma' (religion), but a clarion call for a single dharma, that is Hindu dharma( 'ekabhava') which universality comprises of all other religions. Indian secularism is multi-value character<sup>57</sup> and gives importance to moral reasoning and equally respecting all religion. Rajni Kothari<sup>58</sup> in his book expressed the idea that Indian secularism signifies the polarities of separating religion from politics and accommodating different religions through the arbitration and assumed neutrality of the state. Like other ideas of democracy, socialism, Indian secularism developed as a response to the actual historical needs of Indian society.

The conception of a secular state involves three distinct but interrelated sets of relationships concerning the state, religion and the individual. The three sets of relations are: a) freedom of religion, b) citizenship and c) separation of state and religion.

#### **a) Freedom of Religion**

In the west secularism is defined as a freedom of conscience, freedom of religion means an individual may or may not have faith or shows belief in Church or any religious matter freely according to his own choice<sup>59</sup>, but in India, freedom of religion means an individual have right to profess his or her religious beliefs and practices. In the west (in United States), for Madison and Jefferson, freedom of conscience meant the freedom to exercise religious liberty to worship or not, to support a church or not, to profess belief or disbelief – without suffering civil penalties or incapacities. It had nothing to do with a right to choose one's

beliefs. Madison and Jefferson understood religious liberty as the right to exercise religious duties according to the dictates of conscience not the right to choose religious beliefs. Indeed, their argument for religious liberty relies on the assumption that beliefs are not a matter of choice.

In India the individual is free to consider and to discuss with others the relative claims of different religion and to come to a decision without any interference from the state. The individual is free to reject them all. If the particular individual decides to embrace one religion, he has freedom to follow its teachings, participate in its worship and other activities, propagate its doctrines and hold office in its organizations. If the individual decides to denounce his religion or to embrace another, he has that liberty to do so. The state cannot dictate religious beliefs to the individual or compel him to profess and practice a particular religion<sup>60</sup>. It cannot force him to contribute financially towards the support of a religion by taxation. However there is a limited area in which the secular state can legitimately regulate the manifestation of religion in the interests of public health, safety and morals. India as a secular state guarantees freedom of association for religious purposes as carefully as the individual's freedom of conscience<sup>61</sup>. All religious groups have the right to organize, to manage their own affairs in religious matters, to own and acquire property and to establish and administer educational and charitable institutions. Indian constitution guarantees freedom of religion under article 25-28 to its citizens.

## **b) Citizenship**

The secular state views the individual as a citizen and not as a member of particular religious group. Religion becomes entirely irrelevant in defining the terms of citizenship; its rights and duties are not affected by the individual's religious beliefs. Western secularism views the individual as a citizen and as a member of a particular religious group and there is no influence of religion on citizenship. In the west<sup>62</sup> an individual perform religious duties as a part of their life style and religion is not indispensable for the identification of any individual. Civil liberty was ensured in America in 1993 with Religious Freedom Restoration Act by the Congress, where it was declared that people should be free to pursue their own religious liberty, interests and ends. Individual or citizens are free to exercise duties irrespective of any religious restrictions. A secular state seeks to secure the religious liberty of all members of society. In a secular country their core beliefs and practices come to dominate on one hand and on the other liberty are granted to all

religious communities without any preference. As any religious values, norms or identity could distort the principle of democratic citizenship the state do not interfere with the freedom of religion in private or public sphere.

In India the case for religious liberty<sup>63</sup> derives not from the moral importance of religion, but from the need to protect individual autonomy. Government in a secular state should be neutral towards all religion to secure good life and religious values of the individual. In India rights of citizen<sup>64</sup> are guaranteed from article 14-18 as right to equality and from article 19-22 as right to freedom where no individual is discriminated on religious or caste grounds by the state, and to perform political function. The rights and duties of citizens are not affected by the religious beliefs held by individuals. Religious communities influences and shaped the identity of the citizens in India and India gives special emphasize to citizens of religious minority community. All citizens are guided by their own personal laws and Indian Christian churches are in general sufficiently well organized and skilled in the techniques of communication that they can make their influence felt on the member of Christian community in India. To sum up the presence of fairly large religious minority effectively organized and pay a key role in the development of the secular set up of Indian state.

### **c) Separation of State and Religion**

In the west the underlying assumption of this concept is simply that religion and the state function in two basically different areas of human activity, each with its own objectives and methods. The democratic state derives its authority from a secular source ('the consent of the governed') and is not subordinate to ecclesiastical power<sup>65</sup>. In the western world under the principle of separation; both religion and the state have freedom to develop without interfering with each other. Religious groups can organize, frame their own creeds and regulations, choose their own ecclesiastical officers, found their educational institutions and finance their own activities, all without interference from the state. The state on the other hand is free from the financial responsibility of supporting an official religion and free from all vested ecclesiastical interests. Separation of state and religion thus seeks to fulfill the idea, "a free church in a free state".

In India all religions are, in one limited respect, subordinate to as well as separate from the state. As voluntary associations of individual's citizens, religious groups are under the general laws of the state and responsible for the proper discharge of civil responsibilities

(payment of taxes, maintenance of public order etc). In this respect religions are viewed by the state in much the same way that it views other voluntary associations based on common social, cultural and economic interests<sup>66</sup>. Indian secularism is concerned much with intra-religious oppression as with inter-religious dominations. As example we find state donates funds to 'maths' and 'mandirs', states interference in religious matters to abolish 'devadashipratha' or allow the dalits to enter in all Hindu temples which is publicly maintained. Indian secular state maintains peace between religions, that allows different religious to co-exist and thus Indian secularism is a multi-value doctrine<sup>67</sup>. It accommodates and respects all religious communities and thus allows all religious communities to run their own religious institutions or to guide the community with their personal laws and state does not impose universal civil code on the community.

#### **4. Nehru's Views on Secular State**

Nehru is known as an architect of Indian secularism. A pluralistic and liberal society could survive by unifying the large cultural diversities. To Nehru, India was a much the centre of Hinduism as a unique expression of a 'cultural multiplicity' which lasted for thousands of years. In a reminiscent mood he wrote, "Hundreds of vivid pictures of this past filled my mind, and they would stand out as soon as I visited a particular place associated with them. At saranath, near Banaras I would almost see the Buddha preaching his first sermon. Ashoka's pillar of stone with their inscriptions would speak to me in their magnificent language and tell me of a man who though an emperor, was greater than any king or emperor. At Fathepur Sikri, Akbar, forgetful of his empire, was seated holding converse and debate with the learned of all faiths or curious to learn something new and seeking an answer to the eternal problem of man"<sup>68</sup>.

The secular state mean a state which guarantees individual and corporate freedom of religion, deals with the individual as a citizen, irrespective of his religion, which is not constitutionally connected to a particular religion, nor does it seek either to promote or interfere with it. A secular state is therefore a state where citizens are not discriminated in any form or manner on the basis of their religion. Secularism may be an ideology and may be seen as such as a way of life and a concrete process of nation building. It is not the function of a secular state to promote regulate, direct or otherwise interfere in religion. A secular state while granting basic fundamental rights, enjoins upon its citizen not to discriminate against any citizen on grounds of religion, sex, caste etc. It also grants freedom

of conscience and free profession, practice and propagation of religion subject to public order, morality and health. Simultaneously a secular state may also reserve the right of making provision for advancement of any socially backward community or of making any law imposing restrictions on religious practices in the interest of public peace and morality. A secular state thus always exists to safeguard<sup>69</sup> the welfare of its citizens and provides them equal opportunities for the development of self. Thus we can assume the following to be the characteristics of a secular state – no established state religion, tolerance to all the religion, discouragement to bigotry, equality of rights, welfare of people, no religious education by government, condemnation of religious dogma, no religion exempted from the laws of the secular state. Secular state<sup>70</sup> in India means a state which honours all faiths equally and gives all religion equal opportunities.

The word secular conveyed to him much more than the mere dictionary meaning, especially in the context of social conditions prevailing in this country. Thus a caste ridden society is not popularly secular hence Nehru desired to build a political structure in which the individual was not subject to any social inequalities imposed by religious diversity existed in the country, secularism was essentially a practical approach for maintaining social stability and harmony. Nehru's concept of secularism<sup>71</sup> was as much a product of Indian situation and intimately linked with the idea of the good society. Nehru was concerned with secularism because he was convinced that organised religion and even the religious outlook were opposed to democracy. Western model of secularism that is state-church separation can hardly fit the Indian reality. According to Nehru, "Secular philosophy itself must have come from some background, some objective other than merely material wellbeing. Indian secularism possesses India's traditional and spiritual values and certain standards of ethical behaviours"<sup>72</sup>.

Nehru's concept of secularism has mainly four aspects -

Firstly, Nehru always believed in a multi-religious<sup>73</sup> India and India is a common home to all those who live here to whatever religion they may belong, they have equal rights and obligations. The most essential factors of secularism were granting of equal status to all religions in India. He thought that the right to perform religious ceremonies should certainly be guaranteed to all communities. He said that no religion should be deprived of its legitimate rights, should depend on the membership of religious group of community. It

can fully understand the right to freedom in religion, to him it means equal respect for all faiths and equal opportunities for those profess any faith.

Secondly, Secularism according to Nehru is that, state should follow a policy of neutrality in religious matters. Nehru was convinced that the government of free India must be secular, in the sense that government will not associate itself directly with any religious faith. Nehru always condemned in strong words any talk of Hindu raj or Muslim raj. He believed in people's raj<sup>74</sup> and for that, state expected to follow a policy of co-existence as far as various religions were concerned. If the state tried to transgress upon religious freedom, then that approach would be not only wrong in it but will inevitably lead to friction and trouble.

Thirdly, Nehru's secular state or secular philosophy also meant a certain mental attitude<sup>75</sup> on the part of various communities. Particularly in India, with a variety of religious groups, it becomes most essential that they should develop an attitude, which can bring about harmony and a feeling of fraternity towards one another. He believed that from the religious point of view, it is the responsibility of the dominant community not to use its position in any way which might harm our secular ideal. He emphasized that any narrow and aggressive attitude on the part of the majority creates apprehension in the mind of minority communities. It was much better to displease a few persons to lose an election rather than fail in the ideals such was the firm faith Nehru had in secularism.

Fourthly, Nehru wanted secularisation in all areas of social life. Nehru recognised how deep religions have made their way into the social field such as marriage, inheritance, civil and criminal law. He thought that they lay down a complete structure for society and try to perpetuate them by giving religious sanction and authority. So, the existence of separate sets of laws governing different religious communities was not consistent with the ideal of a secular society. Nehru tried to evolve a uniform civil code<sup>76</sup> for the whole Indian people irrespective of the distinctions of religions and caste by introducing many measures of social legislation. His ideal of secularism envisaged a political structure in which the individual was not subject to any social inequalities imposed by religious sanctions. What actually prompted the constitution makers to opt for a secular state model for India was the problem posed by the religious diversity<sup>77</sup> of the land, the protection of minorities, the unsavoury experience of partition of the subcontinent, and such other peculiar conditions faced by the country at the time of constitution making. In 1976, the 42<sup>nd</sup> amendments

include the word secular in Indian constitution. Till then secularism were inferred in terms of articles 25 and 26 which form the core of religious liberty in India. Article 25 guarantees freedom of conscience and free profession, practice and propagation of religion, subject to public order and health. Article 26 guarantees freedom to manage religious affairs subject to public order morality and health.

Nehru fully agreed with Dr. B.R Ambedkar, the father of our Indian constitution who said that democracy would be unreal and meaningless in the wake of rampant communalism and hence only a secular state based on equality and justice could fit to Indian society. The constitution of India contains Nehru's philosophy about the religious neutral state<sup>78</sup> contains the three main features:-

Firstly, our secularism is liberal in the sense that Nehru wanted to combat communalism with social welfare, politics while maintaining religious neutrality and ensuring religious equality and liberty to all minorities living in India.

Secondly, Indian secularism is not absolute in its character, that is it is qualified in the sense that religious freedom given to all religions is subject to all consideration of public order, morality and welfare of the citizens as such, and the state authority may impose restrictions on any of the freedom or rights guaranteed under article 25 of the Indian constitution. It is for the judiciary to determine whether or not any such restriction is inconsistent with the spirit of the constitution.

Thirdly, Nehru's concept of secularism is both dynamic and enlightened ad it allows the religion to play a part in the social welfare.

Thus Nehru regarded secularism as the most essential feature of modern democratic society. Nehru was determined to build an integrated nation after independence. India being an ethno-cultural<sup>79</sup> mosaic provides scope for variety and diversity. At the dawn of independence, religion became a formidable force and led to the partition after considerable blood bath and painful migration on both sides of India and Pakistan. Even after the partition on narrow religious line and on two nation theory, the fact renamed that we have second largest Muslim population in the world next to Indonesia. Hence to preserve the unity and integrity of India Nehru advocated his theory of secularism which is suitable in highly diverse society with a long history of disunity.

## **5. Critics of Indian Secularism**

The cornerstone of Indian democracy – the word secularism is a highly contested concept. It is contested because two different line of understanding are competing for ideological domination ever since independence and even before. (a) One side of this understanding was Jawaharlal Nehru who had a vision of separating religion and politics manifesting in the concept of ‘dharmanirpeksata’. (b) By way of contrast Mahatma Gandhi rejected the idea of separation of religion and politics and believed in the principle of equal respect of all religions manifesting in the concept of ‘sarva dharma samabhava’. The contest between these two different understanding of secularism was an issue of debate in the Constituent Assembly and later in academic circles in India. The most important contemporary challenge to Indian secularism has been mounted by the forces of Hindu nationalism, and from influential academic writers, notably Ashis Nandy, T. N. Madan and Partha Chatterjee respectively.

According to Nandy, “Nehruvian secularism, which separates state and religion, and which has been imposed on the Indian people, is part of a larger, modern, Western package of scientific growth, nation-building, national security and development. These constitute a modern demonology, a tantra with a built-in code of violence. Secularism demands the members of religious communities to dilute their faith so that they can be truly integrated into the nation-state. It guarantees no protection to the citizen against the sufferings inflicted by the state itself in the name of its "secular, scientific, amoral" ideology of nation-building, security and development. As a handy adjunct to these "legitimizing core concepts," secularism helps the state-elites to legitimize their power to claim monopoly based on religious and ethnic tolerance and on the basis of political rationality. To accept the ideology of secularism is to accept the ideologies of progress and modernity as the new justifications<sup>80</sup> of violence and domination.

According to Nandy, this modern Western rational-scientific secularism, which Nehru sought to impose on the Indian society, has failed either to eliminate religion from politics or to promote greater religious tolerance. Hence, it can "no longer pretend to guide moral or political action." Nandy therefore has no hesitation in calling himself an anti-secularist. By so criticizing secularism, Nandy does not mean to privilege the communalist ideology of either the majority or minority religious communities. To the contrary, these communalist ideologies are, in his view, the pathological by-products of modernity; they are the dialectical "other" or counter-players of modernity's secular state. He notes that khaki

shorts of the RSS cadres are modeled on the uniform of the colonial police. According to him, the ideology of Hindu nationalist revivalism or fundamentalism, with its borrowing of the models of semiotic religions and of the modern Western nation-state, is "another form of Westernization"<sup>81</sup> in the sense that it seeks to decontaminate Hinduism of its folk elements, turn it into a classical Vedantic faith, and then give it additional teeth with the help of Western technology and secular statecraft, so that the Hindus can take on, and ultimately defeat, all their external and internal enemies, if necessary, by liquidating all forms of ethnic plurality-first within Hinduism and then within India.

The next move in Nandy's argument is to suggest that it is the very package of modern nationalism and its statecraft and scientific developmentalism which generate and nourish religious communalisms, which the state elites combat by resorting to the use of the ideology of the secular or nonreligious nation-state. This counter posing of the tyranny of the modern secular state and the violence of modern communal organizations is, in Nandy's view, nothing but the internal dialectics of modernity's nation-state paradigm. By this reasoning, communalism can be the majoritarian or the minoritarian variety, and the secular state stand condemned as the perverse gifts or, rather, the inevitable products of Western modernity. In Nandy's view, the ethico-politically appropriate alternative to them lies in the non-modern, pre-secular conception of religions as accommodative, tolerant faiths or ways of life as was practiced, in exemplary manner, by Asoka, Akbar and Gandhi. They derived their religious tolerance not from secular politics but from Buddhism, Islam and Hinduism, respectively. Gandhi's religious tolerance, he writes, "came from his anti-secularism, which in turn came from his unconditional rejection of modernity."

Ashis Nandy calls himself "an anti -secularist" and argues that ideology and politics of secularism has exhausted its possibilities in India. He even asks for a different conceptual frame which he visualizes at the border of Indian political culture. He locates the cause of new religious violence in secularism and modernity. A 'gift of Christianity' and child of modernity and colonialism secularism is a product of western science and rationality and function as the ideology of modern State which according to Nandy is a source of most contemporary problems. Nandy's rejection of secularism is rooted in a twofold critique of modern culture and society and critique of secular state.

Nandy discuss two different meaning of the word in modern India, the first meaning of secularism demarcate two distinct sphere public life and private life and one's religion is not admitted in public life. According to Nandy, one can be a good Hindu or a good Muslim within one's home or at one's place of worship but when one enters public life; one is expected to leave one's faith behind. This ideology believes that public realm is dominated with vision of science and universal and bringing religion may lead to potential threat to modern polity. Pitched against this is the non-western meaning of secularism that believes in the principle of equal respect to all religions. Implicit is the idea that public sphere must have space for continuous dialogue among different religions because each include within it "an in house version of the other faith, both as an internal criticism and as a reminder of the diversity of the theories of transcendence"<sup>82</sup>. This version of secularism is compatible with Indian understanding of secularism but India's westernized intellectuals have opted for abolition of religion from the public sphere. Nehruvian secularism which separates state and religion is a part of modern western package of scientific growth, nation building, national security and development. These according to him constitute a 'modern demonology a tantra with a built in code of violence'. The idea of secularism creates rigid separation of two spheres – state and religion. Religion enters politics through different means in the form of ideologies and instrumentalized religious exclusivism. Thus even threat of Hindu right has to be coped with religious and not secular means through reactivating traditional forms of tolerance. Secularism is also insensitive to politics of culture and believer is treated as person with inferior political consciousness. In this process traditional culture based on tolerance is eroded and tendencies of extremism increases and generates communal politics. Thus he suggests Gandhian path of inter-faith dialogue.

Like Nandy, T.N.Madan maintains that religious zealots, who contribute to fundamentalism or fanaticism by reducing religion to mere political bickering, are provoked to do so by the secularists who deny the very legitimacy of religion in social life. According to him, Nehru's secularism denies the immense importance of religion in the lives of the peoples of South Asia. Secularism is in this region an impossible credo, an impracticable basis for state action and an impotent remedy against fundamentalism or fanaticism. Ruling out the establishment of a Hindu state as an utterly unworkable proposition, Madan concludes that "the only way secularism in South Asia, understood as inter-religious understanding, may succeed would be for us to take both religion and secularism seriously and not reject the former as superstition and reduce the latter to a mask for communalism or

mere expediency"<sup>83</sup>. He commends Gandhi not only for emphasizing the inseparability of religion and politics but also for opening up avenues of inter-religious understanding and of a spiritually justified limitation of the role of religious institutions and symbols in certain areas of contemporary life. Madan also criticizes the idea of secularism though not dismiss it absolutely. He cautions against unproblematic adaptation of secularism in South Asian realities. Citing Bankim Chandra Chatterjee, Madan argues how translations are difficult because words can be translated but it is difficult to translate an idea that the word denotes if that idea does not exist among people whose language translation is required. The idea of secularism as transferred to countries of South Asia also poses many difficulties. South Asia is a multi-religious society and the majority of people living in this region are active adherents of some religious faith. While Secularism is impractical for State action because Buddhism and Islam have been declared as State religion, Policy of equidistance is also difficult to maintain since religious minorities do not share the majority's view of what this entails for the State. It has failed to bring under control divisive forces which resulted in the partition of the subcontinent in 1947 and also failed to counter religious fundamentalism. Madan argues that it was possible to privatize religion in the West because of developments internal to Christianity such as reformation that facilitated the process. Whereas In South Asia major religious traditions do not assume any radical antinomy between the sacred and the secular. Religion covers all aspects of life and its impact is totalizing in nature thus it was impossible to restrict it to private domain. Religion as the doctrine of overarching ends is the most important factor in the lives of the people of India and South Asia. Religion gives meaning to lives of most of the people and also determines their place in society Thus to impose secularism on believers is wrong in the words of Madan "an act of moral arrogance and political folly"<sup>84</sup>. Religion and the belief of people must be taken seriously and should be given its place in society as non-religions because denial of legitimacy to religion in society of believers provokes fundamentalism on the part of religious zealots. Through religious pluralism inter religious harmony could be established. Secularism and religious faith must be recognized to be compatible with each other. The alternative conception in Madan's views is Gandhism because it has the possibilities of inter religious understanding. Partha Chatterjee too finds that the ideology of secularism is not an adequate or appropriate political perspective for meeting the challenge of Hindu majoritarianism. In his view, the official model of Indian secularism and the present campaign of the Hindu right for setting up a "positively" secular state have brought India to a "potentially disastrous political impasse." Chatterjee points out that its present championing of "positive

secularism" is meant not only to deflect accusations of its being anti-secular but also to rationalize in a sophisticated way its campaign for creation of a modern positivist secular state with a homogenized notion of citizenship<sup>85</sup>. In this role, writes Chatterjee, the Hindu right in fact seeks to project itself as a principled modernist critic of Islamic or Sikh fundamentalism and to accuse the 'pseudo-secularists' of preaching tolerance for religious obscurantism and bigotry. The quandaries generated by the career of the secular state in India and the potentially disastrous nature of the new politics of "positive secularism" lead Chatterjee to the conclusion that the theory and practice of the secular state cannot bring about what, according to him, is really needed in India, namely, the toleration of religious, ethnic and cultural differences. Chatterjee's search is for a "political" conception of tolerance as part of a non-Western form of modernity in India<sup>86</sup>. Finding that the liberal-democratic state can only recognize individual rights, and not the collective rights of cultural or religious groups, Chatterjee directs his intellectual efforts not to secularize the state in the name of any universalist framework of reason, but to defend minority cultural rights and to underscore the duty of the democratic state to ensure policies of religious toleration.

According to Chatterjee to assess the proper relationship between the state and the religious, ethnic and cultural groups, we need to go beyond the "state sovereignty vs. individual rights. Following Foucault, he maintains that the specifically modern form of power, which cuts across "the liberal divide between state and civil society," exercises itself through forms of representation and through technologies of governmentality, that is, the self-disciplining of its subjects. He noted that this modern form of power is characterized by "an immensely flexible braiding of coercion and consent"<sup>87</sup>. Hence, according to him, the secularization of the state cannot be taken as a non-coercive or power-free politics of pure (secular) rationality. Rather, under modernity, the religious, cultural and ethnic communities as well as the secular state are to be seen as institutional sites or strategic locations of the politics of identity and difference. This being so, according to him, arguments for a universal framework of governance based on so-called pure secular-rational grounds (e.g., the principle of the equal rights of all regardless of their religion or caste) which ignore their context of cognitive-political struggles over issues of identity and difference. According to Chatterjee the duty of the democratic state is to ensure policies of religious tolerance within the constitutional vision. So is the case with the principles of respect for persons and of the consent of the governed, which he rightly takes to be the basis for the toleration of religious

differences. The activity or policy of giving equal tolerance to all religions is not a strictly religious activity or policy. It is also not and a moral political activity in which the end is taken to justify any means adopted for its realization. It assumes not only that a pluralism of religious and or nonreligious beliefs is ineradicable under the conditions of modernity but also that political institutions and political policies can be constructed and operated in different ways and for different purposes from those of religious institutions or religious doctrines. Indian secularism cannot be said to be situated entirely outside the problematic and thematic of the Western discourse on secularism. The problematic relationship between religion and politics in the West had its analogies in India too. What we mean is that despite important philosophical or metaphysical differences between them, both European Christianity and Indian Hinduism legitimized, in their own ways, analogous systems of social inequalities during the pre-modern period. The latter was complicit in the "social construction" of the social evils mentioned above, namely, sati, untouchability, etc. Hence, an ethico-political reform of the socio-religious sphere was taken to be an integral part of the Indian movement for swaraja and sarvodaya. Government has also intervened in the matters of conversion. In the constituent assembly conversion as an issue was discussed and the constitution grants right to propagate but word conversion was not included. After independence different State government made these acts to prohibit force, fraud and inducements for conversion. When matter relating to conversion was discussed in the Court, Supreme Court differentiated propagation of religion from conversion and viewed it as contrary to freedom of conscience.

According to Chatterjee in post independent India the model of secularism adopted by India's westernized elites implied exclusion of Indian alternative to Western secular modernity. It also introduced direct involvement of state in religious and social matters especially in Hindu religious matters. According to Chatterjeeif secularism is interpreted as strict separation of religion and politics this can prove fairly compatible with the discrimination against minorities. If secularism is interpreted as equidistance from all religious groups then its practice in India raise some doubts because State has intervened selectively in personal laws of different communities making laws to reform Hindu personal laws but the same reformist agenda has been absent for other communities like Muslims, Christian and Parses. Hindu right describe this as appeasement of minorities. Chatterjee refers to the exceptionality of India though he does not call for a new version of

secularism. Chatterjee is in favour of idea of political tolerance that incorporates autonomy and respect for persons and accommodates different religions and its culture and traditions.

Achin Vanaik in his thesis proposes that traditional beliefs and practices are responsible for undermining the secular state and democratization of society. The root cause of religious communalism is religion itself. The struggle against religion should not be limited to setting up a state equally tolerant of all religions but extend to the secularization and diminution of religion in civil society. To secularize civil society religious influence, importance of religious identity in everyday life and increasing privatization of religious commitments has to be reduced. Secularism means three things - right to freedom of worship, primacy of citizenship and non- affiliation of State to any religion. The secular State must separate state and religion, secularize state laws and policies. Recognizing due importance of Gandhian legacy Vanaik argues that though Gandhi did not separate religion and politics his role was remarkable in giving principle of equal respect to all religions. But many of Gandhi's perspectives were against modern conception of secularism. Secular democracy requires rights centered relationship between individual and society. Vanaik interprets Gandhi's mixing of politics with religious idioms of ahimsa trusteeship etc. as a strategy of class accommodation<sup>88</sup> for preventing any socialist revolution against capitalism. Gandhi mobilized masses in the Indian national movement but this contributed to a conservative though anti communalist, religious nationalism in contrast to a secular, democratic and egalitarian nationalism.

Akkel Bilgrami criticizes Nehruvian form of secularism. In Bilgrami's opinion Nehruvian secularism stands in a conceptual and political space that lies outside the sphere of substantive political commitments. Secularism did not emerge as the product of a negotiation and dialogue between religious communities. It was adopted from above as an Archimedean point. If it would have been the result of debate and understanding of different communities then different groups would have subscribed to it. Presence of different communities in State is important and these communities could play very important role in designing secular principles. Bilgrami presents the model of negotiated or emergent secularism<sup>89</sup> which is based on moderate religious persons embracing principle of secularism not on the basis of universalistic rationality but on their own internal value system. Secularism should also incorporate clarification of those principles that belong to illiberal religious persons also. Instead of seeking neutral common agreement communities should contribute to a secular outcome for different reasons from within their different

substantive values. Instead of being imposed it should emerge from bottom up incorporating moderate political voices and assumptions of different communities.

Through principle of sarva dharma sambhava Gandhi tried to bring people from different religions together and showed respect to all religions, Nehru's notion of secularism dharamnirpekshataor religious neutrality did not mean a state where religion is discouraged. It rather meant a State where people have freedom of religion and conscience and freedom for those as well who have no religion. Nehru himself said it is perhaps not very easy to find a good word for 'secular'. Some people think it means something opposed to religion. That obviously is not correct. What it means is that it is a state which honors all faiths equally and gives them equal opportunities, that as a state, it does not allow itself to be attached to one faith or religion, which then becomes the State religion<sup>90</sup>. Nehru's secularism was understood as freedom of religion or irreligion, (no state religion) and duelyhonoured all religion equally. Constitution guarantees freedom of religion to individual, also to religious denomination, guarantees equality of citizenship, equality of opportunity in public services, no discrimination in educational institutions, no communal electorate, although there is provision for reservation of seats for Schedule Castes and Schedule Tribes, and there is no special taxes for promotion of religion and not to give religious instructions in state educational institutions.

## **6. Challenges to Indian Secularism**

Secularism has come under heavy attack from different quarters in Indian society during the last two-three decades. The Constituent Assembly which came into existence after Indian independence, after long liberation movement formulated the constitution in a way which had all the basic ingredients of a secular state. In the initial decade after the independence, India was admired for adopting secularism as a basic credo, though sometimes giving way to the pressure and compromising under religious influences which have resulted in the outbreak of several riots in India. Themajor elements that pose a challenge to our country's democratic setup are as follows -

### **a) Misinterpretation of India's Composite Culture**

Culture is a collective name for the material, social, religious and artistic achievements of human groups, including traditions, customs and behavior patterns, all of which are unified by common beliefs and values which is an essential part of culture. It is religion which explicitly articulates the distinctive values of a culture. Religion in India has been the great

unifying force of culture<sup>91</sup>. The relationship between religion and culture was emphasized by S. Radhakrishnan when he wrote that it is after all the norms, beliefs and values which determine the social framework of a historic culture. The very names of Hindu India, Buddhist Asia, Western Christendom or Islamic society suggest the fundamental role of spiritual traditions in the shaping of India's society. In India all social organization, law, customs, traditions, architecture, sculpture, literature, dance and music are all shaped by culture. Indian nationalist leaders took recourse to India's glorious past and its rich cultural heritage inculcate by various religious traditions. India's culture has been defined as a fusion of many different strands including the Dravidian, the Aryan Hindu (with its Buddhist variation), and the Muslim (with its Turkish, Persian and Mughal variation) and the western culture induced by the British. India's culture is the assimilation<sup>92</sup> of many culture and values. The unique cultural synthesis in Indian tradition is defined as Hindu culture by Nehru in his *Discovery of India*. This culture is of composite nature which suits in India's multi-cultural, multi-religious plural society.

The Hindu communalist tried to interpret this composite culture as Hindu culture<sup>93</sup> which relies heavily on the epics like Ramayana and Mahabharata and not on Arabian and Persian classics. India is a land of heroes like Shivaji and Hindu gods like Rama and Krishna where Muslim culture is totally alien and Mohammed, Ibrahim has no place. Hindu fundamentalist<sup>94</sup> viewed that the conception of Indian culture allowed no space for the recognition of Muslim or western contributions. In true sense Indian culture respects and includes the cultural contribution of all religious community<sup>95</sup>. The RSS (Rastriya Swamamsevak Sangh) declared that its aim was the revival of India's ancient culture. The RSS activist and its leader M.S.Golwalker followed Savarkar's ideology to redefine Hindu land in terms of Pitrabhumi (fatherland) and Punyabhumi (holy land) where Muslims had no place. RSS, Sangh Parivar and Shiv Sena aimed at reconstruction of the Indian society by the revival of Hindu culture and through total rejection of the idea of equality of all religious communities. According to them Hinduism<sup>96</sup> is a Sanatan (traditional) dharma, identified Hindutva as a common nation (rashtra), a common race (jati) and a common civilization (Sanskrit). Hence Indian culture is basically the culture comes from Hindu and not inherent from other religion who inhabit India. Hindutva is a call for Hindu unity and argues forcefully in favor of the defense of the indigenous<sup>97</sup> Hindu culture against all foreign influences like Christian and Islam. This misinterpretation of India's composite culture challenges the secular principle of the country.

## **b) Challenges from Hindu Communalist Forces and the Outbreak of Riots in India**

The term communalism<sup>98</sup>, as it is used in India today, refers to the functioning of religious communities, or organizations which claim to represent them, in a way which is considered detrimental to the interests of other groups or of the nation as a whole. Bipan Chandra defines communalism “as a belief which enables a group of people following a particular religion to have common social, political and economic interests<sup>99</sup>. In this way religion becomes the basis of their basic social identity and determines their basic social relationships. This enables them to act and function as a separate group, entity or unit”. According to Prabha Dixit<sup>100</sup>, “Communalism is a political doctrine which makes use of religious-cultural differences to achieve political ends”. Ashgar Ali Engineer<sup>101</sup> regards communalism as a political phenomenon “whose genesis can be found in politics rather than in religion”. He however believes that “communalism draws its sustenance from religion”. Rajni Kothari<sup>102</sup> describes communalism “as a conflict between communities, which may also turn violent. For him, communalism is a direct outcome of the decline in democratic politics, in participation in efficient citizen action”.

The Hindu communal groups such as Hindu Mahasabha, RSS, Ram Rajya Parishad, Jana Sangh opposed to anti-Hindu influences<sup>103</sup> (religious influence of Muslim and Christian) in Indian culture and demand for Hindu unity. These parties took recourse to the idea of Tilak who started Ganapati and Shivaji festival as a means of strengthening Hindu solidarity against all non-Hindus. The RSS asserted that national unity could be attained through ‘nationalizing all non-Hindus<sup>104</sup> and by adopting Bharatiya culture. Hence BJP in order to seek Hindu vote took recourse to the agenda of Hindutva and its popular slogan ‘mandir vahin banayenga’, that is to construct temple at the place of Mosque at Ayodhya. These parties tried to shape politics in communal line. Hence BJP’s ‘RathYatra’ and ‘EktaYatra’ gave the party huge success in politics after the failure of Congress in Shah Bano case. RSS demanded that India is a Hindu rastra according to the ideology of Savarkar. The Hindu-rastra<sup>105</sup> doctrine happens to be the common ideological feature of the communalist forces like RSS and SanghParivar which later on resulted in outbreak of riots in several parts of India. RSS believes in the dictum ‘vasudhevkutumbkam’ (world fraternity), and hence Hindu rashtra gives priority to dharma, national identity and tolerance towards other religion. Hindu rashtra<sup>106</sup> is the other word for the creation of ‘akhand Bharat’ that is re-building of Bharat on the basis of Indian culture<sup>107</sup> and tradition and guaranteeing

equality of opportunity to all its citizens so as to build a united nation. Later on BJP made Ayodhya and Ram-Janmabhoomias the central symbol for unifying the Hindus and mobilizing mass support in the cause of Hindu rashtra.

The frenzy outlook of these Hindu fundamentalist resulted in the outbreak of several riots in India like demolition of Babari Masjid, communal riots in Mumbai, Gujrat riots followed by Godhra incidence. On December 6, 1992, a large crowd of Hindu Karsevaks<sup>108</sup> (volunteers) entirely destroyed the 16th-century Babri mosque in Ayodhya, (Uttar Pradesh) in an attempt to reclaim the land known as Ram Janmabhoomi (the mythological birthplace of the god Ram). The riot resulted in the the death of at least 2,000 people in Ayodhya. The communal riot in Mumbai<sup>109</sup> in 1992 resulted in the death of nearly 900 people. The riots started as a result of communal tension prevailing in the city after the Babri Mosque demolition on 6 December 1992. The city of Surat (Gujarat) witnessed horrific communal<sup>110</sup> violence in December 1992. The riot started following a rally by Bharatiya Minority Suraksha Sangh that had been organized by the BJP in support of the karsevaks who were responsible for the destruction of the Babri Masjid in Ayodhya. In retaliation, Muslim youths damaged shops in the old city of Surat and Bandh was called. Fifty-seven persons were burned alive and entire slums were razed to the ground. In the area of Varachha Road, a four-thousand-strong armed mob attacked Muslim houses, in which 27 people were declared dead. In Ved Road, Muslim houses were marked by Hindu criminals and subsequently looted, leading to the death of 32 persons. In the suburbs of Surat, train passengers were attacked. These riots claimed 190 lives. The 2002 Godhra riots<sup>111</sup>, also known as 2002 Gujarat violence and the Gujarat pogrom, was a three-day period of inter-communal violence in the western Indian state of Gujarat. According to official figures, the riots resulted in the deaths of 790 Muslims and 254 Hindus; 2,500 people were injured non-fatally, and 223 more were reported missing. There were instances of rape, children being burned alive, with a widespread looting and destruction of property. On the morning of 27 February 2002, the Sabarmati Express, returning from Ayodhya to Ahmedabad, was stopped near the Godhra railway station. Several of the passengers were Hindu pilgrims, returning from Ayodhya after a religious ceremony at the site of the demolished Babri Masjid. Under controversial circumstances, four coaches of the train caught on fire, and many people were trapped inside. In the resulting conflagration, 59 people, including 25 women and 25 children, were burned to death. It is also true riot is a hateful mad and blind violence. The communalist should realize that every attack on Hindu temples, bomb

explosion, sabotage, derailment of trains causes loss of innocent lives. The objective of the extremism among the Sikhs is to keep their separate identity and protect the interest of the Sikhs and demand separate Sikhs homeland<sup>112</sup> to protect Sikh identity, religion and culture. Sikh fundamentalists created frenzy riot in demand of separatism<sup>113</sup> which finally brought into control by Indian government in the operation Blue Star.

### **c) Challenges due to State's Interpretation with Hindu Code Bill**

In India important areas of civil law, including marriage, divorce, inheritance, succession, remains under the purview of religious personal laws. In the Directive Principles of State Policy, article 44, we find, "the state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India". The Special Marriage Act of 1872 provided for a civil marriage, and the marriage could be solemnized in any form, for all who wished to marry under the Special Marriage Act were therefore compelled to renounce their religion in order to escape the restrictive provisions of their personal laws. The Special Marriage Act<sup>114</sup> of 1954 is thus, in a sense, a uniform civil code in embryo. Codification of Hindu law was the progressive social provisions which sought to modify (destroy) the traditional Hindu social pattern.

The Hindu fundamentalist challenged against the codification of Hindu law that is the Hindu Marriage Bill and the Hindu Succession Bill which was approved by the court in 1955 and 1956. The Hindu Marriage Bill contained three provisions – inter-caste marriages, monogamy and divorce. Polygamy was declared illegal in 1952 by the court in *Bombay vs Narasu Appa* case as it provides the scope of adoption of son instead of another marriage. Regarding adoption among Hindus the conservative Hindus opined that adoption was based on a spiritual concept<sup>115</sup> namely the necessity of having a son to offer oblations (pindas) after the father's death, a function which could not be possibly be performed by a daughter. Inter caste marriages were legalized by the Hindu Marriage Validating Act of 1949 and Hindu Bigamous Marriages had already been prohibited by state legislation in Bombay (1946) and Madras (1949) and the new bill sought to extend the principle to the whole country. N.C.Chatterjee, then leader of the Hindu Mahasabha quoted that divorce was an institution, completely foreign to Hindu religion. Hindu succession Bill introduced another significant innovation, namely the granting the daughter rights on parents property as a simultaneous heir along with the son, widow etc. Under the old Hindu family system, a daughter never received a part of the father's estate, the assumption being that she was

either already a member of another family (if married). The Muslim law of succession on the other hand, did grant such rights to daughters. In the debate in Parliament on the Hindu Succession Bill<sup>116</sup>, several members claimed to see in the measure a wholesome engrafting of a principle “more Mohammedan than the Mohammedan Law”. Critics pointed out that it was an attempt to impose certain aspects of the ‘shariah’ (Muslim law) on Hindus.

#### **d) Challenges for State’s Interpretation in Muslim Personal Law**

In British era the Muslim Criminal Law was replaced by the Indian Penal Code of 1860 and the Criminal Procedure Code of 1898. Muslim law of evidence was replaced by the Indian Evidence Act of 1872. The jurisdiction of qazis was also abolished, and the personal law of different communities was administered by magistrates. Dissolution of Muslim Marriages Act<sup>117</sup> of 1939 began the process of redressing the balance by enabling the wife to initiate the proceedings too on specified grounds. The Muslims Wakf Validating Act of 1913 was amended in 1930, validates settlement of property by way of wakf of Muslims in favor of their families, children and descendants. The British era and its reformist policy have touched the Muslim community in India.

After independence state has interfered in the personal laws of the community in order to restore justice and equality especially among the women. The Muslim Personal Law is applicable to Muslims only in matters of succession, special property of females including personal property, inherited or obtained under contract or gift or any other provisions of law-marriage and dissolution of marriages including divorce, maintenance, guardianship, gifts trust and trust properties of wakf. Women in Muslim community labor under serious handicaps and injustice in matrimonial matters particularly in divorce, maintenance, inheritance etc. They can be ‘talaqued’ (divorced) instantly and thrown into the streets by whimsical husbands. The Muslim Personal Law<sup>118</sup> does not recognize adoption and prohibits adoption. The Muslim Personal Law has become the main issue of Muslim politics in India. The verdict of the Supreme Court in April 1985 in Shah Bano case upholding her claim for maintenance resulted in the protests by fundamentalist sections of the Muslim community, who saw the decision as interference in their personal law. The decision of the Supreme Court ostensibly ushered a new hope for Muslim women’s rights and demolished Muslim’s “right”, to marry and divorce<sup>119</sup> according to whim. Shah Bano, a divorced Muslim wife, pursued for her maintenance and the court gave judgment in her favor. Supreme Court declared that the Muslims were subject to the maintenance provisions

and also went on to pronounce gratuitously that this ruling was in accord with Islamic law (interpretation on the basis of the Islamic concept of mehr). This judicial interpretation angered a number of Muslim mullahs who favored a different interpretation and feared that such a unifying and homogenizing step would lead to the erosion of Muslim identity and they objected to Supreme Court's decision<sup>120</sup> to interpreted Muslim law. But under communal pressure Indian Parliament had to pass a statute, entitled Muslim Women (Protection of Rights on Divorce) Act, 1986, which altered the Shah Bano case decision. According to this new codification<sup>121</sup> of Muslim Personal Law, the divorced woman's husband is obliged only to return the mehr (dower or marriage settlements) and pay her maintenance during the period of 'iddat' (the period of three months following the divorce). If the divorced woman is not able to maintain herself then the maintenance will be given by her relatives or the magistrate may direct the State Wakf Boards (administrators of Muslim trust funds) to pay the maintenance.

## **7. Nature of Indian Secularism: Adopting a Contextual Model**

In sub continental cultures, it is difficult to separate the religious from the non-religious practices. A secular state follows the principle of non-establishment which means the state is separated not merely from one but from all religions. Thus in a secular state a formal or legal union or alliance between state and religion is impermissible. There is no official status of any religion and no religious community in such a state can say that the state belongs exclusively to it. Hence the separation of religion from politics is required to give the pursuit of good life which defines the right of every individual in the society.

T.N. Madan, Ashis Nandy and Partha Chatterjee have all argued that the external threat to secularism is only a symptom of a deeper internal crisis. Secularism in their view has long faced internal threat in the sense that the conceptual and normative structure of secularism is itself terribly flawed. According to Madan<sup>122</sup> removal of religion from public life is simply a western ideal which claims scientific management of state and rational principles. Religion and secular views are contradictory and in India secular principles are inappropriate because Indian cultures dominated by religions. Secondly any attempt to forcibly evict religion from the public sphere provokes a strong cultural resistance where secular state needs to use its coercive apparatus. According to Nandy<sup>123</sup> religion is a way of life, it is not only a faith but it is also an ideology to secure socio-economic interests of the citizen. By modern statecraft Nandy means the scientific management of state institutions.

The public realm is a contested arena between religion on the one hand and science on the other. To ask believers to expunge their faith from the public realm is to compel them to lead meaningless lives. Religion is not a private matter of preference but in India it possesses immense importance. So public private distinction becomes irreverent and religion inevitably enters public life through the back door. Partha Chatterjee<sup>124</sup> clarified Indian secularism as western as it introduced direct involvement of state in religious and social matters of different communities' example – laws to reform Hindu personal laws but not to interfere with the reformist agenda for other communities like Muslims Christian and Parsis.

According to Bhargava these critics fail to see that India developed a distinctively Indian and differently modern variant of secularism. Bhargav clearly<sup>125</sup> defines that Madan-Nandy thesis view separation only as exclusion, identifies it as absolutism and finally failed to identify the principle of 'principled distance' of Indian secularism. According to Bhargava church-state model is culture specific and has two dimensions – first, it reflects a struggle for power and proposes the sharing of power and secondly to fight religious absolutism. Separation of power does not entail sharing it with people with radically different religious beliefs and practices. This is true that secularism derived from the church-state model cannot accommodate deep diversity and hence Indian secularism promotes religious faiths of all community, allowing them full liberty and later by granting them equal citizenship rights by making religious affiliation irrelevant to one's citizenship. Secularism is definitely modern because of its commitment to liberty and equality. The absence of church-state model does not affect the development of secularism in India which Madan and Nandy fails to grasp. Chatterjee too fails to accommodate the idea of principled distance to have room for the view that to promote religious liberty and equal citizenship, the state may have to treat different religious communities differently. Indian secularism is committed to the notion of equal respect, which does not always entail equal treatment rather it means treating individuals or groups as equals. Equal respect may entail differential treatment – Chatterjee is unable to see this and he believes that differential treatment entails a departure from secular principles.

According to Neera Chandhoke<sup>126</sup> to understand secularism it is important to situate it in the wider conceptual context of which it forms part and unravel its meaning in relation to meaning of equality, freedom and democracy. Indian version of secularism is rooted in the principle of sarva dharma samabhava which requires equal respect for all religions. The

premise of equality of all religions is problematic in multi-religious society where religious communities are divided on the basis of majority and minority and some minorities are weak and extremely poor. In this background the idea of secularism as equality of religion when employed by Hindu right put pressure on religious minorities. She employs the principle of substantive equality to ensure both inter group and intra group equality and defends protection of minority rights. This principle demands to recognize institutionalized inequalities in society within the communities and to rectify them by accommodating minority rights. Neera Chandhoke offers a normative theory of minority rights based on the shift from secularism to the universal principle of moral equality.

Gurpreet Mahajan<sup>127</sup> discusses the relationship between state and religion in India with the assumption that secularism requires a commitment to the principle of separation and that the ideology of separation is central attribute of secularism. Yet, a strict separation of the two domains of religion and state is neither possible nor even desirable. Democracies in India and Europe may have followed different policies but the end pursued was the same namely religious non-discrimination. It means no citizen would be disadvantaged or discriminated against on grounds of religious affiliation. She argues that the relationship between the policy and the concept can be understood best in terms of the relationship between forms and the universal. The later represents the end the shared aspirations that permeates particular expressions and policies embody the different paths that countries take to realize that shared end. The underlying idea of secularism in America or democracies in Europe or India is not to discriminate or disadvantage on grounds of religious identity or beliefs. This shared norm was followed by different countries through different policies which were shaped by different political and historical experiences and context. In India policy of secularism created a situation in which constant involvement of state in religious matters became a norm. According to Mahajan India gave specific meaning to the idea of religious liberty through three important dimensions of religious liberty – right to profess, practice and propagate religion, right to set up religious institutions and minority educational institutions. Religious liberty was valued because it entails condition of non-discrimination and ensures religious communities autonomy to determine their religious and cultural life.

According to Amartya Sen<sup>128</sup> the principle of secularism does not require that the state must steer clear of any association with any religious matter whatsoever. Rather what is required is to ensure that in so far as the state has to deal with different religions and

member of different religious community there must be a basic symmetry of treatment. The virtue of this approach he emphasizes is that the requirement of symmetric treatment leaves open the question as to what form that symmetry should take. Sen's theory of basic symmetry of treatment illustrates that the theoretical inadequacy of the secular discourse is largely due to lack of stability in the essential conceptual distinction between the religious and the secular. Sen defends secularism as part of more comprehensive idea that of India as an integrally plural country made up of different religious beliefs, language groups and divergent social practices. It is part of bigger project of recognizing this heterogeneity. Hence while interpreted Indian secularism Sen argued that the state does not owe loyalty to one religion, it is not irreligious or anti religion, gives equal freedom to all religions and religion of citizen has nothing to do in matter of socio-economic problems. In *Bommai vs. Union of India* Justice Sawant J. said concept of secularism as religious tolerance and equal treatment of all religious groups included an assurance of the protection of life, property and places of worship of all religious groups. The important core features of secularism freedom of religion for citizens, non-discrimination, equality of treatment, and no established religion of the state, opposed to institutionalize religious domination are part of Indian understanding of secularism which has been enumerated in special historical and social construct.

### **Secular Features of Indian Secularism**

The character of the Indian constitution on the other hand was decisively shaped predominantly in response to the deteriorating Hindu-Muslim relations. Indian state excluded religion on contextualist grounds for example by refusing to allow separate electorates, reserved constituencies for different religious communities, reservations for jobs on the basis of religious classification and the organization of states on the basis of religion.

Secularism anywhere in the world is required to check the growth of fanaticism and to manage inter-religious conflicts. It must everywhere prohibit the persecution of religious groups and individuals but in India it has had to take on the additional burden of ensuring that conflicts between religious communities even when they are not purely religious in character. In India, we can mention that a secular state<sup>129</sup> tried to ensure these values – a) It ensures the liberty of members of all religious community and to possess their core beliefs and practices. b) It grants non-preferential treatment to all members of every religious

community that the state respects multiple establishments. c) The individuals are free to criticize the religion to which he belongs and to reject or embrace it or to embrace another religion of his choice or to remain without anyone. d) No specific religion will tend to dominate the other religions. e) It ensures physical security, material well-being of the individual and no individual should interfere in the private sphere of other. State promotes the value of equal citizenship where every individual irrespective of religion will be treated equally. f) All citizens are recognized as equal participants in the public domain. Secularism tried to convey a community wide acknowledgement of equal respect for everyone in the political domain. g) In multi-religious society, a secular state gives maximum liberty and equality to all its citizens. The Indian Constitution appears to possess all the above features.

Article 25(1)<sup>130</sup> of our constitution specifies the right to freedom of religion. All Indian citizens are allowed freely to choose their own religion, to profess and practice it, as well as to propagate it to others. Freedom is not absolute but subject to the orders of the state regarding public order, morality and health. Religious customs such as human sacrifices and widow burning (sati) are therefore unacceptable to the state. In Commissioner H.R.E vs. L.T. Swammiar, the Supreme Court held that religion is a matter of faith and it should lay down a code of ethical rules for its followers to accept, it may prescribe rituals, ceremonies, modes of worship, dress code which will be regarded as integral part of religion.

Article 26 states various collective religious rights<sup>131</sup>, here the right extends beyond individuals to religious denominations. Religious denomination is allowed to establish and maintain institutions necessary to practice their religion, to own property and administer such property and it permits a denomination to manage its own affairs in matters of religion. Supreme Court held that AryaSamaj, Anandamarga, Vaishanave, the followers of Madhawacharya and other religious teachers though not separate religions yet they are separate religious denomination and enjoys the protection under Article 26 of the constitution.

Similarly article 30(1)<sup>132</sup> which gives to all religions or linguistic minorities the right to establish and administer their own religious educational institutions. This adheres to the principle that religion is not a matter of the state, but is purely individual and private.

Article 27<sup>133</sup> of the constitution forbids the state to collect taxes for the purpose of promoting or maintenance of any particular religion or religious denomination. State cannot

support economically any specific religion hence we can say there is no official state religion.

Article 28(1)<sup>134</sup> implies that no religious instruction shall be provided in any educational institution wholly maintained out of state funds. Thus we can say religion is prohibited in state supported or funded institutions. Article 28(3) states that no person attending any educational institution shall be required to take part in any religious instruction or attend any religious worship that may be conducted in such institution.

Article 14 and 15(1)<sup>135</sup> deals with equality of the citizens of India. It states that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Every person has free access to all public places and to use public goods (well, tanks, roads, public resort) maintained partly or wholly out of state funds or dedicated to the use of the general public.

Article 16(1)<sup>136</sup> and (2) prohibits discrimination with regard to employment or appointment to any office under the state and article 29(2) prohibits discrimination with regard to admission into any educational institution maintained by the state or receiving aid out of state funds.

Article 325<sup>137</sup> of the constitution declares a general electoral roll for all constituencies and states and no one should get priority on the grounds of religion. Hence articles 14, 15(1), 16(1) and (2), 29(2) and 325 deals with equality of citizenship.

It is frequently claimed that Indians have a natural, traditional affinity with secularism. We have historical instances of multiple establishments of religions. Asoka embraces Buddhism; it may also have been an aspiration of the Mughal king Akbar. Perhaps another example is the 14<sup>th</sup> century Vijaynagar kingdom that granted official recognition not only to Shaivites and the Vaishnavites but even the Jains. Hence we must say Indian secularism is not a single value idea rather it is a complex multi-value doctrine.

### **Contra-Secular Features of Indian Secularism**

Indian Constitution aims not only to give the Indian citizen freedom of conscience and choice of religion, but also it keeps religion and religious affairs out of the business of the state, whether state employment or education. Constitution also aims at keeping the state out of matters of religion. Despite its clarity on the separation of state and religion the

constitution contains several inconsistencies on the matter of religion and state. Aim of Indian state is to secure to all its citizens social, economic and political justice, as well as equality of status and of opportunity. India traditionally was a very stratified society, in which social differences have been considered by the religiously legitimated caste system which hinders upward social mobility of the lowest social classes of Indian society. To ensure justice and equality is a complicated and difficult task.

Though article 25 confers freedom of conscience and religion to the individual citizen article 25(2)<sup>138</sup> allows the state to limit the freedom of religion. This article may regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice to provide scope for social welfare. State interferes in matters of religion for social welfare and to reform Hindu religious institutions. Accordingly article 25(2) provides broad sweeping power of interference to the state in religious matters and reflects the peculiar needs of Indian society. It is important to mention here that law providing for the very extensive supervision by the state about temple administration has been enacted by virtue of this provision. Here it would not be out place to state that the extensive modifications of Hindu personal law (marriage, divorce, adoption, succession), has been affected by legislation based on the provision permitting measures of social welfare and social reform. For the validity of the Bombay Prevention of Hindu Bigamous Marriages Act of 1946, High court delivered its judgement that polygamy is an integral part of Hindu religion, Hindu religion recognizes the necessity of a son for religious efficacy and spiritual salvation, the religion also recognizes the institution of adoption and hence provides for the continuation of the same. The state is empowered to legislate the practice of monogamy among Hindu as a measure of social reform though it interferes with the right of a citizen freely to profess, practice and propagate religion. Harijan temple entry laws have been enacted, the Central Untouchability (Offences) Act of 1955 provides that any attempt to prevent Harijans from exercising their right to enter the temple is punishable with imprisonment or fine or with both. Therefore it must be clear that a secular civil law is equally applicable to all Indian citizens.

Though article 26 guarantees to every religious denomination the right to manage its own affairs in matters of religion but in Venkata Ramana Devaru vs. State of Mysore, the Madras Temple Entry Authorization Act threw all Hindu public temples even VenkataRamana temple to Harijans. The trustees of this denominational temple refused admission to Harijans on the ground that people of low caste were not allow entering temple

premise and under article 26(b)<sup>139</sup> of the constitution they had the right to manage their own affairs in matters of religion. But when it faces inter-religious conflict, Supreme Court approved a compromise arrangement heavily weighted in favour of rights of Harijans and a token concession to the right of a religious denomination to exercise internal autonomy. Further 26(c) and (d) recognize the right of a religious denomination to won acquire and administer movable and immovable property in accordance with law. However it was held in *Surya Pal Singh vs. State of Uttar Pradesh with UP Abolition of Zamindari Act* it expropriate the agricultural land dedicated to the maintenance of a Hindu deity but some compensation was paid to the landlord and High court held that there was only a change in the form of the property.

Article 17<sup>140</sup> is an uninhibited robust attack on the caste system, arguably the central feature of Hinduism, by abolishing and by making the enforcement of any disability arising out of it an offence punishable by law. But article 17 and 25(2) intervene in religious affairs of the citizen.

Article 30(2)<sup>141</sup> commits the state to give aid to educational institutions established and administered by religious communities. It also permitted religious instruction in educational institutions that are partly funded by the state.

These are significant departures from the ‘wall of separation’, view of the secular state. Even article 30(1)<sup>142</sup> recognises the rights of religious minorities to administer educational or religious institution, but it is a community based right and may be taken away for the interest of the greater. These features of the Indian constitution depart from the stereotypical western model – first, unlike the strict separation view that renders the state powerless in religious matters, they enjoin the state to interfere in religion and second, more importantly by giving powers to the state in the affairs of one religion, they necessitate a departure from strict neutrality or equidistance. Article 17, 25(2), 30(1) and (2) compromises the secularity of the Indian state. According to T.N. Madan, AshisNandy and Partha Chatterjee, the presence of these features in the Indian constitution shows why the Indian state cannot be really secular. By accepting community based rights for religious minorities and endorsing state-intervention in religion, the constitution depart from secular principles.

Article 15(4)<sup>143</sup> states that nothing shall prevent the state from making any special provisions for the advancement of any social and educationally backward classes of citizens

or for the scheduled castes and the scheduled tribes. First Amendment Act of 1954 means that the state in fact is allowed to perform reverse discrimination especially on behalf of the scheduled caste and tribes which are among the lowest in India's social order.

Article 16(4)<sup>144</sup> which permits the state to provide reservations of posts for appointment 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. Article 15(4) specifically allows the state to favour scheduled castes and tribes and other socially backward classes with regard to employment in state institutions.

Likewise in articles 330(1)<sup>145</sup> and 332(1) reservation is made to the overall rule of the constitution that there is going to be no communal electorates to the House of People and to the State Assemblies. Both articles say that there are reserved seats for scheduled castes and scheduled tribes to the mentioned assemblies.

Finally we have already mentioned that the constitution prohibits the collection of taxes for any particular religion (article 27). This however is challenged by article 290A<sup>146</sup> which has been inserted by the 7<sup>th</sup> Amendment Act of 1956 and which states that a specified yearly sum is to be transferred from the states of Kerala and Madras to two religious funds for the maintenance of Hindu temples in those states. This clear breach of the overall sentiment of the constitution can perhaps be explained as a remnant of the old princely states of Travancore and Cochin, in which it was customary for the king to support Hindu temples. After the integration of these states in the Republic of India this custom was allowed to persist first in the state of Travancore-Cochin in 1949 and later into the state of Kerala in 1956.

In the years 1955 and 1956, a series of laws regulating marriage, divorce, adoption and maintenance for Hindus were passed by Indian state like Universal's Hindu Laws, 2004. This regulation and codification of Hindu personal law codified the right to divorce and cancelled the right of Hindu men to marry more than one wife. This act was severely criticized by orthodox Hindus, secular minded people who argued that it was not in accordance with Indian secularism. Special Marriage Act of 1872 was passed in 1954 which specifies rules for a religiously neutral marriage (marriage in other religion) before a marriage officer. It may or may not accompany by religious rituals. Muslim personal laws have not, however, completely escaped codification by the state. As a result in 1985, Shah Bano divorced Muslim women applied to Supreme Court and in contrast to Sharia law, won

the right to maintenance. The Rajiv Gandhi government in order to please the Muslim opinion in 1986 succeeded in getting the so-called Muslim Women (Protection of Rights on Divorce) Act passed in parliament. The Dissolution of Muslim Marriages Act from 1939 for the first time codified an aspect of Muslim Sharia law (Universal Muslim Laws, 2004). Hence all these cases depict out state's intervention in religious or personal matter of the community which justifies the contra-secular features of Indian secularism – a departure from mainstream western secularism.

### **Distinctiveness of Indian Secularism**

The preamble of our constitution clearly marks India as a 'Sovereign, socialist, Secular, Democratic Republic'. In the ideal sense in a 'secular democracy, religion must be kept out of all political discourse. But in India's multicultural, multi-religious and multi-linguistic setup it is difficult to divorce religion and politics. In the words of Nehru who is considered the philosopher of Indian secularism, the secular state protects all religions but not favor one at the expense of others and does not accept any religion as the state religion. Secularism is a normative doctrine which envisages a society that is devoid of inter-religious and intra-religious domination. It promotes freedom of religion and equality for all. In India one religious community does not dominate another, that some members do not dominate other members of the same religious community, that the state does not enforce any particular religion nor take away the religious freedom of individuals. The Indian state works in various ways to prevent the religious domination – first, it uses a strategy of distancing itself from religion. The Indian state is not ruled by a religious group and nor does it support any one religion. In India, government spaces like courts, police stations, government schools and offices are not supposed to display or promote any religion; second, Indian secularism works to prevent the religious domination through a strategy of non-interference. This means that in order to respect the sentiments of all religions and not interfere with religious practices, the state makes certain exceptions for particular religious communities, thirdly, Indian secularism works to prevent the domination through a strategy of intervention. For example: banning of untouchability by the Indian Constitution, in which one community of the religion indulge in exclusion and discrimination of the other weaker community. Indian secularism equally opposed the oppression of dalits and women within Hinduism, the discrimination against women within Indian Islam or Christianity and the possible threats that a majority community might pose to the rights of the minority religious communities. This is its important difference from mainstream western secularism. Western

secularism takes into account only the mutual exclusion of religion and politics, Indian secularism instead seeks to achieve its goals through different forms of policies. So Indian secularism shows respect to all religions following an ideology of 'sarva dharma samabhava' than separation of state and religion.

#### **a) Secularism is a Multi-Value Doctrine**

The distinctiveness<sup>147</sup> of the Indian secularism can be understood only when the cultural background and social context in India is properly grasped. First there exists huge diversity of religious communities in India. Such diversity may co-exist harmoniously but it may generate conflicts over values. Second greater emphasis is placed on religious practices rather than belief. A person's religious identity and affiliation are defined more by what the individual has with and in relation to others, than by the content of beliefs individually held by them. Third many religiously sanctioned social practices are oppressive by virtue of their illiberal and in egalitarian character and deny a life of dignity and self-respect. Therefore from a liberal and egalitarian standpoint, they desperately need to be reformed by the institution with enormous social power such as state. First, as a form of movement<sup>148</sup> secularism removes the excessive influence of religion from society. It means secularism undermines religious orthodoxies, frees individuals from the clutches of religion and empowers people to live their life in rational ways. Second, there is a constitutional meaning of secularism which requires the Indian state to maintain distance from religion for policy making. In case of inter-religious conflicts or the struggle against oppressive communities, state follows liberal principles without abandoning the sentiment of the communities. State secures the religious liberty of the community by granting them religious freedom but to secure the values like equality and justice state intervenes in religiously sanctioned social customs. Indian state undertakes several reforms within Hinduism by making polygamy illegal, introducing the right to divorce, abolishing child marriage, legally recognizing inter-caste marriages and introducing temple entry for dalits, the state intervened in religious matters to protect the ordinary but dignified life of its citizens. Intervention in Hinduism by state for example the legal ban on the prohibition of Dalits into the temple is illegitimate interference in religious liberty and equality of all socio-religious groups.

#### **b) Secularism Secures the Right of Specific Community**

According to Marc Galanter the state in India continues to embody a model of secularism. State entails a character of uniform rights but the commitment of secularism to equal citizenship compels the state to secure the rights of each community example personal laws of each community is secured. In India the courts<sup>149</sup> have frequently interpreted religion from a wholly rationalist standpoint and conducted its reform purely on that basis. They have rationally determined both the essential tenets of Hinduism and the religious identities of people. One such case has been discussed by Galanter. A puritanical Vaishnavite sect called Satsangis reacted to the temple entry act and disallows Harijan's entry into the premise. But court declared Satsangis as Hindu not separate from Hinduism and motivate them not to distort true teachings of Hinduism and to remove all superstition and ignorance and thus convinced them to accommodate with Harijans who are also Hindus. The decision of the court to grant alimony to Shah Bano shows that it is a justifiable need of an Indian citizen to live a life of dignity. But this decision of the court undermines the cultural survival of Muslims in India. But for the sake to secure the rights of the minority community Supreme Court enacted a law that effectively made provisions of the Shariat an integral part of secular law. In October 2015, ShayaraBano who was given divorce by her husband filed a petition against triple talaq and challenged the controversial practice before India's top court. On August 22<sup>nd</sup>, 2017 the Supreme Court<sup>150</sup> struck down instant triple talaq (divorce) calling it unconstitutional and against the tenets of Islam. A woman cannot be given divorce over email, or through letter which is against article 14 of the constitution which guarantees the right to equality. Here we find that instead of securing community specific or group right, stronger emphasis was laid on universal individual right of Muslim women by Indian state to give them honor and respect. Secularism aims to ensure real equality among citizens and modernization of culture and hence present government pledges for uniform civil code a progressive move that guarantees the same rights in marriage, divorce, inheritance and adoption to Indian women. It is controversial as it brings Muslim women's personal laws onto a secular footing and goes against the right of the Muslims community but secures the right of the Muslim women.

### **c) Secularism Follows a Principle of Principled Distance**

Principled distance<sup>151</sup> does not demand total exclusion and the relation between religion and politics requires neither fusion nor complete dis-engagement. The boundaries of religion and politics are distinct and each is valuable in its own right, and respects one another's limit. To understand this principled distance we must define what political and ethical

secularism meant. Political secularism justifies the separation of religion from politics either by excluding from politics all ultimate ideals (democracy, equality, autonomy) or by an appeal to the principle of political neutrality.

Political secularism<sup>152</sup> excluded the controversial ultimate ideas from the coercive public sphere for the protection of ordinary life to rule out big evils. But some competing and controversial ideals must be allowed to enter to the public sphere so that in the common space they are freely scrutinized by public with reason. But ideals cannot be totally excluded from public sphere so we need to clarify the relationship between the right and the good. Charles Taylor, claim that what is good gives the point of the rules which define the right that is good defines the right of the individual. But Bharghav defines that it does not follow that any particular good has priority over the right or that the good has priority over the right no matter what the context. The right is required in order to realize the good. Both right and good can claim priority and both can be correct depending on the context. By providing a framework of rules, the right both limits the good and makes a stable life for the individual. Hence according to Bharghav the pursuit of good life is impossible without the right. Principled distance is different from strict neutrality. It rests upon a distinction drawn by American philosopher Ronald Dworkin that is equal treatment and treating everyone as an equal. The principle of equal treatment means that the state treats all its citizens equally in the relevant respect for example in the distribution of a resource of opportunity.

The principle of treating people as equals entails that every person or group is treated with equal concern and respect. But treating people or groups as equals is entirely consistent with differential treatment which is identified with principled distance. For example, the state may interfere in one religion more than in others, depending on the historical and social condition of the religions. For the promotion of a particular value like to promote equality, social mobility of dalits and to secure their rights state fails to maintain strict neutrality<sup>153</sup>. Hence state interferes in caste-ridden Hindu society (which undermines the good of the upper-caste Brahmins but secures the rights of the dalits) more than Islam or Christianity.

Democracy is a means for citizens to achieve the best capability that they can achieve, so it requires laws and policies to be citizen-centric. But as we live in society too much individual centrism could hamper the integrity of community as one will form an individual centric universe around oneself. So democracy can also been seen as means

through which negotiation between 'I' and 'We' take place to maintain the coherence between society and individual while giving sufficient space for individual to grow his or her potential. Previously religion was a tool for streamlining the society and imparting certain values and restrain individual's freedom as the member of community. Religion limits the scope of a person to utilize its capacity through religious dictates. State destroys this power structure by imposing certain rules on the community for creation of society which is equal where each member can grow his potential to its maximum. Secularism hence tries to prevent intra-religious domination (for example by abolition of untouchability) where one group within religious community dominates other group within community. In this regard we can justify Supreme Court's decision (August, 2017) on instant triple talaq issue calling it unconstitutional. There is vocal support for the establishment of Universal Civil Code (UCC) as a secular set of laws will ensure gender equality and protects the right of women. Secularism means taking out all traces of religion from family law and submitting to a single civil code that applies to all Indians. All religious laws discriminate against women and that the state owes its citizen a single, gender equal set of laws. Hindu succession act was reformed by Parliament in 2005 and Christian divorce rights were made gender equal in 2001. The court has steadily affirmed women's rights of maintenance, adoption in various judgments and reforms in minority communities. Hence Supreme Court struck down instantly triple talaq calling it unconstitutional. In a religiously heterogeneous state like India, the democratic system secures the rights and liberties of minority groups by applying the principle of strict neutrality.

The Indian state has not always been neutral even in all cases. For good or bad, it has deviated from the principle of neutrality on a number of occasions. It had so when it carried out a series of reforms within Hinduism. For example it changed Hindu personal law quite significantly: polygamy made illegal, the right to divorce introduced, abolished child marriage, inter-caste marriages were legally recognized. Furthermore, it prohibited animal sacrifices within the precincts of a temple, abolished devadasi dedication, regulated the activities of criminals masquerading as holy men, introduced temple-entry rights for Harijans and reformed temple administration. Here, before deciding whether it was necessary to enact a special provision for Hindus, the legislature took into account their social customs and beliefs. Similar laws for Muslims were simply redundant. Secondly, law in liberal democracies requires legitimacy and the consent of the representatives of

communities. So in Shah Bano case the state supports the shariat. If the state is the march of God on earth (according to Hegel) then all its actions are justified. Hence all state action<sup>154</sup> like entry of dalits into temples or ban on cow slaughter on objection from North Indian Brahmins are justified. Finally, it is perfectly within the competence of the legislature to curb all social evils. If the legislature enact a special provision in regard to say, bigamous marriages among Hindus, it cannot be said that the legislature was discriminating against Hindus only on the grounds of religion rather for the purpose of eradication the social evils prevalent in Hindu religious practices and to secure the rights, even though the policy was targeted at specific communities. A state interfering in one religion more than in others does not automatically depart from secularism – which is term as principled distance. Indian secularism rejects the assumption that one size fits all. Principled distance states that state may intervene in the affairs of the state if such intervention promotes freedom, equality or any other value integral to secularism. Religion may get into the affairs of the state either when the state is compelled to recognize religious communities to secure community rights and social goods.

Ethical secularism<sup>155</sup> separates religion from politics for the sake of an ultimate ideal. Like John Rawls, Raz has shown us that ethical secularism is linked to a distinct conception of toleration. In a pluralist community one tolerates the other not despite one's disagreement but on the understanding that in commensurable values cannot always be realized at the same time in the same sphere and thus one has to tolerate the limitations of others. It is frequently claimed that the state in India is secular because Hinduism is tolerant and it protects all the minority communities and Hinduism alone can sustain communal harmony. Hinduism is marked by religious harmony, tolerance and intra-religious oppression, shows equal respect for all religions and uniquely combines some aspects of religion. It promotes an idea of establishment of all religion to promote a distinct plural community and uniquely shows respect to all religious values. Ethical secularism promotes a strong sense of community<sup>156</sup> – a conception of togetherness. While political secularism promotes an idea of living together ethical secularism promotes an idea of living together well.

To live together well one needs a high degree of community, but living together is possible with a relatively low level of community. Under conditions of conflicting diversity ethical secularism focus on community rights (any religious community) and not on citizen's rights to ensure progress of the society like political secularism. Ethical secularism relies on the particular conception of good life example in the decision of the court to grant

alimony to Shah Bano though it could easily have been determined by the more justifiable need to enable citizen's right to live a life of dignity. But the decision was widely seen to undermine the very cultural survival of Muslims of India and it goes against the good or community-specific rights. Hence the government set the decision of the court aside and enacted a law that effectively made provisions of the shariat an integral part of secular law. Similarly a ban on cow slaughter satisfies the right of a particular north Indian Brahmin community. This is an example where the boundaries of state and religion are respected which is the other form of principled distance<sup>157</sup> (religious liberty means distancing the state from the practices of religious groups) in Indian secularism. The minorities (specifically minority community) are granted certain privileges and immunities in order to ensure their cultural survival (special provisions for ST, SC and OBC) and hence ethical secularism by its more positive defense to secure community rights and goods to different religious and cultural groups can satisfy the plural community. When introducing the system of reservation, the goal was to ensure groups that had previously not had a chance to gain access to education and governmental jobs. While there are challenges faced with the reservation system there is no doubt that this positive discrimination ensures the benefits of specific minority groups for their economic prosperity. If religion and caste is divorced from the state, then it is difficult to ensure equitable progress. Hence strict neutrality is not feasible and government will have to introduce policies which are targeted at specific religions or communities.

Each religious community in India has certain unique practices in family laws from marriage to inheritance and from marital separation to maintenance and adoption. Many of these are unfair to women in different ways still India allows each community to practice its personal law to secure community rights. There are also civil alternatives like Special Marriages Act which any citizen can opt to follow. The Hindu Marriage Act<sup>158</sup> of 1955 and act related to succession and marriage provide special considerations for Hindus living in different geographical regions and belonging to different castes and ethnic groups. For example in some communities in Southern India, marriage between an uncle and niece is allowed and such unions are preferred whereas such marriages are proscribed and viewed as incestuous by Hindus in North India. The Hindu inheritance laws like 'Mitakshara' and 'Dayabhaga' is accepted in most parts of India except West Bengal and Assam. Article 44 of the constitution says that "the state shall endeavor to secure for citizen a uniform civil code throughout the territory of India", but exceptionally the people of North East India

like Nagaland, Mizoram, Manipur, Tripura, Meghalaya and Aurnachal Pradesh has their distinct religious and social practices and guided by distinct customary laws and procedures. The Christian Catholics of India strictly adhere to the Canon Law concerning marriage recognized as the personal law of Catholics. Similarly the abolishing of personal laws of the Muslim community and passing of universal civil code will go against the ethos of religious freedom guaranteed in Indian constitution. Through the principle of 'principled distance', Indian secularism promotes strong sense of community feeling, conception of good life and secures the right of each religious community.

## **8. Conclusion**

Secularism in India is context specific and is based on the idea of principled distance. It has been defined as contextual secularism. The policy of principled distance entails a flexible approach on the question of inclusion or exclusion of religion and the engagement or disengagement of the state depending on the context, nature or current state of relevant religions. This means that religion may intervene in the affairs of the state if such intervention promotes freedom equality or any other value integral to secularism. Principled distance allows for differential treatment. It may even require state intervention in some religions more than in others considering the historical and social condition of all relevant religions. For example to promote social equality that requires undermining in part of the caste hierarchies, it may be necessary for the state to interfere in caste ridden Hinduism much more than say Islam or Christianity. According to Bharghav secularism is fully compatible with the differentiated citizenship rights and secularity of the state does not necessitate strict intervention, non-intervention or equidistance but any or all of these as the case may be.

As a multi value doctrine contextual secularism encourage accommodation – not the giving up of one value for the sake of another but rather their reconciliation and possible harmonization that is to make each work without changing the content of incompatible values. It promotes an idea of living together well by recognizing the values of the community; focus on community rights (made provisions of the shariat an integral part of secular law, made special provisions for underprivileged class, made entry of the Dalits in temple premise), promotes strong sense of community and inculcate an idea that in the same sphere one has to tolerate the limitations of others. A puritanical Vaishnavite sect called Satsanghis reacted to the temple entry Act of 1947 by filling a suit alleging that its temples

were not covered by this Act and therefore they were not bound to permit Harijans to enter into temple premise. In 1950, it even challenged that Act by not only claiming that every religious denomination had a right to manage its internal affairs as it deemed fit, but also that it was a separate and distinct religious sect unconnected with the religion of Hindus. When the matter was brought to the Supreme Court, it conducted an enquiry into the scope of 'temple entry power' and declared the Satsangis as Hindus and enjoined them to be good Hindus by not mis-constructing the true teachings of Hinduism or be guided by superstition and ignorance. Hence state encourage accommodation of all the people with this particular sect to restore possible harmonization in the society on one hand and secure the interest of the minority specific rights on the other by allowing their free access in the temple premise and hence solve inter-religious conflicts. Reconciliation and accommodation is done by removing dogmatism in all spheres to secure the best values. Hence article 25(2) gives state the absolute power to interfere in religious matter for example extensive modification of Hindu personal law in marriage, divorce, adaption, succession. Even Article 26(b) makes the state interventionist as a measure of social reform when it favours the right of Harijans to enter temple premise in spite of strict objection from high caste community members and the state is permitted to do this as a measure of several reforms.

This model of contextual secularism is built into a commitment to participatory democracy and openness to a future common good which ultimately removes all conflicts. It fairly brings divergent conception of good into the political process. The good life conceived by any society includes satisfying the basic needs of everyone in the form of right. For example the minority right in certain context promoting the good of the small community has to be protected not only against the whims of its own members but also against the so-called common good for the larger community and the state. State institutions have to play a crucial role by way of putting several safeguards to secure the rights of smaller 'endangered communities' example court order to make entry of dalits in temple or to declare that no person shall be denying using any public places maintained by state.

Features that make Indian secularism distinctive are its explicit multi-value character that it values religious liberty, equality, peace and toleration. Constitution respects and recognizes community specific rights and its commitment to a different model of moral reasoning and opens up the possible path of multiple secularism of different societies to work out their own secularisms, it follows a principle of principled distance that is it not mutual exclusion of state and religion or strict neutrality but it accepts a disconnection

between state and religion by following an idea of principled distance and it attends to the issues of intra-religious oppression and inter-religious dominations. State in a heterogenous society like ours tried to safeguard the goods and rights of all communities against the whims of their own members as well as others. When ultimate ideas (example religious fundamentalist) infused with religious flavor entered the public arena and threatens the life of the individual then the ideals were expelled by the state. In Indian society right based politics, politics of common good could prevent intra-religious conflicts like the communal violence or to plunge the society what Hobbes called 'the war of all against all'.

India tried to build a composite Indian culture and tried to preserve it through religious tolerance, accommodation of all religious groups, by maintaining neutrality and sometimes through state intervention in religious affairs. The distinctiveness of Indian secularism lies in its explicit multi-value character, strict neutrality, giving importance to moral reasoning, uniquely combines some aspects of religion and respecting some aspects of religion and it is the only secularism that deals with intra-religious oppression and inter-religious domination. Democracy stands for freedom of conscience and belief, tolerance and mutual respect. India being a plural society with multi-religious faiths, diverse creeds, castes and cultures secularism promotes fraternity and amity with dignity of person as its constitutional policy. The state guarantees individual and corporate religious freedom and deals with an individual as citizen irrespective of his faith and religious belief and does not promote any particular religion nor profess one against another. Indian secularism is grounded in the notion of equality, equal concern and respect for other religion. Indian secularism seeks neutrality towards all religion and hence Indian constitution provides religious liberty to an individual and associations of individuals united by common beliefs, practices and disciplines. Individual's freedom of religion is guaranteed in article 25-28 of Indian constitution. The constitution thus declares that every person has a fundamental right not only to hold whatever religious beliefs commend them to his judgment (freedom of conscience) but also to manifest his beliefs or to propagate its tenets among others. In contemporary political scenario, India adopted a contextual model distinct from western notion of church- state separation and which is to satisfy the religious communities. Thus the principle of 'principled distance' is found which secures group rights and the rights of the religious community. Hence it may safely be inferred that Indian secularism has successfully adjusted to Indian multi-religious plural society in spite of its challenges and criticism.

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