

**Collected Works  
of  
Justice R.A. Jahagirdar (Retd)  
(1927-2011)**

# Secularism

**Rationalist Foundation**

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## **Secularism: The Road Behind and the Road Ahead**

Before I proceed to deal with the subject of my talk today, I think it necessary to make a reference to a contemporary event which has a relevance to the topic of my talk. The contemporary event I am referring to is the arrest of Jayendra Saraswati styled as the Shankaracharya of Kamkoti Peetham. Adya Shankaracharya established four monasteries (*mutts*) at four places in India; Badrinath, Dwaraka, Puri and Shringeri. The priests heading these Mutts have been traditionally dubbed as Shankaracharyas. Kamkoti Mutt is not the one established by Adya Shankaracharya. However, the Hindus, at least in the South, have been revering the head of this mutt as a Shankaracharya. Mutts are monasteries and not temples, though a temple may be attached to a monastery. Heads of these mutts are concerned with religious affairs only and are not expected to dabble in political affairs.

The last incumbent of the office of Shankaracharya of Kanchi was Chandrashekar Saraswati who had the reputation of being a very learned person. Though many politicians came to him to pay their respects, he never took interest in politics; he never made any comments on political affairs. He lived up to the age of 100 years. Though during his lifetime, the Ayodhya problem had arisen, Chandrashekar Saraswati never gave advice - gratuitous or otherwise - on its solutions.

Not so the present incumbent. He had hobnobbed with politicians and has meddled in Ayodhya affairs. Let us leave aside this activity of his. Recently he has been arrested by Tamil Nadu police in connection with the murder of an inmate of the mutt. Being a lawyer, I am proceeding on the assumption that he is presumed to be innocent until it is proved to the contrary. This does not mean that he cannot be proceeded against if there are grounds for doing so.

The BJP has, not unexpectedly, tried to exploit this incident by raising a cry that this is an attack on Hinduism. In the case of its own leaders against whom criminal cases are pending and who were included in the Central Cabinet, former Prime Minister Vajpayee had insisted that one could not proceed on the assumption that they were guilty and that law will take its own course. Why not allow law

to take its own course in the case of Jayendra Saraswati? The Pope can commit no error; Shankaracharya cannot commit any wrong!

Incomprehensibly the Prime Minister has advised the Chief Minister of Tamil Nadu to take care to see that the feelings of the followers of Jayendra Saraswati are not hurt or that the daily worship in the mutt is not affected. This is a most uncalled for concern for a person against whom secular process has been set in motion. One would have thought that the Prime Minister would have advised to see that the law would be allowed to take its course, however high the person concerned is.

The advice of our Prime Minister is in sharp contrast to the wise counsel President John Kennedy gave to the American citizens who were agitated by the opinion given by the US Supreme Court in Engel vs. Vitale (370 US 421 : 1962). In view of the wall of separation between the State and the Church by the First Amendment in the US Constitution, the US Supreme Court, through Justice Hugo Black, held that even optional prayers in aided schools were impermissible. There was a furious reaction on the part of a section of Americans that the judges who gave this opinion should resign; if they do not, they should be impeached. President Kennedy called upon the Americans to accept the decision which was a “welcome reminder to every American family that we can pray a good deal more at home and to attend our Churches with a good deal more of fidelity and we can make the true meaning of prayer more important in the lives of all our citizens”.

It is interesting to note that Justice Hugo Black was a devout Christian and was a Sunday school teacher but yet he upheld the doctrine of separation of the Church and the State enshrined in the US Constitution. Despite the alleged dissatisfaction of the Americans with this provision as interpreted by the US Supreme Court, there has not been any demand, let alone a move, to amend the Constitution to put God in the Constitution. The American Constitution is fully secular, though the American society may not be.

Forgive me for returning to the South Indian scene. Ramaswamy Naicker - called Periyar by his followers - started in the 1920s what is regarded as ‘the atheist movement’. It was Dravid Kazagam. It was also called self-respect movement aimed at anti Brahmanism and anti-Aryanism. A significant number of people broke away from Dravid Kazagam (for reasons not examined here) to form Dravid Munnetra Kazagam under the leadership of C. Annadurai, a

charismatic leader who continued to swear by rationalism and atheism. Unfortunately he passed away early.

His successors and followers have completely forgotten the legacy of Periyar and “Anna”. The main branch of DMK’s division came to be led by M. G. Ramchandran, a popular film star, who was succeeded by J. Jayalalitha who is the present Chief Minister. Both these leaders said good bye to both atheism and rationalism. MGR worshipped at the temples and went to pray at Mukambika temple in Mangalore District and presented a silver sword to the goddess. Jayalalitha has repeated this act of devotion of her mentor. In addition she has been worshipping at different temples, has donated an elephant to Guruvayur temple at Kerala and has, as acts of piety, been feeding the Brahmins.

Her rival, M. Karunanidhi, heading the DMK has not shown any signs of rationalism or atheism in his private or public life or in his writings.

I have taken the trouble of preferring my today’s talk with this short account of what once promised to be a great secular, rationalist and atheist movement in the south. The south has gone sacred; not secular.

What is the cause of the decline and fall of this movement? I venture to suggest one explanation. Unquestionably and even unabashedly the foundation - *raison d’être* - of this movement was anti-Brahmanism. Its aim was to destroy - not unjustifiably - the dominance of Brahmins in public life and more particularly in politics. That aim has been achieved - not entirely by this movement. The movement which never had a nucleus of sound rationalist philosophy found itself aimless once the substratum of Brahmin dominance was destroyed. This is unlike the organisation of atheism founded by Gora. This had always a sound philosophical, positive base and did not have, at least as its main plank, anti Brahmanism or anti-Aryanism.

### **“What is secularism – Contemporary World Situation”**

I will deal with the first part briefly; I will deal with the secular scenario in India in details. As we are all aware the word secularism was coined by George Holyoake (1817-1906) while publishing a statement of secular doctrine in an issue of Reasoner in 1851. Oxford English Dictionary rightly credits George Holyoake with the

parentage of this word. The OED states that secularism is the doctrine that morality should be based solely on regard to the well being of mankind in the present life to the exclusion of all considerations drawn from belief in god or in a future state. Holyoake did not merely coin the phrase; he gave the name to the definitely professed system of doctrine of which the following principles were enunciated by Holyoake.

1. Science as the true guide of man.
2. Morality as secular, not religious in origin.
3. Reason the only authority.
4. Freedom of thought and speech
5. Owing to the “uncertainty of survival” we should direct our efforts to this life only.

A necessary corollary that follows from the principles enunciated by Holyoake and from the doctrine of secularism in general is that the affairs of this world should not be governed or guided by religious doctrines or considerations of other worldliness. When an individual orders his life on these lines, he is a secularist, when the society as a whole or an overwhelming number of members of the society follows these principles, we would call it a secular society. However, secularism cannot be imposed upon individuals or members of a society by law.

But law can be made that the affairs of a state shall not be regulated by God or any propositions following from the concept of the existence of God. Laws should not derive their legitimacy from the teachings of religion. No religion should be allowed to occupy any space which belongs to secular life. From this it follows, that the State shall not directly or indirectly, overtly or covertly, bring religion into public life in the governance of the country. No citizen shall enjoy a benefit or suffer a handicap on account of his religious beliefs or on account of lack of such beliefs. The Constitution of the United States of America incorporated these principles. Even before the First Amendment, the US Constitution provided that

1. No religious test or qualification was required to hold any public office.
2. Any person entering upon a public office can take an oath by swearing in the name of God or if he so desires by solemn affirmation.

Students of atheism in England will easily recall the case of Charles Bradlaugh who, when elected to the House of Commons, was not allowed to take seat in the House without taking the oath and was not allowed to take the oath because he was an atheist.

The US Constitution came into force in 1789 but within two years thereafter came the First Amendment which provided as follows.

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

In 1801 Thomas Jefferson opined that the purpose of this amendment was to build “a wall of separation between the Church and State”. In 1879 the US Supreme Court accepted Jefferson’s statement as an authoritative declaration of the scope and effect of the First Amendment. [vs US: 98 US 145(1879)]. Religion shall not enter the portals of public institutions or aided private institutions. The US State is thus a Secular State; a Secular State was born without its name because the word secular itself was not then born.

But the American society, by no stretch of imagination can be called secular. Witness: the public utterances of the people in power; the plethora of cults; religious fundamentalism; and evangelical organisations.

By a gradual process of secularisation after the Revolution of 1789, France evolved into a secular state. By the law of separation of Church and State passed on 11 December 1905, the French Republic has become fully secular so much so that no religious symbols are allowed to be displayed in public places. It is apprehended that the Muslim population, though small, is proving a challenge to French secularism.

Republic of Turkey is the third State which can be said to be totally secular. Coming into absolute power after the Second World War, Kamal Pasha abolished the Caliphate in March 1924 and took several steps to abolish religion from public life. Some of the steps taken by him to establish secularism included the abolition of religious schools, replacement of Shariat Law by Swiss Civil Code, Italian Penal Code and German Commercial Code and banning of Polygamy. Though Secular State in Turkey has survived for over 80 years, in recent years in keeping with the trends abroad, Islamic fundamentalism is raising its head. The present Prime Minister is of doubtful loyalty to secular ideals. Only the national need of becoming a member of European Union has kept Turkey’s secularism alive.

Despite the politicians' proclamation of India being a secular state and despite some judgments of the Supreme Court of India, it must be stated that India is not a secular state properly understood. There is, no doubt, religious freedom but there is no freedom from religion. There is prohibition of taxes being levied for specifically meeting the expenses of promotion of a religion or for maintaining any religion (Article 27 of the Constitution of India) but this does not prevent the State from utilizing the money from the general exchequer for religious purposes. An educational institution wholly maintained out of state funds cannot impart religious instructions (Article 28). In India only the Government and Municipal institutions are wholly maintained out of public funds. Every private educational institution receives grant from the State, often to the extent of 80 per cent of its expenses. Such private institutions are free to impart religious instruction the nature of which remains vague. Such institutions can hold religious worship such as *Satya Narayan Pooja* which is becoming popular or organise religious discourses or group singing (*bhajans*).

These and other provisions of the Indian Constitution persuaded Prof Donald E. Smith of Princeton University to suggest a working definition of Indian Secularism as follows: The Secular State is a State which guarantees individual and corporate freedom of religion, deals with the individual as a citizen irrespective of religion, is not constitutionally connected to a particular religion nor does it seek either to promote or interfere with religion. With great respect to the learned Professor, this is not a definition; it is a description of the Republic of India as per his understanding.

Some persons have suggested that “Indian Secularism” is based upon the concept of *Sarva Dharma Samabhava* - Equal Regard for All Religions. I formulate three objections to this hypothesis.

Originally the Preamble of the Indian Constitution did not contain the word secular to describe the Sovereign Republic of India. This word was introduced in the Preamble by the Constitution (Forty-Second Amendment) Act 1976 which came into force on 3 January 1977. The word, however, was not defined just as another word ‘Socialist’ which was also inserted by the same Act, was not defined. The Constitution (Forty Fourth Amendment) Bill as passed by the Lok Sabha defined Secularism to mean *Sarva Dharma Samabhava*. However during the debate in the Rajya Sabha, this definition was deleted. It can, therefore, be safely asserted that



constitutionally secularism is not equated with Sarva Dharma Samabhav.

Secondly, equal respect for all religions is destructive of the basic concept of secularism. Regard for any religion is inconsistent with the principles of secularism which says that life must be guided by reason. A life guided by reason must take into account the material and non-material needs of human personality. The values and norms for a life in this world run counter to the explicit values and norms of religion. It is true that a secularist need accept the right of another individual to have his own belief system but this is not the same thing as respecting that belief system. To hold otherwise is to make secularism a dead letter.

Thirdly, the concept of Sarva Dharma Samabhav is a vague concept full of contradictions. Acceptance of this concept will prevent the State from bringing about religious reforms where needed. Sometimes it has been stated that Sarva Dharma Samabhav is based upon the essential unity of all religions. I am a good student of the scriptures of all major religions and I have not been able to find any single thread that runs through all religions. Christianity asserts the divinity of Jesus, the virginity of Mother Mary and the resurrection of Christ. Quran denies all these basic beliefs of Christianity. Though recognising the legitimacy of the earlier religions, Quran supersedes the teachings of all previous prophets and asserts that Muhammad is the seal of prophet hood and after him there will be no other prophet and naturally there will be no other religion after Islam, which, it is asserted, is the religion of all mankind, unlike other religions which were for particular nations only.

Hinduism is the great Indian circus-multiplicity of Gods, monkey god, elephant god, caste system, preaching (not practice) of total indifference to this world, 'karma' doctrine and so on and so forth.

What is common among these major religions? I have also yet to come across in the scriptures and history of any religion a call for tolerance of another view and love of the followers of other religions. "Vasudhaiva Kutumbakam" (the whole world is one family) was the Vedic utterance long before any other religion was known.

Mohammed in Mecca was struggling to find support for his religion without provoking the animosity of those who believed in polytheism. Hence in Mecca he once conceded that those who differed from him could have their own religion. However, the

Medinese revelations are clear on the uniqueness and finality of his teachings.

How can one have equal respect for these belief systems which are mutually destructive of each other? How can one say that there is unity among these religions which, in theory and practice, have tended to be intolerant of each other? Secularism of this variety trying to base itself on Sarva Dharma Samabhav and essentially unity of all religions cannot provide a proper or clear guidance either to the individual or to the State. A secular state should exhibit indifference to religions and indeed should keep a vigilant distance from the politics of communalism and religions. Christianity has throughout its history persecuted the Jews and condemned Islam and its founder.

The Supreme Court of India has asserted that secularism is a part of the basic structure of the Constitution. What does the Court understand by Secularism? It is difficult to find the essence of the Court's view in its numerous judgments. I venture to suggest the following as the condensed view of the Supreme Court. These provisions (of the Constitution) prohibit the establishment of a theocratic State and prevent the State either identifying itself or favouring any religion or religious sects or denominations. *The State is enjoined to accord equal treatment to all religions, religious sects and denominations* (emphasis mine).

(P B Sawant Justice. in S.R.Bomma vs Union of India, AIR 1994 SC 1918)

The emphasised portion shows the unconscious incorporation of the concept of Sarva Dharma Samabhav, without being aware of the concepts internal contradictions and imperfection. In practice the politicians and public officials pay homage to this concept by participating equally in the religious functions of all communities. In Mumbai, there is a dargah (the Tomb of a Muslim saint) where on the anniversary of the saint the Inspector of the local police station pays respect to the *dargah* as a part of his official duty. The Chief Minister of Maharashtra participates officially in the worship of Vithoba in the temple at Pandharpur. The Government of India subsidises to the extent of Rs. 12000/- per *haj* pilgrim. The expenses on this account are provided for in the Central Budget — nearly Rs.130 crores. Such practices are helping the shrinkage of secular spaces and should be abandoned at least gradually, though they cannot be legally prevented.

One view is that it is as well that in India there is no wall of separation between the Church and the State. This has enabled legislation for religious reform, for preventing and controlling the mismanagement of funds of the places of worship. In Tamil Nadu, law has been enacted for the appointment of the non-Brahmins as priests in the temples and for even regulating poojas - modes of worship.

The exhortation of late Dr. Rasheeduddin Khan (of Hamdard University) that the State should exhibit a capacity to show respectful indifference to religions becomes difficult to follow. However it becomes necessary to keep vigilance to see that the state will not continue to get entangled more and more in religions and religious affairs.

What is the way ahead for secularists? Let me begin by pointing out that Secularism operates at three levels; State as Secular; Society as Secular; and individual as Secular. The US provides a classic example of a secular State, though the US citizens and the society are not secular. Probably this is so in France also, though in France the invasive presence of religion is not felt. It needs to be noted that the census figures in France do not disclose the religious composition of citizenry. The United Kingdom is not secular for the reason that Anglican Church is the official church. The monarch of England must join in communion with the Church of England. A Catholic or any one who marries a Catholic cannot be the monarch of England.

The foremost task before the Secularists in India today is to prevent the rise and spread of religious fundamentalism-whether of Saffron type or of Islamic type. The saffron type is sufficiently known. One should not turn a blind eye to the attitude of Muslims who act as if they are not only different but also separate from the other communities in India. The dangerous role of All India Muslims Personal Law Board (AIMPLB) which is acting as a parallel legislature and which at one time threatened to establish a parallel judicial system has to be carefully watched. The board consists of self-appointed members having neither statutory nor social or community's sanction.

Several legal questions such as the triple talaq on which this Board is making pronouncements lie legitimately within the jurisdictions of the country's judiciary under Section 9 of the Code of Civil Procedure. It is the Courts of the land alone that can authoritatively decide all such questions. Secularists in this country have failed to

notice that the Muslims do not approach the Courts but get the questions decided internally. In effect there is a boycott of the Courts by the Muslims. In pre-Independent India such questions affecting the civil rights of all Indians were decided by Indian Courts and on occasions by the Privy Council.

The stand taken by AIMPLB on the question of triple talaq is scandalous. It is worse than Henry VIII rule. The triple talaq validates the divorce by a Muslim husband uttering talaq three times in a single sitting - even in the absence of his wife. It is universally recognised that triple talaq is not permitted by the Quran; indeed it is prohibited by necessary implication. Yet AIMPLB says that in India it is accepted and cannot be outlawed.

The question of talaq (or divorce) is dealt with in Sura 65 of the Quran. (All references are to the edition of A. Yusuf Au; Pub: Aman Corpn., St. Brentwood, Maryland USA). Yusuf Ali recalls the Prophet as saying that “of all things permitted by law, divorce is the most hateful in the sight of God”. The very first verse of this Sura stipulates that divorce should be given in the prescribed periods. The same verse mentions that perchance God will bring about thereafter a new situation. Divorce thus given is revocable.

See also Sura 4 verse 35.

If ye fear a breach  
Between the twain  
Appoint (two) arbiters  
One from his family  
And the other from hers;  
If they wish for peace,  
God will cause  
Their reconciliation:

In the Islamic Republic of Pakistan, it is mandatory for the parties to go before the Board of Conciliation before divorce can become final.

It is inconceivable that the Prophet who insisted upon the consent of a woman for her marriage would sanction a mode of divorce which is inconsistent with the Prophet's view of the hateful nature of divorce. The controversy has arisen because of the different views of

different schools of Islamic jurisprudence. Here is a field where uniformity should be brought boldly by the legislature. I endorse the following view of Mr. Abdul Hafiz Gandhi.

Really a total ban on triple divorce is the need and demand of the time in order to live up to the expectations of the Prophet who said, "His people will never choose a wrong path".

Mr. Gandhi suggests that the state should bring about legislation in this regard, albeit by taking into confidence the Muslim Community. Who represents the Muslim Community? Not ALMPLB! Now you have a Shin Muslim Personal Law Board. You are also having a Muslim Women's Muslim Personal Law Board. This is an opportunity the Government must seize and partly at least discharge its duty under Article 44 of the Constitution.

Returning to the question of what the secularists in India should do, I suggest that we should endeavour to build a secularist temper in the country. A general attack on religions is counter-productive. The foundations of religions can be shaken by exposing the particular practices and superstitions most of which are related to religions.

Despite the Supreme Court legitimising the study of moral principles through religious instructions and the study of astrology, we must endeavour to show that secular ethics is universal and demonstrate the absurdities of astrology.

These things need not and should not be done in evangelical way. Rationalism can be taught through the study of the writings of say Gopal Ganesh Agarkar in Maharashtra. Agarkar is a venerable figure whose teachings will find acceptance not merely in Maharashtra. Group studies of Jyotiba Phule and Ambedkar will be useful. Study of astronomy should be encouraged and it is my belief that even a little knowledge of astronomy will dispel the belief in astrology. Publication and distribution of small pamphlets at reasonable prices especially among the school and college going people should help in building the secular and scientific temper among the younger generation. These are some only of the paths we have to follow. A secular state will not necessarily bring about a secular society. It is the secular individuals who will create a secular society.

*(This is the inaugural address given at the International Convention on Secularism held on 14 January, 2005 at Hyderabad, India.)*

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## **Secularism under the Indian Constitution**

Before considering the topic under discussion it would be naturally appropriate to briefly notice the meaning of the word "secularism". The word is a product of the Renaissance and post Renaissance period and has not always meant the same thing to all people. As I will presently show, for the purpose of our study it is enough to understand the word secularism as meaning something which is opposed to religion. The Concise Oxford Dictionary defines the word "secular" as something which is concerned with the affairs of this world, something which is worldly not sacred, not monastic, not ecclesiastical. Secularism is skeptical of religious truth and is also opposed to religious education. Secularism, therefore, must mean an attitude or an approach which is concerned with the affairs of this world and which does not regard anything as sacred or as not open to question. It is not concerned with monastic life or ecclesiastical doctrines. It questions the basis of religious faith and insists that the things of the flesh should not be governed by considerations of the spirit. The affairs of this world must be ordered as to the known truth and not by speculative doctrines.

In the medieval period, people who believed implicitly in religious doctrines had a tendency to be indifferent to, and sometimes even to despise human affairs and to meditate upon God and the afterlife. Secularism developed as a reaction to this attitude and exhibited itself in the form of humanism insisting upon the premise that human beings alone matter during their sojourn on this earth and therefore their welfare must be properly the concern of all human activity. The distinction between secularism and religion can to some extent be found in the Bible itself wherein it has been mentioned: "Render unto Caesar the things that are Caesar's and unto God the things that are God's." This quotation from the Bible brings out vividly the distinction between a government concerned with the affairs of human beings and those of God concerned with the affairs of the other world. But unfortunately after Christianity became an established religion and organised itself into a Church, successive Popes insisted upon absolute power to govern the life of man in all its aspects. As a result, papal decrees governed not only the rites of the Church but also other things connected with the governance of the country. This explains the subordination of the State to the Church for several centuries till it was successfully demolished by Henry VIII of the Tudor Dynasty who had been earlier given the title of the Defender of the Faith by the then Pope. One may also recall the manner in which the Pope drew a line on the

map of the world and allotted one part each to England and Spain for their respective conquests.

Donald Eugene Smith in his book *India as a Secular State* suggests the adoption of a working definition of a secular State. He says that “a secular State is a State which guarantees individual and corporate freedom of religion, deals with the individual as a citizen irrespective of his religion, is not constitutionally connected to a particular religion nor does it seek either to promote or interfere with religion.” As per his definition the concept of a secular State involves three distinct but interrelated sets of relationship concerning the State, religion and the individual. The first set is the relationship between religion and the individual. The second concerns the relationship of the State and the individual and the third the relationship of the State and religion. Smith agrees that the basic assumption must be that a secular State will have nothing to do with religious affairs. For the purpose of deciding as to whether a State is theocratic or secular state it is enough if we find out whether the state has anything to do with religion. If it accepts a religion or religions or if it supports a religion or religions or if it incorporates in its constitution religious commands then one can unresistingly dub that State as a non-secular State. If there is, what is called in American Law, a wall of separation between the State and religion then one might say that, that State is a secular State. I am for the purpose of this discussion accepting this concept of a secular State.

In Russia prior to the October Revolution there was an official Church viz. Russian Orthodox Church. What was to come after the Revolution was partly revealed by Lenin at the time of the Second Congress (1903) of the Communist Party. It was announced that there was to be no established religions or Church; all religions and churches would have equal status in law. Later the theoretical discussion gradually eliminated all connection of the State and the Schools from religion and Churches.

Though marriages in Church are not prohibited, Russian Republic recognizes only civil marriages. Later laws gave effect to Marx’s principle that the removal of the religions and clerical element from education was necessary for the mental emancipation of the people. Charitable activity by the church is prohibited. The Church is permitted to acquire property purely for the religious purposes of the Church. It looks somewhat amusing that such diametrically opposed States such as the U.S.A. and U.S. S.R. should be so strictly secular.



Before I proceed further, I must point out the distinction between a secular State and a secular society. This distinction will be clearer when I refer in a moment to the experience of the United States and United Kingdom. For the present we must note that it is possible for a State to be secular without the society itself being secular. In other words, members of a society who form a particular State may not be secular in their habits and approach to life but the State of which they form a part may as a political entity remain aloof from religion in the sense mentioned above and may answer the description of a secular state. In today's discussion I am concentrating my attention on the concept of a secular state and not a secular society. Is the State envisaged under the Constitution of India a secular State that is the subject of discussion today. A brief reference may be made to some of our neighboring States. It is well-known that Pakistan is an Islamic Republic. Pakistan proclaims that sovereignty over the entire universe belongs to Allah, the Almighty alone. It must be further noted that no person other than a Musalaman can be the head of the State of Pakistan. No law which is repugnant to the injunctions of Islam as laid down in the Holy Quran and other sacred texts can be enacted in Pakistan. These features of the Islamic Republic of Pakistan have remained constant despite the fact that there have been changes of regime from time to time. The Constitution of Burma recognises Buddhism as the State religion. Similarly, Nepal has been proclaimed a Hindu State.

I have already mentioned above that the monarch of England has been awarded the title of the Defender of the Faith. Though Henry VIII broke away from the Roman Church and gave an independent status to the Church of England, the monarchs of England have continued to use that title. The Church of England is the official Church and this alone is sufficient to show that United Kingdom is not a secular State. It may be mentioned that the people of United Kingdom in their daily lives display a marked sense of secularism in as much as they do not follow religious tenets for solving their secular problems. In this sense one might say that in the United Kingdom there is a secular society though there is no secular State. This of course is only broadly true.

In the United States of America, however, the State is secular while the society itself might not be said to be secular. The first amendment to the Constitution of United States mentions that the Congress shall make no law respecting the establishment of a religion or prohibiting the free exercise thereof. This provision of the American Constitution became the subject matter of

interpretation in several cases that went to the Supreme Court of the United States. It is not necessary to refer to all of them. I will make only a brief reference to some of them. Before I do that, however, I may mention that at one time there was in the United States itself a feeling that religion as such was not to be excluded from the legitimate concerns of a Government and should in fact form one of the functions of the established Government. However, the other view which was propounded by Jefferson prevailed. That view was expressed by him in a letter which he wrote to a group of Baptists in 1802. While commending the First Amendment Jefferson pointed out that its purpose was to build “a wall of separation between the Church and State”. Seventy-seven years later Chief Justice Waite in *Reynolds v. U.S.* (98 U.S. 145—1879) mentioned that this statement of Jefferson was almost an authoritative declaration of the scope and effect of the First Amendment.

In a case which arose after the second world war, namely, *Everson v. The Board of Education* (330 U.S. 1 - 1947) this view was reaffirmed by a majority judgment of the Supreme Court. The right of local authorities in New Jersey to provide free transportation for children attending parochial schools was involved in that case. That right was upheld on secular grounds. While so doing, it was pointed out that the term “establishment of religion mentioned in the First Amendment meant that neither a State nor the Federal Government can set up a Church. Similarly no law which would aid one religion or aid all religions or prefer one religion to another could be passed. In another judgment, namely, *McCollum v. The Board of Education* (333 U.S. 203—1948) this separation between the Church and the State was again directly reaffirmed. In this case the question was whether public school buildings could be used for teaching religion to those students whose parents requested for it. The answer was in the negative. Mr. Justice Black speaking for the Court said:

*Here, not only are the State's tax—supported public school buildings used for the dissemination of religious doctrines, the State also affords sectarian groups an invaluable aid in that it helps to provide pupils with the religious classes, through use of the state's compulsory public school machinery. This is not separation of Church and State.*

In 1952 by another judgement of 6 to 3 the Supreme Court sustained a New York City “released time” programme under which religious instruction must take place off the school grounds (*Zorach v. Clawson* 343, U.S. 306—1952). The Supreme Court of the United

States has also held that recitation, of even nondenominational prayers is not permissible in a State— aided school because it gives preferential treatment to persons who believe in religion or God as against those persons who are irreligious or atheists (*Engel v. Vitale* 37 U.S. 421 — 1962). The basic feature of the American Constitution as interpreted by the Supreme Court is this, that the State shall not support any religion; it shall not support all religions even without making any distinction among them. It shall also not extend financial assistance to any institution such as a school which imparts direct or indirectly religious instruction. In this sense the United States Constitution can be said to be fully secular.

There are however certain aspects which have been pointed out by some judges who dissented from the majority judgments mentioned by me above. For example, it has been mentioned that the American Government appoints Chaplains in the army for holding prayers for the soldiers. If this could be done at the expense of the public exchequer, it has been asked, why the schools also should not be given religious education. This question has not been satisfactorily answered.

The Indian Constitution enacted in the year 1950 did not, before the 42nd Amendment, contain the word “secular” or “God” in it. The word “God” is to be found only in the forms of oath to be taken by various persons mentioned in the Third Schedule of the Constitution. Prima facie, therefore, one is tempted to conclude that a document which contains no reference to God must necessarily be secular. However one must not forget that the total absence of the word “secular” may lead one to the conclusion that the Constitution is not secular. The character of the Constitution cannot be decided by a mere reference to the presence or absence of a word or two. If we examine broadly all the features of the Indian Constitution it is possible to say that India is a secular state in the sense that

- (i) No particular religion is prescribed as the state-religion;
- (ii) No preferential treatment is envisaged to any religion or to people professing any particular religion; and
- (iii) The right of worship is given to persons professing all religions.

Active or direct promotion or propagation of any religion by the State is not provided for in the Indian Constitution. In this sense it is secular. More over, Article 14 of the Constitution enjoins upon the State not to deny any person equality before the law or equal protection of rights within the territory of India. This necessarily

means that persons professing different religions will be treated equally by the State. Article 15 of the Constitution prohibits discrimination against any citizen on the ground of religion, among others. Similarly, equality of opportunity is assured to persons professing different religions under Article 16 of the Constitution. Article 29 prohibits an educational institution maintained or aided by the State from denying admission to anyone on the ground of religion. Looking to these provisions one is naturally tempted to subscribe to the view, as many well-intentioned and well-informed people have subscribed, that the Constitution of India is a secular Constitution and that it establishes a secular State.

There are, however, some other features of the Constitution which deter a person like me from agreeing that the Constitution of India is a secular Constitution or that it establishes a secular state. It is true that Article 25 of the Constitution which says that persons are entitled to freedom of conscience and right to freely profess, practice and propagate religion also mentions that this right is subject to public order, morality and health and all the other provisions of part III of the Constitution. So the right given to profess, practice and propagate religion is to be exercised within the four corners of the restrictions mentioned in Article 25 of the Constitution. Moreover, clause (2) of the said Article mentions that the freedom of religion given by the said Article shall not affect the operation of any law or prevent the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice. Thus there is a second inroad into the religious freedom guaranteed under Article 25 of the Constitution. This feature of the Constitution, no doubt, suggests to some extent that the State of India is a secular state. Similarly, Article 26 mentions that subject to public order, morality and health every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matters of religion.

However when we go to the next two articles, namely Articles 27 and 28 of the Constitution, we find provisions which detract from the secular character of the Constitution. Article 27 mentions that no person shall be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. This article therefore is only a ban against the State from collecting taxes part or whole of which could be utilized for

the promotion or maintenance of any particular religion. In other words, it does not prevent the State from utilizing its funds for the promotion of religion or a religious approach. Read simply, the article only prevents the State from collecting any money from persons for the purpose of promoting or maintaining any particular religion. If there is no connection between the collection of taxes and the promotion or maintenance of any particular religious denomination one does not know whether the ban contained in Article 27 of the Constitution can come into play. In other words, the funds which form part of the general revenue of the State can be utilized for promoting all religions. In any case, State fund can be utilised for promoting religious teachings. In so far as there is no total prohibition against the use of the funds of the State for the promotion of religion the Constitution cannot be said to be secular. Indeed, if Article 27 by necessary implication permits the use of the funds of the State for religions generally, there is necessarily a denial of the character of secularism of the Indian Constitution.

Worse still, is the provisions contained in Article 28 of the Constitution. It says that no religious instruction shall be provided in any educational institution wholly maintained out of the State funds. You will notice a sharp difference between this provision of the Constitution of India and the Constitution of America. In America there is a total prohibition of religious instruction in any educational institution supported by the State funds. On the other hand, under our Constitution as per Article 28 it is only that educational institution, which is wholly maintained out at State funds that is prohibited from providing religious instruction. In other words, all those denominational schools which receive grants-in-aid from the State are not prohibited from giving religious instruction. That is because those schools are not wholly maintained out of State funds. It is true that clause (3) of Article 28 provides that no person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction or to attend any religious worship in that institution. This itself, in my opinion, is not enough. A denominational institution, if it receives aid out of State funds, should not be permitted, to indulge in religious instruction or religious propaganda even though such instruction or propaganda is not compulsory- for all the students of the institution. When such religious instruction or religious propaganda is carried on by schools which receive state assistance in funds it necessarily means that to

that extent there is a dent in the secular character of the State of India.

From what has been said so far it must be clear that there is no wall of separation between the State and religion in India as it is there in the United States of America. On the other hand, there is a marked reluctance to bring about such a separation. Take for example Article 290A. This specifically mentions that certain sums shall be paid over every year for the maintenance of Hindu temples which were formerly in the States of Travancore and Cochin. No doubt this provision was inserted in the Constitution in the year 1956 after the States' Reorganization Act under which parts of the States of Travancore and Cochin were transferred to Tamil Nadu. This, however, is no excuse for charging public funds with an obligation to support religious institutions.

I may also invite your attention to Schedule 7, List 1, Entry 63. This enables Parliament to legislate in respect of institutions such as Banaras Hindu University and Aligarh Muslim University. As is well known, though these institutions bear the names of two religions they are not in law religious institutions. The Government of India spends some Re. six crore on the Aligarh Muslim University. Recently, there has been a sustained demand for what has been called the restoration of the minority character of the Aligarh Muslim University. This is being demanded vide Articles 25 and 26 of the Constitution. The most authoritative judgment of the Supreme Court has put the constitutional position beyond all controversy and that is, that the Aligarh Muslim University is not a minority institution and there is no question of any freedom arising under Article 26 of the Constitution. (See *S. Azeez Basha vs. Union of India*, A.I.R. 1968 S.C. 662). Aligarh Muslim University is a creature of the Statute as also Banaras Hindu University. It is not an institution which is established and maintained by or for the Muslims and therefore what has been called the minority character of that institution cannot be restored to it because it never possessed that character. If, however, Parliament proceeds to make a law imprinting the minority character on that University it will necessarily mean that public funds will be used for supporting an institution belonging to a particular religion. This will necessarily involve the destruction of the secular principle. I must hasten to add that a university established by the State for the study of one or more religions will not on that account be a religious institution.

At this state I may also refer to the judgment given by the Supreme Court of India in *Sardar Syedna Taher Saifuddin Saheba v. State of Bombay* (A.I.R. 1962 S.C. 853). In this case the constitutional validity of the Bombay Prevention of excommunication Act 1949 was involved. In the light of the provisions contained in Article 26 (b) of the Constitution of India, the Bombay High Court both at the trial stage and at the appellate stage, had upheld the constitutional validity of the Act by pointing out that by denying the right of the Bohra chief to excommunicate the members belonging to the Bohra community the Bombay Legislature had not done, anything which was contrary to Article 26 of the Constitution. While so holding the Bombay High Court was of the opinion that the Bohra Chief could not claim the right conferred upon the religious denomination under Article 26, in order to put forward a claim of excommunicating or expelling members and thus depriving them of the rights and privileges attaching to the membership of that denomination. This judgment of the High Court was unfortunately reversed by a majority judgment of the Supreme Court which held that the right to excommunicate vesting in the Bohra Chief was an essential part of the religion of the Bohras. The right of the Bohra Chief to excommunicate could not be taken away by any Act made by the State. C.J Sinha has pointed out in his minority judgment, that the right of excommunication was not a purely religious matter and the effect at excommunication or expulsion would result in the exclusion of the expelled person from the exercise of rights in connection not only with places of 'worship but also from burying the dead in the community burial ground and other rights of a civil nature. If the judgment at the Bombay High Court had held the field, the history of the Bohras in India would have been different. The law of the land as laid down by the highest Court of the land has in my humble opinion diluted secularism in India. It is unfortunate that successive Parliaments which have often amended the Constitution to change the situations created by the Supreme Court judgments have not thought it fit to alter the situation created by the judgment in the Bohra Chief's case.

Part IV of the Constitution contains what have been described as Directive Principles of State policy. These principles are not enforceable by any Court but are posited to be fundamental in the governance of the country. It has also been laid down that it shall be the duty of the State to apply these principles in making laws. Some of the principles cannot be transformed into any time-bound programmes because of the paucity of funds and other difficulties.

But Article 44 contains a directive which does not require any resources or funds but only courage and determination to secularize the citizenship of India. That Article directs that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. Unfortunately even after more than thirty years since the Constitution came into force such endeavour is not visible.

I must now turn to the Forty second Amendment to the Constitution and see whether it has made any change towards the secularization of the Constitution. Only two features are worth noting. In the preamble the word “secular” has been introduced. And a new part, being Part IVA, consisting of only one article, being Article 51A, has been introduced. In the beginning I have already mentioned that a word or two in the Constitution will not determine its real character. Mentioning in the preamble that India is a secular State will not make it a secular State any more than mentioning that India is a paradise will make it a paradise. Moreover, a preamble is the least important and the least effective part of any enactment. It is clear, therefore, that the amendment of the preamble has not made any difference.

Article 51A enumerates the fundamental duties of every citizen of India. It says that it shall be the duty of every citizen of India, among other things, to promote harmony and the spirit of common brotherhood among all the people of India transcending religious diversities and to develop scientific temper, humanism and the spirit of inquiry and reform. These are noble sentiments with a flavour of secularism. But how do you enforce these duties? Parliament has to make laws. Even in the absence of Article 51A, Parliament did have the power to make laws in respect of all the matters in Article 51A. The forty second amendment of the Constitution has thus not effected any change in the secular or non-secular character of the Constitution.

At this point I am tempted to dwell on two clauses of Article 51A: Clause (h) enjoins upon every citizen the duty to develop the scientific temper, humanism and the spirit of inquiry and reform. Clause (a) requires every citizen to abide by the Constitution and respect its ideals and institutions. Faith in democracy and contesting the elections with a view to winning them on the basis of the free choice of the electorate are covered by these two clauses. If a candidate contesting the elections to the legislature, Central or State, prays to God or to the Pir of some Dargah that he will offer something to God or to that Pir if he is elected, that candidate, in my



opinion, commits breach of Article 51A in two ways. By expressing faith in God, rather than in the voters, he is not abiding by the ideal of democracy which is enshrined in the Constitution. Thus he is committing breach of Clause (a) of Article 51A. By the mere act of resorting to prayer for success in the election which success must, according to the democratic ideal, depend upon the free and voluntary choice made by the electorate, a candidate is showing total absence of scientific temper thus committing breach of clause (h). One may look at this problem from another point of view. If a candidate believes in God and believes that God will respond to his prayer for success in the election, then he is invoking the intervention of God in preparing the minds of the voters in his favour, and if God answers the candidate's prayer, then the democratic process of free and intelligent choice by the electorate has been disrupted. If a candidate genuinely believes in democracy and in the electorate, he must stand or fall by the choice of the electorate. He should not resort to extra-democratic tricks or measures. In order to enable the candidates for elections to fulfill their duties under clause (a) and (h) of Article 51 A, I want to suggest a provision in the law of election. Every candidate believing in God must be required to swear that he has not prayed to God or any Pir or any other religious head and that he will not so pray for success in the election.

Ultimately a secular State can be built up only in a secular society. In my opinion if one builds up a secular society, it will, in the long run, lead to a secular State but not vice versa. Though our Constitution has several secular features or even if it is converted into a fully secular Constitution, it will only mean that a secular document is born and not that a secular State is born. A secular State or secular society is never born. It has to be built up by the sustained and ceaseless efforts of the secularists, rationalists and scientific thinkers. The pitfalls and dangers of a non-secular approach must be demonstrated; the benefits of a secular society must be explained and brought home to both the ignorant and the fanatic. It is not an easy task but on that account it cannot be given up.

## Secularism Revisited

Discussion on a wide scale has been taking place on the subject of secularism in India after 1965. This coincided with the publication of the pioneering book of Donald Smith of Princeton University. The book was *India as a Secular State* (Princeton University Press, Princeton, 1966). Round about the same time, twelve essays contributed to a seminar organised in November 1965 by the Indian Law Institute were published in a book titled *Secularism: Its implications for Law and Life in India*. The contributors of the essays included outstanding intellectuals —the then chief justice of India, two judges of Alahabad High Court and an eminent jurist. Later in 1968, another book of essays by different thinkers was published. The book was edited by V.K. Sinha and published by Lalvani Publishing House. Bombay.

In 1956, Abid Husain's book *The National Culture of India* (National Book Trust, New Delhi) was published. That book did not attempt any discussion on secularism but the foreword to the book written by Dr. S. Radhakrishnan, then Vice-President of India, contains the following gratuitous observation

*It may appear somewhat strange that our Government should be a secular one while our culture is rooted in spiritual values. Secularism here does not mean irreligious or atheism or even stress on material comforts. It proclaims that it lays stress on the universalisation of spiritual values which may be attained by a variety of ways.*

Subsequently in February 1970 P.B. Gajendragadkar, the then Vice-Chancellor of Bombay University delivered K. T. Telang Endowment Lectures on "Secularism and the Constitution of India", which was published in a book form in 1971 by Tripathi, Bombay. These lectures are full of erudition and deal in great detail with Hinduism and other related subjects. The questions that would be discussed in the lectures had been posed initially as follows:-

*Is the new society which we want to create a secular society? Is the sovereign, democratic republic of India a secular state? What are the distinguishing features of Indian Secularism as contemplated by our Constitution?*

Secularism - in my opinion and I will try to demonstrate that - cannot mean different things in different countries. Further Gajendragadkar says:

*The word 'secular' like the word 'religious' is amongst the richest of all words in its range of meaning. It is full of subtle shades, which involve internal contradictions, and of those contradictions the conventional dictionary meaning can scarcely give a correct view.*

The later discussion in India has been coloured by this view.

I have great objection to this meaning given to the term *secularism*. In the first place it says that there is an Indian type of secularism; secondly it says, the word 'secularism' contains internal contradictions and that thirdly you cannot understand the meaning of these contradictions because no dictionary can help you in this regard. In other words, the word 'secular' has only subjective meaning and every one can use it in any way one likes. I wish to demonstrate that

(1) There is no such thing as Indian secularism and English secularism - there is only one secularism which has universal meaning;

(2) There are no internal contradictions in the concept of secularism; contradictions are there between secularism and non-secular practices;

(3) There is a well-established and widely accepted dictionary meaning which has stood unaltered for a period of nearly a century and half since 1851 when George Holyoake coined that word and gave it an explicit meaning.

The discussion that has taken place on a wide scale and over a period of years - decades and the large literature that has been published have addressed themselves to the question: what meaning should be given to secularism in India or to Indian secularism. Some have argued, quite frankly, that secularism as historically understood does not suit India. Taking liberty with the alleged flexible meaning of the word, you can talk of Hindu or Aryan or even Vedic secularism or Islamic secularism. As a result, the discussion of this subject in India has become skewed. I wish, in all humility, to point out that all this distortion of the word is not necessary and if we find that a particular state of affairs does not fit in the concept of secularism correctly understood, change the state of affairs, not the meaning of the word, or use another appropriate word. When words of a certain kind have been in use, to employ those words as signs of new meanings is to be guilty of counterfeiting. New verbal signs can always be found for new meanings (see p.284 of *Reason, Social Rights and Democracy* by Sidney Hook, 1991 Prometheus Books).

The meaning of word secularism is not shrouded in any mystery. It is not an ancient or archaic word having been used by Chaucer or Shakespeare.

A beginning may be made with the dictionary. *The Oxford English Dictionary* (OED Vol IX, 1978) states that Secularism is the doctrine that morality should be based solely on regard to the well-being of mankind in the present life to the exclusion of all considerations drawn from belief in God or in a future state. OED further points out, rightly, that it was George Holyoake, (1817-1906) who gave this name to the definitely professed system of belief.

Earlier OED gives the meaning of the word ‘secular’ as “belonging to the world and its affairs as distinguished from the Church and religion”.

George J. Holyoake, to whom has been credited the coinage of the word secularism, was an Owenite and had founded in 1846 a weekly called *Reasoner* for the propagation of Owenism. In an issue of *Reasoner* in 1851, he issued a statement of secularist doctrine proclaiming:

- (1) Science as the true guide of man;
- (2) Morality as secular, not religious, in origin;
- (3) Reason the only authority;
- (4) Freedom of thought and speech;
- (5) That owing to the ‘uncertainty of survival’ we should direct our efforts to this life only.

There was, in the latter part of nineteenth century in England, a debate as to whether atheism, the denial of the existence of God, was an essential element of secularism. It may be mentioned here that Holyoake himself was not a theist. In 1841, in a public meeting, provoked by a heckler, Holyoake had asserted that England was too poor a country to have a God and that it would not be “a bad idea to put Him on half-pay” (i.e. retire him) and had been for this blasphemous utterance sentenced to six months’ imprisonment.

George Holyoake and Charles Bradlaugh were two leading secularists and atheists of England in the nineteenth century. Holyoake was no less an atheist than Bradlaugh, though they did not agree on the question whether atheism was a necessary ingredient of secularism. Holyoake thought that ignoring God was enough but for Bradlaugh, denial of God was essential. In March 1870 there was a

public debate between Holyoake and Bradlaugh on this subject and Austin Holyoake chaired the meeting. I do not for the present intend to go into that controversy.

The texts of the speeches of Holyoake and Bradlaugh in this debate have been published. I am taking the liberty of referring to the speech of Holyoake for gathering the correct connotation of the word secularism which, after all, was coined by Holyoake. He says:

If you desire a brief summary, which may be given in a few words, of what the principles to which I have adverted point to, so far as meets the object of this discussion, I would state them thus:

1. Secularism maintains the sufficiency of secular reason for guidance in human duties.
2. The adequacy of the utilitarian rule which makes the good of others, the law of duty.
3. The duty nearest at hand and most reliable in results is the use of material means tempered by human sympathy, for the attainment of social improvement.
4. The sinlessness of well-informed sincerity.
5. The sign and condition of such sincerity are free thought expository speech.

Holyoake points out that to maintain sufficiency of reason is absolutely indispensable. He accepts that this is a heretical position and therefore the secularist, standing apart does not include himself among Christians, does not need to profess Christianity (See, *A Second Anthology of Atheism and Rationalism*, Ed. Gordon Stein, Prometheus Books, Buffalo, NY. 1987 p.348). It must follow from this that an adherent of Christianity or of any other religion cannot be a secularist.

Enunciating its principles, the National Secular Society (England) declared that "the promotion of human improvement and happiness is the highest duty. That the theological teachings of the world have been, and are most powerfully obstructive of human improvement and happiness..." (*ibid* p.363)

I am obliged to burden this talk with some more quotations because they are from books of knowledge to which contributions are made by eminent scholars in the field.

Encyclopedia Britannica says that secularism is “a movement in society directed away from otherworldliness to life on earth”. In the medieval period there was a strong tendency for religious persons to despise human affairs and to meditate upon God and the other life. The Encyclopedia further points out that secularism arose as a reaction to this tendency during European Renaissance when man began to show more interest in human cultural achievements and the possibilities of fulfillment of his personality in this world. It may be added that from Renaissance three streams flowed- secularism, humanism and rationalism- the last one getting fully articulated only in the eighteenth century.

Renaissance persuaded the scholars to study man as a citizen of this world. That led to humanism. It also necessarily gave birth to a desire or an urge to study this world. This gradually led to rationalism and science. The word secularism was not born in Renaissance but the idea was born as a reaction to the futile, fruitless attitude prevalent all through the medieval ages of indifference to human affairs and of contemplation of the other world.

*Encyclopedia of Social Sciences* (Vol. XX, p.264. 1960) explains:

*If secularism is defined as the attempt to establish an autonomous sphere of knowledge purged of supernatural, fictitious presuppositions, its modern origins are to be traced to the later , middle ages of Western Europe. The distinction drawn up by the scholastics between faith and knowledge while it left room for revealed theology was also capable of evolving in a type of philosophical or natural theology which placed its chief emphasis on the truths perceptible by human reason, a broad category which subserved not only all physical knowledge but even metaphysical knowledge of God.*

The ESS points out that the ideal of human and social happiness proclaimed by the French Revolution has continued to influence subsequent generations of political and social workers. It is further pointed out that this has to some extent moulded the temper of some religious groups who are now compelled to accept that mankind shall strive by the most enlightened methods to establish social justice and welfare.

Even the Encyclopedia Britannica points out that in the latter half of the twentieth century some theologians have been advocating *Secular Christianity* by suggesting that Christianity should not be concerned only with the sacred and the otherworldly. The power of

secularism is derived from its close connection with science, and in the union of social and scientific secularism, the movement begun in Renaissance has been gathering momentum and finds its logical climax today.

The Social Science Encyclopedia (Ed. Adam Keeper & Jessica Keeper— Routledge & Kegan Paul 1985, p.737) points out that secularisation refers to the displacement of religious beliefs, rituals and sense of community from the moral life of society. The major institutions of society became legitimated by secular ideologies and formal legal doctrines rather than by religions. It was the philosophy of enlightenment that provided the pivotal impetus towards the thoroughgoing secularization.

At the root of secularism is the principle that the society should be founded on principles devised by rational inquiry into the universal nature of human social life. The ESS has cited other authors who have pointed out the other facets of secularism. For example:

- (a) The rational principles of social organisation are antithetical to religious traditions based upon faith;
- (b) The moral authority of ideologies independent of religious ethics was established for evaluating economic, political stratifications and other social arrangements;
- (c) Despite their rootedness in European culture, secular ideologies have taken on moral authority in many civilizations around the globe, somewhat in the manner of world religions.

Let me enumerate some of the propositions that emerge from the discussion so far or that are necessary to understand what follows:

1. Secularism is a system of social organisation and education which believes that religion has no part to play in the problems and events of every day life.
2. A culture is seen as secular when its acceptance is based on rational and utilitarian considerations rather than on reverence and veneration.
3. A secular society is one that engenders in or elicits from its members readiness to change customary orientation towards or definition of values regarded as essential in that society.
4. Secularism on the part of the individual means a rational state of mind which refuses to recognise the arbitrary authority of any individual or any book.

5. In the context of 'state' or 'society', secularism means an endeavor on the part of state or society to modernise the societal values and thus a policy of not being influenced by beliefs or values of any one or other religious group.

The next step in the discussion is to study the American experiment which correctly interprets and practices secularism. Let me hasten to add that the word secularism is not to be found in the Constitution of U.S.A. But the doctrine is embodied in it. The thirteen colonies of England in North America issued a Declaration of Independence on 4 July 1776. The U.S. Constitution drafted by the Philadelphia Convention was ratified in 1789

Article VI. Section 3 of the Constitution reads as follows:

*The Senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.* (emphasis is mine)

Two things in this Article stand out prominently. First, any person about to enter a public office need not necessarily swear in the name of God; it is sufficient if he makes a solemn affirmation. We in India may not be able to appreciate the significance of this provision; our Constitution has always contained this provision. But it was a path-breaking enactment in the eighteenth century. In England even in the nineteenth century, Charles Bradlaugh was not allowed to take seat in the House of Commons though his constituency repeatedly elected him - in fact five times. The reason - he was an atheist! Bradlaugh agreed to take the prescribed oath but the House said that he would not be allowed to take the oath because he was an atheist. This was in the latter half of the nineteenth century. Bradlaugh ultimately took the oath and his seat after getting elected again in July 1886 - this time no member of the House raised any question.

It should be noted here that Bradlaugh had at one stage made the following declaration:

*Any form I went through, any oath I took, I shall regard as binding upon my conscience in the fullest degree, and I would go through no form and take no oath unless I meant it to be so binding.*



It was only under the Affirmation Act of 1888 that the atheists could take seats in the Parliament by solemnly affirming rather than swearing in the name of God - 100 years after the U.S. had so provided.

(For a detailed discussion of Charles Bradlaugh's Parliamentary fight, see my *Charles Bradlaugh: The Infidel M.P.* published by Scientific Temper Promotion Trust, 1986).

The second important feature about Article VI (3) is the fact that a person of any religious persuasion can hold any public office in the U.S.A. because no religious test is required of such a person. A religious test is a test demanding the avowal or repudiation of certain religious beliefs. In 1961 the U.S. Supreme Court held that a state constitutional requirement requiring a belief in God as a qualification for office was unconstitutional. [*Torcaso v. Watkins*, 367 US 488 (1961)]. In this judgment the phrase Secular Humanism, which became very popular later, was first used by Justice Hugo Black. Roy Torcaso, who had been appointed as Notary Public by the Governor of Maryland was refused commission on the ground that he refused to affirm that he believed in God. In an action brought by Torcaso, Justice Black held that the plaintiff was entitled to the protection of the First Amendment. Justice Black mentioned that secular humanism is one of a number of religions like Buddhism "which do not teach what would generally be considered a belief in the existence of God. (Ref *Religious Liberty and the Secular Society* by John M. Swomley. Prometheus Books, p.117).

No oath - only affirmation.

A person of any religious belief or of no religious belief can hold a public office. However, during the two hundred years of the U.S. constitutional history there is no case of any president making a solemn affirmation. In 1962 neither earlier nor later, a Christian not belonging to any Protestant denomination was elected as president of the United States. No non-Christian has been so elected so far. I should, however add that many non-Protestant Christians and non-Christians have occupied other positions - some of them with great distinction. Justice Felix Frankfurter is a notable example.

Then came the First Amendment, by which the following provision was added to the Constitution in 1791.

***Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press: or the right of the people***

*peaceably to assemble and to petition to government for a redressal of their grievances.* (Emphasis added)

The clause to which emphasis has been provided (by me) is the clause which is relevant for our discussion. The word secularism has not been used in the American Constitution. But the First Amendment is a repudiation of religion as an authority in the governance of the country. The case law that has been developed in the U.S.A. on this subject has been vast and makes very interesting study. This is not the place to enter into a detailed study of this subject. However I must refer to some landmark judgments of the Supreme Court of U.S.A. which has throughout taken a consistent view in this matter. Initially some theorists were of the view that the establishment clause only prevented preferential treatment to any religion or religions and did not prohibit the use of religion in public life. However, subsequently, by a series of judgments the Supreme Court of the U.S.A. has held till today that the U.S. Constitution debar the U.S. Government and the State Governments, the Congress and the State Legislatures from having any connection with any religion.

In 1801, Thomas Jefferson was elected president. In a letter which he wrote to a group of Baptists he asserted that it was the purpose of the First Amendment to build "a wall of separation between Church and State". It is this total separation between the Church and the State that makes the American Constitution politically a secular Constitution, though the words 'secular' and 'secularism' are not found in it. In 1879 more than 70 years after the Jefferson letter, the U.S. Supreme Court accepted that statement by Jefferson *as almost an authoritative declaration of the scope and effect of the amendment.*

Some landmark judgments of the U.S. Supreme Court should now be considered. In 1947, the Supreme Court by the thinnest margin held as constitutionally valid the provision of free transportation by the State of New Jersey to children of parochial schools. This has been justified on the ground of provision of such a facility to school children as a safety measure on highways. However, in the same judgment the following words of warning were written:

The 'establishment of religion' clause of the First Amendment means **at least this**:

1. Neither a State nor the Federal Government can set up a Church;

2. Neither can pass laws which aid one religion, **aid all religions**, or prefer one religion over another;
3. Neither can force nor influence a person to go to or remain away from Church against his will;
4. Neither can force a person to profess a belief or disbelief in any religion;
5. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for Church attendance or non-attendance;
6. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever forms they adopt to teach or practice religion;
7. Neither a State nor the Federal Government can **openly or secretly**, participate in the affairs of any religious organisations or groups and vice versa. (Emphasis added) -

(For American Law and the Constitution I have relied mainly on Edward S Corwin's *The Constitution and What it Means Today*.)

The following further propositions have been established by other decisions handed down by the U.S. Supreme Court:

1. It is not separation of Church and State to permit religious instruction in the State's tax-supported school buildings even to willing children whose parents have requested for it.
2. A "released time" programme under which religious instruction takes place off the school ground is permissible because the State is not hostile to religion.
3. Recitation of even non-denominational prayers is not permissible in a State-aided school because it gives preferential treatment to those who believe in religion or God as against those who do not so believe.
4. The so-called science of creationism is not a science at all; it is teaching of the Bible which is not permissible (Bible can be studied but not taught).
5. The Court has taken a view that statutes involving excessive entanglements of State with Church in the matter of implementation would be invalid. Therefore -

(a) a statute providing salary supplements to teachers in secular subjects in non-public schools operated for the benefit of parochial schools: and

(b) a statute providing reimbursement to non-public schools for teachers salaries and instructional material used in the teaching of secular subjects were both held invalid as they involved excessive entanglements of State with religious matters.

In *Engel v. Vitale* (370 US 421: 1962) even optional prayers in aided schools were held to be unconstitutional. There was a furious reaction to this decision. There were countrywide demands that the judges should resign; if they did not, they should be impeached. The majority decision was delivered by Justice Hugo Black who was a devout Baptist and Sunday school preacher. He was denounced as a Communist and an atheist. This case illustrates the detachment from personal view that the judges display in their work.

Black was in his younger days a member of Ku Klux Klan and anti-Black. As a judge of the U.S. Supreme Court he was a strong desegregationist. Carl Sagan has pointed out that as a member of the Ku Klux Klan, Black wore white robes and intimidated the blacks: as a member of the Supreme Court he wore black robes and intimidated the whites. (on p.431 of *The Demon haunted World*, Random House. New York).

Kennedy, who was then the President of U.S.A. called upon the Americans to accept the decision which was 'welcome reminder to every American family that we can pray a good deal more at home and attend our Churches with a good deal more fidelity and we can make the true meaning of prayer more important in the lives of all of our children.' (*The First Freedom* by Net Hentoff; Delacarte Press, New York. p. 156.)

These are just a few of the several propositions handed down by the Supreme Court which clearly show that no part of the money belonging to the State can be applied directly or indirectly for a religious purpose – however small it may be. This is in my opinion true secularism though that word had not yet come in vogue at that time.

I must hasten to mention here that secularism enshrined in the American Constitution is not the result of a movement for secularism. Provision for secularism was made to prevent any religion or any sect gaining a more advantageous position than another. America is inhabited by a large number of Christian

denominations which were not always tolerant of each other. Different sects were in dominant positions in different States. In order to avoid conflicts among the different denominations and in order to avoid the dominance by any one denomination, the State was prohibited from having anything to do with religion in any manner. A French visitor to the U.S.A. found that in that country there were a dozen sects but only one sauce. Americans are not secular, but the U.S.A. has a secular constitution.

After noticing that in America secularism was established practically without any fight or controversy, one must turn to France where secularism came to be established firmly after a gradual conquest of the ground. Europe had been ravaged for a long time by religious persecutions and wars. That was in fact the main reason why many Europeans migrated to the New World. France had been the arena for the oppression of different Protestant sects. Just two years before the Revolution i.e. in November 1787 the existence of non-Catholics was recognised by an edict. But Louis XVI specified that the Roman Catholic Church alone would continue to enjoy public worship in France. Non-Catholics continued to have civil and political disabilities.

Then the Revolution took place On 14 July 1789. The Roman Catholic Church was too strong to be swept away easily. Secularisation in France took place in stages. The Declaration of Rights of Man and Citizen stated in Article 10:

*No one is to be disqualified because of his opinions even religions, provided their manifestation does not disturb public order established by law.*

First, in 1789 December all non-Catholics (save the Jews) were freed from civil and political disabilities. The Constitution of September 3, 1891 abolished the disabilities of Jews. The first stage was to basically remove the disadvantages associated with religion.

Certain revolutionary groups became active in proclaiming the supremacy of reason.

The cult of eternal Reason is the only one worthy of a free and enlightened nation.

We shall revere only Reason; Equality and Liberty are our gods.

Let us erase superstition's yoke to the last trace. Let Reason take its place, Reason which is heavensent.

Among these and other slogans Goddess Reason was worshipped. National holidays, not based upon religions, were declared. The Church was not abolished but the Roman Catholics accepted the position that Church was in the State and not the State in the Church.

I will indicate briefly the different stages of secularisation.

The State took over from the Church the registration of births, deaths and marriages.

Education system was overhauled and the teaching institutions were removed from the control of the Church and put under the authority of the State. Between 1801 and 1804 the Civil Code, a comprehensive one, was introduced - this marked a complete break from the authority of the Roman Catholic Church over French legislation. The Preamble to the Code proclaimed that there exists a universal and immutable law and "it is nothing else than natural reason in so far as it governs all men".

The overall political and social situation that was thus created has been described by the French word *laicite* for which scholars say, there is no English equivalent. One dictionary *Dictionnaire de la Langue Francese* by Petit Le Robert describes laicite as the principle of separation of civil society and religious society, the State exercising no religious power and the Church exercising no political power. This does not adequately convey the idea of secularism but for the purpose of this talk I will use the word 'secular' for laicite and secularisation for laicization, the process of making secular.

The general framework contained three characteristics:

- 1) The State no longer ensures the salvation of the people;
- 2) The State involves itself only with the citizens' common earthly interest;
- 3) The State considers itself not to be in a position to impose specific religious doctrines;

To be sure, religion was not ignored. In fact the purported religious needs of the citizens were recognised and the State paid stipends to ministers of recognised religions.

The second stage of secularisation in France is marked by the passing of a law of separation of State and Church on 11<sup>th</sup> December 1905. Before that happened, certain other events took place in the

process of secularisation. The law prohibiting work on Sundays was repealed. The provision for divorce was introduced. Distinction between the burial grounds of different religions was abolished. The reform of the educational system has already been mentioned.

The Act of 1905 provided that the Republic neither recognises nor pays nor subsidises any religion. This meant in practice the denial of the usefulness of religions recognised earlier. Between 1905 and today several developments took place which at one time weakened the fabric of secularism (*laïcité*) and sometimes strengthened it. These ups and, downs reflected the social and political fluctuations in France. The debate goes on mostly in the field of education. Religions are studied today but are not taught in the French Republican School, it is said, one does not learn to believe, but to reason.

From what has been said about the birth and growth of secularism in France it is seen that it is a product of social and political development. Laïcité in France is being subjected to new challenges during the last decade and a half. This is primarily due to the immigrant population of Muslims from the erstwhile French colonies in North Africa. The Islamist groups are seeking a special status in the secular republic.

The episode involving the headscarves which arose in 1989 provides a typical example of this challenge. A principal of a school (in Creil) himself an immigrant from the Caribbean forbade three Muslim girls from attending the classes with the headscarves worn purportedly to conceal their hair an action which he justified on the ground of laïcité. The then Minister of Education, who later became Prime Minister, tried to work out a compromise by suggesting that the children and their parents should be persuaded not to wear the scarves while attending the classes and if they are not persuaded they should be allowed in the school. “Munich of the Republican School” shouted the secular intelligentsia of the country.

There are several issues springing up from this and similar incidents. The educational institution is totally a secular institution-- is it not entitled to insist that patently religious symbolism should not be displayed in its premises? To the progressives and non-religious, the headscarf symbolised the subservience of woman. Moreover, it created separateness in a group of students. They insist that when a person comes to France as an immigrant, he enters not only a country but also a history and a culture.

In a still later incident, sometime in 1994, the then Minister advocated that prohibition of 'ostentatious insignia' be included in the school regulations. The problem rests there and has not been resolved to the satisfaction of either party. The French have, in a poll conducted, expressed their view that fanaticism, submission and rejection of Western values were characteristic of Islam. What is the religious composition of French population? No one knows, because the census does not record the religion of the French citizen. It appears that secularism, like democracy needs constant vigilance. (For an excellent account of the French experiment, see "Two Thresholds of Laicization" by Jean Beubarot in *Secularism and Its Critics*., Ed. Rajeev Bhargava, OUP 1998).

Secularism in America, which entered the constitution through the First Amendment, got firmly entrenched by judicial decisions thanks to the initial interpretation given to it by Thomas Jefferson. The idea of separation of Church and State in France was the product of the Revolution and has been fortified by social, cultural and political developments.

I must now turn to another country where secularism has been thrust upon the people by one who was for all purposes a dictator but where it has been subsequently supported and sustained by the population. That is Turkey. The Chief Executive of Pakistan, General Musharaff within few days of his capturing power declared that the role model would be the Turkish secularist reformer, Mustafa Kamal Ataturk. There is in some minds a lurking 'feeling that Karnal Pasha was basically a good Musalman who brought about reforms in Turkey. Khaled Ahmed, the editor of *Friday Times* of Lahore has in an article contributed to *On the Abyss* (2000, Harper Collins) stated as follows:

Ataturk had been admired by the founder of Pakistan, Mohammed Ali Jinnah. The first book he gave to his daughter Dina in the 1930s was a biography of the Grey Wolf, Poet Mohammad Iqbal, considered the philosopher of the State in Pakistan, had supported the secular experiment of Ataturk in Turkey in his 1929 English Lectures. (Page 85)

The lectures referred are *The Reconstruction of Religious Thought in Islam* delivered in 1929. They were first published in London in 1931 but the book has been out of print for a long time. (Those who are interested in the subject will be glad to know that it is now available having been republished recently by Kitab Bhavan, New Delhi).



I was a little surprised by the reference to Muhammad Iqbal a known anti-liberal and anti-secularist, as an admirer of Kamal Pasha. I was naturally driven to check the original.

Iqbal, in his lecture on *The Principle of Movement in the Structure of Islam* (One of the lectures delivered in 1929 and included in *Reconstruction of Religious Thought in Islam*) has, at some length, discussed what is known as Ijtihad in Islamic literature. Referring to the line of thought of the Nationalist Party in Turkey, he points out correctly that the point of supreme interest of that party was the State and not religion and those parts emphasizes the separation of Church and State. The assimilation of theory of separation by the Turkish Nationalists is, according to Iqbal misleading inasmuch as it suggests a dualism which does not exist in Islam. He endorses the view of Said Halim Pasha of the Religious Reform Party, which said that Islam- the world of Islam- is one and it has no fatherland. Said Halim Pasha had further said that modern culture based on national egoism is another form of barbarism - a view Iqbal commends.

There is no admiration anywhere in these lectures of Kamal Ataturk. The only thing which Iqbal accepts is the vesting of Caliphate in an assembly - a body of persons - which was done by the Turks initially. Even this had become irrelevant by the time Iqbal delivered his lectures. Having abolished Sultanate on 1 November 1922, Kamal proceeded to abolish Caliphate itself on 3<sup>rd</sup> March 1924 and on the same day Ministry of Religious Affairs and Religious Schools was abolished. Continuing the narration of events, Kamal proceeded to ban fez cap, suppress religious brotherhoods and close down sacred tombs as places of worship. In 1926 February, new Civil Law Code was adopted which among other things made it impossible for a Muslim to summarily divorce his wife. Kamal had, however, given talaq to his wife in August 1925.

Therefore, when General Musharaff declared that his role model would be Mustafa Kamal Ataturk the religious parties were stunned into silence. Qazi Hussein Ahmed of Jamaat-e-Islami said: "how can Ataturk, who destroyed the Islamic ideology', be the ideal of a Pakistan ruler? Those who are making such senseless statements to make God angry and America happy should learn a lesson from the fate of Nawaz Sharif.

Let me briefly refer to the experiment of Turkey under Mustafa Kamal Pasha. After the break up of Ottoman Empire following the First World War the institution of Caliphate became incongruous. I will avoid the tortuous and bloody events that preceded the rise to

power of Kamal Pasha who, in 1924, abolished the Caliphate. Earlier Indian Muslims in cooperation with Gandhi had agitated for the protection of the Caliphate and against the threat of its abolition. It is also necessary to note that Kamal had become distrustful of Indian Muslims because the then Aga Khan and the former Judge Amir Ali sent a joint letter to Kamal Pasha protesting against the treatment given to the Caliph and asking him to treat the Caliph with dignity and respect. In this letter they claimed that they were speaking on behalf of millions of Indian Muslims. Kamal Pasha was firmly against Turkey being entangled with Arab countries or with India. For this reason and also for the reason that he wanted no religion in public affairs, he refused to become Caliph himself when beseeched to do so by among others, Indian Muslims.

What did Kamal Pasha then do? He proceeded to secularise the Turkish society and state. By this time he had become a dictator having throttled the opposition in the National Assembly. He attacked the fez cap which was associated with Turkish Islam. Wearing a fez cap was made a criminal offence. Nehru rightly points out that the fez cap was inoffensive and when it was banned, riots broke out and they were ruthlessly suppressed. "It sounds rather silly to attach so much importance to a headdress. What is much more important is what is inside the head, not what is on top of it" (Glimpses of World History by Jawaharlal Nehru. p.708).

I will only enumerate some other steps taken by Kamal Pasha for secularising Turkey:

- 1) He encouraged the wearing of European dress-- he himself wore European suits and a hat.
- 2) All monasteries and religious houses were abolished and their wealth confiscated by the State.
- 3) Muslim religious schools were abolished and State non-religious schools were started.
- 4) Shariat Law was replaced by Swiss Civil Code, the Italian Penal Code and German Commercial Code.
- 5) Polygamy was abolished.
- 6) A society for the defense of women's rights was established; *purdha* was abolished and women were persuaded to enter into various professions.
- 7) Latin script replaced Arabic script.

8) Turkish language was purged of Arabic and Persian words, partly because those words could not be written in Latin script.

All this undoubtedly made Turkey a strong state compared to other Muslim nations. Some of the changes made have endured to this day. Turkey is even today a secular state, a woman wearing skirts, Ms. Chiller, had for some time been the prime minister of Turkey.

But the secularism of Kamal Pasha was based upon dictatorship and was not brought about by discussion and persuasion — a course Nehru would have adopted. In the ordinary course, a system which has been imposed upon people with force would be overthrown by the people at some stage. But the secular state has survived for 60 years after Kamal Pasha's death. Of late Islamic fundamentalism is raising its head in Turkey but the Turks who have tasted the fruits of secular life are not accepting a course which may lead them to an Islamic state. It may, therefore, be regarded that the majority of Turks have accepted secularism. Despite a couple of coups, Turkey has retained the democratic framework.

Digressing slightly I wish to refer to another Muslim ruler. Some historians think that Akbar's was also a secular state. Akbar's confused religiosity has been equated with secularism by some historians; he received members of Jesuit Mission to find answers to his theological doubts. On the promptings of a flattering theologian Akbar promulgated what has been described as "Infallibility Decree" under which the Emperor alone could with finality decide any question concerning the Muslim religion. Akbar also partly indulged in the rituals of as divergent religions as Zoroastrianism and Jainism. At one stage he propounded a new religion called *Din—e-Ilahi* (Faith of God) which by necessary implication rejected the claim of Mohamed being the seal of prophet hood. By no stretch of imagination this could be called secularism. (See *Oxford History of India* by Vincent Smith, Fourth Edition, edited by Percival Spear, p.346 et seq.)

S. Gopal rightly points out that his marriage with a Hindu princess, partaking of Gangajal etc., showed, apart from his love of Hinduism, his anxiety to hold his empire together and to prevent his Hindu subjects from becoming restive. His *Sarvadharm Samabhav* made him worship Virgin Mary and other deities on different days according to rites of different religions - thus infuriating the followers of Islam which prohibited idol worship. (*A Historical Perspective of Secularism in India* by S. Gopal. pp.7 and 8, People's Reporter Publisher, Bangalore).

A brief reference to the position in England should be in order. In England there is a close alliance between the church and the state. The Church of England became independent of the Pope in the sixteenth century and is the official Church of England. The monarch of England is the head of the Church. Though there is religious freedom in England, the Church of England has a special status inasmuch as the monarch of England must join in communion with the Church of England. A Catholic or any one who marries a Catholic cannot be the monarch of England. It is probable that a Catholic may not even be Lord Chancellor.

The Church of England by certain internal measures can constitute a General Synod consisting of clergy as well as laity and this assembly can put forth proposals regarding religious matters - such as communion, baptism, etc. These proposals do not have the force of law unless Parliament has approved them by a simple resolution and have received the Royal assent thereafter. This is a simplified account of the relationship between the Church and the State in England. (For a detailed discussion, see *Constitutional Law* by E.C.S. Wade and Godfrey Phillips). The Established Church in Scotland is the Presbyterian Church and the General Assembly of that Church is the supreme legislative and judicial body.

The provisions touching the form of worship are of the authorship of the Church but become binding only under the authority of Parliament, which may consist of Christians of any denomination, non-Christians and atheists. To this limited extent it can be said that there is no theocratic polity in England.

It is time we turn to the Constitution of India. Is the state envisaged under the constitution a secular state? Is there a wall of separation between the state and religions? Our twin-sister state -- Pakistan — is an Islamic Republic. Pakistan's constitution proclaims that sovereignty over the entire world belongs to Allah. No law which is repugnant to Holy Quran and other sacred books can be enacted by the state.

It is contended by many that India is a secular state because:

- (1) no particular religion is prescribed as the state religion;
- (2) no preferential treatment is envisaged for any religion or for people professing any religion;
- (3) the right to worship is given to followers of all religions.

It is further stated that active or direct promotion or propagation of any religion by the state is not provided for in the Indian Constitution. But is it prohibited?

Equality before law (Article 14), prohibition of discrimination on the ground of religion (Article 15) and equality of opportunity in public employment or for holding any public office (Article 16) are all healthy provisions indicating democratic and secular credentials of Indian polity.

Let us now turn to other relevant provisions.

Article 27 provides that “no person shall be compelled to pay any taxes, the proceeds of which are **specifically** appropriated in payment of expenses for the promotion or maintenance of any religion or religious denomination”. (Emphasis added)

This Article is only a ban against the state from collecting taxes, part or whole of which could be utilised for the promotion of any religion. Two consequences follow from this. First, if there is no direct connection between a tax and the promotion of religion, the ban does not come into force. Amounts from the general exchequer can be appropriated for religious purposes. Secondly, a tax may be levied for the religious and spiritual upliftment of the citizens and the proceeds can be utilised for the promotion of all religions — *a la Akbar*.

This is good news for ‘Sangha Pariwar’. Ram Temple can be constructed at Ayodhya with, partly at least, the help of funds from the state exchequer. Haj pilgrims’ tours may be subsidised; contributions can be made to Waqf Boards; payment of stipends to Imams may be considered, as the Supreme Court itself has suggested. A secularist may only bemoan that there is no total prohibition against the use of state funds for religious purposes.

Article 28(1) lays down that no religious instruction shall be provided in any educational institution wholly maintained out of State funds.

It is well known that almost all educational institutions receive grants from the government or a governmental body like the University Grants Commission. It is generally accepted that few schools, even religious schools can survive without grants-in-aid. (See *In Re Kerala Education Bill*. AIR 1958 S.C.956 @ 980). These grants cover 100 per cent of the salaries of the teaching staff and 90 per cent of the salaries of the non-teaching staff. A small proportion

of the expenses is met by other sources including tuition fees. Such institutions are not institutions wholly maintained, though largely maintained, out of State funds. The ban of Article 28(1) will not apply to such educational institutions. Elphinstone College is covered; St. Xavier's College is not.

We have seen how under the secular Constitution of U.S.A. a state-aided school cannot impart religious education. Article 28(3) permits a State-recognised or a State-aided school to give religious instruction or to hold religious worship (*Satyanarayan Puja*) provided no student is compelled to attend the instruction or the worship. It is very difficult for unwilling students to abstain from such classes. Willy-nilly such students will attend religious instructions which may not be educative and which may be propagandist. This is not secularism.

As originally enacted the Preamble to the Constitution did not contain either the word secular or the word socialist, it began with –

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

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

*We, the people of India, having solemnly resolved to constitute India into a sovereign **socialist secular** democratic republic...*

The words in emphasis were added. Nothing else in the Constitution was changed to invest the Constitution with secular character. By putting on a Gandhi cap one does not become Gandhi or a Gandhian. That is the only comment I can make on this change.

But what is secular? The leaders of the Janata Party which came into power noticed that the word **secular** had not been defined. By the Forty Fourth Amendment, an attempt was made to define 'secularism' by saying that it meant '*Sarvadharm Samabhav*' (Equal regard for all religions). Incidentally, socialism was also sought to be defined as society free from exploitation. During the discussions of the Amendment Bill in the Rajya Sabha, after its passage in the Lok Sabha the definitions were deleted. But the phrase '*Sarvadharm Samabhav*' sounded and tasted sweet and our politicians have been rolling it on their tongues ever since. But does this not mean that the Parliament in its constituent jurisdiction did not accept that secularism meant *Sarvadharm Samabhav*? As a lawyer I insist that the meaning of the word must be found in the

dictionary. One can also see how historically the word has been used especially by those who were instrumental in bringing that word into currency.

Donald E. Smith. Professor of Political Science in Pennsylvania University provided what he regarded as a working definition of a secular state. This was in his book *India as a Secular State*. 1963 (Princeton University Press, Princeton):

*'The working definition which I suggest is as follows:*

*The secular State is a State which guarantees individual and corporate freedom of religion, deals with the individual as a citizen irrespective of his religion, is not constitutionally connected to a particular religion nor does it seek either to promote or interfere with religion'. (p.4)*

There is not enough space here to examine in detail the views of Smith. It is sufficient to mention that Smith himself finds that there are several instances both in the Constitution and the laws which, contrary to his definition, have amounted to interference by the state in religious matters. My criticism of Smith's approach is that it sweeps away the basic and historical meaning of secularism. I say: back to basics, you cannot have one meaning of secularism in one country and another meaning in another country. The proper name for Indian polity is probably what Rafiq Zakaria has called "accommodative pluralism" (*The Widening Divide*, Penguin. p.314). For an interesting debate on Smith's hook, please see the last three chapters of *Secularism in India*, ed. by V.K. Sinha. For a more detailed analysis of the provisions of the Constitution, see S.P. Sathe's *Secularism - Law and the Constitution of India*, Indian Secular Society.

In fact, some commentators and even the judgments of the Supreme Court have equated pluralism envisaged in the Constitution to secularism. But the difficulties one would encounter if *Sarvadharmā Samābhav* is accepted have not been appreciated. If you accept *Sarvadharmā Samābhav* as the foundation of Indian Constitution you cannot bring about any religious reform.

What I have said about the non-secular character of the Indian constitution is not shaken by whatever has been said by the Supreme Court in some of its judgments. I will refer to one case which can be taken as the most authoritative pronouncement by the Supreme Court on secularism. The interpretation of the word secularism was

directly involved in *S R Bommai v Union of India* (AIR 1994 S.C. 1918). I will refer to this case as Bommai's case.

President's rule had been imposed in four states in the north in the wake of the demolition of Babri Masjid and of the disturbances that followed. In those four states BJP was in power and the dismissal of the four governments was sought to be upheld on the ground that the governments of those states could not be carried on in accordance with the provisions of the constitution because those governments were acting against the secular principles which were an integral part of the constitution of India. The President order was challenged by the governments who had been dismissed. Bommai came in the picture because his JD ministry in Karnataka had been dismissed, though on another ground. All the petitions challenging different Presidential orders were heard together and disposed of by one set of judgments by a bench of nine judges. For a non-lawyer going through all the judgments and finding out the exact law pronounced by the Court may be a difficult, if not a Herculean task.

Let me assure you that you can safely rely on me for the understanding of the law laid down in Bommai's case. For the present purposes I will only refer to what has been said in relation to secularism. For the sake of arithmetic one can say that Justices Pandian, Ahmedi, Jeevan Reddy, S.C. Agarwal and K. Rarnaswamy agree with Justices P.B. Sawant and Kuldip Singh who gave the leading judgment to which I will be referring now.

In the light of the contentions raised before the Court, the judges were required to examine the concept of secularism under the constitution. Sawant, J., proceeding to refer to Articles 14, 15 and 16 and Articles 25 to 30 said:

*These provisions by implication prohibit the establishment of a theocratic State and prevent the State either identifying itself or favoring any particular religion or religious sects or denomination. The State is enjoined to accord equal treatment to all religions and religious sects and denominations (emphasis mine)*

The last sentence, with great respect, is not warranted by the provisions considered. Sawant, J. proceeds to quote, at length, M.C. Setalvad from his 1965 Patel Memorial Lecture on secularism, and accepts the fact that Setalvad said that our Constitution lacks a complete separation between the church and the state but asserted that it could not be said that the Indian state did not possess some important characteristics of a secular state. Justice K. Ramaswamy



has quoted authors and authorities in several paragraphs (with a number of inaccuracies in the printed report) and after saying that the Supreme Court has not accepted the wall of separation between the church and the state, proceeded to agree with Justice Sawant. He concluded,

*'Secularism, therefore, is a part of the fundamental law and the basic structure of the Indian political system. '* (p.2020)

The Indian attempt at redefinition of secularism demands of an Indian, acceptance of the values of other religions while permitting him to practice his own religion. "The Indian concept of secularism is full of contradictions and therefore is unable to provide a clear unambiguous guideline either to the individual or to the state. As a consequence, the religious values continue to dominate the day to day affairs and in the process generate tension because of plurality of religious views" (H.Y. Siddiqui in "Quest for Secular Society - Challenge and Response" in *Secularism and Indian Polity* ed. Bidyut Chakrabarty, p.233 - Segment Book Distributors. Delhi).

Secularism operates on three levels. State as secular; society as secular; individual as secular. A secular society may exist under a non-secular State. In United Kingdom, for example, the state has an established church, the Anglican Church, but barring a few exceptions the state excludes all considerations of religion in dealing with the citizens. In France, after the Revolution of 1789, church has been separated from state, but the French citizens may not be so separated. It may in passing be mentioned that in France the census figures do not disclose the population religion-wise because no one is asked, at the time of census what his religion is. In America which boasts of a secular constitution, large number of people seems to belong to one church or another. In addition, there are different types of weird cults and evangelists. Ronald Reagan threatened to introduce prayers in educational institutions and legislative bodies. His wife advised him by consulting, not very secretly, an astrologer. A truly secular society will give rise to secular state but not vice versa.

That is why M.N. Roy was rightly skeptical about India becoming secular. At one stage Roy assumed that constitutionally India would be secular state (Independent India, Aug. 1. 1948). This was before the Constitution of India was framed. Of course, Roy proceeded to add in the same article that he doubted whether political life in India would be secular. He noted that religious ritualism has been always associated with public functions. "Ceremonious State functions on

the occasion of the transfer of power were religious, according to spiritually prescribed rules. In some places it went to the extent of selecting the auspicious moment according to the advice of priestly astrologers. (Reprinted in *Secularism in India*, ed. V.K. Sinha. p.148).

In a later article in *The Radical Humanist* - May 14, 1950 (also reprinted in *Secularism in India*, p. 152) Roy noted several non-secular and anti-secular features of Indian polity and society. He exclaimed in exasperation all profession of secularism is meaningless". Referring to the large number of sadhus and sanyasins roaming across the country, Roy said:

*A secular State should not tolerate a vast, many million strong army of holy loafers who outrage' the ethical and aesthetic sense of its cultural and educated citizens* (p.157).

I must now proceed to consider secularism vis-a-vis main religions of India.

Hinduism is the religion in which the majority of Indians are born and it is but natural that what Hindus believe and how they behave are bound to affect the complexion of Indian polity. What is Hinduism? Why does one say one is a Hindu? If you ask me, I would answer by saying that -

(a) I am born in a caste which is and has always been a part of Hindu system.

(b) I am born in a society or a group which has been recognised as Hindu.

I do not believe in *Dashavatar*; I dislike the caste system; I do not accept the authority of the Vedas and Upanishads. I enjoy Puranic stories just as much as I enjoy the Greek mythology but I do not believe in their truthfulness.

But still I am dubbed a Hindu. This is the beauty and despair of Hinduism that this is so recognised by the Supreme Court in one of the early decisions. In *Sastri Yadnapurushdasji v. Muldas Bhudardas* (AIR 1966 S.C. 1119) the Court inquired into the questions as to who are Hindus and what are the broad features of Hindu religion. The Constitution Bench over which presided an eminent scholar, after referring to writings of scholars, including Dr. Radhakrishnan, found it difficult, if not impossible, to define Hindu religion or even to describe it. Unlike other religions Hinduism does not claim one Prophet, does not worship any one God, does not

subscribe to any one dogma, and does not believe in only one philosophic tenet. The population regarded as Hindus does not even follow one set of religious rites or performances.

Ten years later, in *C WT. v. R. Sridharan* (AIR 1976 S.C. 489) the Supreme Court said:

*It is a matter of common knowledge that Hinduism embraces within itself so many diverse forms of beliefs, faiths, practices and worship that it is difficult to define the term Hindu with precision.*

By and large one can proceed on the basis that all those who are called Hindus worship one, or more, or the entire pantheon of Gods. They also subscribe to the theory of Karma - namely that your sufferings in this life are attributable to the sins you have committed in your previous life. The large quantity of Bhakti literature also indicates that man's life is only a sojourn in the world and he should prepare himself for a better life hereafter. This is obviously an anti-secular attitude.

It is necessary to deal with Hindutva which as a concept and an idea was developed by V.D. Savarkar. Before I proceed to examine 'the Hindutva' of Savarkar refer to the Supreme Court judgment in *Dr. Ramesh Yashwant Prabhu v. Prabhakar Kunte* (1996-1 SCC 130). In paragraph 39 of the judgment the Supreme Court mentioned:

*Ordinarily, Hindutva is understood as a way of life or a state of mind and it is not to be equated with or understood as a religious Hindu fundamentalism.*

Justice Verma delivering the judgement curiously quotes Maulana Waliduddin Khan for the correct understanding of Hindutva. The Maulana in his *Indian Muslims - The Need for a Positive Outlook*, (Goodwords Books, Delhi) has formulated his understanding of Hindutva in the following words:

*The strategy worked out to solve the minorities problem was, although differently worded, that of Hindutva or Indianisation. This strategy briefly stated, aims at developing a uniform culture by obliterating the differences between all of the cultures co-existing in the country. This was felt to be the way to communal harmony and national unity. It was thought that this would put an end once and for all to the minorities' problem. (p. 159)*

Justice Verma quotes this opinion approvingly and says:

*that the word 'Hindutva' is used and understood as a synonym of Indianisation i.e. development of uniform culture by obliterating the differences between all the cultures existing in the country. (p. 159)*

### **One country - One Culture**

In a later paragraph viz. 44, Justice Verma says that:

*It is a fallacy to proceed at, the assumptions that any reference to Hindutva or Hinduism in a speech makes it automatically a speech based on Hindu religion as opposed to other religions or that the use of the words 'Hindutva' or 'Hinduism' per se depicts an attitude hostile to all persons practicing any religion other than Hindu religion. (p.162)*

On the contrary, says Justice Verma, it may well be "that these words are used to promote secularism or to emphasise the way life of the Indian people and the Indian culture or ethos..." (p. 1262)

A brief reference to Hindutva of V.D. Savarkar is inevitable. Savarkar's exposition of the subject is to be found in his essay "Essentials of Hindutva" which is included in Vol.VI of *Samagra Savarkar Wagmaya* (1964) published by Maharashtra Prantika Hindusabha, Poona.

In an essay of 90 pages, Savarkar surveys the history of India and points out that all those who have lived and shared the glories, trials, tribulations, sufferings as the inhabitants of this land are Hindus and the awareness of belonging to this land and to this community of Hindus is Hindutva which, he says should not be equated with Hinduism. At some places (e.g. p.58) he uses the word Hinduness. The descendents of these persons also share the Hindutva. The scenes of their history are also the scenes of their mythology. As you read this essay you cannot help being impressed by the almost mystical concept of Hindutva developed by Savarkar. The concept as developed includes Buddhists, Jains, Sikhs and also tribals and excludes Muslims, Christians and Jews. Savarkar does not use religion as a unifying factor for Hindutva - if he did he would have to exclude Jains, Buddhist and Sikhs- but uses religion as an exclusionary factor. This is not secularism.

Savarkar specifically excludes Musalmans for whom Mecca is a sterner reality than Delhi or Agra. "Some of them do not make any secret of being bound to sacrifice all India if that be to the glory of Islam or could save the city of their prophet". (p.87) Savarkar also lashes out at the Jews who despite the hospitality they have enjoyed

in other countries have no sense of gratitude and they are attached more and more to the land of their prophets. (p.87)

Can Islam be secular? Some scholars have attempted to argue that Islam, as revealed through Quran is secular in as much as Islam recognises the legitimacy of other religions and says that there is no compulsion in the matter of belief. That Quran was revealed to Mohammed and that Mohammed is the last prophet are the cardinal principles of Islam. If Quran is revealed by God, none other than God can change it. If God wants to send a new message, he cannot do it simply because there cannot be any prophet after Mohammed. Therefore Quran is the last book for all peoples and all times. Quran is the seal of faith; Mohammed is the seal of prophet hood.

In support of the claim that Quran does not sanction compulsion in the matter of belief the scholars quote earlier revelations in Mecca when Mohammed was struggling against the idolatrous Meccans.

In later revelations in Yathrib, that came to be called Medina there are clear indications that views contrary to Islam could not be tolerated.

This apart, those who believe in a book as the last word which is infallible and unchangeable cannot by any stretch of imagination be called secular. What you should eat, what you should drink, whom you can marry and whom you cannot marry whom to believe as a witness, how many witnesses are necessary for proving a contract, how property should devolve these and other matters which are wholly secular in character are the subject matter of mandates in Islam.

The question of marriages between Muslims and non-Muslims has been dealt with Sura 2 and Verse 221 as follows:

“And marry not the idolatresses until they believe; and certainly a believing maid is better than an idolatress even though she please you. ‘Nor give believing women in marriage to idolaters until they believe and certainly a believing slave is better than an idolater even though he please you”.

This Verse should be read with Verse 5 of Sura 5 (Perfection of Religion in Islam) which permits Muslims to marry women who profess a revealed religion.

There is an express mention of a Muslim man marrying a non-Muslim woman. Islamic scholars have agreed that a Muslim woman

cannot marry a non-Muslim man. That was the real reason for the furore over Mani Ratnam's film Bombay.

Quran and Islam do not separate religion and state. What is ordained in Quran has to be implemented by the State. Iqbal has argued that the Muslims are organised in Umma and not in national states.

Syed Muhammad al Naquib al Attar is a well-known Islamic scholar of Malaysia. He specifically addressed himself to the question whether secularism is consistent with Islam in a book *Islam and Secularism* (Hindustan Publications, Delhi, 1984). I would strongly recommend this book to those who are interested in the subject and especially to Muslims. In this book, Syed Muhammad has shown his familiarity with the history of secularisation and of course his profound knowledge of Islam. It would take too much time to review the book in detail. Let me be content with relevant quotations and please accept my assurance that I am not giving quotations out of context. After a brief outline of the rise of secularism in the West, the learned author says:

*Islam totally rejects any application to itself of the concepts secular or secularisation, or secularism as they do not belong and are alien to it in every respect.... (p 23)*

*A revealed religion as we understand it is complete and perfect in its adequacy for mankind from the very beginning. The Holy Quran says that Islam is already made complete and perfect for mankind (p 27)*

One more quotation

*Not only is secularisation as a whole the expression of an utterly un-Islamic world view, it is also set against Islam and Islam totally rejects the explicit as well as implicit manifestation and ultimate significance of secularisation.(p.38)*

Desacrilisation of politics and society is inconsistent with Islam as in fact it is inconsistent with any religion. There are, however, a couple of things which may commend themselves to secularists.

First, Quran enjoins upon the Muslims to enjoy the fruits of this world which is created by God and in which man has been placed. This life and this living - one should love hundred-fold. Asceticism is not a virtue as it is ostensibly among the Jains. But Quran warns against consumerism which is equivalent to indulgence - this is something akin to environmental protection. Seek happiness and not pleasure.

Secondly, celibacy is disallowed by Ch.24/32 in Quran. Thirdly, miracles are not envisaged in Islam. Mohammed refused to perform miracles when challenged to do so to confirm his prophet hood by simply pointing out that the universe itself is a miracle made by Allah. Mohammed showed the necessity of charity and not its desirability.

Why secularism? That is a question that may legitimately be asked. I am tempted to quote M.C. Setalvad who has in a small paragraph beautifully summarised the secularists' viewpoint:

*A different view in relation to religion is the basis of 'secularism' understood in the sense of what may be called 'a secular attitude' towards life. Many of us, Hindus, Muslims and others, are in our way of life and outlook on most matters largely governed by ideas and practices which are connected with or are rooted in our religion. The secular attitude would wean us away from this approach so that in our relations with our fellow beings or in dealings with other social groups, we have less and less regard for religion and religious practices and base our lives and actions more on worldly considerations, restricting religion and its influence to what has been called its 'proper' sphere i.e. the advancement of the spiritual life and well-being of the individual. Secularism of this character is said to be essential to our progress as human beings and as a nation because it will enable us to shake off the narrow and restrictive outlook arising out of casteism, communalism and other like ideas which come in the way of our development.*

(Patel Memorial Lecture 1965, on Secularism quoted in S.R. Bommai, p. 2000),

My view is that state, as a state, has to do with secular problems and therefore a secular state is necessary. Secularism has a very vital link with democracy. The state must be independent of classes and ethnic groups to make democracy real and effective. The Indian political and social scene for the last decade, tormented by the Ayodhya issue, pre - and post-demolition, demonstrates the necessity of secularism.

I am not unaware of the argument that secular state cannot be built-up by anti-secular or non-secular citizens. But this argument is belied by the American experience. The U.S.A. has a secular constitution but non-secular or anti-secular society. That is why you find in the U.S.A. innumerable sects and cults. Born again Christians and Moral Majority, PTL, evangelical movements - these

are prominent and stronger in America than any other country - not excluding Islamic countries. The birth of fundamentalism took place in the U.S.A. in the 1920s.

The U.S.A. has a secular state but not secular society; England has a non-secular state but a secular society; it is the fate of India to have neither a secular state nor a secular society. As I have mentioned earlier, secularism operates at three levels - state, society and the individual.

A secular state can be established by law but the process of secularisation cannot be promoted by legislation. For this you need inculcation of secular moral values. The process can be helped by legislation and by the conduct of men at the top. The presidents, the governors, ministers at different levels making pilgrimages at the expense of the state and conspicuously taking part in public religious ceremonies do not set a good example for the citizens. Nor are they giving heed to their fundamental duty "to develop the scientific temper, humanism and the spirit of inquiry and reform". [Article 51 A (h) of the constitution]

The provision in the Representation of Peoples Act prohibiting appeal to the electorate in the name of religion is a welcome measure. Its validity has been upheld by the Supreme Court in *Dr. Ramesh Yashwat Prabhu v. Prabhakar Kunte* cited above. The restriction thus placed upon the fundamental right of freedom of speech and expression was held to be a restriction permissible on the ground of decency and morality. Seeking of votes, the judges said, on the ground of the candidate's religion in a secular state is against the norms of decency and propriety of the society.

The long-term approach to make India a truly secular state and society is to make the Indians secular in their outlook and temperament. This can be done by demonstrating that the religions which grip their minds are of no cultural value and also of no practical value, if they believe in them.

Secularism is the product of a process by which society has moved away from control by the church so that science, education, art and politics were freed from conformity to theological dogma and priesthood. The secular spirit is seen in the fact that scientific knowledge and education in general are today tested by reason, by experiment and experience rather than by religious criteria. Secularisation is a historical process which is sought to be reversed



by fundamentalists everywhere, though Copernicus and Darwin have been rehabilitated by the Pope.

In the West, secularism has faced several threats. Immediately after the Second World War, Vatican-sponsored Christian political parties were established and have played no insignificant role in countries like France, West Germany and Italy. After the Second Vatican Council, the process of dialogue with non-Catholics and even non-Christians was envisaged. Despite this, in the U.S. there is an informal alliance between the Catholics and Protestants to assail secular approach to such issues as abortion, prayers and teaching religion in schools.

What is the future of India which we envisage? There are several religions in India whose followers try to cling to their identities as members of those religions. These identities are brought to their notice and also to the notice of others at every step. Some eminent thinkers have opined that secularism is not suited to the temperament of the people of South Asia in general and Indians in particular - that is the opinion of T.N. Madan who is the leading proponent of this view point. Social scientist Ashish Nandy has taken a stand that secularism is not desirable at all. This latter point is broadly answered by what I have said about the birth and growth of secularism.

Is secularism incompatible with the genius of Indian people? My answer is that the Indians are no more religious than the Americans who are being accused of materialism and non-spiritual values. The American colonies were founded by the religious people. At least the early life of the Americans was steeped in religiosity. That was the time when the amendment regarding establishment of religion was passed. From time to time different religious movements have taken place in America. Apart from the traditional churches there are other churches or groups founded by one or the other self-styled preachers. The world's first fundamentalist movement was born in America in the 1920s. From time to time there have been calls for re-amendment of the constitution to allow for religious teaching in aided schools. The Supreme Court of the United States has consistently upheld the interpretation placed by Thomas Jefferson on the First Amendment. There is no basic structure concept of the American Constitution. Yet the American legislators have not thought it fit to suitably amend the First Amendment. This is because the country has realised the importance of keeping the

church and the state separate in the context of the existence of several sects in that country.

Why it is not suited to Indian polity? The schisms between the different religions in India are not narrower than those among the different denominations of Christianity in America. The need for a secular constitution is greater in India than in America. I do not envisage the rise of secularism in India in the French manner; I do not desire secularism to be established in Kamal Pasha's manner. The only way in which secularism can be introduced in India is by way of total separation of religion and the state in the constitution. And there are certain areas where secular laws without impinging upon the religious autonomy of the people can be enacted. One prominent example is the law of adoption. Today thousands of children are given in bogus adoptions. A non-religious, non-communal adoption law should be a good beginning. Adoption is always optional depending upon the willingness of the adopter and the consent of the person giving in adoption. Yet this simple piece of legislation has not found its way to the statute book by obstruction of obscurantist. Instead of showing secularism its place, show religion its place.

Ultimately secularism has to be inculcated in the minds of men. Secularism at the political level should be brought about by law and constitution: secularism at the individual level can come about by enlightenment. Then secularism can take root in the society. The secularism I am speaking of will not render Indian society into a stew. The Indian society can remain a bowl of salads.

## Need for a Secular Law of Adoption

The following is a story from Mumbai. The event took place in December, 2005. Deepika is the second girl child of her parents - the father is a laboratory assistant with probably a meager salary and the mother a home maker. They did not want her but they did not want to kill her. They were, however, treating her so cruelly that her screams attracted the attention of the neighbours who called the police.

Inspector Shamsheer Khan Pathan rescued the child of nine years who had tell-tale signs on her body of the torture to which she had been subjected. She had been burnt with cigarette butts and hot pans. Inspector Pathan who has already three children wants to adopt her but, they say, being a Muslim he cannot do so. Deepika is keen to live with Pathan Chacha' but she is now in Vatsalya, a home for destitute children. Why?

There is a tale. Prophet Muhammad had been presented with a slave named Zaid, son of Haritha, by his wife Khadija. This was the time when Muhammad had started his mission of Islam. Muhammad freed Zaid who was one of the first to convert to Islam. Muhammad had a cousin Zainab who was born in a high family and who was said to be beautiful. Prophet demanded, through his aunt, Zainab in marriage for his adopted son Zaid - a demand that could not be refused because -

*It is not fitting*

*For a Believer, man or woman,*

*When a matter has been decided*

*By God and His Apostle*

*To have any option*

*About their decision:*

*If any one disobeys God*

*And His Apostle, he is indeed*

*On a clear wrong path.*

(Emphasis provided. Quotations from Quran are from the edition of A. Yusuf Ali)

Maulana Muhammad Au of Ahmadiyyah Anjuman of Lahore has, in his edition of Quran, said that all commentators are agreed that the above verse was revealed on the occasion of the Prophet's decision that Zainab should marry Zaid, his adopted son. It is said that Zainab was reluctant to marriage to a freed slave who was, moreover, not good looking.

The marriage did not last long. How it came to an end —there are at least two versions. One version says that once Muhammad went to Zaid's house when he was not expected and Zaid was not in. Zainab met him not fully attired and invited him in. "Muhammad declined but the wind lifted the curtain, evidently while she was hurriedly dressing. He fled in; some confusion, muttering something which she did not quite catch. All she heard was: 'Praise be to Allah the Most High Praise be to Allah who changes men's hearts'". ("Mohammed" by Maxime Radinson; Penguin: 1971 p. 205). Ms. Fatima Mernissi, the famous Moroccan authority on women in Islam, says that the Prophet fell in love with Zainab when she was already married to his adopted son. (Women and Islam - an Historical and Theological Enquiry: Kali for Women, New Delhi, 1993, p. 104. On p. 175 the author suggests that Mohammed did what for many people in Medina was an incestuous act).

When Zaid came to know about the incident, he went to the Prophet and suggested that if Zainab had found favour with him, he would offer Zainab to Muhammad. The Prophet answered him; "Keep your wife for yourself, obviously because a person could not marry his son's (though adopted) wife. This is consistent with what is mentioned in the first part of Verse 37 of Sura 33.

*Behold! Thou didst say*

*To one who had received*

*The Grace of God and the favour: "Retain thou*

*(In Wedlock) thy wife, And fear God". But thou didst hide in thy heart*

*That which God was about*

*To make manifest; thou didst*

*Fear the people, but it is*

*Mere fitting that thou shouldst*

*Fear God...*

Zaid however, dissolved his marriage with Zainab either because he believed Muhammad desired or because the marriage had become insufferable for both the partners. It is the latter interpretation that is offered by Islamic Scholars. Zaid's status was that of a former slave who would not have dared to ask for the hand of a high born, beautiful lady who was moreover the cousin of the Prophet. Zainab herself was reluctant to marry Zaid but Muhammad had asked her to marry Zaid and as has been ordained in Verse 36 of Sura 33 no believer could question a decision of God's Apostle (quoted above).

The marriage, according to Islamic commentators, was not a happy one. Zainab was harsh of temper and she never liked Zaid on account of the stigma of slavery attached to him. Despite the Prophet's advice to Zaid not to divorce his wife (Sura 33.37), Zaid ultimately divorced Zainab.

*Then when Zaid*

*Had dissolved (his marriage)*

*With her, with the necessary*

*(Formality),*

*We joined her*

*In marriage to thee:*

*In order that (in future)*

*There may be no difficulty*

*To the Believers in (the matter*

*Of marriage with the wives*

*Of their adopted sons, when*

*The latter have dissolved*

*With the necessary (formality)*

*(Their marriage) with them.*

*And God's command must*

*be fulfilled.*

(Second part of Sura 33.37)

So in obedience to God's command Muhammad married Zainab who became his seventh wife. Aisha, the daughter of Abu Bakr

who, after Muhammad's death, became the first Caliph, was the third wife of Muhammad. She was very intelligent and sprightly and is said to have remarked sarcastically on the Lord's readiness to answer her husband's wishes.

That apart, the point is Islam does not prohibit adoption. On the other hand, verses 4 and 5 of Sura 33 recognise that sons could be appointed but only

*Nor has He*

*Made Your adopted Sons*

*Your Sons.*

(Verse 4)

Verse 5 enjoins that the adopted Sons should be called by the names of their fathers. Dr. Ima-ad-Dean Ahmad of America points out that the most famous orphan in Islamic culture is, without doubt, the Prophet Muhammad and the importance of taking homeless children to care for them is well established in Islam, "it is somewhat startling to hear Muslims that adoption is prohibited in Islam" (source [www.minaret.org](http://www.minaret.org).)

Christianity encourages adoption. According to June M. Ring, PPL Adoption Resources Coordinator, six principles constructed a biblical view of adoption. They are:

1. Adoption embodies the biblical theme of the covenant.
2. Adoption upholds marriage as the building block for parenting.
3. Adoption upholds the scriptural emphasis on the role of the father.
4. Biblical examples show how God has used adoption to provide for children and to further his purposes and kingdom.
5. Adoption is a scriptural metaphor that emphasises the performance of our relationship with God, the rights we have as his children and his redemption of us.
6. Adoption is an outpouring of God's grace on all involved. (In one sense, Joseph was the adoptive father of Jesus).

Children placed in adoption experience God's grace in a similar way to children who are born into a family. The author advocates the Church's active involvement for improving the prospects of adoption.

(From *Partakers of the Grace: Biblical Foundation for Adoption*.  
Downloaded from Internet).

Hindu Law, even before 1956, almost obliged a son-less couple to adopt a son. The Hindu Adoption and Maintenance Act has repealed the Shastric law, and has now permitted adoption of a son when there is no son and a daughter when there is no daughter. A Hindu, however, cannot adopt without the consent of his wife. A female Hindu, if she is alone in any manner can adopt. In the absence of parents of the child, a guardian can give a child in adoption with the permission of the Court. Unfortunately, under the Act, no person is capable of being taken in adoption unless he or she is a Hindu, though, happily, caste restriction under the old law has been done away with.

By way of parenthesis, it maybe mentioned that under Roman law, adoption was not permissible and it created legal relation of father and son. The effect was analogous to the Hindu law of adoption. The adopted son took the name of the adopter and was bound to perform the adoptive father's religious duties.

In the absence of a law of adoption applying to all communities, the adoption procedure has become a farce; nay, it has become harmful. Destitute children in India are being given mostly to foreigners, though under the guidelines laid down by the Supreme Court.

Underlying these guidelines, given in a series of judgements/orders, there are three cardinal principles:

1. Adoption is the best non-institutional support for rehabilitation of children.
2. The child develops best in his/her cultural and social milieu. Thus the placement of a child through adoption in an indigenous setting would be ideal for the child's growth and development. Inter-country adoptions (adoptions of Indian children by adoptive parents residing abroad) should be resorted to only when all efforts to place the child with adoptive parents residing in India prove unsuccessful.
3. In matters concerning adoption, whether within the country or abroad, the welfare of the child shall be paramount.

The adoptions mentioned above are not the adoptions in the real sense of the term. They are the placements of children in the custody and care of non-relative persons under the Guardians and Wards Act. The absence of a common law of adoption is facilitating the transfer of Indian children to foreign countries, which, many say, is

benefic to the children because they usually move into more affluent circumstances. This is, however, inconsistent with the first part of the second principle mentioned above.

Adoption of Children Bill (1972) was allowed to lapse mostly because of the opposition of some leaders of Muslim community. This opposition was based upon the notion, mistaken as shown earlier, that Islam prohibits adoption.

The Hindu law of adoption does not permit adoption of non-Hindu children. As a result of the “adoptions” -mostly intra-country - taking place under the Guardians and Wards Act, institutional set up - for both facilitating and supervising the adoptions has become necessary. Several malpractices, including the sale of children, have come to light.

A further examination of the question of a secular - not restricted to any community - law of adoption needs to be considered. The Law Commission should be requested to examine the question. In this writer's view, the following principles should help the acceptance of a secular law of adoption.

1. The law would be optional - like Special Marriages Act.
2. The proposed adoptive child and family need not belong to the same caste or religion or tribe.
3. The adopted son shall be deemed to be a part of the adoptive family, taking the religion of the adoptive family. (Muslims or Christians should have no objection to this).
4. In the deed of adoption itself provision must be made for the status of the adoptive child in relation to maintenance and to property of the adoptive family.



## **The Debate on Secularism in India**

During the freedom struggle and during the deliberations of the sessions of the Indian National Congress, prior to independence, there was little, if any, debate on secularism and on what character the State of India was to take. It was no doubt accepted that India, inhabited by many religions, will not discriminate against any religion and will allow freedom of religions to the followers of different religions.

Independent India was anointed in a bloodbath consequent to communal riots that rocked the sub-continent for nearly two years. The Muslim majority areas of the British India were constituted into Pakistan, a theocratic Islamic State - a concept that was duly incorporated later in the Constitution of Pakistan. It should be remembered that in the history of the world, Pakistan is the first and the only Islamic (indeed a theocratic) State born or established as such. Other Islamic States already existed that came to acquire Islamic character. This development has certain political and social consequences that should form the subject of a separate study.

Because of the generally non-communal character of the political party, that spear-headed the freedom struggle and the wise leadership that guided Indian polity at the initial stages, India fortunately did not become a religious or a theocratic State. The debates in the Constituent Assembly that framed the Constitution of India show that there was unanimity on the point that there would be no discrimination based on religion, though there was no common understanding what secularism meant. Surprisingly or otherwise, there was no discussion on this subject at least in the public till the sixties. Apparently there was no judgement either of a High Court or of the Supreme Court dealing with the subject - or else there would have been some debate among our alert academicians.

### **Studies in Indian Secularism**

In 1963 there appeared what has been regarded as a pioneer study on secularism in India. This was 'India as a Secular State' by Donald E. Smith of Princeton University, New Jersey. Around the same time there was another study on the subject made by Ved Prakash Luthera of University of Delhi, India, which was awaiting publication. It was published in 1964 as 'The Concept of the Secular State in India'. In the Preface to his book Luthera mentions that when Donald Smith's India as a Secular State appeared, his study had gone to the press but Smith had read the manuscript of

Luthera's study. As will be mentioned later, the two authors take contrary views on the subject.

Thereafter, for reasons which are not clear, regular discussion and debates took place on this subject, namely, Secularism and India. It would be in order to take note of some of the earlier studies which were published. In November 1965, The Indian Law Institute, New Delhi, had organised a seminar on "Secularism: Its Implications for Law and Life in India" and the papers presented at the seminar along with the inaugural address by the then Chief Justice of India were published in a volume under the same title.

### **Challenges to Secularism**

A.B. Shah, the Founder-President of Indian Secular Society Poona, wrote some articles in a newspaper which brought forth some responses. A Muslim friend put some questions to Shah and he responded to them in his characteristically frank and outspoken manner. Then there was his correspondence with Shankaracharya of Puri. All this material was published in 1968 in a book under the title 'Challenges to Secularism'. This book deserves much wider reading than it seems to have enjoyed. Sample the following headings: The Challenge from Hindu Obscurantism; The Challenge from Muslim Obscurantism, Dialogue with a Hindu Obscurantist (i.e. Shankaracharya of Puri).

A collection of essays in the form of a symposium has been edited by V.K. Sinha and has been published under the title of '*Secularism in India*' on behalf of the International Association for Cultural Freedom. The readers will be interested to note that this volume contains criticism of D.E. Smith's book' by two other academicians Marc Galanter of the University of Chicago and John T. Flint at the State University of New York at Binghamton, New York, and Smith's rejoinder to the same.

During the last forty years or so secularism has been a supremely debated, discussed and, contested subject. In India everyone says he is a secularist. Hindutvavadis insist that they are the true secularists and the Congress is pseudo-secularist; some Muslim scholars - notable among them Dr.Rafiq Zakaria and Asgar Ali Engineer - propound a theory that Islam based upon the Holy Quran is secularist. Moreover so many topics and sub-topics related - directly indirectly - with secularism have been the subject of discussion in India that it is not possible to survey it within the space permitted

for this essay. I intend to cover the debate in so far it deals with three questions which I will formulate as follows:

- *'What is the true meaning of secularism?*
- *Is the Republic of India, as per the Constitution of India, a secular State?*
- *Is secularism desirable or possible in India?*

### **The Meaning of Secularism**

To answer the first question, a survey - though very brief - of the origin of the concept and meaning of secularism is necessary. As a concept, secularism was the product of Renaissance in Europe though the word secularism was not then used. Secular attitude arose as a reaction to the tendency displayed during the medieval ages to despise human affairs and to meditate upon God. If a beginning is to be made towards understanding the meaning of this word, one may turn to the Oxford English Dictionary (Vol. IX 1 978) which states that secularism is the doctrine that morality should be based solely on regard to the well-being of mankind in the present life to the exclusion of all considerations drawn on belief in God or in a future State. OED further points out that it was George Holyoake (1817-1906) who gave this name to the definitely professed belief.

The next step is to find out what Holyoake meant by secularism. Unfortunately, primary sources in the nature of collection of his own writings are not available- at least not easily. But, happily wholly reliable material is available to show the unmistakable views of Holyoake and Bradlaugh. By 1851, a definite stage in the emergence of explicit secularism was reached by the founding of the Central Secular Society by Holyoake. The Society issued a statement of secularist doctrine proclaiming:

- (1) *Science as the true guide of men*
- (2) *Morality as secular, not religious, in origin,*
- (3) *Reason as the only authority,*
- (4) *Freedom of thought and speech, and*
- (5) *That owing to the uncertainties of survival we should direct our efforts to this life only.*

George Holyoake was no less an atheist than Charles Bradlaugh. Holyoake had been sentenced to six months' imprisonment for making the blasphemous statement that God should be retired. It should be remembered that Holyoake published *The Trial of Theism* in 1858. It is also recognised that his coining of the word 'secularism' was an attempt to give atheism some respectability. In March 1870 there was between Holyoake and Bradlaugh a debate on the proposition that "the principles of secularism do not include atheism. Holyoake in support of the proposition canvassed that "... the secularist concerns himself with this world without denying or discussing any other world, either the origin of this, or the existence of that". Bradlaugh, on the other hand, held "that the logical consequence of secularism is the denial, the absolute denial of Providence". In short, Holyoake said that ignoring God was enough; Bradlaugh insisted that God should be banished. This minor difference between them did not affect their common conviction that secularism demanded complete separation of the Church from the State and the abolition of all privileges granted to religious organisations.

### **Wall of Separation**

The theory of separation of the Church from the State had been earlier, in December 1791, incorporated in the U.S. Constitution by the First Amendment which stated that "Congress shall make no law respecting an establishment of religion, or prohibiting the free existence thereof..." Two theories were originally competing regarding the true meaning of this amendment. One theory was that the amendment bans the preferential treatment of any particular religion or sect by the State, The other theory was contained in the famous letter which Thomas Jefferson wrote to a group of Baptists in Danbury, Connecticut, in 1802 wherein he stated that the purpose of the First Amendment was to build 'a wall of separation between Church and State'. Seventy-seven years later i.e. in 1879, Chief Justice Waite, while giving the unanimous opinion of the Court, characterised this statement by Jefferson as "almost an authoritative declaration of the scope and effect of the amendment".

The U.S. Supreme Court has from time to time wrestled with this question but the long line of decisions till today have consistently taken the view that 'State-aided schools cannot allow the school time to be utilised for anything connected to religion, even non-denominational religion, nor can such schools permit their premises even outside the school time, to be used for any religious purposes.

No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever forms they adopt to teach or practice religion.'

I cannot resist the temptation of recalling one opinion of the Supreme Court viz. *Engel v. Vitale* which held that even optional prayers in aided schools were unconstitutional. The majority opinion was delivered by Justice Hugo Black who was a devout Baptist and Sunday school preacher. He was denounced as a Communist and an atheist. It was the wise counsel of the then President of U.S., John Kennedy, that the Americans should accept the decision which was a "welcome reminder to every American family that we can pray a good deal more at home and attend our Churches with a good deal more fidelity and we can make the true meaning of prayer more important in the lives of all our children."

Incidentally, Justice Black was, in his younger days, a member of the Ku Klux Klan and anti-Black. As a judge of the Supreme Court, he was a strong de-segregationist. Carl Sagan has pointed out that as a member of the Ku Klux Klan, Black wore white robes and intimidated the blacks; as a judge of the Supreme Court he wore black robes and intimidated the whites!

### **Multi-religious Society**

America, a secular State in concept and-practice was founded by Pilgrim Fathers, immigrants who have poured into America for over two centuries, have been intensely religious people. Even today there are probably more religious societies, groups, sects - incorporated or not - in America than in any other country. American society is not secular though the State is. The world's first fundamentalist movement was born in this country. It is for this reason, namely the existence of so many denominations of religion, amounting to plurality of religions, that it was thought to have a wall of separation between the Church and the State. This would, the Constitution- makers realised, prevent the dominance of any one particular denomination and secondly would prevent any one denomination members, if in power, from meddling into the affairs of another denomination. The American example demonstrates that in a multi-religious society it is not only necessary but also possible to build a secular State. This holds a valuable lesson to India.

### **French Laicite**

Prior to the Revolution in 1789, France was a Catholic country, having a Catholic monarch, with the Roman Catholic Church as the

Official Church and the Roman Catholic religion as the official religion. The Church commanded power, prestige and pelf. The Church controlled the educational system including the schools and enforced the civil law which was the religion - made law. This situation could be described as that where the State was in the Church and not the Church in the State.

M. Jean Banbarot, an authority on French laicite, the French equivalent of secularism, has in an illuminating contribution *Secularism and its Critics*, traced the development of secularism in France which happened through three stages over a period of two centuries. The French Republic has ultimately evolved into a wholly secular republic. Today the Church is in the State and not the State in the Church. The educational system has been completely freed from the thrall of the Church - "in the French republican school, one does not learn to believe but to reason".

Remember, France was one of the most religious nations in the world, but by a cultural revolution, was transformed into the most secular State. Today it is impossible to know the religious composition of the French society because census does not ask for nor records the religious affiliations of the French citizens.

### **Kamal Pasha of Turkey**

Turkey was the centre of the Ottoman Empire and the seat of Caliphate - the supreme religious and secular head of Muslims all over the world. The religion was the most difficult religion confronting secularism. After Mustafa Kamal came into power he dethroned the Sultan and abolished the Caliphate much to the chagrin of the leaders of the Indian Muslims. A rigorous secularism was introduced by making it an offence to wear a fez cap (a symbol of Islam), abolishing all monasteries and religious houses and confiscating their properties, closing Muslim religious schools and starting State non-religious schools, replacing Shariat law by Swiss Civil Code, Italian Penal Code and German Commercial Code, abolishing polygamy and opening the professions to women who were prohibited from wearing purdah. Ataturk, the 'Father' of Turks, with the submissive collaboration of the Turkish National Assembly, established a secular State and created a secular society which have survived till today though facing some challenge from Islamic revivalism.

### **Secularism in India**

The justification for the review of the evolution of secular States in the three countries made above is the need to emphasize the fact that in all these countries there were deeply religious societies. Yet secular States with obvious benefits have been established in these countries. 'Whether secularism is desirable in a multi-religious society like India is another matter. But it is incorrect to say that in India where there are many religions, predominantly only two - Hindu and Muslim - a secular State cannot be established.

It would, I think, be appropriate at this stage to dispose of the views of two eminent scholars on secularism. The former President of India, Dr. S. Radhakrishnan, should not, with great respect, have been expected to pronounce authoritatively on secularism. However, in the discourse on secularism in India, some participants have quoted a passage from his 'Recovery of Faith'. I would refrain from reproducing in extenso Dr. Radhakrishnan's view of secularism. For the present purpose the following extract is enough to inform ourselves of his views on the subject.

"No group of citizens shall arrogate to itself rights and privileges which it denies to others. No person should suffer any form of disability or discrimination because of his religion but all alike should be free to share to the fullest degree in the common life. This is the basic principle involved in the separation of Church and State. *The religious impartiality of the Indian State is not to be confused with secularism or atheism.* Secularism as has been defined is in accordance with the ancient religious traditions of India." [Emphasis provided]

At best this means that in secular society everyone should be free to practice his or her religion. In my opinion, this is of very little use in the discussion on secular State.

### **Colour of Secularism**

Justice P.B. Gajendragadkar who, as the Chief Justice of India, had inaugurated the seminar on Secularism organised by the Indian Law Institute in New Delhi, delivered Kashinath Trimbak Telang Endowment Lectures in February 1970 when he was the Vice-Chancellor of the University of Bombay. The subject of the lectures was Secularism and the Constitution of India. Gajendragadkar has in those lectures reviewed the development of secularism in Europe, America and Turkey and has also noted the meaning of secularism as unfolded by Encyclopaedia Britannica and Encyclopaedia of the Social Sciences. After doing this he proceeded to state as follows:

*“The word ‘secular’, like the word ‘religious’, is amongst the richest of all words in its range of meaning. It is full of subtle shades which involve internal contradictions, and of these contradictions the conventional dictionary meaning can scarcely give a correct view.”*

This, with great respect, is hardly the correct way to approach the subject but unfortunately this view has coloured much of the later discussion that took place in India.

‘Oh, water, what is your colour?’

‘The colour of whatever you mix me in!’

The meaning of secularism, it is believed, has emerged with sufficient clarity from the survey of historical development made earlier herein. The next question is whether India, as defined by the Constitution, is a secular State. What did the Constitution-makers intend it to be? The Constitution, till the 42nd Amendment in 1976, did not contain the word ‘secular’ except incidentally in Article 25(2)(b). Professor K.T. Shah was the only member who made a valiant effort to get a provision regarding the secular character of India included in the Constitution. The following amendment, moved as Amendment No. 366, was defeated on 3 December 1948.

*“The State in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union.”*

To be sure, neither this amendment nor the speech which K.T. Shah made in support of the amendment would have brought about a situation of “a wall of separation between the State and the Church”. But it would have put a brake upon the State functionaries freely using the State finance and the machinery for pilgrimages and other religious activities. Shah’s amendment would have also prevented the State media, especially radio and television, from broadcasting bhajans, prayers, religious discourses, etc.

### **Non-Discrimination**

The trend of speeches of some of the members on related subjects did not show a full and proper understanding of the need to define secularism or in fact an understanding of secularism. The following extract from the speech of Pandit Laxmi Kanth Maitra on 6 December 1948 can be said to reflect the general consensus:



*“By (a) secular State, as I understand it, is meant that the State is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. This means in essence that no particular religion in the State will receive any State patronage whatsoever.”*

The non-discriminatory character of a secular State is undoubtedly imprinted on the Constitution. There is freedom of religion - the right to freely profess practice and propagate religion. Every religious denomination has been given the fundamental right to establish and maintain its own institutions and to manage its own affairs in matters of religion (Art.25).

There are a couple of provisions which, it is easily seen, do not prevent the utilisation of funds belonging to the State for non-secular purpose. Article 27 stipulates that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion. Does this prevent appropriation from the general revenue for such purposes? It is the application of funds from the general revenue that is making possible the broadcasting of devotional songs and Kirtans and telecasting unabashedly of religious programmes. It is the application of funds from the general revenue that facilitated the 300th Anniversary of Khalsa on which Rs.300 crores are reported to have been spent. Can you legally prevent the reconstruction of Babri Masjid or construction of Ram Temple at Ayodhya with the aid of Government funds? Article 28(1) says: “No religious instruction shall be provided in any educational institution *wholly maintained out of State funds*” [Emphasis mine]

Note that the ban applies only to institutions wholly maintained out of State funds and not to institutions recognised by the State or receiving aid out of State funds. It is well known that almost every private educational institution in India is run to a great extent on funds provided by the State or State agencies. The mischief that would be occasioned by this provision was recognised by K.T. Shah who unsuccessfully sought to get the words “wholly maintained” substituted by “wholly or partially”.

These provisions have been noted by Luthera in his book. He has also pointed out that the State in India can get entangled in the management of religious affairs and institutions. For these and other reasons and in the light of the connotation the word ‘secular’ has

acquired historically and legally, Luthera has argued that India is not a secular State.

### **The Somnath Episode**

An early challenge to the theory and practice of secularism in India was provided by the episode involving the reconstruction of Somnath Temple in Gujarat. As is well known to students of Indian history, Somnath temple was destroyed in AD 1025 by Mahmud of Ghazni and the Shivalinga was broken into pieces. Since then the Hindu sentiment had been strongly agitated and reconstruction of the temple and the installation of a new consecrated lingam had been strongly desired by believing Hindus.

After India attained independence in 1947, moves were initiated towards the reconstruction of the temple. K.M. Munshi, in his *Pilgrimage to Freedom* recalls that Patel, as Deputy Prime Minister, pledged the Government of India to the reconstruction of the historical temple and that the government in the cabinet meeting presided over by Jawaharlal Nehru, decided to reconstruct the temple at Government cost. But Gandhiji advised Sardar Patel not to have the temple constructed and suggested that sufficient money should be collected from the public for this purpose. This advice was accepted and a committee for overseeing the project was appointed under the chairmanship of K.M. Munshi. The decision of the Government, therefore, became irrelevant.

What followed is important. The Constitution of India came into force in January 1950 and in December of the same year Sardar Patel passed away. Munshi invited President Rajendra Prasad to perform the ceremony of the installation of the deity and requested him to accept the invitation only if he was sure of fulfilling the promise. This was because Munshi suspected that Jawaharlal Nehru might jeopardize the President's commitment. However, President Prasad stood by his commitment and performed the installation function on 11 May 1951.

It seems Jawaharlal Nehru did not take well the association of Munshi with the work of the restoration of Somnath temple. For, Munshi says,

“At the end of a Cabinet meeting Jawahar called me and said I don't like your trying to restore Somanath. It is Hindu revivalism.”

This Cabinet meeting was presumably held on 23 April 1951, because in a letter which Munshi wrote on 24 April 1951, he recalls

“Yesterday you referred to ‘Hindu revivalism’...” This letter sets out the history of the restoration work with which, as the letter points out, the States Ministry was closely associated.

This episode gives rise to some important questions. Was the Government of India justified in resolving to undertake the restoration work of a temple (though as a result of Gandhi’s suggestion the money was not provided by the Government)?

If such a decision was taken in a Cabinet meeting over which the Prime Minister presided, was he justified in protesting to the President about the latter’s participation in the function and in chiding Munshi for associating with a work of Hindu revivalism? It is true that the Prime Minister’s protest and rebuke occurred after the ‘secular Constitution’ came into force but no Government could have disassociated with the implementation of a decision taken by it.

These questions have been rendered irrelevant by the conduct of the later Prime Ministers (not excluding Jawaharlal’s daughter) and the Presidents travelling at State expense to religious places and for religious functions.

M.N. Roy had already commented on this phenomenon in his article in *The Radical Humanist* of 14 May 1950 as follows:

*What is necessary is not facile profession of secularism, but a movement for the popularisation of cultural values. The process of secularisation, assuming that it is desired by the Government, cannot be promoted by legislation or executive orders. But men at the helm of affairs could help, if they did not willingly swim with the contrary current, as they do as a rule. The President of the Republic, Governors and Ministers of the States and the lesser are frequently taking leading parts in public religious ceremonies. This demonstrative religiosity is entirely different from religion as a part of one’s private life.*

Warming up to his theme, Roy pointed out:

*The President of the USA or the Prime Minister of the British Labour Government may go to the Church on Sundays and try to lead their personal lives and conduct the affairs of the State according to Christian morality, but their daily lives, either as private citizens or as Statesmen, do not bear the faintest stamp of religious ritualism.*

No wonder that even the agnostic Jawaharlal could not prevent the birth of Independent India on an astrologically auspicious time.

## **Is India a Secular State?**

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

On page 40 of his book, he formulated his famous table enumerating five characteristics of the three religions - Hinduism, Buddhism and Islam - which indicated whether they were favourable to the secular State. Of five factors, four were positive in the case of Hinduism and Buddhism while four were negative in the case of Islam - which meant that the possibility of an Islamic society becoming secular is practically nil.

However, Smith did not fail to notice that the forces of Hindu communalism were biding their time and thought it was not unlikely that the future would bring circumstances more congenial to their growth. He was cautious not to dismiss the possibility of a future Hindu State, but felt that on the basis of evidence then existing the possibility did not appear a strong one. His ultimate verdict: *the secular State has more than an even chance of survival in India.*

## **Degrees of Secularism**

I believe that Smith is in error in holding that India is a secular State, to a degree. There cannot be degrees of secularism - at least in such a way that quantitative difference results in qualitative one. The provisions in the Constitution have been examined earlier here which are capable of producing secular practices. On the other hand, they have created and are creating a situation of non-secular and anti-secular ethos. Luther is more correct on this question.

This is so despite what is stated in some of the judgments of the Supreme Court of India. Recently the Supreme Court had an opportunity of examining whether dismissals of the Bharatiya Janata Party (BJP) Governments in some States and imposition of the President's rule under Article 356 of the Constitution on the ground

“that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution . . .” was right or not. This was consequent to the demolition of what was known as Babri Masjid at Ayodhya, Uttar Pradesh, by the BJP volunteers and other members of the Sangha Parivar. The BJP was in power in Uttar Pradesh. It should be recalled that the BJP had contested the election and had come into power on the basis of a Manifesto, which contained the following:

BJP firmly believes that the construction of Shri Ram Mandir at Janmasthan is a symbol of the indication of our cultural heritage and national self-respect. For BJP it is purely a national issue and it will not allow any vested interest to give it a sectarian and communal colour. Hence Party is committed to build Shri Ram Mandir at Janmasthan by relocating *superimposed Babri structure* with due respect. [ Emphasis added]

The emphasised words were used to indicate the BJP stand that the structure was not a mosque at all and it was built upon a site where Ram Mandir (temple) originally existed.

It must be mentioned straightaway that in S.R. Bommai the judges did not examine the concept of secularism in the light of the theory of separation of Church and State but dubbed as secular the situation existing in the context of the provisions such as Articles 25, 26, 29, 30, 44 etc. Sawant, J., who delivered the leading judgment, after examining the Articles mentioned above and some more, said:

“These provisions by implication prohibit establishment of a theocratic State and prevent the State either identifying itself with or favouring any particular religion or religious sect or denomination. The State is enjoined to accord equal treatment to all religions and religious sects and denominations.”

### **Basic Structure**

Some other judges delivering separate but concurring judgements went further. K. Ramaswamy, J., for example, opined, “Secularism is, therefore, part of the fundamental law and basic structure of the Indian Political System to secure to all its people socio-economic needs essential for man’s excellence with material and moral prosperity and political justice.”

After examining the relevant Articles, Jeeven Reddy, J. (for himself and on behalf of S.C. Agarwal, J.,) said:

“Secularism is thus more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions.”

More eloquently, though not accurately, he proceeded to say:

“In short, in the affairs of the State (in its widest connotation) religion is irrelevant; it is strictly a personal affair. In this sense and in this behalf our Constitution is broadly in agreement with the U.S. Constitution, the First Amendment whereof declares that ‘Congress shall make no laws respecting an establishment of religion or prohibiting the free exercise thereof ...’ (generally referred to as the “establishment clause”). Perhaps, this is an echo of the doctrine of separation of Church and State; may be it is the modern political thought which seeks to separate religion from the State - it matters very little.

Even better: “in this view of the matter, it is absolutely erroneous to say that secularism is a ‘vacuous word’ or ‘a Phantom concept.’”

It is at this stage necessary to examine the judgment of the Supreme Court in *Dr. Ramesh Yashwant Prabhu v. Prabhakar Kashinath Kunte and others* (hereafter Prabhu’s case). This was a judgment of a bench of three judges (not the Constitutional Bench) which by this judgment disposed of two appeals from the judgments in election petitions of Bombay High Court. The question before the court was whether the prohibition of an appeal by a candidate to vote for him on the ground of his religion [Section 123(3) of the Representation of the People Act] was violative of the fundamental right under Article 19(1)(g) of the Constitution. Such a prohibition would be permissible if it amounted to a reasonable restriction under Clause (2) of Article 19. This question was answered in the affirmative, i.e. prohibition would be permissible so emphatically that secularists’ joy knew no bounds. A restriction can be said to be reasonable if it is on the ground of, among other things, “public order, decency or morality”. In paragraphs 28 and 29 the judges held that seeking votes at an election on the ground of candidate’s religion in a secular state is against the norms of decency and propriety of society. Proceeding further the judges said, in paragraph 30, that in context of the abolition of separate electorates based upon religion and secularism being the creed in the Constitution scheme, appeal on the ground of the candidate’s religion was inconsistent with decency and propriety of social norms.”

**Hindutva**

On the facts, the judges found that appeal made by the candidate was of the prohibited kind. This should have been enough for the disposal of the appeal. But the judges, on being invited to do so or otherwise, launched into a discussion of Hinduism and Hindutva and proceeded to say that mere references to Hinduism or Hindutva are not proscribed. What is surprising, to say the least, is the interpretation of Hindutva in paragraph 39 of the judgment. The judges opined:

“Ordinarily, Hindutva is understood as a way of life or a state of mind and it is not to be equated with, or understood as religious Hindu fundamentalism.”

This opinion is sought to be based upon a passage in *Indian Muslims - the Need for a Positive Outlook* (1999) by Maulana Waliduddin Khan, a liberal Muslim scholar. The passage has been extracted out of context and in fact has been ascribed by the Maulana as the view of the Hindutvavadis. That is not definitely the opinion of the Maulana.

What is surprising is the learned judges' failure to notice the meaning of Hindutva as propounded by the Hindutvavadis beginning from Savarkar, who in fact coined the word, and exploited by Lal Krishna Advani and his party as reflected in the Manifestos of the BJP. This part of the judgment has received widespread criticism and has opened an unwarranted controversy which will have to be laid to rest soon by a larger bench of the Supreme Court as soon as possible.

### **Major Religions**

T. N. Madan is a prolific writer on secularism-having written books and several articles on the subject. For the purposes of this essay I will make a reference to his contribution 'Secularism in Its Place' to a collection of essays 'Secularism and Its Critics'. Madan is of the view that secularism is a late Christian idea and it is not indigenous to the religious cultures of India. He argues that the demand for removal of religion from public life is predicated on the view that religion is irrational. He believes that "in the prevailing circumstances secularism in South Asia as a generally shared credo of life is impossible, as a basis for State action impracticable, and as a blueprint for the foreseeable future impotent. He makes what he calls an excursus into South Asia's major religion "to make the point that the search for secular elements in the cultural traditions of this region is a futile exercise for it is not these but an ideology of secularism that is absent and is resisted".

He takes full note of the Muslims' resistance to the reform of family law, Shah Bano case, the Hindurvavadis' agitation for the demolition of Babri Mosque in Ayodhya and Sikh and Hindu fundamentalists facing each other in Punjab and the killing of innocents by Sikh terrorists - even in the context of secularisation in everyday life. Then he takes to following judgment which I would regard as astounding:

“But surely these phenomena are only apparently contradictory, for in truth it is the marginalisation of religious faith, which is what secularisation is, that permits the perversion of religion. *There are no fundamentalists or revivalists in traditional society.*” [Emphasis mine]

In the end Madan rejects secularism as a western modern idea unsuited to the pious society of India and stresses the need for some form of secularism in the Indian cultural context.

I will also briefly dispose of the view of another writer, Aashis Nandy, who too has written extensively on the subject. Nandy, in his contribution ‘The Politics of Secularism and the Recovery of Religious Toleration’ canvasses the thesis of the cultural inappropriateness of secularism on grounds that the public/private distinction lying at the heart of modern secularism makes no sense to the faithful.

Let me at this stage state that rejection of secularism on the ground that it is a western concept is perverse nationalism. You may on this ground, reject, as some in this country do, modern medicine. Democracy, equality, liberty, which were wholly unknown to Indian and Asian societies - can we legitimately reject them? USA was a highly religious society when the wall of separation was built; Catholic Church practically ruled the French society which was also intensely religious. Turkey was the heart of Islamic world. All these countries have accepted secularism as the foundation of their states.

### **Religion in its Place**

I do not expect that a socio-political revolution of the type that took place in France will take place in India; imposition of secularism, as was done in Turkey, is not desirable in India, nor is it possible even with a dictatorship which itself will not be accepted by the Indians. If a secular State is desirable in a multi- religious country that is India, it can be done easily by amending the Constitution to separate religion from all State activities and activities on behalf of State. To



be sure a secular State cannot build a secular society but a secular State can be established even in a non- secular society. This will put religion in its place where it belongs—the hearts and homes of the individuals.

In the concluding chapter entitled ‘What is Secularism For?’ in “Secularism and Its Critics”, Rajeev Bhargav has discussed the desirability of secularism in a modern State and has analysed the implications of secularism looked at from different points of view. Rajeev Bhargav enumerates the arguments for the separation of religion and State broadly on the following grounds. First, religious and political institutions must be separated from one another because both are powerful institutions that command people’s unqualified allegiance. Secondly, secularism is required in order to ensure equality so that no person by virtue of being a member of one institution should be guaranteed membership in another institution. “Separation is required in order to ensure a subtle and complex equalitarian system”. Thirdly, democracy requires that there be no concentration of power in any one institution. “Separation is required to curb political and religious absolutism”. Finally secularism will inculcate the value of fully transparent life.

Religion is a storehouse of superstition and falsehood. A life free of illusion is a life without religion. If this is generally true, then it must be true of our political life. Our polity must be governed by true and self-evident principles not by false and obscure dogmas- It follows that religion and politics must be separated.

Two more practical arguments are also valid. At least in a multi-religious society, the State cannot be entrusted with any functions derived from or dependent upon a religion or religions. The State, after all, is a coercive machinery and there should not be coercion in matters of faith.

Ultimate ideals and religious ideals are not only irrelevant to but are obstructive of ordinary secular life in this world. Bhargava quotes Charles Taylor, who has described ordinary life as the life spent in the production and. the reproduction of life as distinct from life spent in the pursuit of some ultimate ideals. Ordinary life is not restricted as mentioned by Charles Taylor.

## **Pursuit of Happiness**

Ordinary life is the secular life in this world. Its legitimate end is the pursuit of happiness (not pleasure) - in family life, in learning, in arts, in music, in health. How is a religious teaching useful in pursuit of happiness? Bhargava puts it at a slightly lower level. "To sum up, ordinary life requires that an acceptable minimum standard of human interaction exists and it is barbaric to fall below it."

There is not much dissent on the need for having a secular State - 'We are all secularists'. However like Mesopotamia, secularism means different things to different people. One of these meanings is *Sarva Dharma Samabhava* which can be translated as equal regard for all religions. Before proceeding to examine this concept I wish to recall that by 42nd Amendment of the Constitution in 1976 the word 'secular' was inserted in the Preamble to say that India would be a secular, among other things, Republic. What was meant by secular was not mentioned; Article 366 dealing with definitions was not even remembered. The Statement of Objects and Reasons of 42nd Constitution Amendment Bill explained that the purpose of inserting the word 'secular' was "to spell out expressly" the high ideal of secularism, which meant that what was implied in the Constitution was to be made explicit. That part of the 5th Constitution Amendment Bill (1978) which sought to define the word secularism as equal regard for all religions (*Sarva Dharma Samabhav*) was passed by the Lok Sabha but rejected by the Rajya Sabha. An argument is, therefore, available that the concept of *Sarva Dharma Samabhav* has been rejected by Parliament in its constituent capacity.

Dr Amartya Sen, in his essay 'Secularism and its Discontents' calls himself an unreformed secularist and proceeds to propound the theory of symmetric treatment to all religions. This, according to him, is warranted by the provisions of the Indian Constitution. His conclusion in his own words was that:

"It is hard to escape the need to see India as an integrally pluralist society and to accept the necessity of symmetric treatment and secular policies as crucial parts of that recognition."

## **Another World View**

Professor M.P. Rege, a great analytical philosopher of India, in his editorial in the *New Quest* had canvassed the view that the concept of secularism in India could have three meanings:

(i) the recognition that the State is secular and that religious communities are ready to reformulate their values, norms and practices;

(ii) the acceptance of *Sarva Dharma Samabhav* i.e. the attitude of equal respect for all religions as a social and also as a religious value;

(iii) the acceptance of the worldview which claims to be based on scientific knowledge and rational morality

Professor Rege considers the third view as the one having an aggressive element because it denies any place to the transcendent. Rege argues that secularism is no more than one member of a family of worldviews, relations between which need to be based on the principle of *Sarva Dharma Samabhav*.

Professor M.S. Gore, a former Director of Tata Institute of Social Sciences, Bombay, has criticised Rege's view by pointing out that regard for any religion is not consistent with the concept of secularism, that a life must be guided by reason and a life guided by reason must take into account the material as well as the non-material needs of human personality, that the shared values and norms for a life in this world often run counter to the explicit norms of religion and that theistic and transcendental belief systems have often tended to be intolerant of each other. Gore rightly suggests that "even secularism of the agnostic variety need accept the right of another individual to have his own belief system; this is not the same thing as respecting that belief system itself." Despite the platitudes of politicians and others there is in reality no respect among the adherents of one religion for the religion of others.

Professor H.Y. Siddiqui has accurately stated that instead of demanding a rational state of mind "the Indian concept of secularism demands acceptance of the values of other religions while permitting the individual to believe in the values of his own religion.

His conclusion, in the following words, is unexceptionable:

"The Indian concept of secularism therefore still is full of contradictions and therefore is unable to provide a clear unambiguous guideline either to the individual or to the State. As a consequence, the religious values continue to dominate the day to day affairs and in the process generate tension because of plurality of religious views."

The debate has taken place over too long a period and will continue *ad nauseum* unless one returns to the anchor concept of secularism mentioned in the beginning of this essay. Let the religions be followed by those who want to follow. But do nothing that may make the religions flourish. Enlarge the space of secularism, which is at present shrinking. So done, India, for the anti-secularists, can at worst be a bowl of salad and not of stew.

### **A Secular State - No Less, No More**

Rajiv Gandhi Institute for Contemporary Studies, New Delhi had organised, in January-February 1994, a meeting in New Delhi in which papers by eminent intellectuals from different countries were presented and have been published in a book entitled 'Religion and Politics Today'. Among those papers was one titled 'Integration and the Phenomenon of Religious Communalism/Fundamentalism in South Asia' by Dr. Rasheeduddin Khan, the then Director of the Indian Institute of Federal Studies, Jamia Hamdard, New Delhi. Let me quote a paragraph from it:

*"The secular character of the State is exhibited when it remains distant from, distinct from, religion-dominated politics. A secular State, in the pursuit of State activities, governmental obligations and administrative duties, should exhibit a capacity to show respectful indifference to religions and indeed keep vigilant distance from the politics of religious communalism."*

It would be edifying to end this discourse with a reminder in the words of Dr. Rasheeduddin Khan from the same paper:

*"The modern Indian State is an association of citizens equal and free, irrespective of caste, colour, sex, language, region, climate or status. The State in India is not a federation of religions, nor an aggregation of religious communities. The citizens of India, in law and by the Constitution, are members of a common unified national polity. A modern State is based on a Constitution- the fundamental, secular, man-made law of the land. Therefore the State should act as a State and a secular State as a secular State, no less and no more."* [Emphasis is mine].

## **“Suno Bhai Sadho, Kahe Kabir, Suno Bhai Sadho”**

These words have immortalized Kabir, a saint of 14<sup>th</sup> Century. He is not, was not, called “Sant” or “Sadhu” during or after his life. That is partly because he did not speak of God which would have attracted people around him. In his poems, called “dohas” he calls himself “Bhante”. He did not establish any sect.

Kabir was born approximately in 1440 in Kashi, as it was then known. There are many stories of his birth. Commonly it was said that a weaver couple found him near a lake. The couple, Niru and Nima, belonged to a caste known as “Julah”. Though it was known as a caste, it was a sect of Musalmans. So Kabir grew up as a Musalman. As a result, neither Musalmans of that time nor Hindus accepted him.

Julah community was poor. In that community, in poverty, Kabir grew up as a weaver. Julah community was weaver community. Normally that community was a poor community.

Kabir wanted to know more about life and death. He was in search of a Guru. He went to Ramananda of Vaishnav sect, but Ramananda refused to accept him, may be because Kabir was Julah. But Kabir had great “Bhakti” in Ramananda as a guru in his mind. The story goes that Kabir lay on the step leading to a *ghat*. Ramananda while returning from the *ghat* accidentally stepped upon Kabir and said “Ram, Ram”. Kabir accepted this as Ramananda’s way of accepting a disciple. He also accepted Sufi Saint Shekhat as a guru, a fact which shows that Kabir was not a sectarian.

He was growing up in poverty. He also saw the people around him. He saw the exploitation of those whom we call “Dalits” today. He was continuously thinking about this as also other problems. Kabir was, however, familiar about the current philosophy, sects, and rituals. He also knew about the Sants of those philosophy and sects. He was aware of the hardships of the people who blindly believed in those saints and Sadhus. People were slaves of rituals and traditions. He examined Hindu, Muslim, Vaishnav, etc. and found them devoid of true guidance. He said in one of the earliest dohas:

*“If they call me Hindu,*

*I am not,  
Nor am a Musalman.  
I am a statue of  
A metal of this world.”*

To this one required a lot of courage in those days. No one till that time had such thoughts. Nobody had opposed religion. Kabir rejected both the major religions.

In another doha he says “Only Allah is eternal. I am neither Hindu nor Turk. I do not observe any rites. I neither do any Puja nor do I say Namaz.”

It was very courageous to say all this. He did not subscribe to any religion. He said that they call him a Hindu or Musalman and they fight among themselves. He did not say “Namaz” nor did he perform any Puja. For him these are only rituals. God did not dwell in them. Devotion is not measured by them.

He did not believe in “Tirth Kshetra” because, according to him, they only contain water, not God. Does water lead one to God? Then, said Kabir, fish must go to heaven. On idol worship he said, idols are only stones. On the other hand, grinding stone is better because it helps to provide flour.

God, ultimately, dwelt in hearts of men, not in temples, masjids, sanyas or in any ritual. It must be remembered that Kabir was not an atheist. He believed in knowledge which would liberate. That is knowledge that would lead to liberation. With this he tried to educate and enlighten the downtrodden.

Sultan Sikandar disapproved whatever Kabir said. He tried to silence Kabir, but did not succeed. Kabir never talked of compromise. He was clear-headed in his mind and he talked what he believed.

There are many legends about Kabir. Suffice to say, Kabir himself did not codify his teachings. He was fond of oral teaching in the form of small poems which were called “bijaks”. The language of “bijaks” is Hindi which was the language of that region. Did Kabir himself write? The answer is doubtful. A disciple named

Bhagwandas is supposed to have reduced to writing what Kabir preached.

Kabir passed away in 1511. Both Hindus and Muslims claimed his body. When the cloth covering his body was removed, so the story goes, it was found to contain a bundle of flowers. Hindus took away half and Muslims took away the other half. Till today nobody knows whether Kabir was buried or cremated. Kabir himself did not found any sect; but there are Kabir Panths. Ambedkar's Panther was a Kabir Panth, though Ambedkar was not.

Kabir's one Doha says:

*“O servant, where dost thou seek Me?  
Lo! I am beside thee.  
I am neither in temple nor in Kaaba.”*

## Unity of all Religions?

Dr. Bhagwandas, father of Shri Prakash, sometime Governor of then Bombay State, wrote a voluminous book by name “Essential Unity of all Religions”, published by Bharatiya Vidya Bhavan. It is said that Dr. Bhagwandas took 30 years to produce this book. It was immediately after partition when the injuries of Hindu-Muslim riots were still fresh. If it was the intention of the author to bring about the two communities, it has miserably failed, though it got him “Bharat Ratna”. Bharatiya Vidya Bhavan is essentially a Hindu revivalist body, though occasionally it publishes non-revivalist books.

Maulana Wahiduddin Khan of Delhi has rightly pointed out that basic principles of all religions are different and are mutually exclusive; it is incorrect to say that there is unity of all religions. Maulana was commenting on a judgment of the Supreme Court which upheld the election of Manohar Joshi. He was pointing out that “Hinduism was a way of life” was an erroneous statement. In an earlier case, the Court pointed out several parameters which, according to it, would dub a person as a Hindu, though not all Hindus believed in Vedas and Upanishads. In fact, there were atheists who were embraced by the term ‘Hindu’.

If you go through the book by Dr. Bhagwandas, you will notice that he does not refer to the original scripture of religions. He consulted some Muslim scholars to understand what is there in Islam. Dr. Bhagwandas himself has not studied the original books of other religions, let alone Muslim. He has taken some stanzas, as given to him, from other religions and finding that they sound similar concludes that there is unity in all religion. Take for example words like “God”, “Truth” which will be found in all religions, though in Jainism and Buddhism God has no place.

In order to find out the unity of all religions, one must go back to their basic tenets. If Quran says that truth has been dictated by Allah - though differently - that will not show unity. Let us see the things that are essentially followed by different religions.



- The Prophet;
- A book;
- A holy place;
- Pilgrimage.

Let us begin with the Prophet.

According to Concise Oxford Dictionary, prophet means a teacher or interpreter at God's will. It is through him you know what is expected by God from him. God does not speak to the people. It is the Prophet that tells you what is expected from you.

Among Jews, you can take Moses as a prophet because he brought from Sinai the Ten Commandments. Moses did not write any treatise, his sayings constitute the teachings of Jews. "Sabbath" is one of the commandments. Fasting a day in a week, because after creating the world in six days, God took rest on the seventh. Fasting is observed in different ways in different religions, but that is not Sabbath. Is this commonality? Is this unity among the religions? No other prophet teaches fasting, that Quran – through Mohammed – does. Buddha and Jesus do teach fasting.

Then there is the Book among the Jesus, Talmud, which includes Old Testament, regarded as a sacred book. It prophesies a Messiah who will free the Hebrews. That was long before Jesus Christ was born to expiate the sins of mankind – at least the first sin when Adam ate the forbidden fruit. This is the belief of Christians. Jews, of course, did not agree nor do they agree that Jesus was a Messiah. For claiming to be a God and for other blasphemies, he was crucified. Christianity was not born immediately. The Prophets of Hebrew and of Christianity are totally different. The former does not admit the divinity of Jesus. There is no similarity or unity between Judaism and Christianity.

Buddha can be called a Prophet. But what he taught was entirely his own. No God's will. Jainism has no prophet. Mahavir, a contemporary of Buddha and the last of Tirthankaras, taught what is now called Jainism.

Now we come to Mohammed, the prophet of Islam. He did not interpret the will of the God. He tells the will of the God conveyed to him through angel Gabriel. The number of things Mohammed

speaks of in the Quran is too many that cannot be easily summarized in this article. Circumcision, borrowed from Jews, what to eat, what not to eat, when to marry and whom not to marry – they are all ordained in the Quran which is binding on all Muslims. For the sake of record, the following are the essentials for a Musalman:

- There is only one God and Mohammed is his messenger;
- Five times Namaz;
- Thirty days fasting during day time (Ramzan);
- Haj;
- Jakat.

A Persian couplet says that one can talk of ill of God; but not Mohammed. Worship anyone, but Allah, is a taboo. But Mohammed is sacred, though like all of us, he is a man and mortal. Quran says that he is a Prophet and he is the seal of Prophet – he is the last of prophets. There is no prophet after him. Guru Nanak or Basaveshwar, though they are founders of religions, are not prophets. Quran says Islam is for entire mankind and not merely for Arabs. Islam was born in the 7<sup>th</sup> Century, but it is only second population-wise in the world – 14 thousand years it was born.

What is the similarity among these three Semitic religions? Hinduism has no prophets. They are non-human (“*apouresheya*”). Upanishads are mostly commentaries and interpretations of Upanishad. Idol worship is galore among the Hindus. There is not one book for Hindus. For some there is no book at all. In Hinduism there is no hatred of other religions. In Hinduism there can be sub-religions – like Veerashaivism. Though confined to Karnataka, does this religion have similarity with any other? Essential unity?

Then there is a question of Holy Place. For Jews it was the Temple which also is no more. For Christians it is Jerusalem where Jesus was crucified. Mecca is the Holy Place for Muslims – Mohammed was born there. Quran says that every Musalman must perform Haj (i.e. pilgrimage to Mecca) at least once in his lifetime (provided it is possible). Hindus regard pilgrimage to Kashi (Varanasi) as a sacred duty, though no book confirms it. Buddha did not recommend any Holy Place but Buddhists regard Bodha Gaya a sacred place. Jains have no Holy Place. So some religions have no Holy Place. Can one regard this as unity of religions?

The Prophet, the Book and the Holy Place are different for different religions. Though there is similarity among them, there is no unity. One shocking thing must be told. Though there are sects among religions, there are no castes. To our lasting shame, we had Harijans and Mahars who were untouchables. In no other religion you could find untouchability, though now it is not there in India also. How did Dr. Bhagwandas find essential unity among all religions when untouchability was there among Hindus?

There are certain other things which must be touched. Fasting – Muslims must fast for thirty days (Ramzan) during days. Jews fast on Sabbath days though there are no religions; so also Christians who fast on some days. For Jains and Buddhists, there is no fasting. For Hindus things are peculiar. On the eleventh day of each half of each month, fasting is recommended. On *Mahashivaratri* day, Shaivas fast, Vaishnavas feast. Births and deaths are observed in different ways in different parts of the country. It is only among Jews and Musalmans that circumcision is religiously compulsory.

Read in detail, the religions throw up different and, sometimes, mutually inconsistent principles and practices. There is no unity among different religions. In the Constitution of India, Article 14 says that all citizens of India are equal. But that is political equality and not religious.

## Secularism in India: A Balance Sheet

More than 60 years have gone by. Yet the meaning of secularism is neither understood nor clear in meaning to politicians and citizens. Political leaders even talk of '*Sarva Dharma Samabhav*'. Dr. Bhagwan Das canvassed the view long, long ago that there is essential unity of all religions. Maulana Wahiduddin Khan of Delhi has pointed that the basic doctrines of all religions are different and the unity of religions is a myth. The World Parliament of Religions met in Chicago in 1892, which Swami Vivekananda attended, did not pretend that there was unity among all religions. Jews were awaiting for deliverance but got Jesus crucified on the ground that he was not the messiah promised in the Old Testament. Divinity of Jesus Christ, crucifixion, resurrection are fundamental to Christianity and yet roundly denied by the Quran. Judaism and Islam are fiercely monotheistic. Hinduism is polytheistic. Buddhism has no God. Where is the unity?

I have elsewhere discussed what, according to me, is the correct meaning of secularism (See "The Debate on Secularism in India"; New Quest – July-Sept., 2001; "Secularism Revisited", a lecture delivered under the auspices of Asiatic Society of Bombay, published by Indian Secular Society). I will not burden this article with that discussion again. But brief references to the concept are inevitable.

*"Paani, tera rang kaisa? Jisme Milayage vaisa"* (Mohmed Rafi's song).

Water has no colour. That is how it takes the colour of the thing it mixes with.

Similarly in India, Congress claims it is the secular party; Advani insists that Hinduism, being tolerant, is the secular religion; Communists say that communism being atheist is secular.

But what is secularism? The word was coined by George Holyoke who postulated a complete separation between the Church and the State. The U.S. Constitution erects what Thomas Jefferson called "a wall of separation between the Church and the State." Since 1905, France is totally secular – you cannot even know the religion of its citizen as it is not recorded in any document, even in census. Kemal

Pasha established Turkey as a Secular State by abolishing Islamic features.

But in India even agnostic Jawaharlal Nehru could not found a strictly secular State. In Constituent Assembly, Prof. K.T. Shah was the only member who pleaded for separation of the State from religion. Prof. Donald Smith says that India is a secular State up to a degree because in the Constitution of India there are provisions permitting the use of religion even in State functions and activities. Probably in the context of Indian culture and traditions a strict separation between religion and State was thought to be not possible, even by Constitution makers. For example, Pandit Laxmikant Mishra said, on 6<sup>th</sup> December, 1948:

*“By a Secular State as I understand it, is meant that the State is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. This means in essence that no particular religion in the State shall receive any State patronage whatever.”*

Probably this view reflected the consensus of members of the Constituent Assembly.

Unfortunately, till today no proper definition has been given by politicians. By 42<sup>nd</sup> Amendment, the word “secular” was inserted in the Preamble without defining the word in Article 366 of the Constitution, which gives the meaning of the words used in the Constitution. By 44<sup>th</sup> Amendment, an attempt was made to define “secularism” to mean “*Sarva Dharma Samabhav*”. An amendment to this effect passed by the Lok Sabha was rejected by the Rajya Sabha.

Worse still, even the Judges of the Supreme Court, guardians of law, have not dealt with this question authoritatively. The following extract from the judgment of Sawant, J. in *S.R. Bommai v. Union of India* can be said to reflect the view of the Supreme Court:

*“These provisions by **implication** prohibit establishment of a theocratic State and prevent the State either identifying with or favouring any particular or religious sect or denomination. The State is enjoined to accord **equal treatment** to all religions and religious sects and denominations.”* (Emphasis mine).

(AIR 1994 SC 1918 at 2002)

A fair reading of the Constituent Assembly debates, speeches of politicians and judgments of the Courts gives rise to the conclusion that India is not a secular State having a wall of separation between the State and religion and that there are non-discriminatory provisions in the Constitution. Have we lived even upto this definition?

Unfortunately, our politicians, whether of right, central or left, have played with secularism prompting L.K. Advani to say Congress is pseudo secularist. There is a feeling among the Hindus that the Congress is appeasing the Muslims. *Shah Banoo's* case is a classic example of stooping low to conquer Muslim votes. The Supreme Court had held that Section 125 of the Criminal Procedure Code is applicable to all communities, including the Muslims who protested the Government set at naught the judgment enacting a law for providing maintenance to neglected or divorced Muslim women.

The Central Budget provides for a subsidy of Rs.84 crores for Haj Pilgrims. It is surprising that Muslims have accepted this amount despite the fact that the amount comes from the common exchequer which is contributed by, among others, non-Muslims. Does Islam permit taking money from non-Muslims for performing Islamic obligation? This is patently a non-secular act. Muslims should regard money from non-Muslims as *haram* because Islam says that a Muslim should go on pilgrimage of Haj if his means permit.

The attitude of our politicians prevents them from taking steps towards non-communal provisions. Islam allows polygamy but does not mandate it. By enacting a law for providing a monogamous marriage for all, the Parliament does not act in anti-Islamic manner. Similarly, divorce can be regulated by law. Pakistan, an Islamic State, has provided that no *Talaq* is final unless permitted by the Court of Conciliation. Uniform Civil Code is neither desirable nor possible. (Please see my article in Radical Humanist, March, 2007)

There are several Islamic practices which can be regulated by secular laws without contravening Islamic religion. Take for example "adoption". Muslims believe that by **necessary implication** of certain verses in Quran, adoption is prohibited. There is no covert ban on adoption. "... It is somewhat startling to hear Muslims saying that adoption is prohibited in Islam".

Every year, large numbers of children are given in “adoption” under the Guardians and Wards Act to foreigners. A secular law of adoption is the need of the hour. The Hindu Law of Adoption does not permit adoption of non-Hindu children. Adoption of Children Bill (1972) was allowed to lapse because of opposition of some misguided communities. Enact a secular law of adoption and make it optional like the Special Marriages Act. If this is done, several malpractices, including the sale of children, would end.

We are a multi-religious society and yet we have schools for particular religious communities. This is by law not banned. But is it not advisable to start and maintain, even by the State, schools which will admit children of all communities? This will serve the cause of secularism.

Demolition of Babri Masjid is a stigma on secularism and even on *Sarva Dharma Samabhav*. By no stretch of expediency, this is permissible. On 6<sup>th</sup> December, 1992, Kalyan Singh of BJP was Chief Minister of U.P. Now he has entered Samajwadi Party which claims to be a secular party. Is it secularism or even *Sarva Dharma Samabhav*? Demolition of Babri Masjid led, in all probability, to serial blasts in Mumbai in 1993 and consequent communal fights in which hundreds of persons were killed. It has vitiated the political, social and cultural atmosphere of the country ‘*Sarva Dharma Samabhav*’. The way we have treated Taslima Nasrin ill-befits secularism.

In 1984 we had anti-Sikh riots in Delhi in which 2000 persons are estimated to have been killed. Anti-Muslim riots in Gujarat, under the Chief Ministership of Narendra Modi, consumed thousands of Muslims. Vajpayee tried to teach Raj Dharma to Modi, not *Sarva Dharma Samabhav* or secularism.

Witness the present attacks on Christians and Churches in Orissa and Karnataka. They are on the liabilities side of the Balance Sheet. The Sachar Committee Report highlights the disabilities of Muslims. One may regard the recommendations as exaggerated. But the fact remains that Muslims are suffering from several disabilities. To some extent, they themselves are responsible. They still insist on Madrasas. People educated in modern educational institutions have become administrators and police officers. They have become Chief Justices of India, Ministers and Military Officers. At least one Muslim was the Chief of Air Staff. There

have been Presidents and Chief Ministers. Muslims must realize that they will not be taken by their hands towards high positions. They must shed their inferiority complex, feeling of aloofness and must actively participate in political and social life. Muslims are no doubt different, but they should not be separate. Hindus who are in majority are by and large tolerant people despite BJP.

You may not sing “*Vande Mataram*”. But say “*Jai Hind*”.



## Secularism: A Second Look

Secularism sounds sweet and means different things to different people. Indian constitution is said to be secular. It does not favour any particular religion. That is why Indian National Congress says it is secular. Hinduism is the most tolerant religion for ages. Toleration pervades Hinduism which, says Mr. Advani, it is (despite Ayodhya and Gujarat) a secular religion. If Hinduism is the basis of Constitution of India, the latter is secular. Therefore B.J.P. is secular. The Communist parties do not believe in God and religion. Therefore, they say they are real Secularists.

Before any one claims to be a secularist, he or she must tell us what he or she means by secularism. The term itself was in vogue from 17th century onwards after enlightenment. But the philosophy of secularism was in practice. The Church had an ubiquitous presence in all matters pertaining to State. As the people realized they should live according to the dictates of present day life, the importance and the power of the Church declined. Especially in the 18th Century, the US Constitution forbade the use of religion by the State. Thomas Jefferson said the First Amendment to the U.S. Constitution erected a wall of separation between the Church and the State. This despite the fact U.S. as founded in the background of religion.

Soon after, the French Revolution took place and the Constitution mandated that there will be no connection between the State and the Church. This, despite the fact that, till then it was the Roman Catholic religion which dictated the Church all activities of the society and the State. Births and deaths had to be registered in the Church. Education was directed by the Church. Even awards by the state and land distribution had to be approved by the Church. By 1905, France had become a completely secular State.

Today even among the scholars and lawyers there is no agreement on what is meant by secularism. The word was coined by G.H. Holyoake. Fortunately, all the dictionaries, including Oxford Dictionary, give credit to Holyoake as the father of the term. Holyoake defined the term as an ideology, where in social and industrial morality “hitherto determined by reference to transcendental principles of religion were now to be determined by reason, and firmly anchored to the good of man in this life.” Incidentally it may be mentioned that atheism was not necessary for

secularism, whereas Charles Bradlaugh, his close associate, said it was.

Etymologically, that word secular in Latin meant the great span of time or the spirit of the Age. Later, it got the present meaning that of “belonging to this world”. Formerly, Christianity regarded spiritualism as a divisive factor in determination of truth and life of man.

However, explaining the denotation, D.E. Smith, studying the Indian Constitution, defined the secular State as “a State that guarantees individual and corporate freedom of religion, deals with individual as a citizen irrespective of his religion, is not constitutionally connected to particular religion, not seeks either to promote or interfere with religion”. Analyzing the concept, Smith postulates three sets of relationships as follows:

- Religion and individual (freedom of religion);
- The State and the individual (citizenship); and
- The State and religion (separation of State and religion)

The first by implication excludes the third. A person is free to have any religion or not to have any religion. In the case of the second relation, the exclusion of the third factor is essential. A Secular State views the individual as a citizen and not as a member of any particular religion. The third relationship necessarily means that religion and the State function at two different levels – different areas of human activity. The separation of the state and religion is the most commonly recognized component of secularism.

Secularism, historically, is not an event. It is the product of a long line of evolution. In a secular society and under a secular State, people have moved away from Church and religion so that human activity in the field of education, art and politics are free from conformity to theological dogma and priesthood. Secular spirit is seen in the fact that the activities of the state are dictated and tested by reason, by experience and experiment.

The fruits of secularism are many. Since secularism treats an individual as a citizen and not a member of a religion, all individuals are to be treated as citizens and, therefore, equally. Each individual is a unit of secularism. The effect will be and should be democracy and equality which all people cherish.

Of course, Hitler's Germany and Mussolini's Italy were also secular. They did not subscribe to any religion. And they did not subscribe to any ideology except fascism. They had no value system. Similar is the case with Russia. Secularism should be scientific, apart from being free from religion. The States mentioned above were not rational either. In this sense, they were not secular. Egypt, Libya and other states in Africa are in the narrow sense secular but not democratic. Though secularism proper should be and is based upon democracy and equality by itself. Secularism properly understood does not lead to democracy, though all citizens are treated equally unjustly.

D.E. Smith, of Princeton University, has made a detailed study of secularism in India. Many people including Smith regard India as secular State because the State is not aligned with any religion and all religions are allowed to exist side by side. No religion is prohibited. Various Articles in the Constitution permit use of religion. However no religious party is permitted under the Representation of Peoples Act. The Supreme Court has in a case upheld dismissal of a State Government on the ground that it was religious. "*Sarva Dharma Sambhav*" is accepted as the principle of politics.

Various provisions in the constitution, no doubt, do not support or propagate religion. But they also do not provide prohibition of religion. The State functionaries indulge in exhibition of religion. As early as in 1959, M. N. Roy noted several non-secular and anti-secular features of Indian polity and society. "All profession of secularism is meaningless", he exclaimed. He continued to say: "A secular State should not tolerate a vast many million strong army of loafers who outrage the ethical and aesthetic sense of its cultural and educated citizens."

Today, the country and Courts have stayed away from strict secularism.

## **Conversion and *Sarva Dharma Samabhav***

Conversion is of various types; from metric to imperial systems or vice versa; alcoholism to teetotalism; theism to atheism. We are not concerned with these conversions. There cannot be any dispute about these phenomena.

Conversion from one religion to another is the one that concerns us; that too mostly in India which is a multi-religious nation. In the world there is no other country in which almost all religions are present. Unfortunately, Jews are in a small number. They have, most of them, migrated to Israel.

There were Muslim kingdoms in India for 700 years. Yet the Muslim population never exceeded 20%. Some were probably converted by force. Some were converted because of the influence of Sufism. Many may have converted for convenience because it was convenient to belong to the religion of the rulers.

The British ruled for over two hundred years. Yet the Christians formed 3% of the population. It appears that the British as rulers did not impose Christianity on the population. In fact during the Company rule, missionaries were banned. It is possible that some embraced Christianity in order to please the rulers or to be on the preferential list to obtain employment.

Both Islam and Christianity are Semitic religions and are proselyting religions. They believe in increasing their numbers. Islam spread partly by sword, partly by preaching, partly because of the influence of Sufism. Islam is present all over the world except in Western sphere. It never crossed Atlantic. It is present in Europe. For example Albania is totally Islamic because of Ottoman conquests. At one time it spread over large parts of Europe and Asia; it conquered Spain, till it was driven out by Ferdinand in 1492; Ottoman Islam knocked at the gate of Vienna twice. Islam spread rapidly and today Moslems are found everywhere, except in America and Australia.

Christianity, which is more than 600 years older than Islam, spread more slowly and for some time less spectacularly and Europe went through a dark age when Arab scholars were collecting old scholarship especially from Greece. The enmity between Islam and

Christianity was very pronounced. Dante pushed Mohammed into eighth hell.

Christianity, as a religion, spread only after St. Paul propounded its doctrines. Jesus was crucified, put in a sepulcher, and rose again. Christians accept as a necessary part of their religion crucifixion and resurrection. Islam and Judaism are fiercely monotheistic. Trinity is a part of Christian faith. God, son of God and saviour in the person of Jesus and Holy Spirit are together Trinity.

Islam denies all this.

*“They say (God) Most Gracious  
Has begotten a son.  
Indeed you have put forth  
A thing most monstrous.”  
“Say not Trinity; desist:  
It will be better for you:  
For God is one God.”*

*“That they said (in boast)  
We killed Christ Jesus  
The son of Mary,  
The Apostle of God –  
But they killed him not,  
Nor crucified him.”*

These are quotations from The Holy Quran (edited by A. Yusuf Ali). In Sara IX (titled Tauba) it is specifically denied that Jesus was the son of God.

Divinity of Jesus, crucifixion, resurrection and Trinity, which are the foundation of Christianity, are all denied by the Holy Quran. This point is being stressed here to show that there is no unity among religions. Jews denied that Jesus was the Messiah promised in the Old Testament and got him crucified. Islam denies basic beliefs of Christianity. Dr. Bhagwan Das found on a mere comparison of some stanzas, essential unity among all religion. Maulana Wahidullah Khan has rightly pointed out that the principles of all religions are totally different and unity among religions is a myth. Mohamed Ali, of Khilafat fame, said a believer in the Quran, howsoever degraded he is, is better than Mahatma Gandhi, howsoever noble he is. Yet we talk of *Sarva Dharma Samabhav* –

equal regard for all religions. A believer in Christianity and its basics can never truly convert himself into Islam. *Sarva Dharma Samabhav* is a myth and in fact in the light of mutual contradictions is unwarranted.

To a humanist and an atheist, conversion has no meaning. If no two religions are alike, to convert is to fall from frying pan into fire. In “The Varieties of Religious Experience”, William James has said a conversion experience as leading to loss of worry, truth not known before and the sense of change of world. In other words, conversion implies both a new view of the world and a new sense of self. Of course, conversion need not be dramatic as in the case of St. Paul on the road to Damascus. It may be slow and spread over a long time as in the case of Siddhartha. But why convert at all in the absence of spiritual experience. Is this happening in India with Christian conversions?

These are all my thoughts on the nature of conversions. I have already pointed out the legal position earlier in an article (Radical Humanist, November, 2008).

Assuming that conversion is permissible legally or due to persuasion, I have certain objections. There would be no peace, so long as there is no peace between religions. The Quran says Islam is for the world which will or should become Muslim. Thus there will be no other religion. 1700 years have elapsed since the Quran proclaimed Islam as the universal religion which would prevail over all other religions. Yet today there are more non-Islamic people in the world than Muslims. In India Christians are 24 crores while Muslims number 12 crores. Besides, there are religions like Buddhism, Hinduism, etc.

The Quran, Muslims say, is the word of God conveyed to Muhammad via Gabriel whom Salman Rushdi calls postman in Satanic Verses. Yet this word of God has not come true. There are many religions in the world. In “Incredible India” broadcast by Government of India through the television, pluralism of India is shown as the attraction of India which is a land of many religions, many races, many languages, etc. Despite having been subject of foreign rules, Hinduism has remained vibrant. The impact of homogenous religion in the whole world is the destruction of pluralist societies everywhere. The world will not be richer on that account.

Mahatma Gandhi said:

*“If I had the power and could legislate, I should certainly stop proselyting”*

(Collected Works, Vol.46, p.46)

Swami Vivekananda who had awareness of the existence of many religions and who was a speaker in the Parliament of World Religions in Chicago in 1892 said in anguish: “What have the Hindus done to these disciples of Christ that every Christian child is taught to call the Hindus ‘vile’ and ‘wretched’ and the most horrible devils on earth?” (*The Complete Works of Swami Vivekananda*; Vol.4, page 345) He added in another speech mainly addressed to Christians: “Welcome to your religion, but allow me to have mine.” (*Ibid*, Vol.8, page 212) The Rigvedic prayer says “May noble thoughts come to us from all over the world.”

Unfortunately, proselytation in India by the Christians has taken place through money, gifts, etc., thus commercializing religion. Mainly the weaker sections are targeted. The Report of the Christian Missionary Activities Enquiry Committee of M.P. Government presided over by Mr. B.S. Niyogi, who converted to Buddhism in 1956, highlights this aspect.

Conversion of one person as apart from the whole family leads to alienation. It leads to disruption of a family. Even if a whole family is converted, it leads to alienation at the social level. Mother Teresa was also a missionary in the cause of service of the poor, but she was not in the business of conversion.

This article is not an invitation to the Hindutvavadis to indulge in violent acts as besieged in Orissa and Karnataka. I am not against conversion on religious ground. Under Article 25 of the Constitution of India, all persons are entitled to freedom to propagate religion, though the word “propagate” has been narrowly interpreted by the Supreme Court ignoring the Constituent Assembly Debates. But that is the law.

Souls are not ready to be harvested as Pope John Paul II said in “Crossing the Threshold of Hope”.

As a humanist, I would urge freezing of all religions at this stage. For that to happen, Muslims must give up the idea of converting the entire world to Islam. Muhammad’s seal of prophet hood must

be abandoned. Christians should give up the idea of harvesting souls. That will serve the cause of *Sarva Dharma Samabhava* better than conversions.



## **Justice R.A. Jahagirdar (Retd)**

*Justice RAJahagirdar (Retd) studied economics and politics for his graduation and post graduation. During his college days he took part in dramas, debates, and elocution and Students ' Union activities. He studied Law while in employment and passed Law examinations meritoriously in 1959. Having passed the I.A.S. examination, he chose not to join the Civil Service. He served as Government Pleader, Professor of Labour Law in K.C. College and in the University of Bombay.*

*In 1976 he was appointed Judge in the Bombay High Court and retired from there in 1990. After retirement he was appointed Chairman of Monopolies and Restrictive Trade Practices Commission but did not continue for long for personal reasons. He was also Chairman of the Committee for Fixing the Fee of Higher Education in Maharashtra.*

*In addition to his qualifications in Economics and Law, Justice Jahagirdar is a student of Philosophy, History and Religion. A voracious reader, Jahagirdar is fond of Will Durant and his wife Ariel, the famous philosopher-historian couple and quotes them often. His personal library, containing all the volumes of "The History of Civilization" written by this couple, is huge. Recently he has donated all his books to Academy of Political and Social Studies and SM Joshi Foundation Library, in Pune.*

*He is connected with free thoughtmovement and organisations and has spoken and written extensively on rationalism and secularism. He had been the Chairman of Indian Rationalist Association, President of Maharashtra Rationalist Association and Editor of "The Radical Humanist". As a Founder-Trustee of the Rationalist Foundation he has contributed Rs. 5 lakhs towards its corpus.*

*Dr. (Mrs.) Sharad Jahagirdar, daughter of Late Justice P.B. Gajendragadakar (whom Mharashtrians know very well), is a well known and an extremely successful gynecologist. Together, Dr. Sharad and Justice Jahagirdar have very generously donated to the cause of Rationalism, Secularism, Humanism, Social Justice and Freedom of Expression.*



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