Chapter 5. Secularism, Group Rights and Multiculturalism.

In the previous chapters, the theoretical foundations of group rights in India have been explored and the presence of an incipient multiculturalism has been located in colonial practices in India. Interestingly such practices that recognized the group and indeed privileged the group as a basic unit and building block of Indian society, presaged the emergence of multiculturalism later in the decade of the 1970s in many parts of the Anglo-American world. This chapter argues that secularism owing to its being a guarantor of minority rights has been 'overburdened'. Part of this burden of being such a guarantor needs to be shared with an affirmation of multiculturalism in a secularised public domain.

I. Secularism and Multiculturalism.

The concept of secularism assumes importance in a discussion of groups rights in India as it has been viewed as a guarantor of minority rights in the country and is thereby able to ‘deter the persecution of religious minorities’ (Bhargava, 1998: 1). Any discussion of secularism therefore, involves a close connection with minority rights. In addition to the weight of this responsibility that has been placed on secularism, the concept has been a beleaguered one and has had a rather tortuous existence owing to the sustained attack it has come under from rumbustious political quarters like Hindutva in the decade of the 1980s and 1990s, and respectable academic ‘anti-secularists’.

This chapter argues that there is a need to look at the relationship between secularism and the more recent concept of multiculturalism. The reason for this is that both concepts seem to be committed to one and the same end, which is the protection of vulnerable minority groups. However, as a result of this close connection which makes the two concepts seem like allies, indeed which sometimes gives one the feeling that the two concepts are geared to ensuring more or less the same end, it may seem that one concept becomes superfluous and hence completely redundant. If that is the position that one were to take, and one were asked to dispense with a particular concept, one would be more likely to hedge one’s bets on the more solid concept of secularism which has a longer and more respectable historical lineage behind it, than the more recent and upstart
The concept of multiculturalism. However, this attitude and its associated idea of the dispensability of the concept of multiculturalism to privilege secularism, calls into mind what Paul Brass (1999) has termed as secularism being an ‘overburdened’ concept, that too much is expected from it.

The argument of this study is that secularism and multiculturalism are concepts that, taken together can go a significant way forward in the protection of minority rights. However, the two concepts taken together in this way, can give rise to an intriguing possibility. Given the inherent tendency of multiculturalism to reify groups and take a rather static view of culture, it has the potential to actually arrest the process of secularisation that the concept of secularism itself gives rise to. A distinction is thus being made here between secularism as a concept and secularisation as a process that the former gives rise to (see Berger 1973).¹ The process of secularisation is taken to mean here not necessarily as a lessening or diminishing of the role of religion in social life, although it could also mean that. More importantly, what it means is a renegotiation of the spheres in which religion is to play an active role and the spheres in which it is the more secular worldly concerns that are to predominate (see Vanaik 1997). The argument of this chapter is that a ‘group sensitive secularism’, in combination with an emphasis on multiculturalism in a secularised public domain can provide a solution to the protection and promotion of minority groups.

It has earlier been argued that minority rights as they have operated in this country have firstly operated most conspicuously in the private sphere of family and religious laws. Their operation has been less effective, indeed been conspicuous by their absence, in the public sphere, where as a result, the public domain is characterised by its lack of inclusiveness and diversity. An important division between personal and public domains is being made here, such a division forming one of the cornerstones of a liberal polity, one of the foremost conditions of secularism, and indeed the process of

¹ Dipankar Gupta has also made this very important distinction between secularism as ‘ideology’ and secularization as social process. Gupta argues that very often secularism as a concept and ideology has been divorced from the process of secularisation. A consequence of this uncoupling is what Gupta refers to as ‘minoritisation’ which means a profusion of those listed as minorities and a further sharpening and hardening of their boundaries as they ‘are visualized as permanent entities, with fixed and definite empirical manifestations’. Gupta would thus argue that those unscrupulous elements who swear by the ideology of ‘secularism’ create such categories of minorities and by doing so ‘these categories rigidify and become impervious to the actualities that secularisation generates on the ground’ (1995: 2205).
secularisation. A careful analysis of the operation of provisions for minority protection reveal that they have actually resulted in the strengthening and deepening of conservative tendencies in this private/personal domain. Thus, Gurpreet Mahajan argues that while provisions for minority protection have been advanced by the Indian state on liberal principles, their actual operation has resulted in the reification of groups and the bolstering of the position of religious community leaders (see Mahajan 1998).

The fact that group rights have this kind of result is cause for concern and brings into question the relationship that the state should have to communities and groups which enjoy rights and protection. In other words, do the rights that these communities enjoy entail that the state should simply back off and not interfere in the internal affairs of these groups? Such a view would imply that these groups and communities enjoy a negative sphere of liberty, which the state should just keep away from. On the other hand, does the responsibility of the state entail a more positive intervention that could mean legislation to democratise the internal structures of the group? The internal structures of these groups and the lack of democratisation within them, can be further exacerbated by provisions for minority protection in the form of minority rights which can be used by community leaders as a weapon to ward off well meaning interventions by the state, especially in the form of legislation.

Here it is argued that minority rights must operate with the second consideration in mind, which means that there is a need for active state intervention, perhaps in the form of reform legislation to democratise the workings of the internal structures of groups. There will obviously be a great deal of opposition from conservative community leaders to legislation that is enacted with reform in mind. There is not just the problem of opposition from community leaders and resistance from intractable community structures. There is also the problem of an inertia on the part of the state, a lack of political will when it comes to addressing issues of reform and democratisation of communities. The state is thus seen to be in retreat and Niraja Jayal observes that by ‘an unsaintly act of renunciation, it [the state] voluntarily abridges the sphere of its command, and opens the doors, maybe even floodgates, to future abridgements that may undercut its own existence’. This inertia and unwillingness on the part of the state arises from the compulsions of electoral politics and Jayal further observes that ‘the liberal discourse of
representative, majoritarian democracy may be seen to have been manipulated to serve distinctly inegalitarian, unjust, rights-violating, and illiberal ends (Jayal 2001: 149).

However, it needs to be realised that community leaders have relied on the very same mechanism of legislation and have indeed welcomed it when it has been able to further elevate their position within the community as could be seen with the passage of the Muslim Womens Act in 1986. There should then be no objection from community leaders to the idea of legislation itself. Veena Das (1994) has noted that there is a symbiotic relation between the state and community, which furthers a particular patriarchal construction of the community. When there is no opposition to the idea of legislation itself and legislation has been enacted with the active consent of the community, it is possible to envision legislation that is more progressive and gender sensitive. What is needed is a certain receptivity within the community, which means encouraging voices of moderation and progress within, so that the kind of progressive reform legislation that is being favoured, gains acceptability.

To get a better grip on the concept of secularism, post-independence Indian political life and its experience with secularism, can be divided into three distinct phases. The first is the stage of the incipient nation state and the conception of secularism that existed amongst the members of the constituent assembly (Jha 2002, Bajpai 2000). The second is the secularism that prevailed in the Nehruvian era and formed an important component of the liberal-left Nehruvian consensus (Smith 1998; Rudolph & Rudolph 1987). The third is the waning of secularism that was experienced in the post-Nehruvian era. This waning of secularism became much pronounced in the decade of the 1970s, and was further accentuated during the decade of the 1980s and 1990s which were the decades that witnessed the rising tide of Hindutva. It has been especially the last two decades of the 20th century in which secularism has received the most thorough going mauling, discrediting and reviling at the hands of its Hindutva detractors. Simultaneously there have been eloquent expressions in defence of secularism. An optimistic assessment would suggest that secularism has come out of the battle with its opponents, battered and weakened, but still having survived.²

² One says this with a dose of cautious optimism after the verdict of the 2004 parliamentary elections which were a decisive defeat for the BJP led NDA. Many observers have interpreted the election results to be
Before going on to look at the experience of secularism in a more detailed manner, there are two points that need to be explained. The first is the experience of secularism before the country attained independence and the second is the hostility that secularism has faced as a result of its Western European provenance. Taking the second point first. It is specifically such a Western European provenance that makes many observers oppose the idea of secularism and this forms the root of much of the opposition and hostility that the concept faces in this country. However, it will be argued that the concept has become indispensable as a way of organising Indian political life. Further, the uniqueness of the Indian experience has much to contribute to theoretical formulations of the concept, which cannot be understood in terms of the conventional wall of separation and equidistance model, though it does need mentioning that the Indian variant would definitely be much closer to the equidistant model.

The other point that needs clarification is the experience with secularism in the pre-independence period. A naive reading of nationalist historiography would lead one to believe that matters were simple and straightforward, that the Congress led national movement was thoroughly secular, continuously opposing any manifestation of communal mobilisation. However, this was hardly the case and throughout the national movement there were instances of secularism being compromised and communal politics being favoured. Achin Vanaik has argued that 'the period when an anti-colonial national identity was being forged was also the period when the Indian polity was being communalized, and the Congress led National Movement cannot escape most of the responsibility for this' (emphasis added; Vanaik 1997: 31).

firstly, a kind of rejection of the anti-secular politics of the BJP led NDA alliance and secondly, as a rejection of the anti-people neo-liberal economic policies that were being pushed at such a rapid rate by the ruling dispensation See the Seminar issue of May 2004.

3 Gyanendra Pandey has, in his important book, The Construction of Communalism in Colonial North India, commented on how communalism becomes the other or opponent of nationalism: 'communalism, was (and is) important precisely because it was not nationalism. Communalism was, in common with colonialism, the other of nationalism, its opposite, its chief adversary, and hence a necessary part of the story of nation-building in India' (Pandey 1990: 2-3). Such a construction gives rise to a number of binary opposites. Thus, whatever is not nationalism is communalism and whatever is not secular is also communal.
Multiculturalism in India.

It will be argued that the specifically Indian contribution that the multicultural experience can make in India will rely greatly on affirming cultural pluralism in the public sphere and the attempt to make this sphere as inclusive and representative as possible. It will also be argued that the theorization on the public sphere will be greatly influenced by the demands of a secularization of this domain. The theorization on the public sphere will, of necessity, have to take into account the relationship of this sphere with a private sphere that has, in India, been made into a kind of guarantor of minority religious rights. This brings out an important irony in the Indian rights discourse. It has just been mentioned that the private sphere is seen as the repository of protecting and guaranteeing minority rights. Earlier it was also mentioned that secularism has been an overburdened concept because too much is often expected of it and one of the expectations placed on secularism is acting as a guarantor of minority rights.

What is argued here is that minority rights have had wayward tendencies in this country because of the irony just pointed out. The very private sphere that has been a repository of minority rights has experienced an entrenchment of conservative and retrogressive tendencies. Further, the effects of the private domain have frequently spilled over into the public domain, thereby ruling out any possibility of the secularization of the public domain. In fact, just the opposite has been happening. Under the influence of the Hindutva movement with its attempts to irreversibly stamp the public domain with its cultural, norms, values and symbols, there has been a ‘desecularisation’ of the public domain. The presence of Hindutva as a form of Hindu nationalism assuming such an overbearing presence in the public domain has prevented the possibility of an inclusive more representative public domain (see Tamir 1993).

The secularization process that has been under way does not necessarily entail a clear cut demarcation of two distinct spheres with the consignment of the religious to the private, and the public domain becoming the sphere of secular politics. This clear cut separation and demarcation has been the story of the secularization process in the West. On the contrary the secularization process in India will take a trajectory that is in

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4 For an account of the process of secularization in the West see Berger (1973: chapter 5, ‘The Process of Secularization’).
significant ways different from the west and will provide rich resources for the theory and practice of secularism, multiculturalism and liberal democracy.

II. Secularism in three different phases of post-independence India.
The purpose of this section is to survey the fortunes of the concept of secularism in three different phases of the post-independence era. The first phase is the phase of what has been termed the incipient nation state, when India had just attained independence. An interesting view of secularism that one gets in this phase is in the debates of the Constituent Assembly. The second phase is a more consolidated, confident (indeed over-confident) secularism in the phase of Nehruvian India, when secularism forms an important component of the liberal-left Nehruvian agenda. The third is the post-Nehruvian phase in which secularism suffers a battering. This last phase covers the last three decades of the 20th century and witnesses the continuous undermining of secularism as a result of a sustained movement of the polity to the right, accelerated with the rise of the politics of Hindutva.

First Phase: Secularism in the Constituent Assembly Debates 1946-50.
Rochana Bajpai (2000) has argued that the Constituent Assembly debates mark a decisive turning point with regard to the state’s attitude towards groups. Bajpai takes a very critical view of the withdrawal of safeguards for minorities that had been put in place by the colonial state and she holds the Constituent Assembly responsible for this attenuation of minority rights. She notes that all the groups that had been recipients of minority rights were included in the ambit of these provisions in the first draft of the Constitution that was published in 1948. However, in what Bajpai terms a ‘remarkable reversal’ the religious minorities had been excluded from the purview of all the political safeguards by the time the final draft of the Constitution had been readied and these provisions were now confined only to the Scheduled Castes and Scheduled tribes.

According to Bajpai, the dominant nationalist opinion in the Congress, considered minority provisions legitimate only in the case of groups that were definitely backward, while a group’s perception that it needed protection for its cultural identity was not considered to be a legitimate ground (Bajpai 2000: 1837). From Bajpai’s article there
appears to be a distinct antipathy and hostility towards minority rights in the Constituent Assembly, which represented the viewpoint of Congress nationalism. The major argument against such provisions stemmed from the Congress nationalist position (ibid.: 1839; see also Ansari 1999).

Interestingly, the culprit in this story that seems to be emerging is the concept of nationalism. It was thus a certain version of nationalism that rejected collective group rights, encouraged the development of an abstract individualism that completely negated community ties, and insisted on a kind of ‘no-concern’ secularism which ‘further meant the gradual weakening of the bonds of religion and their replacement with nationalism’. The paramountcy of the state according to the ‘no-concern’ theory would only be guaranteed, once religion was ‘relegated to as narrow a sphere as possible so that the state could emerge as a modern Leviathan’ (Jha 2002: 3176). Apart from the ‘no-concern’ theory of secularism; Jha talks about two other theories. The second theory is one that in complete contrast to the first ‘no-concern’ theory with its near disdain for religion, was actually premised upon the value and sanctity of religion. As a result of this sanctity placed upon religion, a conclusion was reached, ironically enough, similar to the first ‘no-concern’ theory, which was that religion must be kept separate from the state, otherwise religion itself would be demeaned. The third theory, which Jha calls the ‘equal-respect’ theory affirmed the significance of religion in India and argued that the state should treat all religions with equal concern. Jha notes that the ‘no-concern’ and ‘equal-respect’ theories clashed during debates in the Constituent Assembly (Jha 2002: 3177).

Bajpai notes that while separate electorates were a particular taboo, every other proposal for the safeguard of minorities was rejected by the Constituent Assembly. These ranged from proposals for proportionate representation and representation of religious minorities in legislatures. While the claims of religious minorities to such safeguards were deemed illegitimate by the dominant opinion in the Constituent Assembly, similar provisions were deemed acceptable for the scheduled castes and scheduled tribes (Bajpai 2000: 1841). Significantly, the political safeguards in case of both religious groups and scheduled castes and scheduled tribes were considered to be temporary measures. Thus, it was thought that once these safeguards had removed the disadvantage that was being suffered by these groups, they could be disbanded. Thus, all the groups in question,
religion. Religious minorities, SCs and STs were considered to be social formations that would no longer be important in national life in the future. The only difference is that in the case of Scheduled Castes and Scheduled Tribes the political and economic safeguards that were granted to them were withheld in the case of the religious minorities.

We thus note two things. The first is that certain universalist and individualist assumptions led the Constituent Assembly into a kind of denial of the continuing validity of groups and that these assumptions worked to the disadvantage of minority groups. The second is that in spite of this denial of the continuing validity of the group, there was a differential treatment of religious minorities on the one hand, and SCs and STs on the other, when it came to political safeguards. The reason for this differential treatment can be found in the logic of nationalism that was not inclined to accept the legitimacy of religious communities as being culturally distinct groups. Further, there seemed to be an implicit assumption that once the SCs and STs had been brought up to the general level of the rest of society they could more easily be assimilated into the larger mainstream society (Bajpai 2000: 1842).

The remarkable thing to note, as the Constituent Assembly Debates were drawing to a close, was that provision after provision relating to the protection of minorities was dropped. Provisions for minority protection were thus 'denuded' and 'watered down' as a result of which Iqbal Ansari argues that the commitment of the framers of the Indian constitution was only 'skin deep'. Interestingly, the set of minority rights that were dropped were those relating to political and economic rights, thus provisions for minority representation in the legislature were dropped and another provision relating to the representation of minorities in the public services was altered to the disadvantage of the minorities (Ansari 1999: 123; Jha 2002: 3179). What remained for the minorities after this watering down was their personal laws which the Constituent Assembly did not want to eliminate. The Rudolphs have pointed out that the Constituent Assembly was almost about to rule out the permissibility of personal religious laws in a secular constitution: 'It (the constituent assembly) almost asserted that a uniform civil code supersedes the varieties of personal law. But at the last minute, it held its hand' (Rudolph and Rudolph 2001: 50). To sum up secularism in this stage of the incipient nation state was clearly not
strong enough to make provisions for a strong set of minority rights, providing in its stead a much ‘denuded’ and ‘watered down’ set of rights.

**Second Phase: Secularism in the Nehruvian Era.**

Secularism was one of the central principles of the Nehruvian consensus. Indeed, there were few serious challenges mounted on secularism during the Nehruvian years. One of the first and most important studies conducted on secularism in India is by D.E. Smith published in 1963, the very end of the Nehruvian era. In Smith’s scheme of secularism there was no possibility of accommodating ideas of the group and acknowledging the existence of groups in Indian society. Smith used a triangular framework to understand secularism with its two angles at the base representing religion and the state and the apex constituted by the individual. Further, the sides and base of the triangle represent the following sets of relationships:

1. religion and the individual (freedom of religion);
2. the state and the individual (citizenship);
3. the state and religion (separation of state and religion).

According to Smith’s second point, there is a complete endorsement of a universal citizenship as against the recent emphasis on a multicultural, differentiated citizenship (see Kymlicka 1995; Young 1989). Further, on the basis of the third point there is a rejection of personal laws as being a violation of secular principles. As against such an attitude we find liberals today endorsing personal laws on the norms of difference upheld by multiculturalism (see Bhargava 1999). The difference between Smith’s ideas and the ideas upheld by present day secular liberals, who would uphold a differentiated idea of citizenship, and who by extension might also support personal laws for religions, can be understood from the fact that Smith published his study more than a decade before the ideas relating to multiculturalism became important.

Secularism in the Nehruvian era was characterised by the supreme confidence vested in it. Its hegemonic position as a vital component of the Nehruvian consensus which is also reflective of the confidence with which the project of modernity was understood in those days is best captured by Akeel Bilgrami’s critique of such a secularism occupying an ‘Archimedean’ position (1998). The zeal with which secularism
as a concept was deployed in public life, can best be understood by looking at the numerous instances in which the courts intervened in the interpretation of religious issues.

This pro-active intervention was evident early on in the case of the temple entry issue, which symbolized the inclusion of untouchables within the Hindu community (Galanter 1998b: 270). Galanter argues that the courts have not been averse to interpreting the boundaries of Hinduism and what constitutes the religion. This has also been true in the case of Islam when the Supreme Court in its judgment relating to the Shah Bano Case took recourse to interpreting certain Islamic practices pertaining to, rather than the opposition contained within them, to maintenance of divorced women. This had disastrous implications as the fall out of the judgment and the entire controversy that it gave rise to has shown (Das 1989; Jayal 2001).

In the case of the Supreme Court’s judgments and pronouncements on Hinduism to effect reform within it, Galanter has taken a rather critical view: ‘It is submitted that the court might have found a more direct and more craftsmanlike route to the same result’ (Galanter 1998b: 280). With regard to the verdict on the Satsangi case, Galanter observes that the court took a decision which committed it to making comments on what did or did not constitute Hinduism, possibly owing to the personality of the Chief Justice P.B. Gajendragadkar, who is termed by Galanter as being a ‘militant advocate of a reformist brand of secularism’. According to Galanter, Chief Justice Gajendragadkar was displeased by an earlier series of judgments by the Supreme Court which upheld the right of religious communities to decide for themselves what constituted religion. Gajendragadkar felt that ‘this “auto-determination” of religious rights was a pernicious doctrine which would give great scope to obscurantist religionists and would place beyond state power practices that were inimical to progress’ (ibid.: 281). However, a little later Galanter himself overturns the logic that he had put forward of explaining the judgment in the Satsangi case: ‘the personal predilections of the judgment writer are hardly a sufficient explanation’. Galanter explains the judgment as flowing from a Westernized educated ruling elite that had ‘a tendency to active reformulation of Hinduism under government auspices in the name of secularism and progress’ (ibid.: 282).
The Satsangi judgment clearly brought out that the state would indeed intervene in the matters of a religious group. A secular state does not necessarily mean a complete and absolute neutrality of the state towards religion and religious groups, for clearly such a position of absolute neutrality is untenable and out of the question. Regarding a secular state and the boundaries of the religious, Galanter observes: 'A secular state, then, propounds a charter for its religions; it involves a normative view of religion. Certain aspects of what is claimed to be religion are given recognition, support, and encouragement; others are the subject of indifference; finally some are curtailed and proscribed' (Galanter 1998b: 283).

Having seen that secularism in India is a delicate balancing act between guaranteeing a certain freedom to religious groups, while at the same it involves a necessary intervention and stepping in on the part of the state, Galanter goes on to delineate two possible ways by which the state can regulate religious groups. These are termed by him as the 'mode of limitation' and the 'mode of intervention'. Through these two terms, limitation and intervention, Galanter refers to firstly, 'the shaping of religion by promulgating public standards and by defining the field in which these secular public standards shall prevail, overruling conflicting assertions of religious authority. By intervention I refer to something beyond this: to an attempt to grasp the levers of religious authority and to reformulate the religious tradition from within, as it were' (ibid.: 284).

A crucial question that Galanter asks here is whether the constitution empowers the court to actively participate in the internal reinterpretation of Hinduism, which can make Hinduism more accommodative of state induced changes (ibid.: 286). Regarding the judgment in the Satsangi case, Galanter notes how it approached the issue based wholly on Western sources without caring to touch upon contemporary Hindu sources. It was thus a judgment which elicited principles from Hindu tradition by common-law techniques. The question that Galanter then poses is that 'if the court cannot enter into Hindu tradition and work within it, how persuasive can it be to the living exponents of that tradition and to their followers?' (ibid.: 287-88). Further, Galanter asks how effective such judgements are going to be. In modern India, according to Galanter, there are for the first time a number of levers like the legislature and the judiciary which can bring about
changes throughout the Hindu community. These levers he further notes are in the hands of the Westernised, Anglicised elite of the country. The big question according to Galanter is: 'Will it get more thrust from them (the levers of legislation and the courts) by using them under the banner of true Hinduism than under that of secular modernism?' The conclusion that Galanter reaches is that the courts are not really very effective when they pronounce upon religious matters in this manner. They are best when they confine their judgments to matters of public order. When the courts pass verdicts in this manner and invoke matters of religious principle, they are actually not making these issues very acceptable among the wide masses of the people, the majority of whom do not agree with many of their elitist presuppositions. To sum up then, the courts are better off when they do not get themselves involved in matters of religious interpretation which is not really their area of competence anyway.\(^5\)

We have a picture of a judiciary which, confident in the strengths of deploying the concept of secularism had no qualms about intervening in religious issues to decide whether something was within the permissible bounds of religion and what constituted essential religious practice. The question is what went wrong with secularism after the Nehruvian era. The answer is that a lot of things went wrong and this is effectively captured by Smith. What strikes one is Smith’s keen sense of what could constitute the dangers to Indian secularism:

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\(^5\) The extent of the judiciary’s involvement in such religious questions can be had from the following quotation taken from Rajeev Dhavan’s (2001) article on India’s quest for secularism:

After some sensitive decisions, including upholding a religion’s power to excommunicate its adherents, many questionable decisions emerged from the Court. In this a leading role was played by Justice Gajendragadkar, who was determined to extend the regulatory control of the state over religious endowments and practices. Without abandoning the “essential practices” test, the courts — especially the Supreme Court — deprived the Khadims of the Durgah Committee of Ajmer of many of their traditional rights, refused to accept the rights of those traditionally linked with the Nathdwara temple in Rajasthan, threw open both temples and mosques for worship, told the Swaminarayans that they were, in fact, Hindus even as they protested that they were not, permitted the exclusion of non-Gowda Saraswat Brahmns from certain ceremonies of a public temple, proclaimed that the Jains had lost their right to manage a temple which had been taken over by the Raja of Udaipur and enabled its statutory takeover, made the role and functions of the traditional archakas of a temple purely secular in nature, informed the Muslims that, on the basis of the Court’s reading of the texts and the advice of a Hindu pandit, “cow sacrifice” was not an essential practice of the Muslim faith, pronounced that the “tandava” dance was not a significant part of the faith of the Anand Margis, found that the practice of pinda and shraddha were integral to the Hindu faith, and stated that praying in a mosque was not crucial to the Muslim faith because they could pray anywhere, “even in the open” (Dhavan 2001: 314-315).
While there is room for cautious optimism, it would be foolish to think that secularism is so firmly established in India that its future is assured. A war with Pakistan, the flare-up of widespread Hindu-Muslim riots, a more compromising attitude toward communalism on the part of Nehru’s successors – any of these possible developments might strengthen the Hindu parties sufficiently to make their challenge to secularism a serious one, if combined with the break-up of the Congress monolith. Nor can we discount a possible upsurge of the latent communal sentiment within certain sections of the Congress itself. The forces of Hindu communalism are biding their time, and it is not unlikely that the future will bring circumstances more congenial to their growth.... There is obviously much that could go wrong (Smith 1998: 229).

The quotation above seems almost prophetic. Every single issue pinpointed by Smith has in fact come true. Thus, continuing Indo-Pak tension has led to corresponding swings in the fortunes of secularism. Nehru’s successors definitely compromised with the principle of secularism. There was indeed an initial resurgence of Hindu nationalism within the Congress. The Congress monolith certainly did break up. Subsequently, the right wing BJP emerged in the very political space vacated by the shrinking Congress. And the forces of Hindu communalism were definitely biding their time.

The third phase: the post-Nehruvian era.

In the post-Nehruvian era with the break up of the consensus which characterised it, secularism was relegated from the pride of place that it once enjoyed, although no one was willing to admit this. Hollow rhetorical appeals to secularism continued to be made. The beleaguered condition of secularism is especially obvious in the decade of the mid-eighties. Niraja Jayal has noted that ‘constitutionally ordained secularism’ in India has been understood as the state’s maintenance of equidistance from all religious faiths and

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India is perhaps the only country where secularism rather than being a mere political idea has also become something of a personal disposition. Thus, someone being a very secular person is almost an acknowledgment of that person’s integrity. The opposite of a decent secular person would automatically be an indecent communal person. Those routinely called communal, like the Hindu nationalists, are quick to insist that they are, in fact, the true secularists while their detractors are, in a unique coinage, ‘pseudo-secular’. In brief secularism has become a validating principle attesting to the worth not just of individuals, but also of institutions and religions.

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its refraining from identifying with any of them. This is a precarious kind of secularism for Jayal argues that ‘demographic disproportionality between the Hindu majority and those professing other faiths has repeatedly highlighted the fragility of the principle of equidistance’. According to Jayal there is an implicit identification by the state with the Hindu majority and there is a constant recourse to an ‘us’ and ‘them’ language, leading to a patronising protection for ‘them’ the Muslims by ‘us’ the Hindu majority (Jayal 2001: 125).

There are two points that need to be noted here. The first is that ‘constitutionally ordained secularism’ with its assumption of equidistance from different religious groups and its reluctance to identify with any faith is an extremely fragile secularism. It is in danger of being swamped by a tide of majoritarianism and this is precisely what happened from 1986 onwards with the rising tide of Hindutva. The second is that minority rights can never be secure with such a conception of secularism, as the most that it can do is secure a form of minority rights that exists at the behest of the majority. It has been noted earlier that secularism in this country has traditionally been tied to the issue of minority rights and is widely seen as the protector and guarantor of minority rights (Bhargava 1998). The events of 1986 with the progressive unfolding of the Shah Bano episode reveal the weakness of secularism as a securing principle for minority rights. They also reveal the wayward tendencies of minority rights, which, while being extended on liberal principles like equality and democratization, had just the opposite effect. To secure minority rights there are two things that need to be done. First, strengthening the concept of secularism itself, especially in the face of the sustained attack that has been launched on the concept from certain academic quarters (Nandy 1998; Madan I 998). Second, fortifying the concept of secularism with the idea of multiculturalism so that the two principles together can support the weight of securing minority rights. This would reduce some of the burden on the already weak pillar of secularism.

III. The Contemporary Debate on Secularism.

Since the decade of the 1980s there has been an impassioned debate concerning secularism. There are entrenched positions and the debate has without doubt given rise to interesting arguments. Among those more critical of the idea of secularism have been
commentators like T.N. Madan and Ashis Nandy. Thus, Madan argues very forthrightly, ‘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’ (Madan 1998: 298). Reflecting, albeit in a very critical manner, the argument that Galanter has made about how the secular, liberal intelligentsia has a particular worldview and how this is sought to be imposed upon other lesser groups with their own cultural norms and presuppositions Madan argues: ‘Secularism is the dream of a minority that wishes to shape the majority in its own image, that wishes to impose its will upon history but lacks the power to do so under a democratically organised polity’ (ibid.).

It is important to focus on the point that Madan is making about secularism as a concept being pushed by an arrogant elite and that it is this arrogance on the part of a deracinated Westernised elite that has led to the kind of recrudescence and revival of religious intolerance and bigotry in this country. A similar point is being made about the concept of secularism by a self-proclaimed ‘anti-secularist’ Ashis Nandy who argues that the ‘hegemonic language of secularism...whatever may have been its positive contribution to humane governance and to religious tolerance earlier, has increasingly become a cover for the complicity of the modern intellectuals and the modernizing middle classes of South Asia in the new forms of religious violence that have entered the Asian scene. These are the forms in which the state, the media, and the ideologies of national security, development and modernity propagated by the modern intelligentsia and the middle classes play crucial roles’ (Nandy 1998: 321-22).

Obviously Madan and Nandy are making the point that the secular views of the elites and middle classes who had a particular modern, liberal world view and who had the backing of the state apparatus have foisted the conception of secularism upon an unwilling India. This is an India consisting of pluralistic and diverse world views and the forcible attempt impose a secular world view with the backing of the state apparatus is responsible for the kind of religious and communal turmoil witnessed in the last few decades. Nandy makes a distinction between religion as an ideology and religion as faith. By religion as a faith he means ‘religion as a way of life, a tradition that is definitionally non-monolithic and operationally plural’. By religion as ideology Nandy means ‘religion
as a subnational, national, or cross-national identifier of populations contesting for or protecting non-religious, usually political or socio-economic, interests’. Having made this distinction Nandy notes that the modern state always prefers to deal with religious ideologies rather than with faiths (Nandy 1998: 322). Nandy goes on to explain the discomfiture of secularists and their legitimising modern states with religion in the following way:

To such secularists, religion is an ideology in opposition to the ideology of modern statecraft and, therefore, needs to be contained. They feel even more uncomfortable with religion-as-faith claiming to have its own principles of tolerance and intolerance, for that claim denies the state and the middle-class ideologues of the state the right to be the ultimate reservoir of sanity and the ultimate arbiter among different religions and communities. This denial is particularly galling to those who see the clash between two faiths merely as a clash of socio-economic interests, not as a simultaneous clash between conflicting interests and a philosophical encounter between two metaphysics. The Westernized middle classes and literati of South Asia love to see all such differences as liabilities and as sources of ethnic violence (ibid.: 324).

Akeel Bilgrami (1998) has written a critique of Nandy’s analysis where he dismisses the idea that Hindu nationalism arose as a reaction to the tyrannies of Nehruvian secularism. More significant than the critique that Bilgrami has made of Nandy’s anti-secularism and anti-nationalist position is Bilgrami’s observation of what was specifically wrong with Nehruvian secularism. Thus, Bilgrami believes that to a great extent ‘the theory and practice of secularism in Nehru’s way of conceiving of the separation takes the form of an unwillingness to acknowledge that there are religious communitarian voices in politics’ (emphasis added; Bilgrami, 1998: 393).

Bilgrami goes on to note that this unwillingness stems from an understandable fear that an acknowledgement would lead to an entrenchment of such groups. However, Bilgrami observes that not acknowledging such religious communitarian voices ‘has had its even more serious pitfalls; and that it has prevented any effort to formulate alternative frameworks for secularism than the traditional framework of the standard liberal tradition which in India – as I said earlier has not amounted to more than a holding process’ (ibid).
It is on the basis of this acknowledgement of groups that Bilgrami argues for a negotiated conception of secularism as opposed to the Nehruvian conception of secularism which he describes as being Archimedean. Bilgrami’s argument then is that secularism in this country must be approached not from the Archimedean perspective of the state, but from the point of view of the different communities.

This would be a negotiation that actively involves the state as a mediator, and this differentiates Bilgrami’s position from that of Chatterjee who from a Foucauldian perspective employs the concept of ‘governmentality’ to argue for internal reforms within religious groups. The distinction between Bilgrami and Chatterjee is that while the former is advocating active state involvement, the latter through his invocation of Foucault is committed to a cynical negation of the state.

It might be useful to add that Bilgrami’s position on secularism, at least with respect to its conscious acknowledgment of groups, is close to the position being advocated by this study wherein there is a conscious acknowledgment of the presence and existence of groups. However, the problem with Bilgrami’s position is that in its attempt to critique the Archimedean heights on which secularism was perched, it leaves the initiative for this negotiated secularism with the religious communities, rather than the state which becomes a mediator, albeit one that is active. Given the conservative construction of religious groups and communities in India it is difficult to accept that such groups and communities would initiate such a negotiation without the active prodding and initiative of the state. Combine this lack of initiative on the part of religious groups and communities with what has been termed earlier as the ‘inertia’ on the part of the state to induce reform within these groups, then we have a very complicated and intractable picture. This is one in which religious communities are obstinately withdrawn in their conservative shells and the state, to compound matters is unwilling to induce the necessary changes.

Again, this inertia and retreat on the part of the state arises from the particular ‘passive’ secularism that according to Anil Nauriya (1989) the Indian state is committed to. Nauriya argues for a more active and aggressive concept. Such a concept would necessarily involve an active interventionist state that could utilise such a concept of secularism to effect important changes. As against such an aggressive concept, the
passive secularism of the Indian state with its associated positions of either an indifferent
neutrality to religion or profession of equal respect for all religions, has committed it to
undertaking a very cautious and muted criticism of religious traditions on the rare
occasions that this has been undertaken. This has been subsequently balanced with
cautious criticism of another religious tradition. This preoccupation of balancing
criticisms of religious traditions, of course, does not get us very far and this particular
idiosyncrasy of Indian secularism has also been noted by Veena Das when she observes
that ‘by a time-honoured tradition in our political culture, one’s secular credentials are
signalled by evenly handing out criticisms of the majority and minority communities’
(Das 1994: 129).

Partha Chatterjee (1998) is another theorist who has given up hope on the concept
of secularism and who believes that as a concept it cannot provide us with a
straightforward and effective way of countering the forces of the Hindu right. Chatterjee
feels that the Hindu right has actually thrived on the concept of secularism as it keeps
claiming that it is authentically secular while other political formations, most notably the
Congress and the left parties, are ‘pseudo-secular’.

Chatterjee goes into a detailed discussion of some of the anomalies of the secular
state in India and the muddles that the state has got itself into, especially with the reform
of Hindu law in the 1950s, while at the same time exhibiting a reluctance to intervene
when it came to the question of the reform of the personal laws of the minorities,
especially Muslim Personal Law. In this muddle that the secular state was entangled in, it
would alternately appeal to the principle of freedom of religion and then the principle of
equality. Each time that it did so it was becoming a victim of its own initiatives. Thus, it
had intervened in the reform of Hindu laws but was reluctant to do so with regard to
Muslim personal law. That the equality principle could not be invoked was evident in the
1950s when conservative sections of Hindu opinion like the Hindu Mahasabha argued
that this was discriminatory. The Hindu Mahasabha was of course opposed to the idea of
reform itself. More seriously there were very few voices among progressive sections that
were willing to point towards this anomaly, the socialist leader J.B. Kripalani being one of
them (Chatterjee 1998: 361).
The Indian state had obviously been caught in a ‘quagmire’ and liberal democratic principles like the freedom of religion and equality were not proving useful in order to extricate itself, as a result of which the state had to muddle along and appeal to pragmatic grounds and considerations. The point that Chatterjee then attempts to make is that ‘the respect for cultural diversity and different ways of life finds it impossible to articulate itself’ in the language of rights. It seems to me that there is no viable way out of this problem within the given contours of liberal-democratic theory, which must define the relation between the relatively autonomous domains of state and civil society always in terms of individual rights. Further, Chatterjee argues that to ‘reconfigure the problem posed by the career of the secular state in India we will need to locate it on somewhat different conceptual ground’ (Chatterjee 1998: 365).

There can be noted here an attempt to circumvent secularism. In Chatterjee this arises, of course, from his opposition to the tradition of liberal thought. However, this circumvention of secularism can also be found in a theorist much more sympathetic to the tradition of liberal thought. Neera Chandhoke (1999) argues that rather than trying to ground the rights of religious minorities in the principle of secularism, it might be wiser to appeal to the principle of equality. This circumvention is a reflection of the battering that the concept has received in the rough and tumble of recent Indian politics. Over the last two decades the term secularism has been made into something of a villain, especially in the popular imagination. The fact that someone like Chandhoke is forced to go ‘beyond secularism’, goes to show the kind of bewailing and despair that exists among the secular liberal intelligentsia with regard to this concept.7

The present Indian predicament, in an explanation offered by the multicultural framework, is one in which the state always expresses the culture of the majority. This view of the state being a purveyor of majority values and norms is held by theorists of multiculturalism like Gurpreet Mahajan, Joseph Carens and Will Kymlicka. Thus, Gurpreet Mahajan observes: ‘However, multiculturalism links the state with the majority

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7 Here it may useful to recall another argument that Chandhoke (2003) herself makes in another book of hers on the Concepts of Civil Society where she argues that concepts such as civil society have become consensus concepts. Consequently, they have become flattened and lost all their explanatory potential. In short it is the concepts that are contested that are the most useful in explanatory terms. Clearly secularism is one of the most contested concepts and therefore it has much explanatory potential within it. It therefore, cannot be circumvented, dodged or avoided.
community; the policies of the state are said to reflect the culture of the majority. Hence, 
the state can justifiably legislate only for the majority community and its interventions in 
the life of the minorities remain suspect. They lack legitimacy such that even those 
actions that are aimed at enhancing equality for the vulnerable sections of the community 
raise the spectre of cultural assimilation' (Mahajan 2005: 92).

This view is by and large true, but not always. To gain a slightly different 
understanding of the role of the state and how it comes to express the cultural norms and 
values of the majority most of the time, a variation of the neo-Marxist understanding of 
the state and the role it plays in society will be used. The idea being put forward here is 
that the state is deeply embedded and imbricated in society. It will inevitably reflect the 
pulls, pressures and tensions of society. In exactly the same way that the state cannot 
always be said to express the interests of the bourgeoisie according to the neo-Marxist 
argument, the argument here is that the state does not always reflect the cultural norms 
and values of the majority. However, it can be expected to do so in the majority of the 
cases. If one were to take the view that the state always expresses the cultural norms of 
the majority then one would be hard put to explain the existence of provisions for 
minority safeguards in a number of liberal constitutions like the Indian. The existence of 
such provisions can be explained as those instances in which the state did respond to the 
needs of the minorities and was not expressing the cultural norms and values of the 
majority.

IV. Anti-Secularism.

There are a number of theorists and academic commentators in India who hold what can 
be termed an anti-secularist view. Often the sources of this anti-secularism are to be 
found in a neo-Gandhianism. Thus, there has been a tendency to valorize the position and 
thoughts of Gandhi. It may be useful to consider some of these approaches. Among the 
more ebullient of these is an article written by Thomas Pantham in which he makes the 
following point:

... that the Gandhian project is aimed at resolving a fundamental 
contradiction in the theory and practice of liberal democracy, namely, the 
contradiction between the affirmation of the freedom of the individual in the
so-called private sphere of morality and its curtailment in the allegedly amoral or purely technical public/political sphere. (Pantham 1983: 166)

What Pantham is arguing is that Gandhian thought has within it the resources and capability to ‘repair this contradiction by dereifying the objective state through swaraj (participatory democracy combining “self-rule and self-restraint”) and by integrating politics and morality through the satyagraha process of sociopolitical action’ (ibid: 166). A further interesting aspect of Pantham’s article is his comparison of Gandhi’s thought with the thought of the German social thinker Jurgen Habermas. Such a comparison between Gandhi and Habermas has also been made by Susanne and Lloyd Rudolph (2001). According to Pantham, both Gandhi and Habermas were reacting to the untruth of the legitimacy claims of the late capitalist state, whose imperialist and fascist manifestations revealed to them the false foundations of Western liberal democracy.

After making this parallel it is interesting to note a particular tendency in such adulatory Gandhian scholarship which is to celebrate and valorize Gandhian thought as being superior to other, especially, western thinkers. Thus, we find Pantham exalting Gandhian thought by claiming that what Habermas has seen in today’s advanced capitalist countries, Gandhi could see much earlier in the peripheral states of South Africa and India. This pattern of arguing that Gandhian thought is superior, can also be found in Susanne and Lloyd Rudolph’s paper on the Gandhian ashram and the Habermasian public sphere, where again the same inevitable argument is made that the Gandhian ashram as an institution is far superior. A similar pattern can be found in the arguments of Vinit Haksar (2001) who argues that aspects of Gandian thought like civil disobedience are superior to Rawls’s ideas on civil disobedience and that the Gandhian framework can be placed within the framework of liberalism where it would exhibit its superiority to Rawlsian liberalism. This study is critical of such adulatory scholarship on Gandhi and argues that there are dangers inherent in Gandhian thought that need to be guarded against.

Achin Vanaik is one commentator extremely critical of Gandhian thought and neo-Gandhian thinkers. He has taken note of the phenomenon of ‘anti-secularism’ which he differentiates from the more politically motivated anti-secularism of Hindutva, and which, also, stands in contrast to the secularist opposition to Hindutva. Thus, both
secularists and 'anti-secularists' stand opposed to Hindutva politics. It is just that their methods of opposition differ, with the secularists arguing that opposition to Hindutva demands a more principled and stronger adherence to the principle of secularism, while anti-secularist opponents of Hindutva would argue that in any battle with Hindutva forces, the struggle must not be waged on the terrain of secularism, but removed from it. Vanaik points out that the anti-secularists are not a separate political force but that their influence is to be felt among members of Indian academia and the NGOs.

Vanaik identifies Bhikhu Parekh, T.N. Madan and Ashis Nandy as the most important academics representing this anti-secularist position. Apart from their common anti-secular position there are a number of issues which divide them, but one of the commonalities that they share is their neo-Gandhianism. The important point that Vanaik makes with regard to these thinkers is that the political import of their positions ends up reinforcing the politics of Hindutva. Thus, many of the anti-secularists in their opposition to the politics of Hindutva have argued that the blame for the recrudescence of religious fanaticism has been secularism itself. Vanaik would argue just the opposite and assert that it is precisely such academic positions that are susceptible to being manipulated and thereby providing intellectual succour to the Hindutva movement (see also Tambiah 1998: 437-445).

Vanaik argues that one of the dominant 'myths' of the anti-secularists is that the Westernised concept of secularism has been overly dominant in Indian political/public life. There is further to be found among the anti-secularist position the creation of a sharp dichotomy between the elites and the masses, with the further assumption being made that it has been the deracinated Anglicised elite that has been pushing secularism and modernity and other such ideas associated with the Enlightenment like instrumental rationality. Such an idea needs to be attacked as this sharp division between elites and masses, the former being seen as deracinated and manipulative, while the latter as innocent, naïve, pure and simple is too simplistic an assumption. Many an anti-secularist in his insistence on speaking for an authentic indigenism is actually making a particularly demeaning argument with respect to the so called innocent masses by attributing to them a misplaced lack of agentiality. Alok Rai in an article on the 'strange case of Indian secularism' rejects such an uncharitable view of the post-colonial Indian elite and the
patronising tone of many who claim to be the authentic voice of the masses: 'The 
Machiavellian view is unduly monolithic – and involves an underestimate of the 
intelligence both of the ruling classes and of the masses whom, it is alleged, they hope to 
mystify by secular appeals even as they mobilise their support by arousing their 
traditional loyalties (Rai 1989: 2771).

The Public Sphere.
It is important to focus on the arguments of the Rudolphs as they use the ideas of Jurgen 
Habermas on the public sphere ‘as the theoretical backboard off which to bounce 
Gandhi’s associational inventions’. Before proceeding, the views of the Rudolphs have to 
be contrasted with some of the neo-Gandhian positions mentioned a little earlier. The 
views of a neo-Gandhian like Ashis Nandy are decidedly anti-modern. On the other hand 
the Rudolphs occupy a more in between ‘tradition-modernity’ paradigm. This ‘tradition-
modernity’ mix favoured by the Rudolphs alongwith the valorisation of Gandhi and his 
opposition to the project of modernity needs to be further differentiated from Habermas’s 
tireless efforts to defend the Enlightenment and the project of modernity from its many 
detractors.

The views of the Rudolphs are being considered here because this study is more 
in line with the Habermasian idea of the public sphere. It believes in the construction of a 
secularised public sphere that is able to represent effectively diversity and cultural 
difference. Further, in the endorsement of multiculturalism in this chapter it argues for 
and emphasises an entrenching and institutionalising of multiculturalism in the public 
domain. Further, it argues for a toning down of the effects of minority and group rights in 
the private domain of family and religious laws where such rights have had wayward 
consequences often reinforcing retrogressive, illiberal, anti-democratic and patriarchal 
tendencies. The arguments contained in this chapter are thus thoroughly opposed to the 
kind of valorisation of Gandhian thought that has been so forcefully objected to earlier.

Further, the reason why the arguments of the Rudolphs need to be considered 
carefully is that such a Gandhian influence in the public sphere would lead to results 
which are completely at variance with the kind of public sphere being envisioned here. 
The Rudolphs argue that the Indian public sphere was different in character from the
'sober', 'rational', bourgeois public sphere that developed in the 18th century in Europe. In contrast Indian associational life and Civil society 'looked different'. It reflected the society of which it was a part, overlooking differences like public/private, religious/secular, chosen/inherited (Rudolph & Rudolph 2003: 388). The Rudolphs further argues that the Habermasian public sphere developed in the context of the profusion of literary journals premised on the growing numbers of the literate. On the other hand Gandhi was crafting a public sphere in India when the forms of communication had still not developed. He further, did not assume a public sphere that was 'conditional on literacy'.

The Rudolphs taking into account all the differences between the Europe of the 18th century in which the Habermasian public sphere developed and the India of the early 20th century in which the Gandhian ashram developed conclude: 'If the coffee house is the quintessential formation of Anglo-American civil society, then the ashram is the special institution of Gandhi’s civil society' (Rudolph & Rudolph 2003: 391). The Rudolphs further extol Tolstoy Farm as the ashram in which 'Gandhi invented multicultural India' (ibid.: 395). Tolstoy farm accounts provide 'the quotidian details of negotiating the integration of private difference into a public space' (ibid.: 396).

Two major points of concern that this study has with the arguments being put forth by the Rudolphs and indeed the uncritical adulation that is found therein, are the use of 'religious grammar' in the ashram contrasted to the 'enlightenment rationalism' of the coffee house and further the obliteration of the public and private by the Gandhian ashram. The reason why these two objections are being raised here is that the use of religious grammar and idiom in combination with the obliteration of the public/private distinction leads to the spilling over of the religious idiom and its dominance in the public domain. There is a consequent 'desecularisation' of the latter, which it is argued here is dangerous and highly undesirable. It is the very opposite of the secularised public domain that is favoured by this study.

In support of the transgression of the public/private divide the Rudolphs argue that this was a 'revolutionary quality of Gandhi’s strategy' as Gandhi was able to understand the complexities of Indian social reality and was further able to disregard this distinction that was so central to European thought. The problem with an argument of this
kind is that it is premised upon an essentialist reading of Indian culture and what is authentic about it. Anything that is deemed to be outside of this essence is to be disregarded and this for theorists like the Rudolphs would constitute a 'revolutionary quality'. Such an approach rules out the possibility of introducing a category like the public/private as an idea which may have a European provenance but which once it has been developed becomes a common resource for humanity.

To reiterate, one of the reasons why such a strong view of Gandhian thought is being taken here is that it has the potential of an all round 'desecularization' of Indian political life (see Vanaik 1997; Chandhoke 1999). This is a danger that arises from the fact that there is in Gandhi's thought a rejection of the idea of secularism understood as a separation between the private/religious and the political/public with a further endorsement of the role of religion in political life. One of the sources of the recent battering that secularism has received in political and academic debates as Vanaik points out is the revival of interest in Gandhi as a political thinker. Regarding the communalization of the Indian polity he forthrightly asserts that '...Gandhi's role comes into dispute. How central was his use of religious idiom and his personal "saintliness" to generating a mass following for the Congress? Was his religiosity peripheral or central to the forming of a winning political strategy for independence – a Gramscian "war of movement" hinging on a series of compromises? Was it the source of a mere communal tinge? Or did he speak the "language of the masses" with a force that no one else could approximate' (Vanaik 1997: 31-32; see also Chatterjee 1985; Parekh 1989)

V. A group sensitive secularism.

This study has adopted a cautious affirmation of the validity and existence of groups. The study therefore tries to look at a form of secularism that is conducive to the existence of groups and their continued flourishing. The reason why such a position is being taken is that secularism in India has traditionally been viewed as the guarantor of minority rights. This is a task it will have to continue to do in alliance with multiculturalism. There are three possible views of the relationship between secularism and multiculturalism. The

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8 An example of a form of secularism that is particularly hostile to the existence of groups is the French concept of laicité and the French Republican tradition in general. On the opposition between the French Republican tradition and multiculturalism see Laborde (2001).
first view might say that the task envisioned for multiculturalism viz. the protection of minority interests has traditionally been performed in this country by secularism. Therefore, any talk of multiculturalism in India is superfluous. A second view might say that not only would the two concepts be attempting to do the same thing, i.e. protect minority rights, but the presence of multiculturalism might serve like the proverbial extra cooks spoiling the broth, as multiculturalism can have the tendency to even work at cross purposes with secularism. It has the very real possibility of further cocooning groups in their isolation, thereby preventing the process of secularization from proceeding. A third view would be that too much has already been demanded from the beleaguered concept of secularism and that the concept by itself is not sufficient to carry the weight of protecting minority rights that has been put on it. Therefore, there is a need to introduce the concept of multiculturalism so that the weight can be shared by the two concepts. This study as should be obvious by now takes this third view of the relationship.  

It is further argued that a secularism that is sensitive to groups, that affirms them and arises from the mediation of groups will be more successful than an Archimedean view of secularism as Akeel Bilgrami (1998) has argued. In fact there are two important theorists that can be bracketed in this category of affirming the validity of the group. These are Akeel Bilgrami and Marc Galanter (1998).

It should be obvious that secularism as it is practised in India is intimately linked with the existence of groups and the commitment of the state to treating them equally. Marc Galanter is one academic who has accepted the reality of group life in India and who unlike D.E. Smith feels that secularism as a principle is not compromised by the state and the political system taking cognizance of groups. Galanter observes that the modern legal system has ‘transformed the ways in which the interests and concerns of the component groups within Indian society are accommodated and find expression’

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9 All the above views are, of course, in one way or the other, affirmations of the continuing importance and validity of secularism. There is a need to keep in mind the vehement rejection of secularism by anti-secularists discussed in this chapter. To take one example of the rejection of an abstract secularism, Sudhir Kakar in an article on religious group identity observes: ‘the political countering of this Hindu identity will involve the offer of a different Hindutva with other images, symbols and myths of the Hindu ethos rather than any abstract concept of secularism which for most is empty of all psychological meaning’ (Kakar 1993: 54).

10 For a critique of D.E. Smith’s views on secularism in India see Marc Galanter (1998a).
(Galanter 1998b: 268). According to Galanter, groups in traditional India were governed by their own rules and were thus autonomous.

However, with the development of a modern system of jurisprudence, groups were to lose this earlier autonomy that they once enjoyed and were now to be governed by modern laws. As a result, they came into a different kind of relationship with the state and with other existing groups in society. Now they are forced to actively intervene to influence the making of rules by representation and influence in the public sphere. Thus, Galanter comments that the legal system provides a forum where the aspirations and interests of India’s modernized and western educated elites and those of other component groups of Indian society clash and come into conflict with each other (Galanter, 1998b: 269). This is a truly multicultural predicament with contending world views premised upon often incommensurable cultural values coming into conflict with each other. The fact that it is happening in the setting of the Indian legal system indicates that we might have to look at the problems of group life and their attendant group rights claims in the context of the legal system.

Galanter points out that the Indian constitution and legal system embody a different relation of law to religion, which is obvious from the fact that Indian law permits religious personal laws, it permits public laws like those of trusts to be differentiated on religious grounds, and the penal law is ‘extraordinarily solicitous’ of religious sensibilities and undertakes to protect them from offence.

Further, there is another aspect that needs to be taken into consideration when we are dealing with secularism in this country – ‘the problem of the autonomy and authority of the various other traditions of normative learning with which the law coexists’. In such a situation the law must face the difficult question of how it is to ‘recognize and/or supervise them’. On the basis of the relationship of the law to the Hindu religious tradition, Galanter puts forward the following ‘crude typology’ to capture the relationship between the law and ‘lesser traditions: (1) delegative recognition of an autonomously defined realm of authority, corresponding to the “separation of powers” mode of secularism; (2) regulative management of boundaries, conflicts, and characterization of the “lesser” tradition, corresponding to the “limitation” mode of secularism; and (3) internal management (for example, interpretation and innovation) of the “lesser” tradition.
by legal specialists, corresponding to the "intervention" mode of secularism' (Galanter 1998b: 290).

From the discussion of Galanter's paper it should be obvious that one of the features that characterises Indian secularism is the way in which the state, and especially the legislative and judicial wings of the government, come into interaction with the varied groups in Indian society. This interaction is extremely challenging as the normative structures of the different groups can often be at variance to the normative structure that is sought to be imposed upon them by the legal structure of the state. If the state is committed to upholding the variety and multiplicity of the groups and also the normative structures upon which these groups are based, what should the state do? Should it just back off from any intervention, thereby defining and guaranteeing a negative area of liberty for groups that is maintained by their rights that are collectively held, or should it actively intervene? This is the big challenge confronting Indian secularism and it brings into the picture the difficult status of the groups and how they are to stand in relationship to the law. Obviously as the principles upon which Indian secularism are enunciated in a more refined manner, the ways and means by which this complex negotiation of issues between the groups and their normative structures on the one hand, and the state on the other, is resolved will need to be taken into account.

VI. Group Rights Again.
All these arguments regarding the group sensitive nature of secularism are leading to an endorsement of the importance of group life, group membership and more importantly group rights. In a similar affirmation of the group and more importantly the different moral premises and implications of group rights Veena Das states that '...cultural rights cannot be thought of as parallel or analogous to other kinds of political rights...'. More relevant for our purposes is her argument that the term cultural rights itself 'includes a variety of situations with very different moral implications' (emphasis added). This particular observation prompts one to think along the lines that when dealing with group rights we are dealing with a species very different from individual rights, with distinct moral and theoretical foundations.
This further reinforces the point that cultural and group rights cannot be considered under the theoretical rubric of familiar rights theories like the choice and benefit theories and hence the need for recognising their distinct theoretical foundations. It may be added that such theoretical foundations and moral implications that cultural and group rights have, may not be found in the liberal tradition as it is familiarly understood today with its dominant and all pervasive liberal-individualism. As the discussion in this study concludes, it may be important to pinpoint this particular concept of liberal individualism as being important, for it will be argued that it is this particular concept and the theoretical fixation that liberal theory has had with it, that acts as an obstacle to arriving at a theoretical resolution of the problem posed by group rights. To go back to Veena Das’s paper, an important observation that she makes after a longish consideration of ‘the contexts in which the problem of cultural rights has been formulated’ (Das 1994: 117) is the irreducibly collectivist dimension of cultural and group rights, the fact that cultural rights cannot be reduced to or understood at the level of individual interests and rights. It may be relevant to quote her at some length:

In the context of these questions, I would like to suggest that just as the experience of the Second World War was of crucial importance for European and American societies – arrived at a conception of human rights based on natural law theories and which essentially tried to empower the individual against oppressive state structures – so the experience of Asian societies today in the context of their struggles over culture, may be crucial to develop the legal structures within which the collective dimension of human existence is given clearer shape and form. This collective dimension is recognized in the Universal Declaration of Human Rights, which refers to the “community in which alone the free and full development of personality (of everyone) is possible”. It seems important (ibid.: 121-122).

In the course of her consideration of these issues Das broaches a number of theoretical issues. Among these one that is particularly relevant is her observation regarding the distinction between individual and collective rights. Her particularly valid observation is what the relevance of this distinction between these two different kinds of rights is to the ‘distinction between individual and collective as morphological categories
and as a subject of rights?' (Das 1994: 121). Rights have traditionally been attached to individuals and liberal theory has never had a problem with associating rights with individuals as the individual has, ontologically speaking, been given a certain distinctness and separateness that has been considered to be a precondition for the autonomy, respect and dignity of the individual that liberalism is committed to. Rights become problematic when they are sought to be attached to groups and group rights are especially problematic when a realist ontological understanding of groups is taken, which views groups as pre-given and objective.

In response to Veena Das’s question one could posit a contractarian view of rights that views them from a constructivist point of view as being subjective rather than the objective view of rights held by natural rights theories. Further, groups and collectivities understood in the morphological sense need to be viewed as constructed entities and categories. There is thus a certain correspondence between rights viewed in this constructivist manner and groups also seen in this constructivist manner. As a result of this correspondence there arises the possibility of flexibility, as the group right can be varied according to the manner and nature in which the group or collective has been constructed. Thus, in response to Das’s query with regard to the ‘distinction between individual and collective as morphological categories and as a subject of rights?’, the view being taken here is that collectives are constructed and contingent as explained in the earlier manner and that they are then understood as bearers of contractarian rights that are also understood in this constructivist and subjective manner.

Das raises at least three further questions relevant to the debate on secularism in this chapter. These are the following: First, what are the obligations of the state in ensuring the survival of cultural groups. Should the state merely provide a negative sphere of liberty and abstain from any interference to ensure the survival and flourishing of a cultural group. Or, does it need to do more than that, by actually fulfilling positive obligations that would ensure the continued flourishing and perpetuation of the group? Second, how effective is the ‘dualistic structure of human rights’ which means the rights that are granted at two levels – the state and the individual, thereby neglecting the
intermediate groups that exist between the state and the individual.\footnote{On the two level theory of rights where rights are granted at the level of the state and the individual, thereby neglecting the intermediate ethnic groups that exist between the state and the individual, see Vernon van Dyke (1977).} Third, if collective rights are granted then what are the relations that would ensue between the state and the collective, between collectives, and between the individuals belonging to collectives and those collectives understood as entities themselves (ibid.: 121).

Having thrashed out some of these theoretical points it is important now to try to understand the ways in which group rights and the demand for cultural rights operate. One of the problems that multiculturalism has been able to identify is the fact that the nation state is not culturally homogeneous. It has further been able to successfully argue that the nation state is not only heterogeneous but that it is also not culturally neutral and that it 'consecrates' a particular culture, which more often than not, is the culture of the dominant majority. In this manner there are a number of cultural, linguistic and religious groups in society. Some groups are culturally privileged as they have access to the state's recognition. The vast majority of the smaller groups are not so culturally privileged as they do not have access to the state's recognition. In this manner Veena Das argues that the state is 'experienced as a threat by smaller units who feel that their ways of life will be penetrated if not engulfed by the larger unit' (ibid.: 124). The larger point is that it is the state which has the power to recognize, accord recognition, and thereby 'consecrate' the cultural values, symbols and norms that belong to a certain group and which by means of the state's act of consecration and recognition become the values of the state. It is therefore very easy to understand how cultural disadvantage arises and how the state is deeply implicated in this process.

Referring to the Shah Bano controversy Das shows how the Muslim community in its rather vehement responses to the Supreme Court judgment asserted that the sphere of criminal law was to be governed by the state while laws pertaining to family and marriage should remain under the purview of the religion or culture of the community. This particular response according to Das was part of a worldwide response in which the cultural claims and legitimacy of the nation state was being slowly eroded and compromised. Thus, in challenging the state as the only giver of values, the community can be understood as 'claiming authority over its private life' (ibid.: 132). Even then, the
authority of the state may be understood as remaining more or less intact, indeed even reinforced by the act of the community in claiming a sphere of sovereignty for itself. This happens with the community actually directing the state as to what the content of the legislation should be.

The important thing to note is relationship between community and state. The community is thus in a situation of competition as well as cooperation with the state. The competition exists as long as the state and community are in conflict with each other over the sphere of authority of the community with the community itself vociferously defending its own turf of the private sphere. The cooperation takes place when the community directs the state regarding the content of the legislation that it wants enacted (Das 1994: 133). The interesting point that one should note here is that the law and legislation acquire a basically conservative orientation as it is being directed by a particularly conservative understanding of community. Thus far from legislation being an effective instrument in the hands of a transformative state to bring about wide reaching social change and social transformation, it becomes a force that is used in collusion between the state and the community to reinforce a conservative and retrogressive understanding of community and its attendant culture.

Das, commenting on the acrimonious debate that unfolded over the Shah Bano controversy laments that it became a contest between the passions of the state (national integration, patriotism) and the passions of the community (its cultural survival in the form given to it by the dominant male culture). As a result the vital issue of the individual right of the woman was completely missed out. The claims of a community that it is sovereign in its private domain which encompasses family practices that are to be governed by personal laws cannot be allowed to become a reason for the suppression of the individual rights of women. There is a high possibility of this actually happening as the rights of women can be suppressed in the family, which is a site of conflict (ibid.: 135).

Das has raised a number of problematic questions regarding cultural rights for groups, but perhaps the most pertinent one that it raises is that while the human rights movement empowered the individual against the state, and if the movement for cultural
rights is able to empower the community or cultural group against the state, how does one ensure that the individual is not completely engulfed by the community? (Das 1994: 137).

The great strength of Veena Das's analysis is that she has shown how the cultural rights of groups are negotiated between the state and the community. This negotiation involves a complicity and collusion between the agencies of the state and the male patriarchal sections of the cultural group to create and reinforce an exclusivist, patriarchal and male-centric understanding of community. Das offers a resolution to the problem which is that on the one hand the state ceases to demand the full ideological allegiance of the collectivities which constitute it, and on the other hand, the cultural groups themselves allow for the possibility of a different way of construction in which the excluded, marginalised voices are also given space (ibid.: 144-45). Das thus observes:

An individual's capacity to make sense of the world presupposes the existence of collective traditions. However, selfhood demands that one is able to break from these collective traditions by being allowed to live around their limits. The simultaneous development of rights of groups and of individuals will depend upon the extent to which these paradoxes can be given voice, both in the realm of the state and in the public culture of civil society (ibid.: 145).

In this suggestion offered by Das is a resolution of the intractable problem mentioned earlier in the study, which is that there exist religious groups and communities obstinate in their unwillingness to bring about reforms, combined with an inertia on the part of the state to effect reforms, the state having retreated from the task. In this combined unwillingness on the part of the state and communities there can be detected a certain arrangement of convenience. It suits both communities and the state that has retreated from its welfare and reformist tasks.

The further problem that Das has been able to successfully isolate and locate is that while the community's challenge to the hegemonic hold of the nation state is valid, the community in the process of challenging such hegemony reproduces and mirrors the
very structure that it was challenging. This is again unfair to the individual who is a part of the community, as the individual may continue to experience oppression albeit not at the level of the nation state but at the lower level of the community. By pointing to this particular problem Das has also brought out one of the inherent problems within multiculturalism. Thus, while the multicultural critique of the hegemonic homogenising nation state is valid, it fails to critically engage with the concept of community and cultural group and how the cultural group while successfully challenging the hegemony of the nation state ends up mirroring and reproducing that very same structure of oppression. This means that the individual within the group may continue to suffer oppression but now at the different level of the community or group.

VII. The Devaluation of Secularism.

It is difficult to agree with some of the points that are being put forward by theorists like Madan, Nandy and Chatterjee. It is argued here that the recrudescence of religious bigotry and zealotry in the country is not the result of too complete a commitment to secularism as theorists like Madan and Nandy would argue. On the other hand, it has arisen because of a diminishing or a lessening of the commitment to the principle of secularism. Here one cannot but agree with the prognosis of D.E. Smith, that less of a commitment to secularism on the part of Nehru’s successors, the break up of the Congress monolith, and further, the rise of religious revivalism, pushing the political spectrum to the right have in combination, led to the systematic undermining of secularism.

There is a further difference posited here with the idea put forward by Nandy that secularism has been upheld and defended by a middle class whose interests have been tied up with state structures. Thus, Nandy would argue that the politics of secularism has been supported by a modern intelligentsia and the middle classes that have been closely associated with the state and whose interests have been tied up with the state and which have also thrived upon the ideologies of national security, development and modernity (Nandy 1998: 322).

Keeping in mind that the challenge by the community constitutes a challenge to the state’s hegemony, Stanley Tambiah couples the crisis faced by the nation state in India with the crisis of secularism (see Tambiah 1998: 418).
On the contrary, it is argued, here that the lack of commitment to secularism and hence its systematic devaluation and undermining has arisen with a number of changes taking place within Indian politics and in particular with different class configurations that have emerged as a result of these changes. The political economy of India has led to a progressive undermining of the state, with the state no longer being as powerful an actor as it once used to be. With this undermining of the state that is an outcome of the forces of economic neo-liberalism, what has happened is that a particular class whose interests are not so tied up with the state has emerged. In effect what has happened is that the older Nehruvian elite, which was Westernized and Anglicised and which depended upon the state for its influence was now eclipsed and replaced by a different elite which was again modern and western educated but which chided the earlier Nehruvian elite for being deracinated and unfaithful to Indian traditions and culture.

It needs to be added that this new elite, numerically speaking, was much larger than the earlier Nehruvian elite that was more in the nature of an exclusive club and that in the words of Ashis Nandy was an ‘ultra elite’ that could no longer ‘screen decision makers’ the way that it once used to in its days of domination. This is also an obvious reference to the fact that the numbers clamouring to make it to elite status were increasing.

The new ‘upstart’ elite, if one can use such a term for want of any other, better term, has been championing neo liberal economic reforms. It is an elite that finds inspiration in the politics of ultra nationalism and follows a politics that is anti-secular. It is the rise of this class which has been the support base of the BJP in the late 1980s and early 1990s. This class has been the most susceptible to being swayed by the excitable politics of Hindu nationalism. This brand of politics has also been the one that has made the loudest noises over national security, as could be seen during the Kargil episode of 1999, which it would not be wrong to say was what gave the BJP the enhanced majority that ensured the party would stay in power at the centre for a full five year term. This frenzy and obsession with national security that this class has nursed could again be seen in the reactions to the Pokharan nuclear tests in May 1998 (Sumit Sarkar, 2002); it could further be witnessed in the kinds of responses to Islamic terrorism that was to be elicited
from this class in the aftermath of the 9/11 incidents and upon which the BJP tried to capitalise.

Where the analysis of people like Nandy and Madan go wrong is that they have been unable to factor into their analysis the significance of the rightward shift in Indian politics. This is a phenomenon that has been under way since at least the 1970s. Thus, it was the Congress under Indira Gandhi that was responsible for the rightward shift in the Indian polity. This is a process that can be dated from the 1970s and coincides with the greater authoritarianism that came to predominate the Congress and was reflected in the declaration of the emergency. The devaluation of secularism is then linked intimately to the changes in the political economy of the Indian state and the displacement of one Nehruvian elite by another numerically larger elite that was more susceptible to, indeed constituted the politics of Hindutva.

This particular class found its upwardly mobile aspirations linked with the interests of global capital and thus favoured neo-liberal economic reforms. Its social and economic aspirations could not be served by the state, partly owing to economic reasons relating to the rolling back of the state which was an imperative of economic neo-liberalism. There were also socio-political reasons that related to the Mandal Commission report and its recommendations of reservation of jobs in the state sector for the Other Backward Classes (OBCs), recommendations which owing to the upper caste profile of this class significantly narrowed down its options in the state sector. In fact it is precisely the politics of Hindutva and the new Hindu right that has led to the unravelling of important elements of the Nehruvian consensus, among which were a commitment to a socialist economy, the policy of non-alignment in foreign affairs and, finally and most crucially for our purposes, the prevalence of Nehruvian secularism (see Vanaik 1989; 2001).

The misleading nature of the argument made by people like Nandy and Madan that the devaluation of secularism has taken place with the displacement of the ultra-elites in Indian politics can be made out on the basis of one simple observation, which is that today the emerging subaltern sections of the Indian electorate, the section represented in the politics of Lalu Yadav in Bihar who for all his rustic humour, coarseness and

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13 See Nasir Tyabji's (1995) article 'Political Economy of Secularism: Rediscovery of India'.

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misgovernance has remained the steadiest bulwark in the defence of secular politics in the country.

The answer to the present predicament that we face in Indian politics then is not less secularism, but more secularism. In the words of Rajeev Dhavan (2001: 320): 'If there be a Xanadu, the road to Xanadu must surely lead to peace and justice, of which secularism is a part. In a shrinking world, all societies have to strive to be secular, but sometimes societies, like ours, have to be more secular than others. And, in a sense, they lead the way for the rest'.