CHAPTER VI
CONCLUSIONS AND SUGGESTIONS

Religion plays an important role in the development of individual personality. In a country like India, where people of different religious faith and sects reside together, the State owes a tedious duty to respect and reconcile their conflicting claims on certain counts. But, there is a similarity in almost all religious faith that they believe in the existence of some supernatural power controlling the universe. India has been ruled by foreign powers for centuries together but even then, the cultural heritage and religious faith of the people are preserved by them, as it is, without any material or radical changes in their religious theories and thinking. There are numerous examples in the history which clearly exhibit that people of this country, despite radical differences in their life style and religious faith, had shown a great restraint and helped each-other in a state of perfect harmony. But, right from the inception of the constitution, it appears that there is gradual decline in the communal harmony of the country, despite the separation of Pakistan from India. The most important and notable frictions can be noticed in the arena of Hindu-Muslim and Hindu-Sikh relationships, in addition to the continued and almost unabated ethnic violence in the
North-East.

If, we took into the scheme of the Constitution of India, then we find that the preamble to the constitution of India out rightly declares that the people will have "liberty of thought, expression, belief, faith and worship". To fulfill this objective, the freedom of religion occupies an important place in Part III of the Indian Constitution and has been placed in the list of basic rights. One is completely free "to choose his path to reach the almighty or to attain "mosha". Indian secularism clearly indicates that the State does not have any religion of its own but the state is not "strictly neutral" in the matters of religion to the extent that the state protects all religions equally without any favour or bias. But, simultaneously, the state also does not interfere" in the matters of religions" to the extent that such faith or practice does not come in conflict with the public order, morality, public health etc. So long a person prefers his faith without any interference in others likely - or in the discharging of sovereign functions, he is free to go to Church, temple, Mosque, Gurudwara; all of them or any of them. One can also profess to be a pure and simple Nastik, and, he still can propagate his atheism.

Today, it is true, that the religious faith and its
propagation has lost its significance and it is not so vital and comprehensive, as it was in the primitive and ancient society, where religion dominated virtually in all spheres of life of man. Its role has been considerably diminished during the last three or four centuries, especially after the invention of science and technology.

In the modern era, where man want to test every things on the scale of scientific reasoning, he prefers to solve his personal or social problems by applying the methods of pure and social sciences rather to pray the God and to get his blessings. The problem of unemployment, over population, illiteracy, Akal malnutrition and spread of infectious diseases can be easily explained on the basis of applications of pure and social science and it becomes embarrassing to say them "Devikripa" or of divine origin. These problems are visualised by the people from the angles of scientific temperament and they try to settle them, in exclusion of divine methods. "Sati-pratha" is no more believed to be a sensible method of sacrifie and the state has rightly intervened to curb its practise as the same can not be allowed to practise in the modern civilized societies. But, it does not mean that the religion has lost its relevance completely in the modern era. Even, today, the religion is the most important guiding force for the people
and the masses all over the world still have strong religious faith, which has influenced their life styles.

The separate home for Muslims, second-grade treatment with Hindus and their religious places in Pakistan, the conversions of Hindus into Christians by missionary activities, pro-Islam and anti-Hindu wave in Indian Muslims, pro-Minoritism, 'anti-Manu', 'Hindu-Rastra', Khalistan and 'Hindutava' are certain common and specific problems associated with the 'Indian-secularism', therefore requires a careful reexamination of the whole of the concept and the fact that in reality are we secular in our behaviour and way of life?

The Indian secularism enshrined in the constitution of India is based on the healthy traditions of the country like sacrifice, tolerance, fraternity and brotherhood. In fact 'Sarva Dharam Sadbhava appears to more than convincing interpretation and meaning of "Indian secularism". The modern conflicts in the arenas of Hindu-Islam relations are because of the fact that we are becoming self-centered and have lost the relevance of aforesaid Indian traditions and are misguided by the fundamentalists for their ulterior objectives of political or other gains.

Freedom of religion enshrined under Article 25 of the Indian Constitution provides for freedom of conscience,
freedom to profess, practice and propagate the religious faith. One is free to have a religious path and negatively he may opt for atheism. In The L.T. Swamiar Case\(^1\), the Apex Court laid down that a religion may not only lay down a code of ethical rules for its followers but it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as an integral parts of religion and these rituals and observances may govern even the matters of food and dress. In the Bijoe Emanuel,\(^2\) the apex court has gone to the extent of even saying that Article 25 is an Article of faith in the Constitution recognising the principle that real test of true democracy is the ability of even an insignificant minority - to find its identity under the country's constitution. The court further said that the question is not whether a particular religious faith or practice appeals to our reason or sentiment but whether belief is generally and consciously held as a part of the profession or practice of religion.

But the freedom of religion is not absolute in character and the state can regulate the freedom on the grounds of public order, public health, morality and can

\(^1\) Coomr. L.T. Swamiar, AIR 1954 SC 282.

\(^2\) Bijoe Emanuel v. State of Kerala AIR 1987 SC 748.
provide for social welfare, social reform and eradication of social evils for ensuring just social order in the society. The state can also throw-open the Hindu places of worship to all sections of the society for enforcing the equalitarian clause and to demolish caste based discriminations in temple entry and right to darshan. More so, the State can also regulate the economic, financial, political and secular activities associated with the religion. For the purposes of getting protection under Article 25, one has to prove the existence of 'religion', which is an important precondition. One cannot propagate and profess some undesirable practices in the name of God and under the pretext of freedom of religion.

In the Rev. Stainslaus Case, the apex court laid down that on the pretext of propagation of one's religious faith, forcible conversions cannot be allowed to be practiced. In the Anand Margies Case, the court did not appreciate the "Tandava Nritaya" on the busy roads of Calcutta due to public order problems and in the Aurobindo Ashram Case, the apex court laid down that the teaching of Guru Aurobindo do

not constitute a separate and distinct religion as the religion has its historical origin and, therefore, can not be prepared in laboratories or in days.

Indian Constitution clearly provides a distinct and separate right in favour of religious denomination to manage religious affairs, under Article 26, though the same is not absolutely free and is subject to public order, morality and health.

In Raja Bira Kishore Case,⁶ the taking over of the secular management of Shri Jagan Nath Temple by Govt. was upheld and not deemed as "any interference in matters of religion". In the Saifuddin Case,⁷ the court declared that ex-communication of a person by the head of a religious denomination for violation of the rules or practices of religion is not permitted under Article 26 and the same is not covered under the freedom to manage the religious affairs.

In Durgah Committee Case,⁸ the Supreme Court held that if the right to administer properly never vested in the denomination or had been validly surrendered by it or had

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otherwise been lost to it, Article 26 would not apply.

In *The Vekataramana Derasur* the Supreme Court explained the relation between Article 25(2)(b) and Article 26(b) that if the denominational rights are such that to give effect to them would substantially reduce the right-conferred by Art.25(2)(b), then, of course, on our conclusion that Article 25(2)(b) prevails as against Article 26(b), the denominational rights must vanish. But, where, that is not the position and after giving effect to the right of the denomination what is left to the public if the right to worship is something substantial and not merely the husk of it, there is no reason why we should not so construe Article 25(2)(b) as to give effect to Article 26(b) and recognize the rights of the denomination in respect of matters which are strictly denominational, leaving the rights of the public to other respect unaffected. In the *Vagnapurushdasji Case*, the apex court intended to establish the social equality between all sections and factions of Hindus in the matters of worship and darshan in temples of denominational character without imparting the traditional and conventional


worship of the deity to be performed by poojaries.

Freedom as to payment of taxes for promotion of any particular religion is covered under Article 27 which provides that no one can be compelled to pay taxes compulsorily for the advancement of any religion or for the maintenance of a religious denomination.

In the Ratilal Case,\textsuperscript{11} the apex court made a nice distinction between 'tax' and 'fees' and laid down that 'fees' is generally charged in lieu of providing some service, whereas the taxes are collected and utilized for the general advancement of society. Tax is the common burden and the tax-payee only gets, in return, is satisfaction of participating in the common benefits of State. The court further laid down that the prohibition covered by Article 27 is only on compulsory levy of taxes and not fees.

In the S.R. Das Case,\textsuperscript{12} the Supreme Court held that the contribution that was levied by Section 49 to the Orissa Hindu Religious Endowments Act, 1939 had to be regarded as a fees and not a tax. The payment was demanded only for the purposes of meeting the expenses of the Commnr. and his Office, which was the machinery set up for the

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administration of the affairs of the religious institutions. The collection made were not merged in the general public revenue and were not appropriated in the manner laid down for appropriation of expenses for other public purposes.

In the Swamiar Case, the apex court held that the contribution levied under the Madras Hindu Religious and charitable Endowment Act, 1951 was a tax and not a fee as the money raised by levy of contributions was not earmarked or specified for defraying the expenses that the Govt. had to incur in performing the new service and all the collections went to the consolidated fund of the state and all the expenses were charged on the general fund of the state without any demarcation of distinction.

In the Suresh Chandra Case, the Delhi High Court laid down that the celebration in connection with the 2500th year of Salvation of Bhagwan Mahavira founder of Jainism did not infringe Article 27 as the Indian secularism is not irreligious and it could be not said that the Govt. was promoting Jainism at the expense of other religions.

Similarly, the arrangements made by the Govt. for Badrinath, Kedar Nath, Amar Nath, Kailash-Mansarovar and Haz

13. Supra n. 1.
could be deemed as a part of Indian - Secularism.

India is following secular policy in its true spirit. The interests of religious minorities can not be adequately safeguarded by a theocratic state due to its commitment to one particular religion. Our constitution guarantees not only religious freedom both to individual and collective without any discrimination it also lawfully permits to propagate religion and one form of propagating religion is by means of religious instructions in educational institutions. This right has been made available under Article 28 of the constitution. This Article prohibits religious instructions in institutions wholly maintained by the State However, it does not prohibit moral instructions or academic study of any particular religion. This was clearly established by the Apex court in DAV College, Jallandhar v. State of Punjab. The people have generally misunderstood about the nature of the freedom of religion under our constitution. We must understand the freedom in the light of our constitution and no freedom can be exercised beyond and above the provisions of the constitution. We have not only been given freedom of religion but also freedom from religion if it becomes a

15. AIR 1971 SC 1757.
menance to one's Liberty and dignity. Constitution aims at the ideology of free exercise of religion and also the principle of tolerance and equality. The State has every right to step in if religion leads to social injustice, exploitation and cruelty in any form. It these ideals can be strictly adhered to, the freedom can't be misused by the orthodox section of the society.

To safeguard the interests of minorities culture and educational rights have been guaranteed under Articles 29 and 30 of the constitution. Article 30 (1) enshrines a fundamental right to the minorities to establish and administer educational institution of their choice. These institutions can also be subjected to regulatory measures. But in a catena of cases discussed in Chapter IV, it is held by the Apex Court that in the garb of regularly measures the state or any other authority has no right to interfere in the internal administration of minority institutions. The discussion of cases reveals that an atmosphere of mistrust is created as and when the states resort to experiments regarding their right to regulate and the minorities want to exercise their fundamental right. the regulatory measures taken by the state must be for educational excellence of the education and the institution. The three recent decisions of
the Supreme Court in Frank Anthony Public School Case,\textsuperscript{16} Christian Medical College Employees Association case,\textsuperscript{17} and All Bihar Christian Association case,\textsuperscript{18} are welcome and timely. They would help in bringing the minority institutions into the main stream of the nation and realise the ideal of welfare state. It will also ensure security of tenure to large number of teachers and other will guarantee the constitution goal of equal pay for equal work to all of them. This is the need of the day to continue this progressive trend in future also.

Thus, nothing should be done by the states and the majority people which may cause cracks in National Unity and integrity. The Minorities should be allowed to exercise their rights available under Articles 29 and 30 in true spirit of our constitutions. The Minority Commission must be further strengthened. The minorities should also have a change in their attitude and outlook and the things should be visualized in national interests. All rights need be exercised without tarnishing the fabric of national unity and integrity. Like other fellow citizens, the minorities

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  \item \textsuperscript{16} (1986) 4 SCC 707.
  \item \textsuperscript{17} AIR 1988 SC 37.
  \item \textsuperscript{18} AIR 1988 SC 305.
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should be conscious of the duties towards the national life. The majority religious communities ought to show breadthness and soft religious attitude towards religious or linguistic minorities regarding the exercise of their rights. The minorities should also not insist too much on separatism or maintaining their individual identity as distinct and separate from others in areas which do not relate to their religion, language or culture. In other areas they should identify with the national aspirations. On the whole, a balance has to be maintained between national unity and integrity on one hand and the preservation of the legitimate minority rights on the other.

There has been a lot of controversy regarding the protection of national interest on one side vis-a-vis the religious liberty on the other side. The Apex Court, in the National Anthem Case, was called upon to decide a similar controversy. The court, following a judgment of the U.S. Supreme Court in the West Virginia State Board Case, gave predominance to the religious freedom as against national respect, national interest and national values. The hobb'ble Supreme Court, perhaps, did not give much credence to the

19. Supra n.2.
20. Supra, n.9.
fact that we are 'Indians' first and thereafter Christians or 'Jehovas' or Muslims etc. We all owe a national duty, in addition to the fundamental duties that we must respect our national flag and song. The instant ruling of the Apex Court will only add fuel to the fire and is likely to be interpreted as a licence for 'all' to disregard the sanctity of the National Anthem, national Flag and other national marks of the country which may endanger national integrity and unity of the country. It is, therefore, estimated that the judgment of the High Court in this case appears to be more sound.

In the Ismail Faruque Case, the majority judgment of the Supreme Court appears to be more sound as the State under its sovereign powers can acquire any land in public interest. The area and structure around 'Babri Masjid - Ram Janambhoomi' has been a constant point of severe ethnic clashes and riots between Hindus and Muslims and, therefore, the Government has rightly intervened in the matter in the interest of national solidarity and public order, after all religious freedom or right to perform pooja or pay 'Namaj' can not be permitted at the cost of bloodshed.

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21. Supra, n. 11.
In the Adelail Co. Case, the Australian Supreme Court has rightly laid down that anti-war propaganda can not be allowed in the guise of religion or under the pretext of religions propagation, especially, when the nation is at war. Religions liberty is subject to national Security.

If, we look at the 'religions fabric' of our country, them it becomes clear that it is so vast and wide to cover everything from birth to death of a person. Therefore, power has been given to the State to regulate this freedom and to provide for social welfare, especially to eradicate social evil prevalent in the society for centuries together. The reformative zeal in the arena of religions faith and practices was must and invitable because of fantasies guiding most of the religious faith even to the extent of child or human sacrifice for religious benefit. Such activities, can, even be heard in the media reports of modern society. The concept of social reforms was inherited by the Indian constitution under Article 25 (2) (b) without impairing the religions freedom. But, the process of reformation, it appears, has been more in case of the Hindus society, whereas, the State was taken a precautionary approach in the field of orthodox Muslim society.

In the *Narasu Appamali Case*, the Bombay High Court upheld the Bombay Prevention of Hindu Bigamous Marriages Act, 1946 which declared "the contracting of bigamous marriage by a Hindu", a penal offense but on the other hand same was permitted among Muslims. The court laid down that it is to be seen by the State that it want to bring about the reforms stages by stages or by community wise or territory-wise and the same can not be applied uniformly to all communities. The court, further make it clear that the two communities can not be treated absolutely alive as both not be treated absolutely alive as both are governed by separate and distinct personal laws based upon their separate religions texts. More so, polygamy has never been recognized among Hindus and monogamous marriage is, therefore, a rule without exceptions.

In the *Srinivase Case*, also the Madras High Court followed the principle laid down in the Naraser Case while upholding the validity of the Madras Hindu (Bigamy prevention and Divorce Act, 1949 and made it clear that bigamous marriage can not be permitted as a policy among

Hindus. In the *Ram Prasad Case*, the Allahabad High Court laid down that a person can not be permitted and allowed to contract second marriage even on the failure of first wife to bear a son for 'pindadan' and continuation of race and name of the family. In such cases, the law permits adoption of a son, if the family really desire to have a son as the adopted son being an equally efficacious alternative to a natural son and within the framework of monogamous marriage. In short, the courts and legislatures have laboured hard for the reformation of Hindu practices and to ward off any attempts towards plural marriages by giving solid legal justifications.

However, in the Muslim society, it appears, the approach of the legislature has been sluggish for reformation of various 'secular' practices associated with the religion, though on many occasions, the courts have tried to regulate such 'secular' practices amidst strong protests and objections raised by Muslim fundamentalists. In the *Badruddin Case*, the Allahabad High Court laid down that "under the personal law of Muslims a Muslim may have as many as four wives but having more than one wife is not part

of religion. There is no authority which precisely laid down that a 'Musalman' must have more than one wife always or it is obligatory upon him to have four wives at time."

In the *Sahulameedu Case*, the Kerala High Court made it clear that the benefits of a rule under Section 488 (3) Cr.P.C. regarding the maintenance can not be denied to a Muslim wife who is staying away from husband after his second and subsequent marriages. In the *ShahBano Case*, a lot of hue and cry was raised by the Muslim fundamentalists, over a controversial judgment delivered by the Apex Court while dealing with the right of a divorced Muslim wife to seek maintanence under Section 125 Cr. P.C. The court laid down that Section 125(1) (b) which defines 'wife' as including a divorced wife, contains no words of limitation to justify the exclusion of Muslim women from its scope. Therefore, a divorced Muslim woman, as long as she has not remarried is 'wife' for the purposes of Section 125 and the statutory right available to her under this Section is unaffected by the provisions of the personal laws applicable to her. But, due to the pressure exerted by the Muslim fundamentalists on the ground that the judgment of the Apex

Court is in violation of Shariat law, the parliament has diluted the impact of the judgment by passing of the Muslim woman (Protection of rights and Divorce) Act, 1986 amidst strong protests and agitations. Therefore, it is amply clear that the Muslim society resist the reformation and do not permit any one to look into their "religions affairs and practices" under the pretext of religious freedom and liberty.

As pointed out earlier, the freedom of religion is not absolute in nature and is certainly subject to power of the State to make laws for social welfare and social reforms. Therefore, the freedom of religion certainly can not prevent State from throwing open all "Hindu Religions Institutions of Public Character" to all classes and sections of Hindus without any favour a discrimination. Undisputedly, the aforesaid right conferred by Article 25 (2) (b) is a right of "all classes and Sections of Hindus" to enter into a public temple and to have 'darshan'. The Scope and unqualified terms would cover individuals under Article 25 (2) and a 'denomination' under Article26(b). Therefore, the right to enter a 'temple' shall be available against individuals and against denominations. The fact is that, though Article 25 (1) deals with the right of individuals, Article 25(2) is much wider in scope and ambit, and has
reference to the rights of communities, and controls Art. 25(1) and 26(1). Article 25 (2) (b), therefore, prescribed a right to enter into a temple or other like institutions of public character (which are dedicated to the public as a whole or those founded for the benefit of Sections or denominations thereof) for the purposes of 'darshan' and pooja, though subject to such regulations made by the Management in this behalf.

In the Vekataramana Divorce Case, while upholding the right of public to have 'darshan' and Pooja' in a denomination temple, said that, however "no member of the public could claim as a part rights protected by Article 25 (2) (b) that a temple should be kept open for worship at all hours of the day and night, or that he should be allowed personally to perform the services of 'Archakas' (poojaries) or 'special pooja' on certain acquisitions. The right of public will be not absolute in nature and is subject to such limitations which are made out by the denomination. But, simultaneously, the denomination can not bar the public at large absolutely to have darshan and pooja in the religions institutions of public nature or temples. Further, the

instrument or deed of dedication of a denomination will be guiding piece of evidence in determining the public vis a vis denominational rights over such institutions in the matters of internal discipline and manner of pooja etc.

The judgment of the Apex Court, is, however criticized by some critics on the ground that it would have been better if the Apex Court would have read Article 25(2) (b) as an integral part of Article 26(b), without applying the principle of harmonious construction for validating temple entry laws, as the same would have been more justified and logical. In the Yagnapurushdasji Case, Apex Court laid down that the Harijans can not be refused entry into a public temple on superstitions, ignorance and complete misunderstanding of the teachings of Hindu religion and of the real significance of the tenets and philosophy taught by "Swaminarayan" himself.

In E.R.J. Swami Case, the court has tried to nationalize the institution of priesthood (poojaries) by holding that the act of appointment of a 'poojary' in a

30. Supra Chapter V, 64.
temple is a secular act and is not a religious practice, and, therefore, the monopoly of certain castes in the appointment of poojaries is bad. The people of other castes and the scheduled castes, therefore, can not be refused appointment of 'poojaries' or 'Archakas' merely on the grounds of caste. It is submitted that the decision of the court appears to be too much technical in the instant case. The courts were right and justified when they were trying and justifying the temple entry laws by enforcing the "Omnibus equality clause" but to prescribe reforms" in the area of religion" or to eliminate the hereditary usage ensuring denominational qualifications of the "Archaka or poojary" are apparently unjustified and, therefore, amounts to judicial encroachment of the religious liberty of a denomination.

In the Pogakula Laxmi Reddy Case,\footnote{Pogakula Laxmi Reddy v. P.S. to Govt of A.P., AIR 1997 A.P. 6.} The A.P. High Court, while upholding the right of the public to worship a "Tarmind Tree" and the nearby place like a temple, refused the excavation of the place for taking out Kala Gnanam Bhandaru (knowledge of the future) on the basis of the disclosures made by s Swami that he is 'reincarnate' of some
saint who had been the founder of that temple or disputed place in 4th century, and therefore, now he want to get back the preserved treasure i.e. Kala Gnanam Bhandaru (Knowledge of the future). The A.P. High Court further laid down that the court can not decide the questions regarding the excavation of Kala Gnanam Bhandaru, the disclosures of Swamy, the issue of reincarnation of Swamy and the propriety of the Swamy over the place in dispute etc., under Article 226 of the Indian constitution.

The judiciary has played a vital role in the reformation of certain "so-called" religious practices. In the A.I.D. Women Association and Janwadi Smiti Case,\(^34\) the Supreme Court upholding the restraint orders of the Government. on the "performance of Chunri ceremony" in the Ram Sati Ji Mandir laid down that Section 2(1) (b) of the Commission of Sati (Prevention) Act, 1988 prohibits the glorification of Sati "in any form".

But, in the Atheist Society - Case,\(^35\) however, the court refused to interfere and to issue a writ of mandamus to prohibit breaking of coconuts, performing of poojas,

\(^{34}\) A.I.D. Association v. Union of India AIR 1989 SC 1280.
chanting of 'mantras' or 'sutras' of different religions at State functions. The A.P. High Court rejected the prayer of the petitioners and held that these activities have been a part of the Indian tradition and are meant to provoke the blessings of the Almighty for the success of the project undertaken.

In the Anand Margis Case, the practice of procession with "Tandva Nritaya" in the busy streets of Calcutta and in the Cow Slaughter Case, the practice of slaughtering of cows and distribution of cow-flesh among Muslims on 'Bakrid', were not appreciated and considered as part of the religion by courts, and, therefore, not protected under Art. 25 of the Indian Constitution.

To implement the mandate of omnibus equalitarian Clause, Article 17 of the Indian Constitution abolished 'untouchability' and prohibited its practices in any form. It is further provided that "enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law."

In the Banwari Case, the Allahabd High Court upheld the convictions of certain "Dhobies" and "Barbers" under

U.P. (Removal of Social Disabilities) Act, who had refused to render the personal services to "Harijans". In the Souriyar Case, the Madras High Court refused to issue declaration in favour of Caste Hindus restraining the Harijans from using the burial ground, customarily, reserved by the former for their use. In the Bhaishankar Case, the Bombay High Court declared that the Segregation practices followed in the canteen of certain mills, thereby, serving separately to Harijans and other caste workers, is offensive of the Bombay (Removal of Social Disabilities) Act, 1947. In the Behari Lal Case, the Allahabad High Court held that refusing a person to take water from a public tap because the person belonged to scheduled caste, to be an offence under Section 7 (1) (b) of the Untouchability offenses Act, 1955. In the Ramchanderan Case, the head-Master of a Govt. Girls School was convicted for his discriminatory action in constituting a separate section of Harijan girls students of IXth standard without any justification.

Therefore, it is clear from the above discussion that judiciary is playing a pivotal role in strictly applying the provisions of laws dissected to eradicate the social evil of 'untouchability'. In the E.R.J. Swami Case,⁴² the Court has even gone to extent that while appointing "poojaries or 'Arfchakas' of temples the monopoly and favour of certain traditional castes in exclusion of other castes and Harijans, is discriminatory.

For the enforcement of omnibus equalitarian clause, the judiciary has not appreciated the power of 'Dadas', 'Sardars'.or Dai' to excommunicate a person from a tribal or a Kabila or a community. The practices of 'Hukka-Pani Bandh' or expulsion from caste or community are outdated and requires reconsideration in the modern and civilized communities. More so, neither the "freedom to manage the religions affairs" or protection under personal laws would validate the action of Dadas and Sardars who intent to expel persons of their tribal or Kabila or community on grounds of disobeyance of commands of such 'Sardars' or for the violation of 'rules' of such 'kabilas' or communities. In the Saifuddin Case,⁴³ the Apex Court has laid down by a

majority decision that the 'head' of a community can not ex-
communicate a person from their society while "managing
their religions affairs" under Article 26 (b), as expulsion
of a person from a community reduces such person like an
'untouchable' and the practices of untouchability and caste
based disfavours have already been abolished. Similarly, the
practices of "Hukka-Pani Bandh", though very common in
villages, are devoid of any legal force and sanctity.

A lot of reformation has been done by the Union and
State Governments. in the financial administration or
secular administration of denominational or other like
properties. The courts have also backed the executive orders
and the legislations in this behalf. More so, the role of
Union Govt. is certainly praiseworthy in providing the
facilities for yatries to Amaranth, Vishnu Devi, Kailash-
Mansarover, Ha, Badrinath, Neelkanth etc.

In the Aurbindo Ashram Case, the Apex Court has
upheld the Coonstitutionality of Aurbindo (Emergency
Provisions) Act, 1980,Wherein the Govt. Took over the
secular administration of the 'Ashram' as the 'management'
of the Aurbindo Ashram was engaged in corrupt practices and
was quilty of mismanaging the affairs of Ashram. The Govt.

had received numerous complaints in this behalf. Similarly in the Birla Kishore Case, the Supreme Court upheld the action of taking over the secular administration of Shri Jagan Nath Temple from the Raja of Puri and Vesting it in a committee. In the Babri Masjid Case, the Apex Court has upheld the governmental action to acquire the disputed structure and the adjoining land under its sovereign powers to avoid the probable bloodshed and Hindu-Muslim riots till the matter is finally disposed of by the Apex Court. In the Gulam Abbas Case, the court wisely ordered the shifting of the two graves of Sunnies to avoid the clashes between Shias and Sunnies and in larger interest of society as there had been long-standing controversy over these graves and many a times tensions prevailed in the communities, though Shariat law is against shifting of graves.

In the All India Imam Organization Case, the Apex Court has delivered a landmark judgment and came to the rescue of Imams for the payment of some honorarium for their subsistence so that they could better manage the Muslim religious places.

The parliament has recently passed a Uniform Wakf Act,

46. Ismail Faruqui v. Union of India (1994) 1 SCC 360.
1995 for better management and proper administration of wakf properties and to check the possible misuse and mal-administration of such properties.

In last, the Parliament must take up the initiative of framing a Uniform civil Code by taking the Muslims in confidence and without injuring their religions tenets and freedom.

Furthermore, we must keep in mind that "freedom of religion" is given to Choose a path to attain `Moksha' or to purify your soul or to get religions advantage and the same can not be permitted to be misused for ulterior objectives. Lastly, we are Indians first, and, thereafter Hindus, Muslims, Sikhs or Christians, therefore, national interest and solidarity must predominate over other issued including religion.

Suggestions:

From the foregoing study of the freedom of religion under the Constitution of India and keeping in new, the sensitively - of Indian religious fabric, the values of our national life epitomized in the preamble to the constitution and implemented in its different provisions and the traditions and cultural heritage of the country, following useful and realistic suggestions are given for strengthening the Indian secularism.

1. National Integrity Council must be more dynamic so as to keep a close watch and visit especially with reference to onslaughts, and treats to disrupt communal
harmony and consequential communal riots in the name of God or language.

2. Despite the Constitutional mandate for abolition of untouchability and a series of laws for penalizing its practices, there are numerous complaints from the rural Harijans and such other backward classes of persons that they are still regarded as 'untouchables' even in the matters of public amenities and it appears that there is hardly any phenomenal success in the area especially regarding rural Harijans. It is also seen that these people reside in the villages only on the mercy of upper castes and are being harassed and prosecuted and denied equal treatment. Therefore, it is suggested that more attention for upliftment of Harijans and other backwards should be paid who are living in far-away, rural and remote areas so that they could be given their due right of equality.

3. Law Commission of India and the apex court has recommended for the adoption of Uniform Civil Code. However, the Govt. is apparently not interested in the adoption and enforcement of a uniform civil code. We have to take strong measures, sometimes, for the advancement and well begin of the society, therefore, we have to go for a Uniform Civil Code, sooner or later, without which we can not achieve the desired goal of perfect communal harmony and brotherhood. Article 44 of the Constitution of India do provide for
the adoption and enforcement of a such a code.

4. The parliament must come out with a central legislation on the issue of forcible conversions being practised even in the modern times in many parts of the country.

5. The Parliament should also form uniform legislative policy to regulate the slaughter of animals and wherever possible they must ban it save the public health from dead or decaying animals.

6. The hon'ble Apex Court must show restraints in dealing with the religious matters as radical or phenomenal changes can not be introduced by way of judicial activism in the arena of faith and practices of religion. Therefore, the Court, should as far as possible, avoid in falling the religious controversies and confusions.

To sum up, the wisdom of establishing a constitutional structure, based on respect for all religious and their right to co-exist could be a best solution of the present problems related to secularism. In other words, what is required, is "Sarva Dharam Sadbhava" based on brotherhood, fraternity - and sacrifice.