CHAPTER XI

SECULARISM : HISTORICAL RETROSPECT

Introduction

Freedom of religion is one of the most important components of a secular state. The long panorama of human history depicts man's struggle to maintain his religion free from the clutches of the authority of the state and out of this battle has emerged the concept of the secular state. The task in this chapter is to know the implications of secularism and to review, in brief, how this concept has been evolved in the world in general, and in India in particular.

What Is Secularism?

Secularism is a protean concept, defying all efforts to pin it down to precise, concrete propositions.¹ The Encyclopaedia Britannica defines secular as 'non-spiritual, having no concern with religious or spiritual matters'. It is used in the wider sense 'anything which is distinct, opposed to, or not connected with religion or ecclesiastical things, temporal as opposed to spiritual or ecclesiastical'.²

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Secularism is the term applied in general to the separation of state politics or administration from religious or Church matters. It may be described as a movement intentionally ethical, negatively religious, with political and philosophical antecedents. Though the concept of secularism is old, it acquired wide currency and new significance in British liberal thought and literature as a result of the writings of G.L. Holyoake, the father of secularism, who laid down its basic principles in his famous books 'Principles of Secularism' (1859) and 'The Origin and Nature of Secularism' (1896).

Does secularism, therefore, mean anti-religiousness or counter-religiousness?

The relations of secularism to religion were defined as mutually exclusive rather than hostile. The secular movement away from religion need not imply total abandonment of it. It is perfectly possible to advocate both secularism and religion. Secularism is not opposed to religion as such; it is opposed rather to the use of religious institutions, and religious motivations, in the legal-political and educative processes. ... So long as religion does keep to its own sphere, secularism is religiously neutral. it

4 For details see ibid.
5 Ibid.
neither endorses nor disapproves of religiousness.6

This aspect of secularism was emphasised time and again during the discussions in the Constituent Assembly which drafted the Constitution of India. These views are discussed in detail at some later stage, but suffice it, to refer to what H. V. Kamath has said:

"When I say that a state should not identify itself with any particular religion, I do not mean to say that a state should be anti-religious or irreligious. We have certainly declared India to be a secular state. But to my mind, a secular state is neither a God-less state nor an irreligious state."7

Justice Gajendragadkar is also inclined to think that 'secularism would be a purely passive force if it was content to base itself on the negative aspect of being anti-religion, anti-God, or anti-spiritual quest.'6

In the West: Europe

The concept of secular state as interpreted in the West owes its origin to the beginnings of Christianity.

Christianity is characterised by its recognition and

6 A. R. Blackshield, supra n. 1, p. 11.
7 C.A.D. VII, 825-6. For detailed anthology on various views on the subject see Appendix 1, to Ved Prakash Luthera, The Concept of Secular State and India, pp. 159-66.
8 Inaugural address to the Seminar on Secularism: Its Implications for Law and Life in India, supra n. 1, p. 1.
teaching of basic duality - spiritual and temporal, each with its appropriate set of loyalties. This duality was reflected in the famous gospel of St. Mark recording the Sermon of Christ:

"Render to Caesar the things that are Caesar’s and to God the things that are God’s."

In this conflict, the Church symbolised the spiritual power while the State represented the temporal power. There was frequent conflict between the loyalties of the Christians to the state (in practice, to the king) and to their Church. The sermon of Christ had far-reaching implications and effects. It implied that the religious aspect of man’s life was distinct from the material one and though the king could have jurisdiction over the material relations, he could not have any authority over the religious sphere of human life. This implied the creation of two powers, each with its corresponding jurisdictions which were so far vested in a single authority, viz. Caesar. Thereafter, the jurisdictions were defined and delimited and these institutions were to enjoy authority over their respective jurisdictions.

9 Donald Smith, *India as a Secular State*, p. 9.
The Edict of Milan marks the second important phase in the growth of this idea of secularism. The Edict provided:

"Liberty of worship shall not be denied to any, but that the mind and will of every individual shall be free to manage divine affairs according to his own choice."¹²

Later, Emperor Constantine was converted to Christianity and the relationship between the state and the church assumed a different aspect. It was now the turn of the Christians to persecute the followers of rival religions and non-Christian places of worship came to be closed. For a time, the Christian State symbolised by the Christian Emperor and the Christian Church symbolised by the Pope worked in close co-operation. This co-operation, however, could not last long and conflict became apparent.

In the fifth century, Pope Gelasius preached the doctrine of two swords implying the dual organisation of human society. The Church was expected to conserve the spiritual interests and to mediate eternal salvation, and the state was supposed to maintain peace, order and justice in temporal affairs. This doctrine of the two swords was later on modified by the papalists. They maintained that originally all authority, temporal as well as spiritual, belonged to the Church. Subsequently, the Church retained the spiritual authority for itself and transferred the

¹² Quoted by Donald Smith, supra n. 9, p. 9.
temporal power to the state. They held that the ultimate title to all temporal power was vested in the Church. The anti-papalists, on the other hand, believed that both powers, spiritual and temporal, were handed down directly from God to Church and state respectively, claiming thereby equality of authority in relation to each other.  

From humble beginnings, Christianity acquired gradually the status of the religion of the Roman Empire and ultimately it became, more or less, the world religion. Christianity was able to realise this stupendous success because it could fill up the vacuum in Europe created by the fall of the Roman Empire by 476 A.D. On Christmas Day in 800 A.D., Charles the Great (Charlemagne) was crowned the Holy Roman Emperor by the Pope. He led about fifty military campaigns to subjugate barbarians and in his mission of propagating Christianity, he did use brute force.

In the years that followed, there prevailed a conception of Universal Christianity. The Church was viewed as something much more than the voluntary association of Christian believers it had been in the first century. The myth of the Holy Roman Emperor was of deep significance and it commanded the loyalty of people in a vast empire and promoted unity with the bonds of Christianity.

The eleventh century witnessed further conflict between

13 Ibid., p. 13.
the papalists and the anti-papalists, when the secular rulers tried to choose Bishops, and the papal authority, on the other hand, claimed the power to excommunicate and to depose any unworthy Christian ruler. The controversy reached its climax, when Emperor Henry IV marched on Rome, deposed Pope Gregory VII and set up a rival Pope. The controversy subsided temporarily when it was agreed that the kings should recognise the right of the Pope to appoint Bishops on the condition that the latter should be instated in office by the touch of the sceptre of the former.

Pope Boniface VII (1294-1303) marks the turning point in the history of church-state relations. In 1296, Pope Boniface in his Papal Bull declared that laymen have no jurisdiction over the clergy, 'over both the persons and goods of ecclesiastics' without prior papal permission, and that no mundane authority was permitted to levy taxes on Church property, nor was the clergy permitted to pay them; the imposition of such taxes without papal approval was put under the sanction of excommunication from the Church.14

Both England and France refused to obey the Papal Bull and challenged the interference by the Pope in their sovereign power of controlling finances. In 1300, the first Christian Jubilee was celebrated with unprecedented pomp and spectacle and Pope Boniface appeared in public in the garb

of Pope and Emperor, wearing the imperial sceptre and crown, displaying two swords, and proclaiming himself Pontiff, Caesar and Emperor. In 1302, the Pope issued the Bull UNAM SANCTUM proclaiming:

"One sword, moreover, ought to be under the other and the temporal authority to be subjected to the spiritual ... both swords are in the power of the Church, the one by the hand of the priest, the other by the hand of the kings and knights, but at the will and sufferance of the priest."

This challenge was accepted by King Philip IV of France who planned to bring Pope Boniface before a General Council of the Church to be held in France, and to have him deposed for heresy, murder, immorality and other crimes. The Coup of Anagni where Pope Boniface was seized by Nogaret, one of the closest advisers of King Philip, proved to be a decisive victory of the temporal power of the state over the spiritual authority of the Church. This victory ushered in a new era by destroying the prestige and power of the Holy Roman Empire, undermined the belief in the universal authority of the papacy and contributed to the growth of nationalism. This movement of nationalism, later on, gradually fragmented Europe into sovereign nation states which challenged the claim of the Church to temporal sovereignty also. The Popes

15 Ibid., p. 256.
who followed, Benedict XI and Clement V along with their successors tried to mend matters but the Great Schism (1378-1417) during which there were two Popes, one at Avignon in France and the other in Rome, further weakened the universal authority of the Church even in the spiritual sphere.

In the fourteenth century, Marsilio of Padua in his famous treatise, 'Defensor Pacis' (Defender of Peace - 1324) made a significant contribution to the idea of secularism and the secular state. His most revolutionary doctrine which influenced Protestantism is of 'the congregational authority in the church'. It implied that the church is a community of believers and, as in the political community, the only source of authority is the body of its members. He criticized the doctrine of Papal plentitude of power and maintained that 'all bishops are of equal authority immediately through Christ, nor can it be proved by divine law that there is any superiority or subjection among them in spiritual or temporal affairs, the Church has no coercive authority, spiritual or temporal over either clergy or laymen.'

He even goes so far as to say that for practical purposes, the church becomes a department of the state and the civil authority has the power to regulate the number of churches and temples. He made a clear distinction between divine and human law and

16 Ibid., p. 266.
17 Ibid., p. 267.
asserted that temporal compulsion cannot be used to enforce conformity in religious beliefs. He proclaimed:

"The rights of citizens are independent of the faith they profess, and no man may be punished for his religion." 16

This statement clearly expressed the basic content of the idea of a secular state. This, however, was merely the formulation of an idea which took centuries to take root and develop. 19

In the sixteenth century, Martin Luther 20 and John Calvin 21 heralded the Protestant Revolution in Europe. Luther argued that liberty is in the conscience and spirit of man and has no relation to his political or social condition, that faith is an act and expression of freedom and that it cannot be imposed by force. He, however, did not introduce any new principle in the organisation of relationship between state and church. After Luther's death, the Religious Peace of Augsburg (1555) settled the problem of religious division in the German states by the principle of Jus regio, ejus religio, according to which the ruler of the country determined the religion of its inhabitants. This principle was

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16 Donald Smith, supra n. 9, p. 12 (italics mine).
20 Martin Luther, Secular Authority : To What Extent It Should Be Observed. (1523).
more liberal than the medieval method of imposing uniformity of belief from which there was no escape, because under the policy of the Peace of Augsburg, religious minorities or dissidents were free to adhere to their religion, provided they emigrated. It was but natural that the acceptance of this principle did not enable Germany to learn the lesson of religious toleration. Lutheranism established the first reformed church independent of Rome and thus encouraged the formation of such independent churches elsewhere. The establishment of more churches resulted in increasing mutual toleration among them. Relative power of each religion declined in proportion to the growing number of such churches.

The protestant reformation resulted in the breakdown of the medieval Respublica Christiana and the consequent emergence of independent princely states which did not necessarily contribute to the rise of a secular state. In matters of church-state relations internally, the Protestant states were not very different from the Catholic states. The state and the church still remained interlinked. Religious uniformity as the basis of political homogeneity was enforced in these states as vehemently as in the Respublica Christiana, although, the religion in this case was protestantism.22

Though in the initial stages, Christianity was divided

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22 Ved Prakash Luthra, supra n. 7, p. 19.
into two confessions, Catholic and Protestant, the forces generated by the Protestant reformation were so powerful that in due course it came to be further divided into various sects and sub-sects which disturbed European peace by their unprecedented wars. This multiplicity of faiths was a boon in disguise to the extent to which the state could not identify itself with any particular faith, Catholic or Protestant. In some states various faiths were so well balanced that the enforcement of one church by the state could be realised only at the cost of losing peace and order in the state. The state, as a result of practical necessity, dissociated itself gradually from the interests of any particular faith and both the state and the church developed a sense of mutual toleration. This attitude of toleration was generally not based on principles but on expediency. This approach was particularly adopted by the Politiques in France. 23

Though Bodin is considered the best spokesman of the Politiques, he accepts religious diversity on somewhat philosophical grounds whereas most of the Politiques tolerated

23 The Politiques were a group of administrators, lawyers, and publicists who sought to stem the tide of religious fanaticism that was ruining France. They were Catholics but they were not ready to sacrifice the interests of the French nation to those of the Roman Catholic Church. Though they preferred religious unity, they were willing to accept the fact of Protestantism because they thought that France could not stand the strain of wholesale massacres and permanent civil war.
religious dissent primarily on grounds of expediency. This is particularly clear when he says:

"The prince who has complete certainty of the true religion and desires to attract to it his subjects divided into sects and factions should not be driven into the use of force, because the more the will of men is forced, the more it becomes obstinate. On the other hand, if the prince follows the true religion without shame or make-believe, he will be able to turn the hearts of his subjects to his religion, without using violence or punishments."24

The process which was initiated in France was further accentuated by the philosophic support that it received at the hands of noted French philosophers of eighteenth-century Montesquieu and Rousseau. Montesquieu maintained that when the legislator has believed it his duty to permit the exercise of many religions, it is necessary that he should enforce also a toleration amongst these religions themselves. It is a principle that every religion which is persecuted, becomes itself persecuting: for, as soon as, by some accidental turn it arises from persecution, it attacks the religion which persecuted it; not as a religion, but as a tyranny'. He says: "It is necessary, then, that the laws require from the several religions, not only that they shall

not embroil the state, but that they shall not raise disturbances amongst themselves. A citizen does not fulfil the laws by not disturbing the government; it is requisite that he should not trouble any citizen whomsoever." 

The French revolution of 1789 challenged the established Church of the Catholics who suffered bitter persecution at the hands of over-enthusiastic revolutionaries. Subsequently, politics in France was characterised by anticlericalism. The French clergy, on the other hand, realised that the union of church and state, instead of strengthening the church, was undermining its vitality and this realisation led to further separation of the state and the church. What was happening in France had its impact on the other European nations as well.

In England, however, the medieval concept of church-state relations was continued with the acceptance of a church with king as head, the only difference being that while the medieval European church was a universal or imperial church, the English church was the accepted national church. The congregationalists in England, however, advocated a new conception of the church and conceived the church as a voluntary association of like-minded believers grouped in autonomous congregations. These congregations considered religion as a matter of inward spiritual faith and conscience.

25 Ibid., p. 430.
and they did not identify the membership of the church with that of the state and managed their affairs in a self-regulated way.

The degree of religious toleration and religious liberty in England varied from time to time even under the reign of Queen Elizabeth and during the period that followed. Various Acts defined the nature of toleration to the various sects and the Catholics in particular suffered numerous legal disabilities which continued even during the first half of the nineteenth century. On the theoretical front, modern liberalist John Locke who considered religion as being outside the scope of civil government was not tolerant towards the Catholics and atheists, nevertheless, his firm belief in the concept of individual liberty opened up new vistas in the context of religious liberty in relation to the state.

Dr. Ved Prakash Luthers points out that after the Protestant Reformation and the consequent multiplicity of faiths, there emerged in Europe two distinct patterns. Under the first, a particular church was established and it was recognised as the religion of the state. The other churches were granted freedom, the degree of which varied from country to country. The established church of the state enjoyed

26 Acts such as: Cromwell’s Constitution, 1647. Act of Toleration, 1689.

27 Luthers, supra n. 7, pp. 21-22.
certain benefits and privileges which were denied to the other churches. The state subsidised it and at the same time, controlled and regulated its affairs. Dr. Luthers describes the case of the United Kingdom as belonging to this pattern, where the Church of England is an established church and its affairs such as the forms of worship, organisation of the church, its finances and properties etc. are controlled by the state.

**Jurisdictionalism**

The second pattern is described by Dr. Luthers as Jurisdictionalism under which the state maintains equal status for the confessions within its domain. It is founded on the principle of equality of churches and therefore grants freedom to all religious groups, and equal liberty of conscience and worship to all citizens. The jurisdictionalist states are not separated from the churches but are intertwined with them. They exercise a vigilant supervision of the activities of various churches. Jurisdictionalism 'does not necessarily prevent one religious body from having special forms of recognition from a state where its membership is in the large majority, but it does assure that the state shows its fostering care for and equal protection to all important religious bodies which it believes loyal to its higher interests.'

28 Ibid., p. 22.
29 Ibid.
30 Ibid.
Most of the European states have adopted either of these two patterns, but, according to Dr. Zaitseva, the state under both of these systems is not secular, because the state is not separate from religion. He maintains:

"In the case of the establishment of a single church, it was intertwined with one church and controlled and regulated the affairs of one church. In the case of jurisdictionalist states, the state was intertwined with all churches and controlled and regulated the affairs of all churches. In the latter case, therefore, there was a more comprehensive application of the principle underlying the establishment of a single church. In a jurisdictionalist state there existed what has been called 'multiple establishments' i.e., the establishment of many churches."31

This brief historical account of the changing relations between the state and church in Europe shows that it was the secular trend in the citizens' ideas and way of life that, more than any other cause, led to the decline of the influence of religion in society.32 As rightly put by Toynbee, this decline was due to the "seventeenth century secularisation of western life, by which science replaced religion as the paramount interest and pursuit of the leading spirits in the western society."33 This account of the conflict between

31 Ibid., pp. 22-23.
32 M. C. Setalwad, supra n. 19, p. 10.
33 Quoted by Donald Smith, supra n. 9, pp. 14-15.
the state and church explains how secularism as it was articulated in European countries was in substance 'a protest against the tall and intolerant claims of spiritual power and that led to the assumption that there is a kind of antinomy between religion and secularism'.

In U.S.A.

The history of church-state relationship in the United States of America could not remain unaffected by what was happening in this context in the European theatre. The earlier history of the American colonies was characterised by the multiplicity of churches and denominations, moreover, borrowed from the mother countries by the colonists. Some belonged to the Calvinist Congregationalism and some established the church of England. Some colonies, however, did not have any established church or any religion of the state and in some others, state-churches were changed from time to time. Most of the colonies thus adhered to the principle of the union of the state and church, though the degree of this union differed from state to state. Rhode

35 New England Colonies.
36 Southern Colonies.
37 Rhode Island, Pennsylvania etc.
38 New York, New Jersey, Georgia etc.
Island, a colony founded by Roger Williams, a radical banished from the colony of Massachusetts, was an exception to this idea of state-church relationship. This departure is reflected in the Charter of Rhode Island, 1663, which proclaimed: "No person shall be in any wise molested, punished, disquieted, or called in question, for any differences in opinion in matters of religion." A similar experiment of toleration was conducted in the colony of Pennsylvania, which attracted a large number of persecuted dissenters.

These two experiments proved to be a success and they set an example for the other colonies that were facing the perpetual problem of a clash of various faiths and denominations. The waves of liberalism and scientific rationalism, which engulfed Europe and changed the church-state relations there, had their impact on the American colonies as well and they taught the colonists that the method of separation of church and state was the only answer to religious fanaticism and traditional dogmatism. This gradually resulted in the freedom of colonies from the despotism of church and paved the way for a secular state in the U.S.A.

The Constitution of the U.S.A. could be considered the first secular Constitution of the world in the modern sense of the term. Madison, one of the founders of the Constitution

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39 Quoted by Donald Smith, supra n. 9, p. 16.
of the U.S.A., felt that "since religion is exempt from the authority of society at large, still less can it be subject to that of the legislative body whose jurisdiction is both derivative and limited. ... Since religion is not within the cognizance of Civil Government ... its legal establishment cannot be said to be necessary to Civil Government." This is well reflected in the Constitution of 1789 which does not contain any reference to God. Article 6, clause 3, of the Constitution makes it unconstitutional to deny someone public office because of his religion. The best expression of the principle of separation of church from state is found in the First Amendment to the Constitution of the U.S.A. It states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

This amendment ushered in a new era in the relations between state and religion by creating a wall of separation between Church and State. It was in 1802, that President Jefferson used these words which have become the guiding principle in deciding cases regarding freedom of religion in the U.S.A. He wrote:

"I contemplate with sovereign reverence that act of

40 Quoted by Luthera, supra n. 7, p. 23.

41 This clause reads: 'No religious test shall ever be required as a qualification to any office or public trust under the United States.'
the American people who declared that their legislature should make 'no law respecting an establishment of religion or prohibiting the free exercise thereof' thus building a wall of separation between the church and the state.\textsuperscript{42}

What Jefferson called the wall of separation between church and state has been regarded by many constitutional jurists as the basic principle of a secular state.\textsuperscript{43} The Supreme Court of the U.S.A., in numerous cases, has interpreted this principle and it will not be out of place if a reference is made to some important cases and the judgements of the Supreme Court thereon.

In Everson v. Board of Education\textsuperscript{44} the court defines the constitutional rule as follows:

"The establishment of religion clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or preferring one religion over another.\" 

\textsuperscript{42} Quoted by Donald Smith, supra n. 9, p. 17.

\textsuperscript{43} Getulved, supra n. 19, p. 11.

\textsuperscript{44} 330 U.S. 1 (1947) --- A New Jersey law allowed local school Boards to make contracts in connection with transportation of students. One township, in 1947, decided to repay bus money to parents whose children went to Catholic parochial schools. In this case the Supreme Court of U.S.A., held that such a payment is not unconstitutional, that it did not tend to establish a religion because it was used for a purely non-sectarian purpose.
one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small can be levied to support any religious activities or institutions whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organisations or groups and vice versa. 45

In West Virginia State Board of Education v. Barnette Justice Jackson, while striking down the flag salute law, said:

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." 46


46 319 U.S. 624 (1943) --- The facts of the case were: West Virginia required all school children to recite the pledge of allegiance to the flag each day. When Jehovah's Witnesses refused, because their religion forbade them from taking oaths before images, the students were expelled from school and their parents threatened with prosecution. The West Virginia court upheld the law, but the Supreme Court reversed it, holding the law unconstitutional because it was an interference with the freedom of religious exercise.
Similarly, Mr. Justice Frankfurter, while commenting on the meaning of separation said:

"Separation is a requirement to abstain from fusing functions of government and of religious sects, not merely to treat them all equally ... separation means separation, not something less."

It may be pointed out that most of the judges in various cases referred to them were in agreement about the meaning of the separation and maintained that religion could not be made the business of state legislation but they differed in their opinion whether a particular statute violated the principle of the separation of the state and church and therefore there were dissenting judgments.

The First Amendment with its reference to this wall of separation, forms thus the theoretical and constitutional foundation of the secular state in the U.S.A. "It reflects the philosophy that church and state should be separated. And so far as interference with 'the free exercise of religion' and 'establishment' of religion is concerned, the separation must be complete and unequivocal. The First Amendment permits no exception, the prohibition is absolute."


48 Everson case as well as West Virginia case.

49 Zorach v. Clauson 343 U.S. 306 at 315 (1952). The case was: New York allowed its school children to go outside the school for religious instruction upon written request of their parents. The 'released time' programme did not require
One may be tempted, on the basis of these judgments, to say that there is complete or absolute separation between state and church in the U.S.A. Constitutional lawyers have often considered the question as to whether the doctrine of the wall of separation between the church and state which is spelt out of the provisions of the First Amendment is fully and completely observed in American life; and the answer generally given is in the negative.\(^5\) It is true that the government is forbidden, as far as possible, to pass laws respecting an establishment of religion or prohibiting the free exercise thereof, in view of the fact there are at least eighty-three separate religious groups of 50,000 members or more as well as hundreds of smaller groups. Nevertheless, some activities, though they can be justified constitutionally in the name of religion, would disrupt such a society and therefore have been outlawed.\(^5\) Polygamy has been banned throughout the nation, and this prohibition has been held as constitutional, even though polygamy is advocated by the Mormons.\(^5\) Sunday closing laws are another set of any public expenditures. The Supreme Court held the law constitutional, not a violation of the free exercise or establishment clause. No one was forced to take religious instruction or condemned or ridiculed because he did not wish to be released from school.

50 P. B. Gajendragadkar, supra n. 34, p. 8.
51 Jethro K. Lieberman, supra n. 45, p. 122.
constitutional statutes which affect religion, and in spite of protestations, many states have enacted legislation requiring stores to remain closed on Sundays.53

Equally important are the practices, which otherwise could be considered violations of the doctrine of the wall of separation, are adopted in day-to-day American life. It can be pointed out for example that the appointment of Protestant, Catholic and Jewish chaplains in the armed services, the tax exemptions granted to churches and synagogues, the opening of state and national legislative sessions with prayers, references to God and to Christ in the official utterances of the officers of the state, occasional observance of holidays for state offices on religious occasions, placing of religious symbols like crucifixes and holy managers in public buildings, and host of other such practices54 testify to the fact that the separation is not absolute.

What is true of state adhering to religious practices, is equally true of religious institutions interfering in political walks of life. Most of the churches in the U.S.A., as well as the organisations55 of other religious denominations,

54 For exhaustive analysis of such practices see Ved Prakash Luthera, supra n. 7, pp. 43-45.
55 For example: Anti-Saloon League of the Baptists, Washington; Friends Committee on National Legislation of the Quakers; National Catholic Welfare Conference of Roman Catholics; Synagogue Council of America of the Jews, etc.
have established their lobbying organisations, which not only speak on non-religious issues but also follow pressuring techniques to compel national legislature to enact or defeat legislation as they desire. Leo Pfeffer gives a very exhaustive account of such practices when he says:

"To-day, churches have organised themselves politically to act instantaneously on a variety of issues. ... Today the church is in politics, not now and then, but continuously. ... It is very much in politics and will continue to be there for a long time to come. (Their practices) include helping to draft party platforms, watching and reporting legislative proceedings, making friends in Congress, drafting legislation, furnishing information to legislators, working with Congressional committees, bringing direct pressure to bear on legislators, keeping records of attitudes on votes of Congressmen, working with administrators, and making contacts with the White House."

Pfeffer not only cites the practices followed by these religious lobbies but also gives an interesting account of how they successfully pressurised the National Congress in its legislative function. This clearly shows that religion

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56 For example a bill to prohibit racial and religious discrimination in colleges and universities was defeated in the upper house of New York legislature as a result of the lobbying of State Catholic Welfare Committee of the Roman Catholic Church.

57 Leo Pfeffer, Church, State and Freedom (The Beacon Press, 1953), pp. 205-06.
has equally transgressed beyond the field of its operation and has violated the doctrine of the wall of separation of the state and church.

What is more important, perhaps, is that the state has not only interfered in religious practices but that it has shown itself, definitely, in favour of the majority religion, - Christianity. Many of the decisions of the courts in the U.S.A. have clearly exhibited this bias in favour of the religion of the majority, and have prohibited the state from regulating the practices which are in conformity with the Christian beliefs.\textsuperscript{58}

This bias of the American Government supported by the decisions of the courts is best expressed by Searle Bates who points out that:

"In one form or another Christianity was, and is, the religion of a very large part of the American people. This fact has found expression in many aspects of public life and law; for example, the use of prayers on solemn governmental occasions, the recognition of Sunday and of certain Christian festivals by national and state governments alike. State laws concerning blasphemy and offensive language proceed largely from Christian ideas and amount to a protection of the Christian standards of the majority. All this seems right and just to most Protestant and Catholic Christians."

\textsuperscript{58} Lutheru, supra, n. 7, p. 48.
But for Jews, Mohammedans, atheists, even for various sects of Christians, the observances and the laws are certainly inconvenient, discriminatory, and at times approaching the transgression of conscience. 59

This shows that the wall of separation between the state and the church built by the First Amendment does not exist in actual American life and, therefore, the rigid antinomy between religion and the state cannot be taken for granted. It would, therefore, be accurate to say that, despite the First Amendment in American public life, there is no evidence of complete separation between the church and the state and so all the tests of secularism cannot be said to be fully satisfied. 60

In this connection, it may be pointed out that such an absolute separation is far from practical realisation even in a highly modernised pragmatic American society, and more so in traditional societies. Even today man is so deeply religious, his day-to-day life in the material field being under the influence of his own religious convictions, it would be futile to postulate absolute separation between the state and church.

Secularism in Asia

It has been noted how the concept of secular state was

60 P. B. Gajendragadkar, supra n. 34, p. 8.
evolved in Europe and America as an important aspect of liberal democratic tradition. Freedom of religion of the individual, which is one of the basic ideas of secular state, has for centuries been rooted in Asian countries, especially those following the Hindu and Buddhist religions.61

Hinduism, Islam and Buddhism are the major religions of Asia and in most of the Asian countries, the relations between these religions and the state were based on interdependence and not on separation as in the west. The authorities of the state patronised religion by building places of religious worship such as Hindu temples, Buddhist Pagodas and Muslim Mosques, endowing these institutions with property in terms of money or lands, participating in rituals directly or indirectly, helping financially the theological teachings and controlling the administration of these institutions. Religious authorities like priests, monks or mullahs not only interpreted the religious scriptures but also advised the state authorities in their religious as well as secular functions. This interdependence of state and religion was a major obstacle in the introduction of the idea of secular state in these regions. The development of a secular state in India is being considered later in this chapter but before that it would be appropriate to refer to secularism in Turkey.

61 Setalvad, supra n. 19, p. 12.
In Turkey

Turkey was the first country in the Asian theatre, to adopt the secular state as early as the thirties of this century. Islam, a religion comparatively less susceptible to the impact of secularism has been the religion of the majority in this country. Turkey which never was under the western colonial rule could not come in direct contact with western liberal tradition; however, her geographical contiguity with European nations enabled her to receive the western liberal impact much earlier than was possible in case of other Asian countries. Her disastrous defeat in the First World War and the consequent disintegration of its empire were responsible for increasing awareness of its obsolete institutions.

Till 1923, Turkey was governed by the Caliphs who combined in them both the temporal and spiritual powers. In 1919, Caliph Vahid-u-Din joined hands with the allied invaders and matters came to a crisis. The invaders were defeated by the dynamic leadership of Mustapha Kemal Atatürk in 1922 and he initiated the process of rational secularisation in his country. The Caliphate was abolished but the emerging state was still a Muslim state as it adopted Islam as the religion of the Turkish state.

62 This is so because of its theological intolerance, tradition of fusing temporal and spiritual authority as well as the detailed regulation of society by Islamic law.

63 Article 2 of the Turkish Constitution of 1924.
the Grand National Assembly was responsible for the implementation of SHARI'AH (the traditional Islamic law). It was in 1926 that the SHARI'AH was replaced by western civil code copied from Switzerland and all citizens Muslims, as well as non-Muslims like Jews and Greeks, were made subject to a common civil code based on equality and justice. In 1928, further amendments were made, whereby the clause declaring Islam as the religion of the state was deleted and later by an amendment of 1936, Turkey was declared 'republican, nationalist, populist, secular and revolutionary state'.

Consequent to these amendments, various radical steps were taken by the government such as dissolution of the institutions of religious instruction, abolition of monasteries and giving financial aid to religious institutions as well as the Imams. The dynamic, popular leadership of Mustafa Kemal was successful in the initial stages, in enforcing these reforms. The common man in Turkey, the peasantry in particular, however, were not happy with this process of banishing Islam from public life and gradually after 1946, the process of desecularisation was initiated and the earlier radical reforms were gradually withdrawn.

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64 Article 26 of the Turkish Constitution of 1924.

65 For exhaustive analysis of these transformations, please see: Reed, "Secularism and Islam in Turkish Politics," Current History, Vol. 32 (1957), pp. 333-37.
Secularism - Indian Context

In considering the true nature and character of Indian secularism, it is necessary to bear in mind the background furnished by the outstanding characteristics of Indian history and Indian culture and philosophy. The panorama of Indian history beginning with the invasion of India by the Aryans roughly about 4000 B.C. to 2500 B.C. and ending with the termination of the British rule discloses one broad feature and this is when invaders came to India and conquered part or parts of India, conversions took place, but the converted people ultimately became a part of the Indian brotherhood. This panorama of Indian history could be divided for our analysis into three periods: The ancient period of Hindu State, the medieval period of Islamic impact and the third period of British impact.

The Early Hindu State

The early Hindu political system revolves round the concept of Dharma, a concept which is profound in its implications. The conception of Dharma was a far-reaching one, embracing the whole life of man. Dharma does not mean a creed or religion but a mode of life or a code of conduct which regulated a man's work and activities as a member of society and as an individual and was intended to bring about

the gradual development of man and to enable him to realise what was deemed to be the goal of human existence. Dharma implied justice, morality and righteousness and in ancient India the foremost duty of the state was to uphold and promote Dharma.

The Hindu state was characterised by the king-priest partnership. The ancient writers considered each in a sense to be the basis of the other’s power, the union of the two being perfection. The function of the Brahman was to interpret Dharma and preside over the rituals. Coronation by the priest was a necessary pre-requisite to the exercise of royal power. The Hindu kings, with a view to promoting Dharma, built temples, granted them large endowments and exercised strict supervision over their affairs.

This does not, however, mean that the ancient Hindu state was a theocracy. Despite the influence of the priestly class, the actual ruler was the king or the Raja, whose caste duty was to wield power and administer punishment for the breaches of Dharma. The king relied upon the wisdom of the Brahman for understanding the meaning and implications of Dharma, and he was enjoined by the religious scriptures to protect the Brahman at all costs. Besides these considerations, theocratic power did not develop in India, primarily because the Brahmans did not develop church organisation on the lines of European priesthood and, therefore, could not contend for temporal power, and were
dependent upon the king for earthly support.

One very important distinguishing feature of the ancient Hindu state was the remarkable degree of religious freedom and tolerance. The Hindu view of life, which attaches greater importance to the future evolution of man and the ultimate absorption of the human personality in the absolute, necessarily leads the Hindus to attach lesser importance to individual religious beliefs and makes for toleration. A basic doctrine of Hindu philosophy holds that the spiritual liberation of man can be reached in many ways, and Hindu society, therefore, embraces in its fold diverse, contradictory and even conflicting beliefs and practices.  

Hindu philosophy claims the unique distinction that it has tolerated the existence of different philosophic views and never insisted on the rigidity of uniformity. It has been inspired by a quest for truth, unhampered by faith in dogma.

This basic philosophic approach of the Hindus was primarily responsible for the toleration of various faiths and denominations by the ancient Hindu state. The Hindu state never attempted to impose any particular faith upon its people and various creeds were not only permitted to

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67 Setalvad, supra n. 19, p. 13. For details see infra Chapter V, 'Definition of Hindu'.

68 P. B. Gajendragadkar, supra n. 66, p. 5.
practise their faiths but they were allowed to propagate their faiths, establish religious institutions for worship, manage their properties in their own ways. It has already been noted how western communities had to fight a grim battle for getting and enjoying the basic right of the freedom of conscience. From the earliest times in India freedom of conscience was permitted to people of all faiths and there is no trace of a struggle which the Europeans had to undergo for centuries together. This religious toleration of the ancient Hindu state has necessarily created the foundations of a secular state in India.

This should not, however, be interpreted to mean that the ancient Hindu state was a secular state. The reasons are, first that while the modern secular state in the western sense postulates institutional separation of state and religion, the ancient Hindu state engaged in active promotion of religion by establishing religious institutions and by aiding them (without strings) with state help. Secondly, secular state also implies the granting of equality for all before the law as well as freedom of social action for all sections of society. The ancient Hindu state, on the other hand, was based on Varna system which resulted in social stratification and the consequent caste regulations created a discriminatory society. Similarly, the legal code differed for different sections within Hindu society, and the earlier scriptures prescribed discriminatory punishments for offences committed by people belonging to different caste groups.
The Medieval Period

The medieval period is characterised by Muslim invasions particularly in the Northern regions of the Indian sub-continent. These invasions subjected these regions to Muslim rule for about one thousand years. The early invaders, particularly the Ghaznavids (976 A.D. to 1186 A.D.) were primarily concerned with loot and plunder of the rich areas of the North but later they tried to establish their rule, more or less in a permanent fashion, prominent examples being the Delhi Sultanate (1211 A.D. to 1504 A.D.) followed by the Mughal Empire (1526 A.D. to 1757 virtually and to 1858 formally). During this period of Muslim rule, the policy of the state changed from time to time, but, by and large, most of the rulers were intolerant and aggressive and the majority community of Hindus had to suffer persecution in an unprecedented manner. Thousands of Hindus were converted to Islam by force, public worship of Hindu images was forbidden. In many parts of the country, old Hindu temples and the images therein were destroyed, discriminatory and oppressive taxes like jizya were levied on all non-Muslims, discriminatory practices were adopted even in government.

69 It was after the Battle of Plassey in 1757, that the Mughal rulers lost their control virtually and in the period that followed the East India Company brought under its control major part of Indian sub-continent. In 1858, Queen Victoria became de jure sovereign of the Indian Empire when the last of the Mughal Emperors Fakruddin died.
services, Hindus and other non-Muslims being denied government appointments. Social discrimination practised in the empire was intended to remind Hindus and the other communities of their inferior status. By and large, non-Muslims were treated as second class citizens in the empire. Religious persecution was at its highest during the rule of Feroz Shah Tughlaq, Sikander Lodí and particularly under the most intolerant and fanatical rule of Emperor Aurangzeb.

Strongly contrasted to this general tradition of religious persecution was the benevolent, moderate and tolerant rule of Mughal Emperor Akbar. He not only prohibited early invidious practices of forced conversions and religious bigotry of iconoclasts; but offered equal treatment to people belonging to different religions, Hindus, Christians, Zoroastrians, etc. He abolished the repressive Jizya tax, encouraged the building of temples, abolished socially discriminatory practices. He encouraged common discussions by leaders of all religious faiths, promoted the freedom of religious thought by encouraging the translations of important religious scriptures of the Hindus. In his court assembled scholars from various religious faiths and high offices of his executive body were kept open to non-Muslims.

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70 The famous Golden Temple of Sikhs at Amritsar was built on the land donated by Emperor Akbar.

71 For example, Bhagwad Gita was translated into Persian by poet Faisi.
as well. He was so impressed by the teachings of various religions, that he attempted to establish a new faith by synthetically incorporating important basic teachings of Hinduism, Zoroastrianism as well as of the different sects of Islam. This new doctrine was called by him as 'Din-e-Ilahi' and it was based on the principle of the unity of God.

This impressive record of religious toleration can be strikingly compared with the fanatic religious wars of the Roman Catholics and the revolutionary protestants in Europe in the same period. This experiment in religious tolerance, however, was like a comforting oasis in the desert of religious fanaticism of other Muslim rulers. His was a remarkable attempt to establish a secular tradition, 'perhaps the first conscious attempt to formulate the conception of secular state.' In the modern age, he was the first and almost the greatest experimenter in the field of religious toleration. His experiment was the only link of the medieval period, which continued at least for the time being the tradition of Indian secularism.

72 Prominent Hindus--Todarmal, Mansingh, Bhagwan Das etc. held very high offices such as of Governors and Ministers. While Artists like Tansen, Birbal and others formed part of his Court of Nine Gems.


74 Dr. Sri Ram Sharma, The Religious Policy of the Mughal Emperors (Calcutta: Oxford University Press, 1940), pp. 4-5.
After the fifteenth century, the Indian sub-continent was exposed to Christian invaders from Western Europe, the Portuguese, Dutch, French, and English. These maritime powers, who first came to India as traders tried to establish their political power. Among them, the earlier powers, the Portuguese and Dutch were not tolerant to Indian religions and resorted to force for converting Hindus as well as Muslims to the Christian faith. The British, however, followed a different policy of religious neutrality, of non-interference in the religious life of the natives. This policy was primarily dictated by the trading interests of the company which the directors thought could best be served by religious neutrality. In the latter half of the eighteenth century, the rule of the East India Company was subjected to parliamentary control which renewed the charter of the company every twenty years. Every time Parliament debated the working of the Company in India, attempts were made to establish government missionary establishments in India to convert the natives but these attempts were foiled by the directors of the company claiming that such a policy of forced conversions would defeat the purpose of trade. The degree of neutrality, however, differed from person to person who held the office of Governor-General in India.

The early nineteenth century witnessed some very important steps taken by the rulers of East India Company, the abolition of the practice of Sati by Lord William
Bentinck and the enforcement of a uniform criminal law, thus establishing equality before the law in India. In 1850, the Government of India enacted the Caste Disabilities Removal Act for protecting the interests of religious converts and from 1854 was followed the policy of giving grants-in-aid to educational institutions managed by private agencies but which were secular in orientation.

In 1856, the British Crown assumed the power of sovereignty over India and Queen Victoria in her historic proclamation reasserted in clear terms the intention of the Government to continue the policy of religious neutrality. The Proclamation declared:

"Firmly relying ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion, we disclaim alike the right and desire to impose our convictions on any of our subjects. We declare it to be our Royal will and pleasure that none be in any wise favoured, none molested or disquieted, by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure."

Even though early British rule had asserted its adherence to the policy of religious neutrality, the actual
implementation of this policy was, nevertheless, far from easy. The British rulers, like their predecessors, were expected to honour the rights and privileges enjoyed by religious institutions in the administration of their religious affairs. During the process of the disintegration of the Mughal Empire there emerged principalities which were governed by Hindu or Muslim rulers. These rulers followed the policy of patronising religious institutions. The religious authorities expected the British Government to continue the same policy and consequently acts were passed to regulate and control the endowments, both of the Hindus as well as the Muslims. As patron, huge sums were spent by the British Government for supporting these religious institutions. British officers participated in the festivities of the native communities. This participation by the government in religious affairs was considered in England by some as a violation of the policy of religious neutrality and consequently, the British government had to withdraw this patronage. This withdrawal, however, was not received well in India it being alleged that this policy would expose the religious institutions to greater dangers.

Another important development from the standpoint of secular tradition in India during the British period is the establishment of the Church of England in India. In the initial stages of Company rule in India, Company officials did not take an initiative in building churches
in India, though private missionary efforts were encouraged. After the renewal of the Company Charter in 1613, however, Parliament provided for the appointment of Bishops of the Church of England to supervise ecclesiastical matters in India, and the Company thus became officially connected with the missionaries and their congregations.

With the growth of the British empire in India, new Bishoprics were created in India and in spite of the opposition by Company officials, the expense of the salaries and of constructing the churches was charged partly on the revenues of the Company government. This process continued even after the British Crown assumed the sovereign power, perhaps with more vigour and thus 'a government which professed religious neutrality, appointed and paid Bishops whose duty it was to convert Hindus and Muslims.' This association of the church and state was opposed by Indians as well as some authorities of the church itself contending that such association undermined the freedom of the church in its independent missionary work and subjected itself to the goodwill of the government. As a result of this opposition, the legal union between the Church of England and the Church of England in India was abolished in 1927 by a statute of Parliament. In practice, however, substantial sums of money were spent to meet the salaries of the church officials.

75 Donald Smith, supra n. 9, p. 81.
and to maintain the churches. After the attainment of independence in 1947, this association was completely broken by the abolition of the Indian Ecclesiastical Establishment in March 1948. 76

The above analysis shows that the British policy of patronising Hindu and Muslim religious institutions and associating itself directly or indirectly, formally or informally, with the ecclesiastical organisation of the Church of England in India, was an aberration of its general policy of religious neutrality and, thus, was contrary to the idea of secular state.

Indian National Congress

From its very inception, the Indian National Congress which formed the main platform for organising the nationalist movement in India was secular in its character. As pointed out in its report "the Congress is a community of temporal interests and not of spiritual convictions that qualify men to represent each other in the discussion of political questions; we hold their general interests in this country being identical, Hindus, Christians, Muslims and Parsis may fitly as members of their respective communities represent each other in the discussion of public secular affairs." 77

In conformity with this policy representatives of various

76 Ibid., p. 83.
77 Quoted by Donald Smith, ibid., p. 86.
religious communities participated in the deliberations of this organization and held high offices as well.78 This secular attitude adopted by the Indian National Congress was mainly due to the fact that its early leaders were inspired by western liberal tradition and were convinced that such an attitude alone would muster the strength for their organization in a multi-religious community in India.

Almost parallel to this organization was running the organisational effort of some Muslim leaders79 who were not ready to accept the forum of Indian National Congress as truly representative in character. They founded in 1906 the Muslim League which according to them was the only association with a right to speak on behalf of the Muslim community. By this time, the Indian National Congress was badly divided into two factions, the moderates and the extremists, and it is a matter of controversy whether the Muslim separatism was due to the excess of religious symbolism of the extremists in Congress.80

The British Government had introduced representative institutions in India after the Indian Councils Act in 1861

78 Distinguished Muslim leaders like Badruddin Tyabji, Rahmatullah Sayani were Presidents of early Congress sessions.

79 The leadership of such effort was provided by men like Syed Ahmed Khan. The early associations were called the Patriotic Association (1885), the Muhammadan Defence Association (1893) etc.

80 This controversy is a matter of separate investigation which need not detain us here.
and non-officials were increasingly associated with the working of the administration since then. The dawn of the twentieth century witnessed the introduction of democratic electoral process in India and the nature of the electorate became a matter of bitter dispute between the two important organisations, the Congress and the Muslim League. The Muslim League pressed for its demand for a separate electorate for the Muslims, a demand which was accepted by the Governor-General, Lord Minto. This demand for communal representation was, however, very strongly opposed by the Indian National Congress contending that such representation would undermine the national unity. Lord Morley, Secretary of State for India supported the idea of joint electorate pressed for by the Congress but the Muslim League was not ready to accept anything short of a separate electorate and it threatened a nation-wide agitation for their demand. The Indian Councils Act of 1909 provided for such a separate electorate by reserving seats for Muslims in the Indian Legislative Council as well as the provincial councils and only the Muslim electorate was allowed to vote for these reserved seats.

The system of separate representation for different communities encouraged them to form themselves into separate political units and promoted the growth of Muslim communalism. This, in turn, had the effect of strengthening the non-communal and secular attitude of the national movement.
The Lucknow Pact of 1916 agreed upon by the Indian National Congress and the Muslim League confirmed the principle of separate electorate. The Montague-Chelmsford report of 1916 was not in favour of the idea of communal electorate contending that such a system was not conducive to the growth of the self-governing principle. But on account of the insistence on it by the Muslim League, the Government of India Act of 1919 applied the principle to Muslims as well as other communities like Sikhs, Anglo-Indians, Indian Christians, etc.

The differences over the issue of communal representation could not be settled even at the Round Table Conferences held in London between 1930 and 1932 with the result that the same principle was continued under the Communal Award on the basis of which representation was accorded under the Government of India Act, 1935. With malice towards none, it can be said that the progressive application of the principle of separate communal electorate ultimately resulted in the tragic climax of the partition of the Indian sub-continent and the emergence of Pakistan as an independent Muslim state.

In Princely States

The story of secular tradition in India before independence would not be complete without a reference to the relations between state and religion in the princely states in India. Prior to independence, there were as many as 562 princely states which were autonomous in their administration though the paramountcy in relation to them was
vested with the British Crown. Most of these princely states were autocracies governed by Hindu Rajas or Muslim Nizams or Nawabs. The degree of control of the state over religious institutions differed from state to state but, by and large, the pattern was common and the state was less neutral in relation to religious affairs than in British India.

The princes, either Hindus or Muslims, gave large grants and created endowments for temples, maths as well as Muslim mosques, they either controlled the religious and charitable institutions directly or through their agents or representatives. The religious heads or officials like the Purohit, Pujari, Mahant, Mutawalli, etc. did enjoy an important status and prestige in the courts of these princes and elaborate religious rituals were performed at the time of coronations and other important official functions. Similarly government officials were invited to settle disputes regarding worship and management of religious institutions. Though conversions were freely possible in British India, there were numerous restrictions regarding the same in most of the princely states and some states made conversions almost impossible by imposing a variety of restrictions. Some enlightened and liberal princes were progressive enough to abolish untouchability and allowed the untouchables entry

81 For detailed analysis see infra Chapter VI, 'Hindu Religious and Charitable Endowments: Temples'.
in Hindu temples, however, most of the princely states continued the age-old institutions and practices unhindered.

On the whole, it may be pointed out that Hindu princes continued the ancient and medieval tradition of patronising religion but the Muslim princely states, contrary to the Muslim tradition of religious intolerance of the Mughal Emperors, followed the policies of religious toleration, at the least of religious indifference. The foundations of secular tradition in the princely states, thus, were comparatively weaker than those in British India, where the policy of religious neutrality was, by and large, followed.

Post-Independence Period

It will be seen that the tragic memories of the partition of the Indian nation, still vivid in the minds of the framers of the Indian Constitution, rightly impelled them to adopt a secular Constitution. In spite of the partition and the consequent formation of an independent Muslim state of Pakistan, Muslims in India remained a sizable minority community forming almost one-tenth of the total population of the country. In addition to this militant and effective minority community, there were others—Anglo-Indians, Christians, Parsis, Sikhs, Buddhists, Jains etc. who made India a heterogenous multi-religious nation. Under the

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62 In 1936, for example, in Travancore, the untouchables were allowed to enter Hindu temples.
circumstances, 'a secular Constitution for independent India under which all religions could enjoy equal freedom and all citizens equal rights, and which could weld together into one nation the different religious communities, became inevitable.'\(^{63}\) The development of multi-religious, multi-lingual, multi-cultural pattern of the Indian community which was disclosed by the panorama of her long and checkered history constituted a relevant factor in determining the basic character of Indian secularism\(^{64}\) as evolved by the Constituent Assembly.

**In the Constituent Assembly**

The Constituent Assembly of independent India consisted primarily of the members of the Indian National Congress which was a secular national organisation from its very inception. At the Karachi Session in 1931, the Congress affirmed the ideas of religious liberty and adequate protection to the minorities and emphatically declared that 'The state shall observe neutrality in regard to all religions.' This shows that those who framed the Constitution for India were clear in their minds about the adoption of a secular system for the country even during the liberation struggle and the birth pangs of freedom symbolised by the partition of the country further accentuated the imperative need for such a system for an independent India.

\(^{63}\) M. C. Setalvad, *supra* n. 19, p. 17.

\(^{64}\) P. B. Gajendragadkar, *supra* n. 66, p. 5.
The secular state which has been designed by the Constituent Assembly of independent India was naturally influenced by the concept of secularism conceived by prominent leaders of the Indian Nationalist Movement and it would not be out of place if a brief reference to the same is made.

Mahatma Gandhi, ‘the sacred-secular paradox’\(^6\) was not a member of the Constituent Assembly but he was the prime force in moulding Indian polity before independence and his views had tremendous impact on the leaders who were second in command. ‘Gandhiji was a man of God with a secular mission, a political leader with a religious appeal. ... He lifted religion to great heights.’ ‘To me God is Truth and Love,’ he said, ‘God is ethics and morality, God is fearless. ...’\(^7\) Even though Gandhiji was a deeply religious man and for him the tiniest activity was governed by what he considered his religion, his concept of Rama Rajya had a non-secular savour; he regarded all religions as true and could say with complete sincerity, ‘my veneration for other faiths is the same as for my own.’\(^8\) For him the soul of religions is one, but it is encased in a multitude of forms and he thought that the multi-religious society of


\(^7\) Ibid.

India necessarily required the cultivation of mutual respect and tolerance among the followers of the different religions. He was decisively in favour of a secular state when he said:

"Hindustan belongs to all those who are born and bred here. ... Free India will be no Hindu Raj. It will be Indian Raj ... without distinction of religion. ... Religion is a matter which should have no place in politics."

Dr. Radhakrishnan, the philosopher-President of India, more or less following the Gandhian tradition felt that, in this country, all are free to profess or preach the faith of their liking and that we wish well of all religions and once said very explicitly "I want to state authoritatively that secularism does not mean irreligion. It means we respect all faiths and religions. Our state does not identify itself with any particular religion."

M. N. Roy, an atheist and a Marxist who later on became a radical humanist represented the other extreme of the notion of secularism. For him secularism was an ideology opposed to a religious one, a theory of life and conduct which not only excluded religion from human life, but would regard it as man’s moral duty to fight against

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88 Quoted by V.K. Krishna Iyer, supra n. 85, p. 15.
89 The Statesman, New Delhi, 18th November 1957, p. 7.
90 In his speech on 21st August, 1961.
religion. He thought that secularism in this sense should strike roots in India and that ‘only a restated materialism could provide the view of life which is needed in India today.’ What he wanted the state to afford its citizens was not “the freedom to choose from among various religious doctrines but the freedom of the human spirit from the tyranny of all of them.”

Pandit Jawaharlal Nehru, whose personality always reflected a curious synthesis of the West and the East, liberal rationalism of the West and the rich heritage of the East, played an important role in the making of modern India and exercised perhaps the maximum influence in the making of the Indian Constitution. He was extremely critical of the spectacle of organised religion in India and elsewhere, and frequently condemned it and ‘wished to make a clean sweep of it. Almost always it seems to stand for blind belief and reaction, dogma and bigotry, superstition and exploitation, and the preservation of vested interests.’ He, however, always admired whatever was noble and personal in religion and felt that ‘religion consists of the inner development of the individual, the evolution of his consciousness in a certain direction which

91 Quoted by Dr. Abu Sayeed Ayyub, supra n. 87, p. 49.
92 From ‘Autobiography’ quoted ibid., p. 50.
is considered good." The religious instinct in him wanted 'satisfaction not only for our physical and material needs but also for those inner imaginative urges and adventurous stirrings that have distinguished man ever since he started on his troubled journey in the realms of thought and action.'

He expressed himself very clearly on numerous occasions about the need for and nature of a secular state for India. He was convinced that the 'measure of India's progress will be the measure of our giving full effect to what has been called a secular state.' To him, a secular state meant a state not tied to any religion. It is a state where one community or group or party will not be permitted to usurp the rights of another. While religion is completely free, the state, including in its wide fold, various religions and cultures, gives protection and opportunity to all and thus brings about an atmosphere of tolerance and co-operation.

Though both Mahatma Gandhi and Pandit Nehru aimed at the same need of having a secular state for India, their

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93 Ibid., p. 51.
94 From 'Discovery of India', ibid., p. 51.
95 Hindustan Times, 18th April 1949, p. 6.
96 Ibid., 4th June 1949, p. 1.
97 Ibid., 3rd February 1949, p. 9.
98 Ibid., 18th April 1949, p. 6.
approaches differed. While Gandhi based his secular state on his intense belief in the truth of religion, Nehru conceived the secular state as the cardinal doctrine underlying modern democratic practice.99

Jawaharlal Nehru in his broadcast on 19th August 1947 made clear the secular approach of the government:

"The Government of India ... will treat every Indian on an equal basis, and try to secure for him all the rights which he shares with others. Our state is not a communal state, but a democratic state in which every citizen has equal rights. The government is determined to protect these rights."100

Moving the Objectives Resolution before the Constituent Assembly, Nehru said:

"As far as India is concerned, I can speak with certainty. We shall proceed on secular and national lines in keeping with the powerful trends towards internationalism. ... In the future, India will be a land, as in the past, of many faiths equally honoured and respected."101

The members of the Constituent Assembly were, by and large, agreed on the issue of adopting a secular state for

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99 M. C. Setalvad, supra n. 19, p. 16.
100 Quoted in India Since Independence. Government of India Publication (June 1971), p. 10.
101 Ibid., p. 12.
India, and during the debates in the Constituent Assembly various members expressed their views and tried to bring out the nicer shades of the concept. A reference to a few observations would not be out of place.

Lokanath Miara wanted the state 'to keep its hands clean of all religious institutions and wanted the state not to 'bother about the management of any religious institutions.'\textsuperscript{102} At one stage, in bitterness he wanted to delete all reference to rights relating to religion.\textsuperscript{103} On the other hand, Lakshmikant Maitra felt that the secular state 'is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. ... that no particular religion in the state will receive any state patronage whatsoever. The state is not going to establish, patronise or endow any particular religion to the exclusion of or in preference to others and that no citizen in the state will have any preferential treatment or will be discriminated against simply on the ground that he possessed a particular form of religion.'\textsuperscript{104}

\textsuperscript{102} C.A.D. VII, p. 673.
\textsuperscript{103} Ibid., pp. 823-24.
\textsuperscript{104} Ibid., p. 831. (Italics mine.) For further references see Luthera, supra n. 7, Appendix I, p. 161.
Conclusion

This rapid historical retrospect points out the evolution of the concept of secularism in the west in general and the foundations of secularism in India in particular.

Broadly speaking, there are three models of the secular state as evolved in history.

The first model which was evolved in the post-reformation Europe implies the setting up of a particular church to which the ruler belonged, as the established Church, which was recognised as the official church or official religion of the state. The other denominations were granted a certain degree of freedom which differed from country to country. This was one of the earlier models of religious tolerance.

The second model is known as jurisdictionalism which aims to maintain equal status for numerous faiths or denominations within its province. It grants freedom to all religious groups and equal liberty of conscience and worship to all citizens. In this model, however, the state is not separated from religion, on the contrary, each is intertwined with the other. The state exercises considerable measure of control over the religions and even, in some cases, grants subsidies to them.

The third model, which has been evolved in the U.S.A.
is based on the actual separation of church and state, or as is described, implies the creation of a wall of separation between the state and church.

These three models are, more or less, based on the liberal democratic tradition as evolved in the west. There can be found one more model of the Marxist communist tradition which is motivated by an active hostility to religion as such. Under this model, even anti-religious propaganda is allowed. 105

Freedom of religion is the most basic component of the secular state and with minor exceptions this practice of religious freedom has been very strongly rooted in Indian tradition. It is clear that the emergence of India as a secular state in the mid-twentieth century did not represent an abrupt break with the past. ... It was rather the result of attitudes, policies and forces which had taken shape over hundreds of years, thousands of years if one considers the tradition of Hindu religious tolerance. 106 The long tradition of Hindu religious tolerance enabled people belonging to various faiths to live in peace and amity. Both Hindu and Muslim rulers followed the practice of appointing high officials of the state from other communities. The British government

105 Article 124 of the Constitution of U.S.S.R.
106 Donald Smith, supra n. 9, p. 99.
followed the policy of religious neutrality, permitting considerable freedom of religion to peoples belonging to different creeds and even trying to introduce liberal reforms in systems of law, education, administration and social relationship, and thus tried to reinforce the tradition of secularism bringing it in line with the tradition of secularism in the west.

The framers of the Constitution of India, most of whom were the leaders of the Indian National struggle were deeply impressed by the urge of making India a secular state. They have fortified their desire by incorporating freedom of religion in justiciable fundamental rights and the task in the next chapter is to see the nature of these rights and to know how these rights can be enforced by the judiciary.