CHAPTER - III

SECULARISM
THE CONSTITUTIONAL DIMENSION

There are very few political concepts which are discussed so widely and deeply as ‘secularism’ in modern India. In the first chapter, we have seen that, secularism with all its inherent characteristics such as common law, common citizenship, equal civil rights, equality before law, etc, originated in India during the reign of the British. Along with secularism, they sowed the seeds of communalism by their policy of ‘divide and rule’ and it was this policy that ultimately led to the partition of India in 1947. This chapter, besides making a constitutional analysis of the content and meaning of secularism, examines judicial deliberations on ‘secularism’ and ‘uniform civil code’.

Like many other concepts, borrowed from known written constitutions of the world, the word ‘secularism’ was not initially incorporated in the constitution. The framers of the constitution might have considered its inclusion superfluous as they had surrogated it with sufficient provisions in the
constitution to make India a secular state. It could also be a reason that the word ‘secular’ carried a lot of misunderstanding with it, especially during those times. It is not uncommon that people often brand it as something anti-religious or anti-God. It is also well argued that having had faith in the goodness and nobility of the people of India, the framers of the constitution would have left it to the people of free India to preserve and cherish it\(^1\). Whatever might be the reason the constitution makers were absolutely clear in their minds of what was meant by the term ‘secularism’. For instance, Dr. B.R. Ambedkar, Chairman of the Drafting Committee speaking on the Hindu Code Bill in 1951, in Parliament, explained the secular concept as follows “it (secular state) does not mean that we shall not take into consideration the religious sentiments of the people. All a secular state means that this parliament shall not be competent to impose any particular religion upon the rest of the people. This is the only limitation that the constitution recognizes”\(^2\). While discussing the draft constitution some prominent members of the Constituent Assembly like K.T. Shah and H.V. Kamath argued for inclusion of terms like ‘secular’ and ‘socialist’ in the constitution but it was rejected by the
Assembly by a majority vote on the ground that a mere inclusion of such terms would not make any change in the content and quality of the constitution but, conversely, might create misunderstandings.

It was only with the Forty-Second Amendment of the Constitution (1976) that the word secular became part of the preamble and one of the ideals of the constitution. As a result, the preamble now reads: WE, THE PEOPLE OF INDIA, HAVING SOLEMNLY RESOLVED TO CONSTITUTE INDIA INTO A SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC. Explaining the meaning of secularism as enshrined in the constitution, M.V. Pylee writes: “The concept of secular state envisaged by the constitution is that the state will not make any discrimination whatsoever on the ground of religion, caste or community against any person professing any particular form of religious faith. No particular religion will be identified as state religion or will it receive any state patronage or preferential status. The state will not establish any state religion; nor will the state accord any preferential treatment to any citizen or discriminate against
him simply on the ground that he professes a particular form of religion. The fact that a person professes a particular religion will not be taken into consideration in his relationship with the state or its agencies”3.

**ORIGIN OF SECULARISM**

As one of the basic structures of our constitution, secularism is a borrowed concept from the west and it owes its origin to the beginning of Christianity. “Christianity”, writes M.V. Pylee, “is characterized by its recognition and teaching of basic duality-spiritual and temporal- each with its appropriate set of loyalties. This is reflected in the famous Biblical precept, ‘Render unto Caesar the things that are Caesar’s and unto God the things that are God’s’. But this was not easy to practise. Hence there was frequent conflict between the loyalties of Christians to the State and to the Church”4. It is true that the concept of secularism as evolved over the centuries in the west, however, took an anti-religious character5.

The term secular has been derived from the word ‘seculum’ which means originally ‘age’ or ‘generation’, but it came to mean in Christian Latin the ‘temporal world’. Almost all the
major countries and known encyclopedias in the west use the term secular with the same meaning. Article 2 of the 1958 French Constitution states, “France is a Republic, indivisible, secular, democratic and social. It shall ensure the equality of all citizens before law, without distinction of origin, race or religion. It shall respect all beliefs.” The constitution of 1958 reaffirmed the freedom of conscience and worship as was ensured under the 1905 Laws of Separation, which formally ended the privileged position held by the Catholic Church.

In the United Kingdom, Anglican Christianity is the state religion and the monarch is supposedly the head of the Church as well as the State, but the British society is highly secularized. The British State, despite being associated with a Christian denomination, enacts laws on secular considerations and is hardly motivated by Anglican Christian dogmas. All religious groups are free to associate, worship, publish, promote their views and proselytize on behalf of their beliefs and worldviews. Similarly non-religious groups also have the freedom to promote non-religious or anti-religious views and opinions.
In Germany formal separation of Church and State took place in 1918 itself. The Federal Republic of Germany sees itself as a democratic and social state under the rule of law. Article 4 (1) of the 1949 Constitution guarantees freedom of religion, of belief and conscience and the freedom to express one’s religious or philosophical convictions. Article 4(2) guarantees the undisturbed practice of religion; the constitutional court has ruled that this extends to the practice of non-religious, ‘philosophical’ beliefs.

The United States is officially, constitutionally and historically, a secular state. As a result of the peculiar American governmental structure, law affecting religion and belief originate at the national, state and local levels. The principal legal text governing the relationship between Religion and the State is the First Amendment to the federal constitution which states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for redressing grievances”. The expression that has enforced
deeply into America’s consciousness about religion and politics is that there should be a “wall of separation” between church and state. This means that the government should not act as an arbiter of religious disputes nor establish any religious fests, nor propose or favour any religious doctrines, conversely, religions should have no control over public offices or public acts. The Supreme Court of the United States of America also upheld the ‘wall of separation’ between the matters of religion and state. In Everson verses Board of Education 330 U.S.1, the court observed: “Neither a State nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another…… 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 adopt to teach or practice religion. Neither a state nor the federal government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect a wall of separation between church and state.”
After the establishment of the Republic of Turkey in 1923, it became the only Islamic country to adopt secularism, against a background of the dominance of Islam at all levels of state and society. The Constitutional Court of Turkey has clarified the meaning of secularism as “from a legal point of view, in the classical sense, secularism means that religions may not interfere with state (affairs) and the latter not with religious affairs”.\(^{11}\)

Thus a cursory reading of the constitutions of some of the prominent countries of the west reveals that official separation between religious and political authority is an intrinsic feature of the western notion of secularism. The separation wall is indispensable to conserve and consolidate human liberty of freedom of expression, freedom of movement and freedom of conscience, without which individual life becomes indifferent, undelightful and meaningless.

Nearly the same meaning for the term ‘secular’ is incorporated in the major world encyclopedias and dictionaries. The Encyclopedia Britannica gives two meanings to the term ‘secular’. First, as referring to that which lasts for a long period
of time and secondly, as that which is not concerned with religious or spiritual matters. The Encyclopedia Americana defines secularism as “an ethical system founded on the principles of natural morality and independent of revealed religion or supernaturalism”. The Encyclopedia of Religion and Ethics defines secularism as “wholly unconcerned with that unknown world and its interpretation. It deals with the known world, interpreted by experience and neither offers nor forbids any opinion regarding another life”.

Some of the world’s famous dictionaries also give the same meaning for the term ‘secularism’. The Concise Oxford Dictionary defines it as “that which is concerned only with the affairs of this world and not the sacred or the ecclesiastical”. The Chambers Dictionary defines secularism as “the belief that the state, morals, education, etc… should be independent of religion …” The Dictionary of Social Sciences has identified three usages of the term ‘secular, first, if refers to the worldly as against the spiritual, secondly as opposed to the sacred and thirdly as applied to trends and conditions which continue over a period. The Oxford Illustrated Dictionary of English
defines the word ‘secular’ as something concerned with the affairs of the world not sacred, not monastic, not ecclesiastical, temporal profane by or opposed to religious education.\textsuperscript{16}

**Secularism in India**

Of course, a wall of separation between the Church and State, sacred and mundane, ‘this worldly and other worldly’ religious and political, exists in the western notion of secularism. The quality and content of the term secularism is obviously different in different countries depending on the history of the relationship between State and Church in that country. This negative character of secularism, which is the hallmark of the west, is conspicuously absent in Indian secularism, which is positive in character. In India we do not have a history of long-drawn struggle for power and supremacy between the church and state. So there exists no dichotomy between secular and sacred or religious and mundane. Instead of separation it is neutrality and even-handedness-\textit{dharma nirpekshta} that characterizes the Indian brand of secularism.\textsuperscript{17} This principle is literally embossed on the Indian Flag in the form of ‘dharma chakra’ or the ‘Wheel of Law’, which was
inspired by the Buddhist emperor Asoka’s Saranath Pillar, and which symbolizes the idea of ‘sarva dharma samabhava’ or equal respect for all religions. The idea is that the wheel moves uniformly as all the spokes are of equal length and the Indian State will be even-handed and impartial towards different religious faiths.

The impartiality characteristics of Indian state, as enshrined in the constitution, that is, State is neutral in religious matters of people, bestows on future Indian governments an important duty to make a uniform civil code (Article 44) for all sections of people in the country. The apex court has reminded the union government, a number of times, of the need and importance of making a uniform civil code throughout the territory of India, as an important step to fully achieve the goal of a secular society. The Constitution of India entitles the state the right to stifle those secular aspects of religious practices that interfered with the fundamental right of equality of all citizens (especially caste, which stood in the way of creating a democratic nation state), while continuing with the old Hindu tradition of state acting as protector and promoter
of faith.\textsuperscript{19} On the positive side, Indian government is allowed to provide funds, in the name of promotion of “Indian Culture”, for schools run by religious organizations, maintenance of places of worship, pilgrimages and social service agencies operated by “faith–based” organizations.

In the first Chapter of this thesis we have seen that the Indian National Congress was the first non-communal (secular) political organization in modern India with an all India stature and that its members came from different parts of the country, spoke different languages and practised different religions. They were unanimous in making future India a secular state based on equal civil and political rights. However, disagreements persisted among them regarding the nature and content of secularism in independent India. There were two streams of thought on secularism in modern India - secular humanism and neo-Hindu revivalism. The former, being branded as the western model, was supported by democratic socialists like Jawaharlal Nehru, B. R. Ambedkar and radical humanists like M.N. Roy who believed that a rational reform of the Hindu world view and customs was essential for having
a modern secular outlook. The latter stream, being branded as Indian, was supported by revivalists like Bankim Chandra Chathopadhyay, Swamy Vivekananda, Shri Arubindo, Mahatma Gandhi and others who believed that a regeneration of the supposedly tolerant and benevolent Vedic ‘golden age’ was a pre-requisite for social progress²⁰.

Modern Indian secularism, which is a hybrid of these two streams in Indian National Congress, reflected in the Indian Constitution. Of course the predominance is for the first, secular humanism, advocated by Jawaharlal Nehru and other secular humanists. The Constitution of India, which is unique in many respects, is the greatest contribution of our national leaders to posterity. It contains enough provisions for making future India a truly secular state. In fact, it became the greatest bulwark of Indian secularism in independent India and the country could successfully withstand all the challenges from communalism because of its dispassionate presence.

Nevertheless the framers of the Constitution deliberately avoided insertion of the word ‘secular’ in the constitution when it was formally enacted on 26th November 1949; the original
(unamended) Constitution in all aspects was a secular document. Though the addition of the word ‘secular’ to the constitution did not make any qualitative change in the content and quality of the constitution; it became one of the ideals of the constitution just like democracy or the republic that the people of India should foster and cherish close to their minds.

**Constitutional Provisions Concerning Secularism**

A close examination of various provisions of our constitution would divulge the fact that they are comparable with similar clauses in the constitutions of leading secular democracies in the world. In the Constitution the chapter on Fundamental Rights (part-III) forms the strongest pillar of the edifice of Indian secularism. Article 14 of the constitution declares that “state shall not deny to any person equality before the law or equal protection of the laws within the territory of India”. While equality before the law is a somewhat negative concept implying the absence of any special privilege in favour of any individual and the equal subjection of all classes to the ordinary law, equal protection of laws is a more positive concept implying equality of treatment under equal circumstances.
Thus, Article 14 stands for the establishment of a situation under which there is complete absence of any arbitrary discrimination by the laws themselves or in their administration. Highlighting the significance of Article 14 in establishing a secular state in India, M.V. Pylee writes, “political equality which entitles any Indian citizen to seek the highest office under the state as opposed to what obtains in a theocratic state is the heart and soul of secularism as envisaged by the constitution”\textsuperscript{21}.

Article 15 says, “The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them. Further on the basis of any of these grounds a citizen cannot be denied access to shops, public restaurants or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public”\textsuperscript{22}. The significance of the article is that it is a guarantee against every form of discrimination by the state on the basis of religion, race, caste or sex. Interpreting the scope of the article, the Supreme Court held that “it is plain that the fundamental rights
conferred by Article 15(1) is conferred on a citizen as an individual and is a guarantee against his being subjected to discrimination in the matter of rights, privileges and immunities pertaining to him as a citizen generally”23. Thus, Article 15 enlarges the concept of secularism to the widest possible extent prohibiting discrimination on grounds of religion, race, caste, sex or place of birth.

Article 16 guarantees equality of opportunity in matters of public employment. This article has two parts. First, there shall be equal opportunity for all citizens thereby the universality of Indian citizenship is emphasized. Secondly, the state is prohibited from showing any discrimination against any citizen on grounds of religion, caste, race, sex, descent, place of birth or residence, in matters of public employment. Equality of opportunity in matters of public employment as a right is applicable not only to new appointments but also to promotions for those in service24. This article does not prevent the central and state governments from making special provisions for the reservation of backward classes in public employment. Thus Article 16 reiterates the citizenship
qualification for public employment, transcending one’s religious and caste qualifications; an important hallmark of a secular state as opposite to a theocratic state.

Articles 19 to 22 taken together, to form a charter of personal liberties, are the backbone of the chapter on Fundamental Rights. Of these, Article 19 is the most important and it may rightly be called the key-article embodying the “six freedoms” under the constitution, guaranteed to all citizens without any discrimination. They are; The right:

a. to freedom of speech and expression;

b. to assemble peaceably, without arms;

c. to form associations or unions;

d. to move freely throughout the territory of India;

e. to reside and settle in any part of the territory of India; and

f. to practice any profession, or to carry on any occupation, trade or business.
These freedoms are universal and guaranteed to all the citizens (aliens also enjoy these freedoms subject to certain conditions). The state not only cannot interfere with these rights in the name of religion or caste but also should make them available universally to all citizens without any distinctions. These freedoms, as a whole, constitute the liberty of the individual, and liberty is one of the most essential ingredients of human happiness and progress.

The non-association of state with any particular religion in preference to others and granting a good measure of freedom to its citizens to profess, practise and preach one’s religion both individually as well as collectively, are the characteristics of a secular state, unambiguously present in the Indian Constitution. Article 25(1) says that all persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion subject to public order, morality and health, and other provisions of the constitution. (2) Nothing in this article shall affect the operation of any existing law or prevent the state from making any law.
a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Article 25 not only entitles the individuals to hold a particular religious belief but also to practise and propagate their religion. The term practise means that an individual can also perform all the external acts and rituals which are essential and organically connected with the religion of choice. Over and above these, individuals have the right to propagate their religions with the intention of popularizing them. Referring to the Right to Propagate, the Supreme Court of India observed:

“The provision has given everyone the right to propagate his religious views for the edification of others.”

There was a bitter controversy in the Constituent Assembly on the desirability of inserting the word ‘propagation’ in the constitution. While some members strongly opposed
granting such a religious right to the individuals, others supported its insertion to the constitution. R.K. Diwakar, S.W. Krishnamoorthy and K.T. Shah opposed the insertion of the word ‘propagate’ in the constitution on the ground that it might create social disorder, communal disharmony and religious tensions. But members like K. Santanam, Krishnaswami Bharati, Pandit LK Mitra and many others stood for the inclusion of the word propagate in the constitution. They argued that denial of right to propagate religion would be tantamount to the negation of the freedom of speech and expression guaranteed by Article 13 (now Article 19)²⁷. The Constituent Assembly finally accepted this argument and included the word ‘propagate’ in the constitution.

Highlighting the significance of the word ‘propagate’, M.V. Pylee writes, “the word ‘propagate’ does not find a place in any other constitution where it deals with religious freedom”²⁸. But the practical wisdom of our constitution makers made it a conditional right. So, when propagation affects other people’s religious sentiments or conversion involves some sort of force or fraud, it goes against the letter
and spirit of the constitution”29. A secular state which gives protection to all religions equally is by no means bound to protect every kind of human activity under the guise of religion. There are religions which bring under their own cloak every human activity and it would be absurd to suggest that a secular state should protect them all.

It is true that Article 25 aims at the establishment of a secular character among the Indian polity. As such it cannot entertain any special privilege for any religion or allow one’s religious rights to be curtailed in any way. That is why the right to religion, like all other rights, has certain qualifying clauses. But, if an individual peacefully propagates his/her religion or honestly converts others, no valid objections can be raised, because our secular state has pledged to observe an attitude of neutrality and impartiality towards all religions30.

The religious freedom granted to the people in a secular state has three dimensions. The first refers to the liberty of the members of any one religious group. It is a harsh truth that in most religious communities, one or two interpretations of its core beliefs and practices come to dominate. Given this
dominance, it is important that every individual or sect within the group be given the right to criticize, revise, or challenge these dominant interpretations. The second dimension is that, the liberty is granted non-preferentially to all members of every religious community. The third dimension of religious liberty is that individuals are free not only to criticize the religion into which they are born, but at the very extreme, given ideal conditions of deliberation, to reject it and to remain without one\textsuperscript{31}. Thus the freedom of the atheists not to have faith in any religion and at the same time eligible for full legal rights is an important feature of modern secular states\textsuperscript{32}. It is argued that the phrase ‘freedom of conscience’ is meant to cover the liberty of persons without a religion.

The religious freedom that is guaranteed to the people of India by the Constitution is comparable with similar provisions of other modern secular democracies in the world. The Constituent Assembly, while discussing religious freedom, underwent heated exchange of views and some members even went to the extent of saying that the religious freedom guaranteed under the Constitution would endanger the secular
structure of the constitution. But prominent members of the Drafting Committee and Assembly took a stand contrary to this view. Supporting the religious freedom as essential ingredient of a secular state, Lakshmi Kant Maitra said, “By secular state, as I understood it, is meant that the state is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. This means in essence that no particular religion in the state will receive any state patronage. The state is not going to establish, patronize 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 professed a particular form of religion. In other words, in the affairs of the state, the professing of any particular religion will not be taken into consideration at all. This I consider is the essence of a secular state”33.

Explaining the relation between religion and a secular state H.V. Kamath, another member of the Constituent Assembly, 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 nor an anti-religious state.”

The significance of secularism as it relates to the State of India has been elaborately dealt by India’s second president, Dr. S. Radhakrishnan, in the following words:

“When India is said to be a secular state, it does not mean that we reject the reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or that the state assumes divine prerogatives. Though faith in the supreme is the basic principle of the Indian tradition the Indian state will not identify itself with or be controlled by any particular religion. We hold that no one religion should be given preferential status, or unique distinction, that no one religion should be accorded special privileges in national life or international relations for that would be a violation of the basic principles of democracy and contrary to the best interests of religion and government. This view of religious impartiality
of comprehension and forbearance has a prophetic role to play within the national and international life. No group of citizens shall arrogate to itself rights and privileges which it denies to others. No person should suffer any form of disability or discrimination because of his religion but all alike should be free to share to the fullest degree in the common life. This is the basic principle involved in the separation of church and state. The religious impartiality of the Indian State is not to be confused with secularism or atheism. Secularism as here defined is in accordance with the ancient religious tradition of India. It tries to build up a fellowship of believers, not by subordinating individual qualities to the group-mind but by bringing them into harmony with each other”35.

Article 26 is, in fact, a corollary to Article 25 and together they refer to freedom of religion. It says that, subject to public order, morality and health, every religious denominations or any section thereof shall have the right

a) to establish and maintain institutions for religious and charitable purposes;
b) to manage its own affairs in matters of religion;

c) to own and acquire movable and immovable property; and

d) to administer such property in accordance with law

By clearly demarcating the spheres of state and religion, which is an important feature of a secular state, Article 27 says, “no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination”. Article 27 is an additional protection to religious activity by exempting funds appropriated towards the promotion or maintenance of any particular religion from the payment of taxes.

Article 28 also moves on ‘separation’ line, that is separation between religious and state activities. It says (i) No religious instruction shall be provided in any educational institution wholly maintained out of state funds. (ii) Nothing in clause (1) shall apply to an educational institution which is administered by the state but has been established under any
endowment or trust which requires that religious instruction shall be imparted in such institution. (iii) No person attending any educational institution recognized by the state or receiving aid out of state funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

It is a fact that although educational institutions run by religious minorities are receiving a state aid that does not prohibit these ‘institutions from imparting religious instructions to those who are willing to attend. Thus, while the secular character of the state is demonstrated by all state educational institutions, private or denominational institutions, even when they receive state aid, are given freedom to maintain their religious character.

Article 29 and 30 deal with cultural and educational rights generally known as ‘Minority Rights’. Article 29(1) guarantees the right of any section of the citizens residing in any part of
the country having a distinct language, script or culture of its own, to conserve the same. Section (2) prohibits any discrimination based only on religion, race, caste, language or any of them in the matter of admission to state or state-aided educational institutions. Article 30 Section (1) provides that “all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice”. Article 30 Section (2) assures that the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

There are very few clauses in the constitution which are so controversial and widely debated as Articles 29 and 30. While all other Fundamental Rights are granted to all the people of the country, cultural and educational rights are guaranteed only to certain sections-linguistic and religious. There were strong protests in the Constituent Assembly against granting special rights to minorities. For some members in the Constituent Assembly, the terms ‘minority’ or ‘minority
interests’ were abhorrent and repulsive. For instance, P.S. Deshmukh, a member of the Assembly, found ‘no more monstrous a word in the history of Indian politics than the word “minority”’. He claimed it to be a demon that hampered the progress of the country. Sidhwa, another member of the Assembly, went to the extent of saying that ‘the phrase “minorities” to be wiped out from history’. Strong opposition against special rights of minorities, on the part of certain members in the constituent assembly, might have sprung up from their solid conviction that this would create hurdles in the way to national unity; promote communalism and a narrow anti-national outlook. A more detailed examination of the debates shows that this objection to special rights for religious and linguistic minorities was limited to a few members and majority in the Assembly was in favour of special rights for minorities.

Highlighting the significance of cultural and educational rights, M.V. Pylee writes, “These provisions (cultural and educational rights) are unique in the sense that there are no similar provisions included even in the constitution of America.
When provisions under Article 29 and 30 are considered along with other provisions in the chapter on Fundamental Rights and elsewhere in the constitution, safeguarding the rights of religious, linguistic and racial minorities, it will become clear that the purpose of these provisions is to reassure the minorities that certain special interests of theirs, which they cherish as fundamental to their lives, are safe under the constitution.

The access to academic institutions maintained or aided by the state funds is the special concern of Article 29(2). It recognizes the right of an individual not to be discriminated under the aegis of religion, race, caste, language or any of them. The discrimination based solely on the ground of a citizen’s particular religion, race, caste or having any particular language is absolutely prohibited in educational institutions maintained by the state or receiving aid out of state funds. This is one of the basic principles of a secular state. Article 30 (2) of the constitution demands the state an impartial or non-discriminative treatment of minorities - whether based on religion or language-while granting aid to educational institutions. This is another core principle of a secular state.
A careful reading of Article 29 (2) and Article 30(1) reveals an intrinsic difference between the two articles. Whereas Article 30 provides exclusive right to establish and administer educational institutions to the linguistic and religious minorities, Article 29(2) provides indiscriminate right to admission in government-sponsored and administered educational institutions to the citizens of India. Regarding the peculiarity and significance of Article 30(1), M.V. Pylee writes: “Article 30 is a charter of educational rights. It guarantees in absolute terms the right of linguistic and religious minorities to establish and administer educational institutions of their choice and, at the same time, claim grants-in-aid without any discrimination based upon religion or language. The fact that the constitution does not impose any express restriction in the scope of the enjoyment of this right, unlike most of the rights included in the chapter on Fundamental Rights, shows that the framers intended to make its scope unfettered. This does not, however, mean that the state cannot impose reasonable restrictions of a regulatory character for maintaining standards of education.”
The Constituent Assembly rejected the demand of certain minorities for ‘separate electorate’. Instead it granted Article 29 and 30 as a special protection against dominance if not the encroachment of majority community. The principles of elementary justice and also the principles of liberty and equality, that rule community-differentiated political rights out, do not oppose community-differentiated social rights. In reply to Mahavir Tyagi’s suggestion regarding the granting of cultural and educational rights to the minorities to be withheld till the fate of minorities residing in Pakistan was clearly known, Dr. Ambedkar said, “the rights of minorities are not relative or conditional upon the decision of other states but were absolute”. He continued, “No matter what others do, we ought to do what is right in our own judgment and therefore, every minority, irrespective of any other consideration, is entitled to the right to use their language, script and culture and the right not to be precluded from establishing any educational institution that they wish to establish”.

The term ‘minority’ as a concept has not been adequately defined in the Indian constitution. Although mentioning the
cultural attributes of religion and language, the constitution does not provide details on the geographical and numerical specification of the concept. Even the specifics of language and religion are not mentioned. In the Constituent Assembly during debates on Article 23 (Now Article 30), Dr. Ambedkar said,

"It will be noted that the term minority was used therein not in the technical sense of the word ‘minority’ as we have been accustomed to use it for the purposes of certain political safeguards such as representation in the legislature, representation in the services and so on. The word is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense, but which are nonetheless minorities in the cultural and linguistic sense. For instance, for the purposes of this Article 23 (now Article 30), if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities… The article intends to give protection in the matter of culture, language and script not only to a minority-
technically, but also to a minority in the wider sense of the term as I have explained just now.”

Alluding to criticisms that Article 30 would restrict the activities of the state and tarnish its secular character, Dr. Ambedkar said, “I think another thing which has to be borne in mind in reading Article 23 (now Article 30) is that it does not impose any obligation or burden upon the state. It does not say that when, for instance, the Madras people came to Bombay, the Bombay government shall be required by law to finance any project of giving education either in Tamil language or in Andhra language or any other language… The only limitation that is imposed by Article 23 (now Article 30) is that if there is a cultural minority which wants to preserve its language, its script and its culture, the state shall not by law impose upon it any other culture which may be either local or otherwise. Therefore this article really is to be read in a much wider sense and does not apply only to what I call the technical minorities as we use it in our constitution.”

Taking the rights guaranteed under religious, educational
and cultural fields as a whole, it will be noted that these are couched in the most comprehensive language and the maximum possible freedom is guaranteed to the minorities, religious and linguistic. It is argued that the democratic character of the constitution would have faded if the minorities had not been given adequate protection to preserve their beliefs and culture. Also the constitution might be branded as an instrument for the furtherance of the interests of the majority community. It has rightly been observed that Articles 29 and 30 had made the Indian Constitution more secular than even the constitution of the United States of America\textsuperscript{47}.

So far we have been analyzing provisions dealt in part III of the constitution in support of secularism. Part III can rightly be considered the most important pillar of the structure of Indian secularism which incorporates a good measure of religious freedom, citizenship rights and provisions related to separation of state and religion. Let us now turn to two equally significant provisions, Articles 325 and 326 in part XV, which have in-depth impact on the secular character of the constitution.

Article 325 of the constitution says, “No person to be
ineligible for inclusion in, or to claim to be included in a special electoral roll on ground of religion, race, caste or sex”'. It means that there shall be one general electoral roll for every territorial constituency for election to either House of the Parliament or to the House or either House of the Legislative of a state and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them48.

Article 326 of the Constitution says, “Elections to the House of the people and to the Legislative Assemblies of States to be on the basis of adult suffrage”. It means that elections to the House of the people and to the Legislative Assembly of every state shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than (eighteen years) of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under this constitution or any law made by the appropriate legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal
practice, shall be entitled to be registered as a voter at any such election\textsuperscript{49}.

Adult suffrage gave a voice, indeed power, to millions who had previously to depend on the whim of others for even a vague representation of their interests. Direct elections brought-or could bring- national life and consciousness to individuals in the village. This new awareness through a new channel of communication made possible new allegiances, national instead of local, thus creating an alternative to the caste and other purely local loyalties that impeded national unity. And if one local loyalty merely supplanted another, as a result of direct elections, at least the village society had a new fluidity. It is very doubtful if indirect elections would have had this effect.

Regarding the far reaching impact of adult suffrage on society, K.M. Panickkar said, “Adult suffrage has social implication far beyond its political significance….Many social groups previously unaware of their strength and barely touched by the political changes that had taken place, suddenly realized that they were in a position to wield power”.\textsuperscript{50}
There was a bitter controversy in the Constituent Assembly over the inclusion of provisions for separate electorate for minorities. Strongly arguing for separate electorate, Pokar Sahib Bahadur said that human beings identify themselves with particular communities, within every one there was a ‘spiritual sense of self-respect’ and this self-respect was linked to their community-based identity. He further argued that in true democracy all the people must have a real say in public matters and this is possible, as far as minorities are concerned, only through separate electorate.  

The arguments of Pokar Sahib and his colleagues were rejected by the Constituent Assembly on the grounds that granting political rights on a purely religious basis would make the country a theocratic state, it will lead to communal crimes and massacres and it violates the principle of equal citizenship which is the core value of secularism. Rejecting separate electorates, Sardar Patel said, “they (separate electorates) had in the past sharpened communal difference to a dangerous extent and had proved one of the main stumbling blocks to the development of a healthy national life”. Hence the Drafting
Committee came to the conclusion that the provision regarding joint electorates was of such fundamental importance that it ought to be mentioned expressly in the constitution. Consequently Article 325 was added wherein provision regarding joint electorates was made.

Submitting its report, the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas set up by the Constituent Assembly, stated: “The first question we tackled was that of separate electorates; we considered this as being of crucial importance both to the minorities themselves and to the political life of the country as a whole. By an overwhelming majority we came to the conclusion that the system of separate electorates must be abolished in the new constitution. In our judgment, this has proved one of the main stumbling blocks to the development of a healthy national life. It seems especially necessary to avoid these dangers in the new political conditions that have developed in the country and from this point of view the arguments against separate electorates seem to us absolutely decisive”\textsuperscript{53}. 
Throwing light on the significance of Article 325 in maintaining the secular character of the constitution, the Supreme Court observed: “Article 325 precludes a person being rendered ineligible for inclusion in any such roll or to be included in any special electoral roll for any such constituency on the grounds only of religion, race, caste, sex or any of them. This would show that Article 325 is of crucial significance for maintaining the secular character of the constitution. Any contravention of the said provision cannot but have an adverse impact on the secular character of the Republic which is one of the basic features of the constitution”.

Commenting about the extensive positive impact of Articles 325 and 326, on Indian democracy and secularism, M.V. Pylee writes: “The cumulative effect of the above two provisions (Articles 325 & 326) on democracy in India is indeed far-reaching. The principle of one man, one vote, and one value has become a constitutional right. The removal of the notorious system of communal electorates which had broken up Indian society statutorily into religious and communal
compartments is in perfect harmony with the establishment of adult suffrage. As a result, the citizens of India will vote as individuals and not as Hindus, Muslims, Christians or Sikhs”.

Along with universal adult franchise, which is an important component of equal political rights, the constitution also guarantees equal citizenship rights to hold higher political offices. The constitution requires that important offices of the state such as that of the President, Vice-President, judges of the Supreme Court and High Courts, Attorney-General and Advocate-General shall be filled in only by the citizens of the country, but citizenship itself cannot be denied on grounds of religion, race or caste. Thus the constitution, in unequivocal terms, states that all citizens, irrespective of their religion, caste, race, sex, etc, subjected to other conditions prescribed by the parliament, are eligible for holding any political office in India.

The constitution not only guarantees equal citizenship rights but also allows every person, subject to certain conditions, to acquire citizenship without any discrimination based on religion, caste, race, sex, etc. Accordingly Article 5
(part II) of the Constitution says, every person who has his domicile in the territory of India at the commencement of this constitution; and

a. who was born in the territory of India; or

b. either of whose parents was born in the territory of India; or

c. who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India\textsuperscript{62}.

But it must be remembered that the constitution does not, in any way, restrict the power of parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship\textsuperscript{63}. Accordingly the parliament passed a comprehensive law dealing with citizenship in 1955. The Citizenship Act, 1955 provides for five modes of acquiring citizenship. They are by birth, by descent, by registration, by naturalization, and by incorporation of territory. But it is true that the Act passed by the parliament fully conforms to the original provisions
contained in the constitution dealing with citizenship, that the Act also made open the citizenship to all subject to certain conditions, irrespective of their religion, caste, race and sex. This, of course, is a pre-condition for enjoying equal political rights by every citizen, guaranteed by the constitution.

The three-dimensional characteristics of a secular state as enunciated by Donald Smith such as sufficient religious freedom, granting of citizenship rights irrespective of the religious beliefs of the people, and mutual exclusion of state and religion, are evidently present in the constitution of India. The third feature, that is, a wall of separation between religion and politics, is not fully endorsed by the constitution, though Articles 27 and 28(1) imply strict separation. By giving the president of the republic the option of not taking an oath in the name of God, Article 60 confirms the strictly neutral character of the Indian Constitution. But there are a number of provisions in the constitution, and later, many more legislations by the parliament and state legislatures, which contravene state neutrality and entail state interference in religious matters. Some of such provisions and acts are listed below.
i) The state is entitled to regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice (Article 25 (2) (a))

ii) The state is empowered to make laws providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus (Article 25(2)(b))

iii) Financial administration of religious institutions (Article 26 (c) (d)).

iv) Grand-in-aid from the state fund to educational institutions imparting instruction and maintained by religious denominations (Article 28(2) (3), 30(2)).

v) The state is urged to take steps to abolish untouchability (which sprang up from caste system— the central feature of Hinduism) (Article 17).

vi) Maintenance of Hindu temples (Article 290 (A))

vii) Amendments in personal laws which are based on the
religion of different communities in India.

viii) Interpreting and restricting the scope of religious freedom through judicial decisions.

ix) Celebrations of the anniversary of persons in the field of religion, and spending money from the state fund on such occasions.

It may be concluded that the absence of a complete separation between the state and religion is because of the character of Indian society which is basically religious in nature. The religiosity of Indian society makes the observance of absolute impartiality of the state in its dealings with the citizens impossible.

Anti-Secular Principles and Practices

It was rather a stupendous task before the constitution framers to make amenable a foreign ideology like secularism with a traditional, religious society like that of India. In their effort to balance between foreign and native, they were forced to make some compromises. As a result some anti-secular principles and practices were allowed to be flourished side by
side with secular ideals. Some of them are cited below.

i. Special provisions were made for the reservation of the weaker sections in educational institutions and employment opportunities for their advancement (Article 15(4), 16(4)). This constitutional provision has created caste and communal consciousness and vested interests in economic, social and educational reservations.

ii. Prohibition of cow slaughter (Article 48). Accordingly many state governments have passed legislation prohibiting cow slaughter on religious pretensions.

iii. Representation on the basis of religion and caste. The constitution gives the right of representation to the Anglo-Indian Community in the House of the People (Article 331) and in the Legislative Assemblies of the states (Article 333). The constitution also provides for reservation of seats to the scheduled castes and scheduled tribes in the House of the People (Article 330) and in the Legislative Assemblies of the states (Article 334).
Constitution, seats were reserved for SC & ST and other backward communities in panchayaths (243 D) and Municipalities (243 T).

iv. Often the oath taken by representatives of the people, particularly in the parliament and state legislatures is not in consonance with the secular tenets of the constitution.

v. Performance of religious ceremonies and other practices in our national life are contrary to the spirit of secularism\(^69\). For instance, every year, the government recognizes and we observe many public holidays on religious festivals which include holidays of all the communities-Hindu, Muslim, Christian, Buddhist, Jainist, Sikh, Parsi, etc.

vi. The group-specific rights guaranteed to certain communities (Article 29(1), 30(1), are contrary to the principle of an egalitarian society, which is the essence of a secular society).

It may be submitted that, apart from the above cited examples, many more inconsistencies are found in the Indian secularism partly due to the defects in written laws and partly
due to the peculiar characteristics of tradition-bound Indian society. A two-pronged strategy might help the country to overcome the hurdles. They are constitutional amendments and secularization of social and political life of people.

**JUDICIAL DELIBERATIONS ON SECULARISM**

Till 1976, when the constitution of India underwent its 42nd Amendment, nowhere in the constitution there was any direct reference to the term ‘secularism’ to determine the character of the Indian state. Moreover, the attempt made by a prominent member of the Assembly, Prof. K.T. Shah, to insert a new article to the constitution defining the content of Indian secular state as “The state in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union”, was rejected by the Constituent Assembly as majority of the members in the Assembly were not favourable to the proposal.70

The ambiguity over the meaning and content of the term
‘secularism’ continued even after its inclusion in the preamble to the constitution in 1976 by its 42nd amendment. Then doubts were raised whether the preamble was a part of the constitution or not and the controversy continued till the apex court finally decreed that it was a part of the constitution. The last and final attempt to include a clear definition for the term ‘secularism’ to bring about clarity was made during the Janata regime in 1978. The proposed 45th Amendment Bill, 1978 included the term ‘secularism’ in Article 366 along with a definition. Since the Janata party was not in a position to command majority in the Rajya Sabha, some kind of compromise formula had to be evolved with Congress as the latter had a two-thirds majority in the upper house. The casualty of this compromise was the deletion of the term along with its meaning from the proposed text of the amendment of the constitution.

Thus the responsibility to give clarity and precision to the meaning and scope of the term secularism finally bestowed on the Supreme Court as the final interpreter of the constitution. The Supreme Court of India, by using its power of adjudication,
judicial review and judicial legislation, was unanimous in upholding secularism as one of the basic tenets of Indian Constitution through its manifold verdicts. But regarding its (secularism) nature and characteristics, the Court appears to be swung between pure western and traditional Indian concept of secularism. Here an analysis is made on the impact of court verdicts on Indian secularism.

On the one hand, religious and cultural diversities made secularism indispensable for democracy and national integration, and on the other hand were the impending task of modernizing our traditional society and bringing in social reform that required state intervention in religious affairs. Many crucial issues concerning secularism were adjudicated during this time. While in some cases the court has come out strongly on the issue, declaring secularism as an unamendable feature of the Indian constitution, in others the court’s functional definitions of secularism is susceptible to the interests of the majority impinging on the rights of minority communities, and in some others it privileged minorities.
The first unambiguous verdict on secularism, declaring it as part of basic law of the land, was made in Kesavananda Bharati vs. State of Kerala, in 1972\textsuperscript{74}. A thirteen judge constitutional bench headed by Chief Justice Sikri, in no uncertain terms, declared secularism to be the fundamental law of the land. The apex court enumerated the ‘secular character of the constitution’ as one of its basic features. The judgment declared secularism not only a basic law but also an unamendable feature of the constitution, though it was silent on the meaning of secularism in the Indian context\textsuperscript{75}.

The Supreme Court’s landmark judgment on secularism was in S.R Bommai Vs Union of India, in 1994\textsuperscript{76}. In this case a nine judge bench reiterated that secularism was a part of the basic structure of the polity and held that secularism undeniably sought to separate the religious from the political\textsuperscript{77}. Moving on the line of the non-establishment or disestablishment clause of the United State’s constitution, Justice B.P. Jeevan Reddy argued that in matters of the state, religion was irrelevant\textsuperscript{78}. It was, in fact, the high point of the Supreme Court’s protection of secular ideals. Justifying the dismissal of the Bharatiya
Janata Party (BJP)–led state governments of Uttar Pradesh, Rajasthan, Madhya Pradesh and Himachal Pradesh in the aftermath of the Babri Masjid demolition, the court held that use of religion and caste to mobilize votes in the elections by any recognized political party would amount to corrupt practice and was unconstitutional\textsuperscript{79}. The court further held that “BJP’s party manifesto, the close link of some of its members to the Rashtriya Swayamsevak Sangh (RSS)-a banned political outfit at that time, and support to ‘Kar Sevaks’ show how religion is used for the purpose of politics\textsuperscript{80}.

In SR Bommai Vs Union of India, the Supreme Court gave a practical shape to the principles enunciated in the earlier thirteen judge bench judgment in the Keshavanand Bharati case, which only said that secularism was a fundamental law. In the Bommai case the apex court gave unbridled powers to the central government to take any action, including the dismissal of a popularly elected state government, to protect the secular character of the constitution. The court declared that any state government which pursues an unsecular course, contrary to the constitutional mandate renders itself amenable
to action under Article 356 of the Constitution that subjects them to dismissal. Moving more closely to the western notion of secularism, the court gave the following ruling.

“The religion is a matter of one’s personal belief and mode of worship; secularism operates at the temporal plane. Freedom and tolerance of religion is only to the extent of permitting the pursuit of spiritual life that is different from the secular life, the latter falls in the domain of the affairs of the state”. Justifying the interference of state in religious matters on certain circumstances, the court said, “The state has the power to legislate on religion including personal laws and secular affairs of temples and mosques, and other places of worship. State has the power to decide what does and what does not constitute a religion for all practical purposes.”

In the same judgment, Jeevan Reddy, Agarwal and J.J. Ramaswamy also expressed the view that secularism in India is in broad agreement with the US Constitution’s first amendment. Though the court, by and large, stood for the separation of the sacred and the secular, it did not fully abandon the Indian traditional notion of secularism based on religious
tolerance. J. Ahmadi stated that Indian secularism was based on “the principles of accommodation and tolerance”\textsuperscript{84}. Thus, while the court supports equal respect for all religions, it also propagates a certain degree of separation of the affairs of state and religion.

The enthusiasm to protect and sustain secularism that we noticed in the Bommai case was obviously absent in its other judgments. For instance, in Ismail Faruqui Vs Union of India\textsuperscript{85}, the Ram Janmabhoomi case, the court seems to have endorsed a concept of secularism that had its rationale in Hindu scriptures. J. Varma (speaking for C.J. Venkatachaliah and J. Ray) justified a vision of secularism – ‘sarva dharma sambhava’, i.e., tolerance of all religions-that had its roots in the Yajur Veda, Atharva Veda and Rigveda and Akbar’s Din Ilahi\textsuperscript{86}. The court went a step further and said that secularism in India exists because of the tolerance of the Hindus who are the majority religion\textsuperscript{87}. The court’s analysis, derived from the scriptures of religion alone, subverts secularism. It gives the impression of secularism as tolerance that is steadfast with Hindu interests, which subsumes other faiths within its
philosophy. Such a perception of secularism is inconsistent with minority interests and the principles of pluralism.

In Ramesh Prabhoo Vs Prabhakar Khuntes, 1995, the Supreme Court took more or less a stand the same as Ismail Faruqui Vs Union of India. The case came before the Supreme Court as an appeal petition against the Bombay High Court’s verdict nullifying the election victory of Prabhoo on the ground that he (Prabhoo) and his agent (Bal Thackeray) violated Representation of Peoples Act, 1951, that prohibits a direct appeal for votes on the ground of the religion of the candidate. A sample of the speeches cited in the judgment is given below:

“We are fighting this election for the protection of Hinduism. Therefore, we do not care for the votes of the Muslims. This country belongs to Hindus and will remain so. You will find Hindu temples underneath if all the Mosques are dug out. Anybody who stands against the Hindus should be showed or worshipped with shoes. Prabhoo should be led to victory in the name of Hindu. Though this country belongs to Hindus, Ram and Krishna are insulted. We do not want Muslim votes. A snake like Shahabuddin is sitting in the Janata Party.
So, the voters should bury this party”

The Supreme Court’s three judge bench held that Bal Thackeray’s speech in the election campaign in 1990 asking Hindu voters to vote for Ramesh Prabhu, a Hindu, and making derogatory remarks against Muslims, amounted to corrupt practice. However, the Supreme Court accepted the arguments of Prabhoo and Thackeray that their speeches did not amount to appeal for votes on the basis of their religion because Hindutva implies Indian culture as a whole and not merely the Hindu religion. The verdict of the Supreme Court in Prabhoo Vs Kunte is a warning to communal forces using religion for political purposes but its acceptance of Hindutva as synonymous with Indian Culture totally inconsistent with its verdict in Bommai case.

In the NCERT textbook case the Supreme Court decreed that all faiths are equal. The majority view was that the essence of every religion is common; only the practice differs. The verdict, of course, is against the spirit of Indian society which is based on the co-existence of many cultures, religions, castes and languages, having their own separate identity. It is
also against the basic principles of the constitution which guarantee community-specific social rights to minorities whether based on religion or language.

In Sardar Taheruddin Syedna Saheb Vs State of Bombay, 1962 and Ziauddin Burhanuddin Bhukhari Vs Briujmohan Ram Das Mehra, 1975\textsuperscript{93} , the Supreme Court seems to have endorsed the approach of the state towards religions as neutral and impartial. In the former case Justice Ayengar explained that Articles 25 and 26 of the constitution, “embody the principle of religious toleration… besides, they serve to emphasize the secular nature of Indian democracy which the founding fathers considered to be the very basis of the constitution\textsuperscript{94}. In the latter case, Justice Beg said that our constitution makers certainly intended to set up a secular democracy the building spirit of which is summed up by the objectives set forth in it. The court set the role of the state as neutral or impartial in extending its benefits to citizens of all castes and creeds and made it the state’s duty to ensure through its laws that disabilities are not imposed based on person’s practising or professing any particular religion\textsuperscript{95}. 
In the Indra Sawhney case, Judge Kuldip Singh indicated that secularism envisages a cohesive, unified and casteless society and seems to have defined secularism to extend beyond religion. In these cases, the courts indeed stepped in to declare secularism as a fundamental law of the land and its stance on secularism was that of neutrality and impartiality towards all religions.

As in the Ramesh Prabhoo Vs Prabhakar Khuntes, in Manohar Joshi case also, the court supported majoritarianism, a clear deviation from the Bommai Case. In Manohar Joshi’s case the Supreme Court ruled that the promise to establish the first Hindu state in Maharashtra did not amount to appealing for votes in the name of religion.

In the court’s opinion, a mere statement that the first Hindu state will be established is by itself not an appeal for votes on the ground of religion, but is the expression, at best, of such a hope. Whatever may be the opinion of the judiciary it is within the purview of common knowledge that no religious state can remain to be neutral.
Religion and the Supreme Court

Like secularism, religion also does not have a clear definition in the constitution. Interestingly it is the judiciary in India that tells us what constitutes and what does not constitute a religion. The Supreme Court is of the view that the problem with secularism in India is the demarcation between “what are matters of religion and what are not….. Religion is not defined in the Constitution and it is a term that is hardly susceptible of any rigid definition99.

In SP Mittal Vs Union of India, the Court stated that religion is a matter of faith; belief in God is not essential to constitute religion.100 The court cited the examples of Jainism and Buddhism as no-God religions, but they are religions. In A.S. Narayan Deekshitulu Vs State of Andhra Pradesh101, the Supreme Court held that religion in the constitution was a personal matter for those who have faith and belief in it.

While in early cases like Sirur Math Jagannath Temple102 and the Bombay Trust cases of Justice B.K. Mukherjee, the court assured all religions protection of their belief, practices and management of their religious institutions. In the
Nathdwara temple case, the court propounded that only the essential practices of a faith would be protected\textsuperscript{103}. Judges thereby became the custodians of faith. Further, in A.S. Narayana Deekshitulu Vs State of Andhra Pradesh, it was established that the law’s attempt to separate essential practices from non-essential was not unlawful but visionary. In Vaishnodevi Shrine Case, the court further clarified this point when it said that, “the performance of religious service was considered an integral part of the religious faith and belief and could not be regulated by the state, but the service of the priest was considered a secular activity, which can be regulated by the state\textsuperscript{104}.

The court also decides what constitutes a religious denomination. In S.P. Mittal Vs Union of India\textsuperscript{105}, the court denied the status of religion to followers of Arobindo, whose teachings were recognized as his philosophy and not a religion. In Brahamachari Sidheswar Shai Vs State of West Bengal\textsuperscript{106}, the court held that the followers of Ramakrishna, who are a collection of individuals and who adhere to a system of beliefs, as conducive to their spiritual well being, who have organized
themselves collectively and who have an organization of a definite name—Ramakrishna Math, can be regarded as a religious denomination within the Hindu religion. While in another case, Anand Margis, the Anand Margis were recognized as a religious denomination. But the performance of tandava dance by its practitioners (in procession or at public places by Anand Margis carrying lethal weapons and human skulls) was believed by the court to be a non-essential feature. Thus, the court not only decided what constituted a religion but also what practices should be allowed within its ambit.

In Ismail Faruqui Vs Union of India, the Supreme Court’s majority opinion was that the state could, in the exercise of sovereign power, acquire places of worship like mosques, churches, temples, etc., for the maintenance of law and order. It argued that while offer of prayer or worship is an essential religious practice, its offering at every location where such prayers can be offered is not an essential religious practice. Similarly ban on cow slaughter, in the State of West Bengal Vs Ashutosh Lahiri and earlier, in M.H. Querseshi Vs State of Bihar, and that the Muslims in India cannot be given the
freedom to kill cows by way of ‘Qurbani’ as part of Id Ul Adha, further extend the debate on essentiality and non-essentiality of religion. Bijoe Emmanuel Vs State of Kerala case added a new dimension, following similar dicta by the U.S. Supreme Court. Here the court allowed the believers of Jehovah Faith the right not to sing the national anthem on grounds of genuine conscientious religious objection. The court further contended that it was not disrespectful to the national anthem, if a person stood up respectfully when it was sung but did not join the singing. In the All-India Imam Organisation Vs Union of India, the Imams approached the court against the exploitation of the Wakf Board. The court decreed that under the Wakf Act of 1954, it was the duty of the Wakf Board to pay remuneration to Imams. While in Bijoe Emanuel’s case the court supports liberal secularism by adhering to individual freedom against state’s authority, in Imam Organization case, the court permits state’s interference in matters of religion and the management of religious affairs.

The judgments of the Supreme Court, thus, reiterate that
in matters of religion, only essential practices can have absolute protection, as determined by the state. This has entailed frequent interference of state in matters of religion. It, of course, is an anomaly that a secular state frequently interferes in religious matters and plays the role of a manager in religious institutions, while it is argued that the secular state should be kept out of interfering with religious denominations, and the maximum interference that can be allowed is supervision only. The difficulty of restricting the state, separating religious from the secular, and the inconsistency of the judiciary in its judgements have prevented Indian secularism from flourishing further.

Uniform Civil Code and the Judiciary

The civil code is a set of laws governing the civil matters of the citizens in the country relating to matters like marriage, divorce, adoption, custody of children, inheritance, succession to property, etc. The common civil code or uniform civil code, if enacted, deals with the personal laws of all religious communities relating to the above matters which are all secular in character.
The framers of the constitution were unanimous in believing that enactment of a uniform civil code would enhance fraternity and unity among citizens, who were fragmented in terms of religion, caste, language, culture, etc. So they left the task of enacting a uniform civil code (UCC) to the posterity by incorporating Article 44, which states, “the state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.

Since Article 44 forms part of Directive Principles of State Policy and which cannot be enforced through a court of law, much has been left to the future leaders of the country to be decided. The constitution makers were wise enough to think that Nineteen Fifties was not a right time for the country to enact uniform civil code as the country was just partitioned and communal relations, by and large, were tense. However, they did not rule out its adoption in future, when the country became mature and stable. Pundit Jawaharlal Nehru, while defending the introduction of the Hindu Code Bill instead of a UCC, in Parliament in 1954, expressed this view when he said, “I don’t think at the present movements the time is ripe in
India for me to try to push is through”115.

Going through the debates in the Constituent Assembly, it is clear that there were sharp differences amongst its members on the issue of personal laws. While some members, especially from minority communities, firmly stood for personal laws to protect religious freedom, others argued for a uniform civil code for all, based on a notion of homogenized citizenship. Supporting the Uniform Civil Code, K.M. Munshi, a member of the drafting committee said, “nowhere in the advised Muslim Countries the personal law of each minority has been recognized as a sacrosanct as to prevent the enactment of a civil code116. Unable to arrive at an agreement, the Constituent Assembly finally decided to incorporate the enactment of a uniform civil code, as a future target, in the non-justiciable part of the constitution i.e., the Directive Principles of State Policy. Personal laws of minorities were maintained and thus, the whole gamut of family, property, marriage, divorce and adoption rights were left within the fold of religious legislation117.
There are arguments for and against a uniform civil code. Since the Constitution is ambiguous on the issue of personal laws, the arguments in favour of and against them are based on provisions laid in the constitution. Opposition to reform of personal laws is based on the freedom of religion and conscience, whereas the guarantee to citizens of equal protection of the law and before the law supports a uniform civil code. This issue also raises questions concerning the hierarchy of rights-can the right be governed by personal laws (a component part of the Right to Freedom of Conscience) have precedence over the right to equality- and legal pluralism in a diverse society.\textsuperscript{118}

For those who consider preservation of cultural pluralism and cultural rights of religious minorities as essential features of Indian secularism, do not find any contradiction between secularism and personal laws of different religious communities. They even argue that secularism sans protection to minority religions and cultural groups creates majoritarianism.\textsuperscript{119} While others who advocate common civil rights to all sections and groups transcending religions, caste,
etc as an essential pre-condition for a secular state are strictly opposed to special protection measures for different identities and cultures.

It has been argued that since the Directive Principles are non-justiciable, they are not of much significance when compared to Fundamental Rights, which are justiciable. However, Article 37 of the constitution says, “Directive principles are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws”\textsuperscript{120}. Settling disputes over the superiority of Fundamental Rights over Directive Principles or vice versa, the Supreme Court said, “Directive Principles and Fundamental Rights ought to be harmoniously constituted, and whenever possible Fundamental Rights should be adjusted in their ambit so as to give effect to the trend”\textsuperscript{121}.

This analysis is mainly centered around the implications of certain judicial pronouncements on vital constitutional cases involving personal laws (a component part of right to freedom of conscience in part III) and Uniform Civil Code (Part IV), on Indian secularism. In fact, the tussle is between Article 25
(Fundamental Right) and Article 44 (Directive Principles of State Policy).

**Personal Laws and the Judiciary**

Judicial pronouncements are important in determining the essence of the implications of various provisions in our constitution. In the State of Bombay Vs Narasu Appa Mali, 1954, the court held that personal laws do not fall within the ambit of laws in force and therefore, are not void even if they conflict with Fundamental Rights. The Court further held that religious denominations had autonomy and personal laws were recognized as extra constitutional laws. The judicial perception was that personal laws did not fall within its purview; scriptures and religious texts were not subject to judicial review.

In the remarkable Shah Bano judgment of 1985, the Supreme Court of India took a stance contrary to the one it adopted in Narasu Appa Mali case. The Shah Bano case concerns an old Muslim woman who went to court against the way her husband had divorced her. In 1978, 65 year old Shah Bano filed a petition demanding alimony from her husband, who had abandoned her for another woman after over 40 years
of marriage. According to Muslim law, Shah Bano was entitled only to three months maintenance. The Supreme Court upheld her right to maintenance. It ruled that Section 125 of the Criminal Procedure Code overrides Muslim Personal Law (Shariat) in matters of divorce. Reminding the central government of the urgent need for enacting a uniform civil code for the entire territory of the country, the apex court said, “it is a matter of regret that Article 44 of our Constitution has remained a dead letter……. It provides that the state shall endeavour to secure a uniform civil code for the citizens throughout the territory of India. There is no evidence of any official activity for framing a uniform civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal laws. A common civil code will help the cause of national integration by removing disparate loyalties to laws, which have conflict ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue”124.

The political aftermath of this judgment—protest by patriarchal sections of the Muslim community—invoked the
efforts of the court. The Rajiv Gandhi’s government, succumbing to pressures from orthodoxy, adopted an easy course of action by passing a legislation titled ‘The Muslim Women’s Protection Bill’ that abrogated the right of the Muslim woman divorcee to maintenance under section 125 of the Criminal Procedure Code\textsuperscript{125}.

In Sarla Mudgal Vs Union of India and others\textsuperscript{126} the court once again reiterated the need for a uniform civil code. Justice Kuldip Singh stated that the uniform civil code was required for national integration. Emphasizing the role of a uniform civil code in bringing unity in the country, he further stated, “The traditional Hindu Law-Personal Law of the Hindus-governing inheritance, succession and marriage was given as far back as 1955-56 by codifying the same. There is no justification whatsoever in delaying indefinitely the introduction of a uniform personal law in the country. The learned judge proceeded further to observe that those who preferred to remain in India after the partition, were aware of the fact that Indian leaders did not believe in the two-nation theory or three-nation theory and also that in Indian republic
there would be only one nation— the Indian nation and no community could make a claim to be a separate entity on the basis of religion.”

Apparently ruling out any contradiction between Article 44 and religious freedom guaranteed under Part III the court further held that, “Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and the like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27 of the constitution.”

In a recent judgment of July 2003, John Vallamattom and Anr S Vs Union of India, Chief Justice V.N Khare observed that it was a matter of great regret that Article 44 of the constitution has not been given effect. He held that the common civil code will help national integration by removing contradictions based on ideologies.

It is true that in a tradition-bound society like that of India, the positive impact of a uniform civil code cannot be under-
estimated. What is needed is a bit of audacity and will power on the part of political leadership to take initiative to frame a uniform civil code for the entire country. This can be done only after taking the minorities into confidence as they may have grave apprehension of majority dominance as well as a craving for maintaining their separate identity. The enactment of the uniform civil code would accomplish the wishes of our constitution makers who had reposted their faith in the posterity to frame it in future when people become mature to think beyond their primordial loyalties. Though there are inherent inconsistencies in judicial pronouncements, there is hardly any reason to doubt the good intention of the judiciary when it reminded the central government of the need for framing a uniform civil code for the entire territory. In pursuance of the goal of secularism, it is advised, the state must stop administering religion-based personal laws.

It was not only the broadmindedness but also the firm determination of our national leaders that made India a secular nation. The constitution of India was the end product of our freedom struggle that lasted for about two hundred years.
Though the term secularism was deliberately avoided from the constitution, when it was formally adopted in 1950, the constitution makers had not even an iota of doubt in their minds regarding the secular makeup of future India. A perusal of the constitution would reveal that there are sufficient provisions in the constitution to make India a truly secular nation. Some of these provisions even surpass similar provisions in the Constitution of the United States of America. However, the Constitution is not without contents which are inconsistent with the basic tenets of secularism.

Though the addition of the word ‘secular’ to the preamble of the constitution in 1976 through its 42\textsuperscript{nd} Amendment did not make any qualitative change in the secular character of the state, it was, since then, made one of the declared goals of independent India along with democracy, sovereignty, socialism and republic. Judiciary, being the final interpreter of the constitution, decides the implications and scope of the constitutional law. Judicial deliberations on issues of secularism rather reveal that the context takes centre-stage in decision making. Though marked by inconsistencies, the judiciary, by
and large, supported secularism and a secular state in India in its pronouncements. The landmark judgment in Bommai Case considered secularism as the basic law of the polity, having well embedded the features of Indian and western concepts with a clear emphasis on the latter.

Judicial deliberations on religious matters, in general, support state interference to regulate secular matters of religions. As far as a uniform civil code is concerned the court sturdily pleaded for its enactment and demanded the central government to move quickly in that direction. Thus, the Constitution, through its manifold provisions, obviously erects the structure of a truly secular state in India. While interpreting the Constitution, the Supreme Court proved itself to be a great adherent of its ideals and secularism is one of them.
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56. Art. 58(1)(a)
57. Art. 66(3)(a)
58. Art. 124(3)
59. Art. 217(2)
60. Art. 76(1) read with Art. 124(3)
61. Art. 165(1) read with Art. 217(2)
63. The Constitution of India. Art. 11
64. Rajeev Bhargava, India’s Living Constitution, op. cit. p. 113
65. Ibid. p. 114
66. In exercise of the power granted by Article 17, Parliament passed the Untouchability (Offences) Act, 1955, which was amended in 1976 as Protection of Civil Rights Act”. The Act made practicing of untouchability a punishable offence.
69. Ibid.
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75. Economic and Political Weekly, November 20, 2004. p. 5028
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82. Ibid.
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that Congress (the central legislative body) shall not make any law establishing religion, or to prevent the free exercise thereof, or to infringe the right to conscience. Indian Journal of Political Science, vol. LXVI, No. 4, Oct-Dec., 2005. p. 910

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