CHAPTER FIVE

FRAMING OF THE CONSTITUTION AND SECULARISM

The Concept of Secularism with its historical and philosophical background, both in the West and India, has been discussed so far. Now, it is to be discussed with reference to Framing of the Constitution of India. This includes the discussion of the formation and working of Constituent Assembly of India and adoption of the Constitution by it. It also includes the discussion on the provisions for the Secular State for India.

Demand for Constituent Assembly :-

In this context, it can be pointed out that, as early as 1922, there was a demand of Constitution for India through a Constituent Assembly without external interference. In 1922, Gandhiji had said "Swaraj must spring from the wishes of the people of India, as expressed through their freely chosen representative". Then in May 1934,

the Indian National Congress officially adopted the programme of a Constituent Assembly. In January 1938, Jawaharlal Nehru proposed that the Constitution of free India must be framed without external interference by a Constituent Assembly elected on the basis of adult franchise. Then the Congress in its Session held in March, 1940 reiterated that 'Nothing short of complete independence can be accepted by the people of India. They alone can properly shape their own Constitution and determine their relations to the other countries of the world, through a Constituent Assembly elected on the basis of adult suffrage'.

The Indian National Congress repeatedly insisted on a Constituent Assembly for India, but the Muslim League opposed it, and the British Government was indifferent to the demand for Constituent Assembly. However, later under the compulsion of the situation in India and world, the British Government was forced to consider the Indian demand for the Constituent Assembly. The British policy was

expressed in its 'August Offer of 1940'. But the 'August Offer' was not acceptable to India, as there was no concrete provision for a Constituent Assembly. The August Offer was rejected by all Political Parties in India.

Then the Gripps Mission (1942), for the first time gave a plan for the composition of an elected Constitution making body after the end of the war to frame a new Constitution. But the proposal of Gripps Mission was rejected by the Congress and other Organisations as complete Independence was not mentioned in the proposal. The Muslim League was also dissatisfied because it wanted a definite pronouncement in favour of partition.

**Formation of Constituent Assembly :-**

The appointment of the Cabinet Mission to India in March, 1946, marked a turning point in India's History of Constitutional Development. The Cabinet Mission plan which was announced on 16th May, 1946, included the proposal of a Constituent Assembly elected on the basis of adult franchise. In accordance with the provisions of the Cabinet Mission plan, election to the Constituent Assembly was held in July, 1946. Out of the total seats allotted to the
British Indian Provinces, the Congress captured 211 seats, the Muslim League got 73 seats and other parties and Independent won 12 seats. 93 seats allotted to the Indian States were not filled up.

The overwhelming majority of the Congress, frustrated Jinnah, the Leader of the Muslim League. He pressed for an indefinite postponement of the Constituent Assembly. Later, he ordered all the League Members to boycott the Constituent Assembly which was scheduled to meet for its preliminary session at New-Delhi on 9th December, 1946. The leaders of the Congress and the British Government tried to persuade the members of the Muslim League to participate in the Constituent Assembly. But all their attempts resulted failure. The Muslim League continued its boycott.

The Constituent Assembly, however, met on 9th December, 1946 and started functioning in the absence of the Representative of the Muslim League. Sir Sachidanand Sinha, acted as the President of the Assembly. Later on 11th December, 1946, Dr. Rajendra Prasad was elected as the permanent President of the Constituent Assembly. The first
Session of the Constituent Assembly continued up to 23rd December, 1946.

In June, 1947, the Mountbatten Plan gave another turn to the History of Constitutional Development in India. The Muslim League accepted the Mountbatten Plan on 9th June, 1947 and the Congress accepted the same on 15th June, 1947. The Mountbatten Plan partitioned the country into India and Pakistan; and the Governor General announced the setting up of a Separate Constituent Assembly for Pakistan.

Then the Indian Independence Act passed by the British Parliament came into force on 15th August, 1947. This Act brought about a complete change in the character of Constituent Assembly and made it a sovereign body free from to frame, the Constitution in any manner it liked.

Here, it can be pointed out that the Constituent Assembly was not elected directly and on the basis of universal adult franchise. However, its membership included almost all the distinguished personalities with the only exception of Mahatma Gandhi. The Membership of Constituent Assembly consisted of persons like Pandit Nehru,

Thus, the Constituent Assembly membership included persons from all parts of the country and from the different walks of life. They represented almost every section of Indian people.

Framing of the Constitution:

The Constituent Assembly worked through a number of Committees. The Drafting Committee was set up on 29th August, 1947 under the Chairmanship of Dr. Ambedkar. He was ably assisted by the other members such as Alladi Krishnaswami Iyer, N. Gopalswami Ayyanger, K.M. Munshi, Saiyaid Muhammad Saadulla, T.T. Krishnamachari (in place of D.P. Khaitan who died in 1948), N.M. Rau (in place of B.L. Mitter who resigned after the First Session of the Constituent Assembly).3

The Drafting Committee prepared the Draft Constitution consisting of 315 Articles and 8 Schedules, and it was introduced in the Constituent Assembly on 21st February, 1948. The Constituent Assembly considered the draft at length. Then the Revised or Amended Draft Constitution consisting of 395 Articles and 8 Schedules was placed before the Constituent Assembly on 14th November, 1949, and the Constituent Assembly finally adopted the Constitution on 26th November, 1949. However, the Constitution came into force on 26th January, 1950, and India became a Sovereign Democratic Republic.

The Constituent Assembly worked for two years, eleven months, and eighteen days to finalise the Constitution. During this period, the Constituent Assembly discussed and debated many problems such as the form of Government, Union Or Federation of India, Citizenship and universal adult franchise, Fundamental Rights, Sovereignty of the Parliament or Supremacy of the judiciary, Gandhism or Socialism, Secular State or Theocratic State, Problem of Minorities and their Reservation of Seats, Problem of Language, Problem of Unity and Integrity of the Nation. It was really herculean task to solve these problems,
to the satisfaction of all the people. But the Constituent Assembly had performed its task well and gave a new Constitution to Independent India.

Objective Resolution :-

The Constituent Assembly of India, in its Second Session on 22nd January, 1947, adopted the most important Resolution known as 'Objective Resolution' which was moved by Pandit Jawaharlal Nehru, on 13th December, 1946.

The Objective Resolution reads thus - (1) "This Constituent Assembly declares in its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution, (2) Wherein the territories that now comprise British India, the territories that now form the Indian States and such other parts of India as are outside British India and the States as well as such other territories as are willing to be Constituted into the Independent

Sovereign India, shall be a Union of them all, and (3) wherein the said territories, whether with their present boundaries or with such other as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of the Government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom and (4) wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of the Governments are derived from the people and, (5) wherein shall be guaranteed and secured to all the people of India, justice, social, economic, political, equality of status, of opportunity and before the law, freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality and (6) wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes, and (7) wherein shall be maintained the integrity of the territory of the
Republic and its Sovereign rights on Land, sea, and air according to justice, and the law of civilized nations, and (8) The ancient Land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

The importance of this Objective Resolution is that, it set forth the basic aims of the Constituent Assembly in drafting the Constitution. "It is a Resolution and yet, it is something much more than a Resolution. It is a Declaration. It is a firm resolve. It is a pledge and an undertaking and it is for all of us --- a dedication" 5.

The ideal embodied in Objective Resolution is reflected in the Preamble to the Constitution of India. However, from the point of view of the Concept of Secularism, it can be noted that the term either 'Secularism' or 'Secular State' does not appear in the Objective Resolution'. Similarly, Jawaharlal Nehru delivered a long speech on the Objective Resolution and he made a reference to 'Republican State', 'Monarchy', 'Democratic State', American

---
Constitution', 'Russian Revolution', 'Socialism', 'Socialist State', etc., but there was no reference to 'Secularism' or 'Secular State'. This was perhaps to avoid controversy. Jawaharlal Nehru himself said 'it (the Resolution) has been drafted after mature deliberation and efforts have been made to avoid controversy'.

Attempts to Insert the Word 'Secular':

Many of the members of the Constituent Assembly used the term 'Secular' on many occasions during the debates in the Constituent Assembly. Not only this, Prof. K.T. Shah, a member of the Constituent Assembly, twice, to incorporate the term 'Secular' in the Constitution.

K.T. Shah's first attempt was in the form of an amendment in the clause (I) of the Article I of the Draft Constitution. He moved to insert in clause (I) of Article I, the words "Secular, Federal, Socialist" so that the amended Article would read as follows: "India shall be a Secular, Federal, Socialist Union of States". Prof. K.T.


Shah argued that the inclusion of the term 'Secular' will help India to avoid the communalism and sectarianism which was experienced in the past. It will also ensure equality and justice by non-interference of the authority in the State.  

Prof. K.I. Shah's amendment was opposed and rejected by other members of the Constituent Assembly. Dr. Ambedkar, Chairman of the Draft Committee rejected the amendment on two grounds. In the first place, "that the Constitution should not fix the social and economic organisations for the future. These are the matters which must be decided by the people themselves according to the time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether". In the second place, "that the amendment was superfluous, since the goals of socialism have found place in the provisions relating to the Fundamental Rights and Directive Principles, therefore, it is unnecessary to accept the amendment."

9. Ibid., P. 402.
H.V. Kamath also argued that the amendment moved by Prof. K.T. Shah was out of place. The words 'Secular and Socialist' should find place, if at all, only in the Preamble. Finally, the amendment moved by Prof. K.T. Shah was rejected by the Constituent Assembly.

K.T. Shah's second attempt was in the form of a proposed new article. (Article 18 A) which read as:

"The State in India being Secular shall have no concern with any religion, creed or profession of faith, 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".

So far as State's relation with the religion is concerned, Prof. Shah proposed a principle of neutrality. However, by neutrality, he did not mean 'the utter ignorance or neglect of institutions or services which may in the name of religion or belief be conducted by the people professing a particular form of faith'.

11. Ibid., P. 816.
Similarly, he was for equality and against partiality in the treatment of citizens. He explained that "All classes of citizens should have the same treatment in matters of mundane from the State. And even those who may not be citizens of the State by living within it, should receive the same treatment."\textsuperscript{12}

Prof. K.T. Shah's second amendment, though it was moved by him, was rejected by the Constituent Assembly without discussion on it.

Thus, Prof. K.T. Shah wanted a categorical declaration of the State being Secular and he tried for that by moving the amendment in the Draft Constitution, but without success. The Constituent Assembly rejected the amendment to insert the term 'Secular' in the Constitution. Therefore, it did not appear either in the Preamble to the Constitution or in the provisions of the Constitution.

\textit{Controversy Over 'Hindu State' Or 'Secular State':—}

When the Draft Constitution was under discussion in

\textsuperscript{12} C.A.D. Vo. VII, P. 816.
the Constituent Assembly, there were two schools of opinion, one was in favour of 'Hindu State' and the other was in favour of 'Secular State'. The first section denounced the Concept of Secular State and argued that after partition of the country secularism had no meaning and just as Pakistan has declared itself to be an Islamic State, India should be declared as the Hindu State.

Loknath Misra asserted in the Constituent Assembly that 'if you accept religion, you must accept Hinduism as it is practiced by an overwhelming majority of the people of India'.

Many other members of the Constituent Assembly, were in favour of Secular State, and they have expressed their views on the Concept of Secular State and Secularism.

Chaudhari Ranbir Singh, pointed out that 'Our aim to-day is to set up a Secular State - non-denominational State --- our object of establishing a Secular State in this country would remain merely an unrealised dream if

we decide to provide safeguards on the grounds of religion.\textsuperscript{14}

Hussain Imam was of opinion that 'Secular State does not mean that it is anti-religious State. It means that it is not irreligious but non-religious and as such, there is a world of difference between irreligious and non-religious.'\textsuperscript{15}

Tajmal Hussain argued that, 'this is a Secular State and a Secular State should not have nothing to do with religion ---. We should not, being a Secular State, be recognised by our dress. If you have a particular kind of dress, you know at once that so and so is a Hindu or a Muslim. This thing should be done away with.'\textsuperscript{16}

H.V. Kamat said that 'after all, the State represents all the people, who live within its territories and therefore, it cannot afford to identify itself with the

\textsuperscript{14} C.A.D., Vo.VII, P.289.

\textsuperscript{15} Ibid., P. 546.

\textsuperscript{16} Ibid., PP.818-19.
religions of any particular section of the population. But Sir, let me not be misunderstood 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 that India would be a Secular State, but to my mind a Secular State is neither a Godless State nor an irre- ligious nor an anti-religious State.¹⁷

Lakshmikanta Maitra explained that 'by Secular State, as I understand it is meant that the State is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any par- ticular form of religious faith.--- The State is not go- ing 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 professed, a particular form of religion.'¹⁸

L. Krishnaswami Bharti has pointed that '--- It is

¹⁸. Ibid., P.831.
not at all inconsistent with the Secular nature of the State. After all, the State does not interfere with it. Religion will be there. It is a personal affair and the State as such does not side with one religion or another. It tolerates all religions. To say that some religious people should not do propaganda or propagate their views is to show intolerance on our part.19.

Mohd. Ismail Sahib said that 'it is not necessary for a Secular State to ban religious education in the State Institutions. Sir, it will not be in contravention of the neutrality or the Secular nature of the State to impart religious instruction. It will be going against the spirit of the Secular State, if the State compels the students or pupils to study a religion to which they do not belong. But if the pupils or their parents want that religious instruction should be given in the institutions in their own religion, then it is not going against the Secular nature of the State and the State will not be violating the neutrality which it has avowedly taken in the matter of religion.'20.

M. Anantsayanan Ayyangar explained 'we are pledged to make the State a Secular one. I do not, by the word Secular' means that, we do not believe in any religion, and that we have nothing to do with it in our day-to-day life. It only means that the State or the Government can not aid one religion or give preference to one religion as against another.'²¹.

Mahavir Tyagi was of opinion that 'A Secular State means the State of Truth and God and eternity without prejudice to any particular religion. --- India believes in God and therefore, the Indian State must remain a State of God. It must be a godly State and not a godless State.'²².

R.K. Sidwa made it clear that 'a Secular State does not mean that an individual can not believe in God.'²³.

K.M. Munshi, also regarded that "---" A Secular State is not a Godless State. It is not a State which is pledged to eradicate or ignore religion. It is not a State

²². Ibid., P. 1051.
²³. Ibid., P. 1054.
which refuses to take notice of religious belief in this country.24

Thus, the Concept of Secularism as enshrined in our Constitution was very vividly explained by the Members of the Constituent Assembly. It seems that they were by and large agreed on the issue of adopting a 'Secular' rather than a 'Theocratic' or 'Hindu' State for India.

Why Secular State was opted? :-

The Constituent Assembly of India opted for the Secular State because of many reasons. The Secular State was accepted 'in order to strengthen the foundations of democracy. An authoritarian State could well be Hindu in India, as it is Islamic in Pakistan, but Indian democracy would have undermined its foundations, if it had opted for a denominational State'.25

Shelat has pointed out that 'denial of Secular Principles would have not only jeopardised the territorial

integrity and sovereignty of the new State but would have disrupted the democratic structure that was about to be setup after a long and arduous struggle.\textsuperscript{26}

The Secular State was opted 'because of the tradition of religious tolerance from the time of Asoka'.\textsuperscript{27}

Wadhava has explained that 'The Concept of Secular State introduced in the Indian Constitution for safeguarding the interests of religious minorities. A Theocratic State because of its commitments of one particular religion would have been harmful to the religious minorities. The Concept of the Secular State was adopted in view of the religious diversity of the Indian Society'.\textsuperscript{28}

\begin{enumerate}
\item[28.] Sankhdher M.M., (Edited), Frame Work of Indian Politics, Gitanjali Publishing House, New-Delhi, (1983), P.36.
\end{enumerate}
It can be pointed out that, Secularism was accepted because the framers of the Constitution had bitter experience of the Partition of the country on the basis of religion. Therefore, Secularism was considered necessary and desirable for India. Similarly, in a country like India with its religious diversity, it was also difficult to make a choice of a particular religion as the State religion. Therefore, Secularism was considered as a pragmatic solution to the problems of religious diversity and religious minorities. It can also be pointed out that the Secular State was an antidote of Hindu State which would have been theocracy which is out-dated concept and against the principle of democracy. Therefore, the Concept of Secularism which was considered progressive and conducive to the democracy was accepted in the Indian Constitution.

Why the Term 'Secular' was Omitted? :-

Though the Constituent Assembly of India opted for the Secular State, the term 'Secular' did not appear in the original Constitution. Therefore, the question arises as to why was the omission of the term 'Secular'. It is
not answered in the Constituent Assembly. But some of the authors on the 'Constitution of India' and 'Secularism' have attempted to answer this question. Smith has pointed out that, 'the inclusion of such an Article in the Constitution, however, laudable the intention behind it, would certainly have produced a conflict with Article 25 which permits extensive State intervention in matters connected with the religion in the interest of social reform'.

Luthera has explained that 'The Omission of the term 'Secular' was because the Constitution makers did not intended India to be a 'Secular State' in the proper sense of the term.'

Ayyub Abu Syeed said that the Omission of the term 'Secular' was because 'ancient Scriptures did not make mention of it. And probably the more important reason was

that they (makers of the Constitution) associated this word with a spirit of antagonism towards everything that, is signified by religion.\textsuperscript{31}

Gajendragadkar regarded that 'The Omission of the word 'Secular' or 'Secularism' is not accidental but was deliberate. It seems ---that the Constitution Makers were apprehensive that, if the words 'Secular' and 'Secularism' were used in suitable places in the Constitution, they might unnecessarily introduced by implication the anti-religious overtones associated with the doctrine of Secularism as it had developed in Christian countries.\textsuperscript{32}

Thus, it can be said that the Omission of the term 'Secularism' or 'Secular State' in the Constitution was deliberate but it was in view of many things, such as the religious diversity and the influence of religion on the life of the Indian People. Similarly, it was because the

\textsuperscript{31} Ayyub Aby Syeed, Socialism Democracy and Secularism, National Book Trust of India, (1965), PP-48-49.

\textsuperscript{32} Gajendragadkar P.B., Secularism and the Constitution of India, University of Bombay, First Edition (1971), P.52.
anti-religious meaning associated with the Concept of Secularism. The Omission of the term 'Secular' was also because the Constituent Assembly of India had no intention to effect the wall of separation between the State and religion. On the contrary, it has adopted the Constitution which recognises both the religious freedom and the regulation of it by the State in the interest of public order, morality etc.