

# Non-Establishment of Religion in Secular India



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## Abstract

From the time immemorial, religion has exercised a pervasive influence over mankind. The Indian society is a highly religious society of firm believers. There are very few non-believers. People of different religions having lived together in India, have now come to realize that the essence of all religions is common. All religions profess and aim at improving innate qualities of human being like truth, love, compassion, forgiveness and brotherhood. In India, the social traditions of State-craft are more familiar with the prevalent concept of *Sarva Dharma Sambhava* i.e. equal respect to all religion without any discrimination. Consequently, India has accepted the theory of "Secular State". Under this theory, the State is neither religious, nor irreligious, nor antireligious, and State does not make any discrimination whatsoever on the ground of religion or community against a person professing any particular form of religious faith. This paper examines the neutrality of the State in matters of religion.

**Keywords:** Sarva Dhrama Sambhava, Wall of Separation, Devaswom, Inculcation, Sect, Denomination

## Introduction

In India, during British rule there was an intimate relation between politics and religion. The partition of India and the savagery that followed partition brought into sharp focus the danger inherent in the merger of politics and religion. The Constitution maker, therefore, adopted a secular Constitution. The most important characteristics of secular State are not only adoption of policy of religious tolerance but also the prohibition against the State adopting or patronizing a particular religion. The State, therefore, shall not establish any religion. In the context of religious plurality and pervasiveness of religion in all aspect of social life, the principle of non-establishment has to be applied in India. Obviously, the Constitution makers build a relationship between State and religion as to provide a framework for the fostering and promotion of a composite culture which would serve the supreme need of national integration. They, consequently, rejected the American model of non-establishment clause and preferred dispersal of the nuances of the non-establishment norm to its specific incorporation in Article 27 and 28 of the Constitution.

## Objectives of the Study

Indian Constitution balances an individual's freedom to follow any religion freely and to practise and propagate the religion freely and the right of the State to regulate such activities which are not an integral part of religion. Our Constitution makers certainly intended to set up a Secular, Democratic, Republic, the building spirit of which is summed up the objectives set-forth in the Preamble to the Constitution. Although, India has adopted a secular ideology to rule the people of the country though the Indian society has not been secularized fully yet, the Framers of the Constitution, the social reformers and the Indian Judiciary have played a vital role in order to make the society secularized. Despite of these efforts, the governments, the political leaders and the orthodox religious zealots have failed the Constitution on secular front. The recent Gujarat Communal Riots – Godhara and Post – Godhara episode is a glaring example of it. The main object of the present study, therefore, is to study the way and means of misusal of religious freedom and give solutions to such misusal so that religious fanaticism may be eradicated and true secular spirit may be evolved in the Indian society. The aims and objective of this study is not to speak for or against any religion or community in India, but to show the importance of secularism in national life of India and to what extent the State in India is neutral in relation to the religion.

**Review of the Literature**

Modern writers engage secularism and secularization following a consistent set of representative strategies, despite their different experiences of religion as well as the ethno-linguistic and cultural differences one finds among the authors named. The essays in the book entitled "Religion And Law in Independent India (1993), Manohar Publishers & Distributors, New Delhi" edited by Robert D. Baird examined the relationship between religion and law in modern India. In the introduction the editor makes a significant observation, which reveals the foundation of the inquiry. "In traditional India religion is not something that is part of life, but that which gives meaning to all of life." If that is the case, the editor says, the issue to be explored on law-religion relationship is only what happened as a result of secularisation. The essays in the volume attempt to answer this question from the religious, legal, social and philosophical angles. A further dilemma in this regard arises from the multiplicity of laws and systems and the differences in what is legislated and what is practised. There are a number of essays, which study the gap that exists between law in the statute book and law "on the ground." There are other papers, which try to explain the contemporary issues in terms of ancient religious texts and practices. The question how politics and governance are influenced by religious differences and judicial pronouncements on religious issues are discussed in a few articles. Few important issues on law-religion relationship discussed in the volume and which continue to agitate the public mind are the issues of status of women under different religions, the case of uniform civil code, the scope of minority rights and the legitimacy of conversion. In a thought-provoking analysis on "Personal Law vs. Uniform Civil Code", John Mansfield of Harvard Law School questions whether personal law can be treated as "law" at all under the secular Constitution.

Gary Jeffery Jacobsohn in his book "The Wheel of Law - India's Secularism in Comparative Constitutional Context (2003), Princeton University Press" questions that How can religious liberty be guaranteed in societies where religion pervades everyday life? The author addresses this dilemma by examining the constitutional development of secularism in India within an unprecedented cross-national framework that includes Israel and the United States. He argues that a country's particular constitutional theory and practice must be understood within its social and political context. The experience of India, where religious life is in profound tension with secular democratic commitment, offers a valuable perspective not only on questions of jurisprudence and political theory arising in countries where religion permeates the fabric of society, but also on the broader task of ensuring religious liberty in constitutional polities. India's social structure is so entwined with religion, Jacobsohn emphasizes, that meaningful social reform presupposes state intervention in the spiritual domain. Hence India's "ameliorative" model of secular constitutionalism, designed to ameliorate the disabling effects of the

caste system and other religiously based practices. Jacobsohn concludes, and within this phenomenon the place of religion in liberal democracy is among the most vexing challenges confronting us today.

**Methodology**

The Doctrinal research method has been adopted to accomplish the present study. In this connection constitutional provisions, statutory laws, related judicial pronouncements, books, journals, reports and treatises etc. have been consulted, analysed, and examined as an instrument to eradicate the religious fanaticism and establish a true spirit of secularism in our society and country.

**Constitutional Mandate**

A secular State does not recognize any "State-religion". But all the religions flourish and get equal scope for their development on the basis of non-intervention. The followers of different religions are free to form their own associations for their development, provided they do not come in the way of other associations. Thus, the non-establishment clause incorporated in our Constitution may be broadly studied into two rubrics *viz.*, *first-* official religion of the State and the *second-* "Wall of Separation": Not adopted.

**No Official Religion of the State**

Article 27<sup>1</sup> prohibits the laying of a tax the proceeds of which are meant specifically for payment of expenses for the promotion or maintenance of any particular religion or religious denomination. The idea underlying this provision is that the India is a secular State and the religious freedom has been guaranteed by the Constitution, both to individuals and to groups, and it is also against the general policy of the Constitution that any money be paid out of the public funds promoting or maintaining any particular religion or religious denomination. But in accordance with our traditions, Indian secularism is neither anti-religion nor does it require the State to be neutral in relation to religions. This article, therefore, does not prohibit to State from the promotion of all religions out of money raised through taxes. The framers have adopted modified form of this tradition keeping in view of the plurality of religions in India.

**"Wall of Separation": Not Followed**

The Indian Constitution spells out the counters of freedom of religion enshrined in First Amendment of the American Constitution. The American First Amendment prohibits establishment of religion by Congress and guarantees free exercise of religion. Such prohibition, in America, builds a theory of "Wall of Separation" between the State and religion. But the framers of Indian Constitution were not willing to adopt in it entirely the theory that there should be "Wall of Separation". They have incorporated a specific provision in Article 28<sup>2</sup> leaving no scope for ambiguity in this regard. In respect of educational institutions wholly maintained by State funds, this article prohibits altogether the giving of religious instruction. The object of this prohibition is to avoid the problems likely to arise because of the religious pluralism in India and not to dissociate State completely from religion or to create hostile attitude of the State towards religion. For, it would be difficult for

the State to be no-discriminatory in the meeting of demands of the followers of every religion that they must be provided provision for the religious instruction in the State maintained educational institutions. The framers of the Constitution, therefore, thought it expedient to prohibit the State from imparting instructions in any religion in the educational institutions wholly maintained by it.<sup>3</sup>

### Judicial Efforts

Judiciary in many cases has interpreted the "non-establishment clause" enshrined under Article 27 and 28 of the Constitution which can mainly be categorized into four rubrics as under:

### Doctrine of Wall of Separation Rejected

The founding fathers of United States have initially, propounded the touchstone for American secularism as the State and religion should be separate. Thus, for a basic premise of all secular system in United States, they propounded the doctrine of "Wall of Separation". In *Everson v. Board of Education*,<sup>4</sup> the Supreme Court of America, while elucidating the notion of non-establishment clause of the First Amendment, held its applicability to States which involved payment by some New Jersey parents for transporting their children to Catholic schools.

The Madras High Court for the first time in *K. M. Narayanan Nambudiripad v. State of Madras*,<sup>5</sup> considered whether the Indian Constitution contains a non-establishment clause. After an elaborate survey of American cases, the Court discovered that "the meaning of the words establishment of religion had not been the same at all times and with all persons".<sup>6</sup> The Court rejecting the doctrine of "Wall of Separation" found that, "while Article 25 and 26 reproduce the law and enacted in the second clause of the First Amendment there is nothing in our Constitution which corresponds to the first clause therein."<sup>7</sup> The Court held that, "the framers of the Indian Constitution were willing to adopt from the American Constitution not the entire doctrine of the Wall of Separation but certain aspect of it. They have been incorporated in Article 27 and 28(1), which respectively, prohibit levy of taxes to promote any particular religion or religious denomination, and imparting of religious instruction in educational institutions maintained out of State funds."<sup>8</sup>

In *St. Xavier's College v. State of Gujarat*,<sup>9</sup> Supreme Court also rejected the Doctrine of "Wall of Separation" on the ground that it was applicable only in functional secularism. While, determining the scope of Articles 29 and 30, the Court, in this case said that, "Our Constitution has not erected a rigid "Wall of Separation" between Church and State. We have great doubts whether the expression "secular State" as it denote a definite pattern of Church and State relationship can with propriety be applied to India."<sup>10</sup>

The Indian Courts, therefore, have refused to interpret Articles 27 and 28 on the basis of American doctrine of "Wall of Separation" between the State and Church or on the basis of neutrality of State towards religion. The Courts have determined the relationship between the State and religion under these articles according to ethical foundation of our secularism. The underlying idea is that the ethical

value common to all religion should be integrated and promoted in order to evolve a composite culture for the country. Such a culture can be the foundation of our national unity. The judicial interpretation of the constitutional policy to promote all religions has to be appreciated in this context.

### No Religious Discrimination by the State

The framers of the Indian Constitution had contemplated a secularism of the type which is product of India's own social experience and genius. They did not contemplate a State hostile to religion but contemplated a non-discriminatory and equi-proximity role of the State towards religions or religious denominations. The Kerala High Court, therefore, in *Verkey Devassy v. State of Kerala*,<sup>11</sup> has brought out this role of the State and held that, "A secular State does not mean that no religion should be allowed to flourish in the State or that no support should be given by the State in any manner for the development of any particular religion.....it seems.....that facility must be afforded to all religions to develop in a secular State."<sup>12</sup> The Courts, in various cases, clarified that Indian secularism does not require the State to be hostile to religion. It established that the promotive role of the State without favouring a particular religion is the basic norm of our secularism. In *Papanna v. State of Karnataka*,<sup>13</sup> the Karnataka High Court held that "the temples, mosques and churches were found by Kings and by men of piety with the object of enabling the public or sections thereof to carry on worship and properties were endowed for the upkeep and the maintenance of those institutions so that the services might be carried in perpetuity."<sup>14</sup> The Court, therefore, upheld the acquisition of land for construction of temple on the ground that this action of State serves to the cause of humanity and inculcate certain values among the people.

Now the question arises here that what does the expression "public purpose" mean? This question was resolved by the Kerala High Court in *Verkey Devassy v. State of Kerala*.<sup>15</sup> In this case, the High Court upheld the acquisition of land by Government on ground that such acquisition was a public purpose. Determining the meaning of expression "public purpose" the Court observed that, if a section of the general public is benefited by the acquisition the purpose must be a public purpose. Public temples are meant to serve the general public. So the acquisition for the establishment of a temple or a church or a mosque must normally be a public purpose."<sup>16</sup> Thus, from above judicial interpretation it is obvious that the Courts have made it clear that the Indian secularism does not contemplate a State hostile to religion. Without any discrimination State can promote religion by constructing the places of worship. Such construction will not be against the spirit of secularism if, it is normally be public purpose.

### State Aid or Support to Religious Institutions

Numerous religious institutions are useful to society in different ways and deserve support from the State. But secularism connotes that the State should not take sides in matters of religion, that is, prefer to foster one religion as against the other. Nevertheless,

due to various reasons the separation between the religion and State cannot be maintained rigidly. It is incontestable proposition that if religious institutions are essential to society they should be encouraged and assisted by the State. The assistance from the State to religious institutions may be given either for purely religious purposes, or for secular activities undertaken by religious institutions.

#### Meaning of "Religion"

Scope of State aid to religion or religious denomination cannot be determined without determining the meaning of expression "religious purpose" and "religion". The term "religion is not defined in the Constitution and indeed it is a term which is hardly susceptible to any rigid definition. The Court, therefore, has confined the meaning of the expression "religion" as used in Article 27 to the essential parts of religion as the Supreme Court has confined it under Article 25 and 26 of the Constitution.<sup>17</sup>

#### Aid to Religious Institution for Religious Purpose

To maintain the secular character of Indian polity it was considered desirable by the fathers of the Constitution that no money should be paid out of the public funds for the promotion or maintenance of any particular religion or religious denomination. Financial aid may, however, take different forms, and not all these forms are prohibited by the Constitution. While financial aid in the form of a State subsidy is prohibited, financial aid in the term of tax exemption granted to a particular religion is not specifically forbidden. Thus, the promotion and maintenance of a particular religion may be achieved by giving grants to a particular religious body or to an individual. It is in this context, the question arises, whether Article 27 forbids a tax by the State for the promotion of a particular religion or it also outlaws tax exemptions to a particular religion? Article 27 does not forbid tax exemptions<sup>18</sup> and is confined only to situations where general public funds are used for the promotion of a particular religion. However, Article 290-A, the constitutional validity of which has to far not been determined, states:

#### 290 A. Annual Payment to Certain Devaswom Funds

A sum of forty six lakhs and fifty thousands rupees shall be charged on, and paid out of the Consolidate Fund of the State of Kerala every year to the Travancore Devaswom Fund; and a sum of thirteen lakhs and fifty thousand rupees shall be charged on, aid paid out of the Consolidated Fund of the State of Tamil Nadu, every year to the Devaswom Fund established in that State for the maintenance of Hindu Temples and Shrines in the territories transferred to that State on the 1<sup>st</sup> day of November, 1956, from the State of Travancore Cochin.

Judicial decisions deal with two main problems in our secular framework, viz., (1) what kind of levy the State is competent to impose and (2) what constitutes promotion or maintenance of religions or religious denomination.

#### What Levies is the State Competent To Impose?

Resolving to the question that what kind of levy the State is competent to impose, Mukherjea, J.

in Commissioner, H.R.E. Madras v. L. T. Swamiar,<sup>19</sup> referring to Article 27 observed that, "What is forbidden by the Article is the specific appropriation of the proceeds of any tax in payment of expenses for the promotion or maintenance of any particular religious denomination."<sup>20</sup> In this case, Section 70(1) of the Madras Hindu Religious and Charitable Endowment Act, 1951 was declared void as violating Article 27. Section 70(1) provided that, "In respect of services rendered by the Government and their officers, every religious institution shall, from the income derived by it, pay to the Government annually such contribution not exceeding five per centum of its income as may be prescribed." The Court observed that Section 76 spoke of the Constitution being levied in respect of the services and has thus the appearance of fees, but it pointed out that the contribution had been made to depend upon the capacity of payer and therefore, it had the characteristics of a "tax" and the imposition bore a close analogy to income tax. Thus, to meet the expenses of Government supervision over the administration of religious endowments a fee can be levied on them. The Court further indicated three essentials of "tax" as under:

First, A tax is a compulsory exaction of money by a public authority for public purposes enforceable by law and is not payment for services rendered.

Second, Tax.....is and imposition made for public purposes without reference to any special benefit to be conferred on the payer of tax. This was expressed by saying that the tax is for the purposes of general revenue which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is no element of *quid pro quo* between tax payer and public authority. In "fees" there is always an element of *quid pro quo* between the tax payer and the public authority.

Third, It (tax) is a part of the Common burden the quantum of imposition upon the tax payer depends generally upon this capacity to pay.<sup>21</sup>

Applying above test, the Supreme Court held that the contribution levied up to 5 percent of the income of the payment of the expenses incurred by it in its administration is in the nature of a tax not fee.

Time and again these tests were applied by the Supreme Court in many cases. In *Ratilal Panachand Gandhi v. State of Bombay*,<sup>22</sup> under Bombay Public Trust, the Public Administration fund was created for the proceeds from a levy or contribution. The Fund was to be applied for payment of charges incidental to the administration of the public trust and for carrying into effect of the provision of the Act. Applying the tests laid down in *L.T. Swamiar* case,<sup>23</sup> the Supreme Court held that this was a special fund which was to be applied exclusively for payment of charges for expenses incidental to the regulation of the public trusts and for carrying into effect the provisions of the Act. The collections, therefore, were not merged in the general revenue but they were ear-marked and set apart for this particular

purpose.<sup>24</sup> Whatever a levy is a tax or a fee will depend on the nature of the levy<sup>25</sup>.

The learned judge pointed out that in fees there is always an element of *quid pro quo* which is absent in a tax.<sup>26</sup> Five years later Das, J. in *Moti Das v. Sahi*,<sup>27</sup> affirmed Mukherjee view to uphold the validity of Section 70 of the Bihar Hindu Religious Trust Act, 1951 which had provisions similar to Section 49 of the Orissa Act. Again, in *Ramachandra v. State of West Bengal*<sup>28</sup> raised the question whether a statute permitting the State to impose a fee of up to two rupees per head on pilgrims visiting a sacred place of Hindu pilgrimage was a tax or fee. The Court held that at the purpose of the Statute in authorizing the State to impose such a levy was to enable it to take measures to safeguard health, safety and welfare of the pilgrims the relevant provision was not violative of Article 27. It would, thus, appear that ordinarily a levy on religious institution to meet the expenditure of Governmental supervision cannot be objected to.

#### **What Constitutes Promotion and Maintenance of Religion?**

In our secular framework, the next question is, what constitutes promotion and maintenance of religion? In *Commissioner, H.R.E. Madras v. L.T. Swamiar*,<sup>29</sup> resolving this question, Mukherjee J. observed, referring to Section 76 of the Madras Act that, "the object of contribution under Section 76 of the Madras Act is not fostering or preservation of the Hindu religion or any denomination within it. The purpose is to see that religious trusts and institutions, wherever they exist, are properly administered. It is a secular administration of the religious institutions that the legislature seeks to control and the object, as enunciated in the Act, is to ensure that the endowments attached to the religious institutions are properly administered and their income is duly appropriated for the purposes for which they were founded or exist. There is no question of favouring any particular religion or religious denomination in such cases."<sup>30</sup>

It is submitted that above judicial view is in harmony with the objective of our secularism which requires the State to provide religious facilities to the followers of all religions. For, the purpose of the State action was not to promote a particular religion but to provide facility of religious worship to both the Hindu and Muslims whose places of worship were destroyed or damaged during communal riots. A year later Raghunath's case was relied upon in *Bira Kishore Mohanty v. State of Orissa*,<sup>31</sup> to uphold the validity of a State grant for the renovation of a water tank open for use by the general public but belonging to a Hindu deity. The decision turned on the fact that the grant in question did not seek to promote or maintain Hindu religion.

#### **Composite Culture: A Pre-Requisite of Secularism**

India is a multi-religious and pluralistic cultural society. Religion has the positive influence on the conduct of society. The main social change sought to be brought about by Constitution of India is to coalesce the different communities based on religion into a society based on association of people

coming together to achieve common ends. The society based on association, therefore, has to be nurtured on a composite culture which is the one of the main object of Indian secularism. Religion as an element of culture has not escaped the process of secularism. Thus, to maintain the secular character in the society the State has to aware of the elements of that culture which nourish the feelings of oneness and national unity on the one side and on the other, it has to help in promotion of composite culture for the country. The Delhi High Court, thus, in *Suresh Chandra Chiman Lal Shah v. Union of India*,<sup>32</sup> held that, "The objective of the Constitution is to evolve, in the words of the Preamble, "fraternity assuring the dignity of the individual and the unity of the nation". The remark that the Constitution is not only a political but is also a social document is nowhere more truly than here. It does not establish only the State as the political organ but also intends to promote the growth of the nation as a politico-cultural entity. To achieve this object, the Constitution has attempted to play up those elements or religion which contributes to a composite culture and to play down other elements which incline towards separation."<sup>33</sup>

In the regularization of modern cultures many forces are working towards the secularization of cultures weaning them away from the hold of religion. Ethical teachings of a religion are one of them which provide the basis of the culture of a community. Certain ethical norms differ from religion to religion and certain diversity in the society. The Constitution, therefore, provides that these ethical norms should be weaned away by the State from the society. But, the common ethical norms, help in the promotion of unity and integrity of the society because these norms provide a common way of life and common thinking among the followers of different religions. The Constitution requires the State to promote these ethical values can be promoted by the State into two ways, *viz.*, by highlighting and by inculcating these values among the people through instructions in educational institutions.

#### **By Highlighting and Inculcation of Ethical Values**

The State highlights the ethical values by highlighting the humanitarian and universal message of various religions and their founders who have contributed to the composite culture of the country. In *Suresh Chandra Chiman Lal Shah v. Union of India*,<sup>34</sup> the petitioner challenged the validity of the programme of celebration of the 2500<sup>th</sup> anniversary of the attainment of salvation of the founder of the Jain religion, Mahavira, as this celebration amounted to promotion and maintenance of Jainism in contravention of Article 27. Delhi High Court by applying the test of distinction essential and non-essential parts of religion laid down in *L.T. Swamiar* case<sup>35</sup> rejected the contention of petitioners. The Court, thus, held that, "While religion is an essential element in the Indian culture, cultural activity is distinguished from religious activity by its dominating purpose and objective. While the Jains may have the exclusive right to profess and practice Jainism and to perform the ceremonies prescribed for the observance of the Nirvan of Bhagwan Mahavir, the

State and others cannot be shut out from expressing their respect and administration for contribution of Bhagwan Mahavir to the Indian culture..... According to this test, the programme which is impugned by the petitioners clearly falls within the domain of culture and is not either a matter of religion or religious activity."<sup>36</sup>

The Court further said that, "A secular way of remembering Bhagwan Mahavir is devised by the Government to suit all the people irrespective of the religion to which they may belong. It is the essence of a common culture activity that everyone should be able to participate in it. It is not meant to be an imitation of a religious practice. It does not, therefore, misrepresent the Jain religion or the religious practice."<sup>37</sup> Thus, the Court approved State action to highlight the cultural values embodied in different religions which might contribute to the evolution of composite culture in the country.

It should, however, be noted in this context that Article 28 is no bar to imparting of ethical education in an educational institution recognized or aided by the State.<sup>38</sup> The prohibition for religious education in the state maintained schools gave rise to some difficulty in the efforts of the State to evolve a composite culture for the country. To overcome this problem the Supreme Court in *D.A.V. College, Jullundur v. State of Punjab*,<sup>39</sup> narrow down the meaning of the word "religious" used under Article 25 as used with the word "instruction" under Article 28 to its essential parts. In this case, the State of Punjab has established Guru Nanak University with a view *inter alia* to make provision for study and research on the life and teachings of Guru and their religious and cultural impact in the context of Indian and world civilizations. This was challenged under Article 28(1) on the ground that the University being wholly maintained out of State funds was providing religious instruction. The Supreme Court rejected the challenge and said that the provision did not imply that religious instruction would be given. The Court, thus, held that, "Religious instruction is that which is imparted for inculcating the tenets, the rituals, the observances, ceremonies and modes of worship of a particular Sect or denomination. To provide for academic study of life and teaching or the philosophy and culture of any great saint of India in relation to or the impact on the Indian and world civilizations cannot be considered as making provision for religious instructions."<sup>40</sup> Evidently, the ethical values which contribute to our composite culture does not fall within the purview of phrase "religious instruction" as used under Article 28 of the Constitution. The Courts have, thus, endorsed the ethical basis of our secularism.

In *Aruna Roy v. Union of India*,<sup>41</sup> the Supreme Court while upholding the constitutional validity of National Curriculum Framework for School Education (NCFSE) published by the National Council of Educational Research and Training (NCERT) held that there is no prohibition for having study of religious philosophy and culture, particularly for having value-based life in a society which is degenerating for power, post or property.<sup>42</sup> The Court pointed out that NSFSE nowhere talks of imparting religious

instructions as prohibited under Article 28 of the Constitution. What is sought to have value based education and for "religion" it is stated that students be given the awareness that the essence of every religion is common. Only practices differ. There is a specific caution that all steps should be taken in advance to ensure that no personal prejudices or narrow-minded perceptions are allowed to distort the real purpose. Dogmas and superstitions should not be propagated in the name of education about religions.<sup>43</sup> Dharmadhikari, J., in his separate but concurring opinion, was of the view that, "A distinction, thus, has been made between imparting "religious instructions" that is teaching of rituals, observances, customs and traditions and other non-essential observances or modes of worship in religious and teaching of philosophies of religions with more emphasis on study of essential moral and spiritual thoughts contained in various religions. There is a very thin dividing line between imparting of 'religious instruction' and 'study of religions'. Special care has to be taken of avoiding possibility of imparting 'religious instruction' is the name of 'religious education' or 'study of religions'."<sup>44</sup> Thus, the most important aspect of this case is that the Supreme Court while deciding this case laid emphasis on "moral values" and the role of religion in promoting those moral values. The Court pointed out if a society is bereft of moral values there would neither be social order nor secularism. Religion is the foundation for sanction behind civilized society depends upon moral values.<sup>45</sup>

#### **Conclusion and Submissions**

Above analysis clearly reveals that the concepts of "neutrality" or "hostility" of the State towards religion have been rejected by the Courts. A very liberal view has been taken by it regarding the role of State towards religion under Articles 27 and 28 of the Constitution. Prohibition under Article 27 extends to promotion of particular religion and does not extend to promotion of all religions. The meaning of the word "religion" used in Article 27 has been confined to its essential parts by the Courts. State, therefore, cannot promote essential parts of religion which include secular and cultural matters associated with religion. The Courts have approved a "non-discriminatory promotive" role for the State to overcome the problems created by religious plurality for national integration. The evolution of a composite culture is one of the pre-requisite of Indian secularism. The State is, therefore, under a duty to evolve a composite culture through inculcation among the people of the ethical values common to all religions. Education is the most powerful instrument for inculcating ethical values among the people. Therefore, the framers of the Constitution provided no bar to imparting of moral education in an educational institutions recognized or aided by the State. The Courts have also approved the framers such intention. In sum, it may be said that the relationship between the State and religions, under Articles 27 and 28 is "equi-proximate" and "promotive". Keeping in view these challenges following submissions are made in order to strengthen the norms of secularism in action:

1. An atmosphere conducive to secularism by accepting modernization in every sphere of life should be created. Indian secularism needs the society with the people having secular attitude towards the solution of economic, social, and political problems facing the nation. There is, therefore, a need to accept secularism as social philosophy and as a way of life.
2. Religious tolerance can only be built by explaining the philosophy and the ideology of tolerance in the various faiths that have existed in pre-modern India. This is the brooding spirit permeating through the Constitution of India itself. Now, it is high time to approach in reconciling diverse practice, customs and traditions of the marriages as one of the means for social and national unity and integrity and establishment of Indian culture for harmony, amity and self respect to the individuals.
3. A central legislation should be enacted to prohibit conversions from one religion to another by force, fraud or by inducement.
4. India must turn to social reform, abandoning the narrow practice of touch-me-not secularism which has come to mean equal respect for every body's communalism. An obvious casualty of this trend has been a uniform civil code. All personal laws in India need first to be codified before one can even begin to think of a uniform civil code.
5. The challenges of secularism need to be tackled by the measures like constitutional amendments, secularization of Indian society and modernization in every sphere of life. Similarly, this task should not be left to the government alone; it requires everybody's efforts and co-operation from everybody.
6. Comparative religion and cultural appreciation should be taught at all levels so that children and adults alike learn to understand and appreciate the inter-cultural rootedness of so much of what is around us.
7. The people in general should be educated and trained in secular way of life. In other words, they should be taught to make distinction between their personal life as an individual and their public life as citizens and to consider economic and political problems without religious loyalties.

In the end it can be said that the doctrine of secularism is firmly anchored in the Constitution of India and has been effortfully guarded by the Supreme Court of India. But, the continuous relevance and the operative use of the objectives and the provisions of secularism in our Constitution would depend on the kind of secularism we would develop in our society. Secularism is a goal as well as process. As an ideology and as a bundle of working norms, it is conditioned by the past legacies and the prevailing realities; in turn, it also shapes the course of social evolution and the thought processes. Secularism in our country is an ally of nationalism and national integration of inter-communal harmony and accommodation, and of liberty, freedom, equality and

fraternity.

#### References

1. *Article 27 reads as under:*  
27. Freedom as to payment of taxes for promotion of any particular religion – 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.
2. *Article 28 reads as under:*  
28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions – (1). No Religious instruction shall be provided in any educational institution wholly maintained out of State funds. (2). 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. (3). No person attending any educational institution recognized by the State of receiving aid out of State funds institution or to attend any religious worship that may be conducted in such institution or in any premises attached less such person or, if such person is a minor, his guardian has given his consent thereto.
3. 7 C.A.D. pp. 880-81.
4. (1946) 330 U.S. 1(F).
5. AIR 1954 Mad. 348.
6. *Id.* at 389 (para. 4).
7. *Id.* at 390 (para. 6).
8. *Ibid.*
9. AIR 1974 SC 1389.
10. *Id.* at 1434 (para. 139).
11. (1966) K.L.T. 805.
12. *Id.* at 807 (para. 5).
13. AIR 1983 Kant. 94.
14. *Id.* at 97 (para. 7).
15. *Supra* note 14.
16. *Id.* at 207 (para. 5).
17. *Suresh Chandra Chiman Lal Shah v. Union of India*, AIR 1975 Delhi, For detail, see "Meaning of Religion", Chapter III, at pp. 52-55.
18. *Some members of the Constituent Assembly expressed the opinion that religious property should not be immune from taxation. See 7 CAD, 865.*
19. AIR 1954 SC 282.
20. *Id.* at 296 (para. 50).
21. *Id.* at 295 (para. 43).
22. AIR 1954 SC 388.
23. *Commr. H.R.E. Madras v. L. T. Swamiar*, AIR 1954 SC 282.
24. *Id.* at 30 at 395 (para. 22).
25. *Shri Jagannath Ramanuj Das v. State of Orissa*, AIR 1954 SC 400.
26. *Id.* at 403 (para. 9).
27. AIR 1959 SC 400; See also, *Ratilal Panachand Gandhi v. State of Bombay*, AIR 1954 SC 388.
28. AIR 1976 Cal. 164 at 172.
29. AIR 1954 SC 282.
30. *Id.* at 296-7 (para. 49).

31. *AIR 1975 Ori. 8.*
32. *AIR 1975 Del. 168.*
33. *Id. at 172.*
34. *Supra note 42; See also, Bira Kishore Mohanty v. State of Orissa, AIR 1975 Ori. 8.*
35. *AIR 1954 SC 282.*
36. *Supra note 42 at 174 (para. 13).*
37. *Id. at 174 (para. 14).*
38. *K. M. Narayanan Nambudiripad v. State of Madras, AIR 1954 Mad. 385.*
39. *AIR 1971 SC 1737.*
40. *Id. at 1746 (para. 26).*
41. *(2002) 7 SCC 368.*
42. *Id. at 395 (para. 40).*
43. *Id. at 398 (para. 53).*
44. *Id. at 399 (para. 57).*
45. *Id. at 390 (para. 31).*