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ABSTRACT:

“A pious Hindu man fasting in Navratri, one of the most important religious occasions of Hindus where Goddess Durga is worshipped in the most sacrosanct manner by remaining in isolation away from the worldly pleasures and fasting for nine consecutive days refused to take an online order from a food-delivery app merely because the order was being delivered by a non-Hindu lad¹.

A Muslim person after placing his order for chicken fries from one restaurant through a food delivery app, quite famous in India, known by the name Zomato enquired from the restaurant whether the chicken he ordered was a non-halal and upon learning from the manager of the restaurant that the chicken was not cut by way of halal the man consequently cancelled his order and claimed refund for the same from the food delivery app².

These two instances are poles apart from each other yet the single element which somehow unites the two is the emotion of superiority of one’s faith over the other. The CEO of the food delivery app, Zomato in response to these two incidents took upon in a social media platform named Twitter where he tweeted a thought-provoking statement, “Food is not about religion. Food is the religion.” That’s secularism in India³.

Secularism in India has got its definition in a whole different level. This paper attempts to articulate the concepts of secularism from the Indian perspective. The paper begins with a general idea and definitions of secularism found in various books and dictionaries. The second part of the paper attributes to the secular and non-secular features found in the Indian Constitution. The third part of the paper focuses on the significance of secularism in

¹ *Zomato Refuses Customer’s Request To Change ‘Non-Hindu’ Delivery Boy*, available at <https://www.telegraphindia.com/india/zomato-refuses-customer-s-request-to-change-non-hindu-delivery-boy/cid/1695569>.

² *K BHATTACHARJEE, Dear Zomato, you cannot make concessions for Halal meat and then claim ‘food has no religion’*, available at <https://www.opindia.com/2019/07/dear-zomato-you-cannot-make-concessions-for-halal-meat-and-then-claim-food-has-no-religion/>.

³ *Ibid.*

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modern day polity. The fourth part of the paper deals with the conceptualization of secularism in India while the fifth part attempts to explain the various debates surrounding it. The paper ends with a conclusion citing author’s take on the subject discussed in this paper”.

I. INTRODUCTION:

Religion has been the most instrumental and decisive factor in shaping the modern civilization. When religion found its place in the modern-day polity, ushered a new concept called ‘Secularism.’ Secularism has been a topic of debate since the past few decades. The history of mankind has witnessed numerous upheavals since the dawn of civilization. One of the greatest discoveries of mankind is the acceptance of a belief that there exists something beyond the seemingly visible world – faith.

One of the greatest and most admired ideologies of free India is Secularism which has been equated with democratic ideals as well as scientific temper. Secularism as a concept was coined by George Jacob Holyoake of England in 1851. The modern ideology of secularism traces back its roots to the conflict between reason and faith, often seen in the discourse between State and the Church in the later Middle Ages of Western Europe. Three centuries after, in the Age of Reason and Enlightenment the ideology of Secularism was eventually proclaimed in the latter half of the eighteenth century. Scholars like Peter Berger proposed in his thesis that Secularization is a gift of Christianity to mankind.. Spencer and Saint-Simon, Comte and Durkheim, Karl Marx and Weber were the early prominent advocates of the idea of secularism.

The notion of Secularism was one of the central agendas of the founding fathers of our Constitution before it was actually embedded to the Preamble of our Constitution by virtue of the 72nd Amendment to the Constitution in the year 1976. The intention of the framers of our Constitution, collectively known as the Drafting Committee insisted on the existence of a ‘composite culture’ which in modern day common parlance is known as Secularism. The

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Supreme Court in its verdict given in the case of *Subhash Desai vs. Sharad J. Rao*⁴, AIR 1994 SC 2277 reflected on the intention of the Drafting Committee of the Constituent Assembly wherein it was held that without discriminating the freedom of others to incite and create hatred among various groups of persons subscribing to different religions every citizen in the democratic republic of India has the right to profess, practice and propagate his religion freely without any hindrance or obstruction neither from the State nor from any other citizen(s).

Thus, the idea of secularism, often seen as a gift of Judeo-Christian tradition was built into Western social theorists paradigms of modernization (Madan, 1991). The original usage of the term ‘secular’ from the Latin saecularis of Roman times referred to occasional celebrations. In Christian Latin, it referred to those living outside the regulations of the church, acquiring a negative connotation.

It was only by the early nineteenth century that the meaning of the term secularism changed radically. Instead of differentiating the worldly from the religious, it pledged for the well-being of the human society without having or resembling any sanctions from the Divine or the supernatural.

By the end of the First World War which witnessed the collapse of the Ottoman Empire in the twentieth century, a number of countries comprising of a blend of significant ethnic, religious and cultural diversity moved forward to demarcate the line between the State including the public sphere and the private affiliation of religion thereby giving justification to the establishment of secular states.

Secularism is not only of one type, in fact depending on the national history, culture, customs and traditions of different countries there are different sorts of secularism. In America, secularism is a social institution to protect the religious people from the arbitrary power of

⁴ Subhash Desai vs. Sharad J. Rao AIR 1994 SC 2277.

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the state whereas in India secularism found its place in the Preamble of our Constitution to protect all the distinct followers of different religions and none from each other.

II. SECULAR AND NON-SECULAR FEATURES OF THE INDIAN CONSTITUTION:

Secular as well as non-secular features; both can be found in the Constitution of India. While some of them are given in the form of Fundamental Rights the others are given in the form of general articles which has been discussed hereunder:

II.I SECULAR FEATURES:

Article 15 prohibits any religious discrimination and shows the secular nature of our country by providing equal status and opportunities to all religions while *Article 16* prevents any discrimination based on religion on matters related to profession and employment.

Under *Article 25* of the Constitution the citizens have the right to profess, propagate and practice any religion keeping in mind morality, health and public order. There is a restriction on this right only due to excessive nature of religious practice which goes against the basic feature of human rights. For instance, the practice of dowry and Sati are unacceptable religious practices and in these occasions state interference is must and justified.

Article 26 provides religious rights to maintain religious institutions, manage the affairs on its own, acquire property in conformity with the law but the condition is no public order, morality or health shall be harmed. *Article 27* prohibits collection of taxes in order to promote religion. *Article 28* of our Constitution states that no religious instructions shall be forced on institutions run by state fund.

Article 29 prohibits discrimination between religious groups in educational institutions maintained by the state fund. *Article 30* also provides the religious and linguistic minorities

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to handle educational institutions. All these rights show the secular nature of the country conferred to the citizens by the constitutional provisions.

II.II NON-SECULAR FEATURES:

Under *Article 15(4)* of the Constitution the state is allowed to make special laws for upliftment of socially backward people and further *Art 16(4)* gives authority to the state to make reservations in employment matters. *Article 330(1)* and *332(1)* give the state the right to make laws on reservation on election of members who are from disadvantaged backgrounds to the houses of the Parliament.

Article 25(2) provide the state with the power to make laws in matters of social, political, economic and secular aspects of practicing religion and furthermore Hindu religious institutions on command of the state shall be available to all classes of the Hindu religion. This limitation is given to provide all Hindus equal access to religious institutions and also the state is enabled to make laws if it sees any unjust or unfair treatment among the religious groups or within the religion itself.

The Constitution also provides under the Directive Principles of State Policy to establish and maintain a Uniform Civil Code under *Article 44* which tries to collaborate laws relating to marriage, divorce, succession etc., of most religions followed in India to function according to the mixed religious practices of Hindu, Muslims, Christians or Parse's. This takes away the rights of the people wanting to follow a particular religion due to the customs followed by such religion. Thus, this provision is contrary to secular nature.

III. SECULARISM IN MODERN-DAY POLITY:

Atheism, Humanism and Secularism are different concepts and carry different meanings, however these terms are often interpreted as one and the same thing. A non-religious view of life, meaning of values and virtues is not required to be a secularist. Secularism is a political principle; both religious as well as non-religious people can hold to it. Secularism does

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include the notion of separation of religion from state but more importantly it's about the freedom to practice, preach and profess one's own religion without discriminating or annihilating oneself from the practices of others who follow a different religion.

Much of the liberal concepts of our modern civilization such as Freedom of speech, Freedom of thought and expression or so to say the foundation of freedom in the world today find its genesis in secularism for if it weren't for secularism much of the modern world that we enjoy and benefit from would not had been possible.

Due to the establishment of secularism not just an abstract political phenomena there have been big wins from secularism for it has actually changed our world for the better. If secularism had not found its place in the Constitution of India, how much tragically violent would be the history of India or if secularism would not had put an end to sectarianism the wars of religion in Europe would still be raging with millions of people being dead and billions injured left to the atrocities of narcissist orthodox.

While there is a stereotype about secularism that it is oppressive of religious people showing how China despite of claiming itself to be a secular country abuses religious people more particularly Uyghurs Muslims and deprive them of their freedom. On the contrary China, much like Soviet Union has its own established religion. In its rigid sense, secularism is an idea of having the affairs of the state completely separate from the affairs of any pious ideology or religious doctrine which is why this particular stereotype does not hold any water in a country like China which has its own established religion and political ideology of Marxist-atheism.

Well, there are a lot of academic debates about what is secularism really! While on the one hand, secularism is something real or in other words Secularism as an idea written into country's constitution formed in that way. While other intellectuals perceive secularism as an ideology more abstract than just a way of doing politics in a political culture. Countries like

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UK or Denmark which do not have secular constitutions none the less they have a very secular way of doing government in practice.

IV. CASE LAWS ON SECULARISM:

The Supreme Court in a number of cases have passed judgments reiterating the significance of secularism in the Constitution of India thereby establishing secular laws precedence over personal and religious laws.

One of the landmark cases where Supreme Court of India upheld the provision enumerated in Section 125 of Cr.P.C which is applicable to all the communities irrespective of their personal laws and highlighted the moral obligation of a husband to maintain his wife is the case of ***Mohd. Ahmed Khan vs. Shah Bano Begum & Ors***⁵, also known as the ‘Triple Talaq Landmark case.’ Normally mentioned as the Shah Bano Case, this lawsuit has established itself as a milestone in the fight for struggle of rights, particularly freedom for the Muslim women.

In this instant case, the main contention of the plaintiff, Mohd. Ahmad Khan was that since he had pronounced an irrevocable Triple Talaq and as a consequence the respondent, Shah Bano was terminated to be his legal wife, therefore he cannot keep any form of alliance or connection with his divorced wife as it was not allowed by Islamic law and was considered to be ‘Haram’, hence there was no valid reason for him to be legally responsible to maintain his wife.

The pivotal issue raised in this case was twofold – firstly whether Section 125 CrPC was applicable to Muslims over their own personal law and secondly, whether Uniform Civil Code applied to all the religions or not. The Apex Court, upholding the judgment of the High Court of Madhya Pradesh passed its verdict conveyed by C.J. Chandrachud held that Section 125 CrPC solicited to Muslims as well, without any sought of discrimination and went further

⁵ Mohd. Ahmed Khan vs. Shah Bano Begum & Ors 1985 AIR 945, 1985 SCR (3) 844.

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reasoning that although the responsibility of a Muslim husband to maintain his divorced wife is limited to the extent of ‘Iddat’ period which is the period after the divorce petition is filed till the passing of the divorce decree, however, this rule according to Muslim personal law is against humanity and the situation where a divorced wife is not in a financial position to maintain herself and her children does not contemplate the rule of law which is mentioned in Section 125 Cr.P.C.

Between paras 7 and 8 of the instant case the Apex Court underlined the secularism of the provision of Section 125 CrPC thereby stating “Clause (b) which is the Explanation to Section 125(1), which defines ‘WIFE’ as including a divorced wife, contains no words of limitation to justify the exclusion of Muslim women from its scope. Wife, means a wife as defined irrespective of the religion professed by her or by her husband...That is the genesis of Clause (b) of the Explanation to Section 125(1). Section 125 is truly secular in character.”⁶ Shah Bano’s case proved for the first time in the judicial history of India that ‘Law is above all, including religion’ and the landmark verdict passed by the Apex Court was one of the preliminary steps towards an egalitarian society.

The maiden case where the judiciary intervened in signifying Secularism as one of the basic features of the Indian Constitution was that of ***Sardar Syedna Taher Saifuddin vs. State of Bombay***⁷. In the instant case, the Apex Court had struck down the Bombay Prevention of Excommunication Act, 1949, which entitled Syedna, the head of the Dawoodi Bohras community to expel or excommunicate a member from the religious life of the community on the ground that it is in violation of Article 25 and 26 of the Constitution. The Court firmly insisted that expulsion of a member from the religious portion of the community was not only limited to the denial of religious freedom such as denied access to places of worship of that member but it also incurred loss of some basic civil rights such as being denied to bury the dead in the community burial. In his strong and correct dissent, Chief Justice Sinha noted:

⁶ Mohd. Ahmed Khan vs. Shah Bano Begum & Ors 1985 AIR 945, 1985 SCR (3) 844.

⁷ Sardar Syedna Taher Saifuddin vs. State of Bombay AIR 1962 SC 853.

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‘The right of ex-communication is not purely a religious matter. The effect of the ex-communication or expulsion from the community is that the expelled person is excluded from the exercise of rights in connection not only with places of worship but also from burying the dead in the community burial ground and other rights to property belonging to the community, which are all disputes of a civil nature and are not purely religious matters.’

In yet another case of Z.B. Bukhari vs. B.R. Mehra⁸, the Supreme Court of India for the first time reiterated that a state which is secular must be neutral or impartial and must not be biased for any reason, whatsoever. “The Secular State, rising above all differences of religion, attempts to secure the good of all its citizens irrespective of their religious beliefs and practices. It is neutral or impartial in extending its benefits to citizens of all castes and creeds...Therefore, candidates at an election to a legislature, which is a part of ‘the State,’ cannot be allowed to tell electors that their rivals are unfit to act as their representatives on grounds of their religious professions or practices. To permit such propaganda would be not merely to permit undignified, personal attacks on candidates concerned but also to allow assaults on what sustains the basic structure of our Democratic Republic. The term Secular is used to distinguish all that is done in this world without seeking the intervention of a Divine Power. Secularism is quite independent of religion. The Secular state is neutral or impartial.”

V. SECULARISM FROM THE INDIAN PERSPECTIVE:

Sarva Dharma Sambava is the Indian version of Secularism which means the Hindu religion has the potential to accommodate all other religions. It is this notion of multi-religious harmony which actually contributes to the continued pre-dominance of Hindu religion in society and the state. Thus, a monolithic view of Hindu tradition is conceived as the Indian tradition through times immemorial. **In the Indian context, the conceptual understanding of the term secularism involves two tenets:**

⁸ Z. B. Bukhari vs. B.R.Mehra 1976 2 SCC 17.

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Firstly, the fundamental civil right of religious liberty, while safeguarding religious and cultural pluralism. This is because, both Hindus as well as Muslims fought in unison to accomplish the two-century struggle for independence. The Indian National Movement for independence from the British Crown was a cumulative effort of both Hindus and Muslims living in the then Indian subcontinent, which also included modern day Pakistan and Bangladesh.

Secondly, emphasis on the modern-day ideals of freedom, liberty, equality and justice. The frontiers of the Indian National movement who were the leaders, duly qualified and with worldly experience such as Nehru, Gandhi, Abdul Gaffar Khan, Maulana Abu Kalam Azad, etc. were well acquainted with western philosophy of nation-building and with the western political thought.

There are more than thousands of linguistic communities and almost all the religions of the world find their place amongst the Indian populace. Therefore, religious communities are not perceived as static, on the contrary, they are rather viewed as active and dynamic parts of our country, which collectively give the meaning of secularism in the Indian context in contrast to the USA’s concept of a Secular State (the Wall of Separation) which is a complete and non-interventionist affair. Due to this reason, the State refrained itself from interfering in the religious practices and pious customs and traditions of different religions and withheld with it the right to intervene on certain grounds, most particularly to safeguard the democratic ideas for the greater good.

The Indian concept of secularization envisages a measure unity of the Indian society through secularization to realize a national community based on social ideals. In other words, the Indian concept of secularization discards the idea that the State has any religion, for that matter, rather there is no State religion and that all religions are equal and all the religious communities are treated equally by the State and before the State. The contradictory roles of the Indian state often seen in intervention and non-intervention is attributed to various

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reasons ranging from lack of political will to vested interests of different political groups in the chaos of rival fundamental contentions. This can be understood in the affiliation of political parties to various vested interest groups such as Bharatiya Janata Party (BJP) is often linked to the practices, roles and actions of Rashtriya Samaj Sevak (RSS) in framing and shaping public policies by the central government which is why the politics of BJP is often cited as Hindutva politics.

The intervention of state in affairs of religion is contemplated for the purpose of re-defining the scope of religion within the public domain whereas its non-intervention is contemplated in order to make an effort to uplift the autonomous status of religious organization from state intervention, besides concerns for equality and individual liberty.

However, these factors alone are not adequate, for 64 years after independence, there is still no consensus with respect to the existence of various personal laws based on religion, such as Muslims in India, to a great extent are still governed by the All-India Muslim Personal Law Board. As a consequence, certain sections of society such as the status of women, for instance is still subordinated to a great due to the practice of polygamy, which is acceptable in the Muslim population merely because their personal law allows it. Modernized and secularized laws such as Hindu Marriage Act, 1955, Hindu Adoption and Maintenance Act, 1956 and Hindu Succession Act, 1956 are still infused with certain religious sentiments.

The Preamble to the Indian Constitution submitted by the Drafting Committee of the Constituent Assembly in 1949 did not contain the word ‘SOCIALIST’ and ‘SECULAR’ although it existed in the minds of the framers of our Constitution from the very inception.

Hence, assuming that post-independence which had also seen the division of India in two parts – modern day India and modern-day Pakistan based on religion, people would respect, admire and appreciate the sentiments of other religious communities, while at the same time practicing, professing and propagating their own religions and that people would remain

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secular, by and large, in their actions and thoughts. The word ‘SECULAR’ found its place in the Preamble to our Constitution in the year 1976 when it was formally incorporated by virtue of the 42nd Amendment to our Constitution and since then secularism as an idea became an integral part of our Constitution.

It is pertinent to mention herein the words of Dr. B. R. Ambedkar, the Chairman of our Drafting Committee while delivering his speech on Hindu Code Bill, 1951 in the Indian Parliament when he 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 that a secular state means that this Parliament shall not be competent to impose any particular religion upon the rest of the people.”⁹

The definition of ‘Secular’ or ‘Secularism’ is not given anywhere in the Indian Constitution nor is there any explanation to the term. In a country like India, where caste, creed, race and ethnicity and most importantly religion plays a significant role in generating emotions and consequent actions, both rational and mundane and due to the absence of any clear contemplation of the separation between state and religion, it often leads to confusion and often promotes bad blood and communal hatred between different communities.

For instance, the ban on Salman Rushdie’s Book¹⁰ was seen as an attempt to appease the Muslim community and on similar line, several decades ago, B.R. Ambedkar’s riddles on Hinduism was held up owing to the Hindus etc. Thus, one is vulnerable to confusion when the State imposes sweeping restrictions on freedom of speech and expression as to whether it is the intervention or the non-intervention of the State. These instances underline the political leadership at the Centre selectively appeases both the minority as well as the majority fundamentalism on different occasions.

⁹ Prasad and Anand, 2006.

¹⁰ *Salman Rushdie: India banned Satanic Verses hastily*, available at <https://www.bbc.com/news/world-asia-india-19566894>.

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VI. ASPECTS OF THE DEBATE ON SECULARISM IN INDIA:

Due to the multi-religious and cultural diversity of the Indian heritage it appears that secularism is more than just an abstract political philosophy through the Indian prism rather it is a very difficult and complex subject. More recently, with the advent of cultural nationalism and religious fundamentalism, the debate on secularism has become an overreaching confrontation of contradictory perceptions.

The most significant debate on secularism in this decade arose ever since the Ram Janmabhoomi –Babri Masjid controversy which resulted in the demolition of Babri Masjid on 6th December, 1992 by Hindu nationalists and communal fanatics. This incident sparked the most heated debate on secularism which went on to show how powerful religion can be used as a tool to promote communal hatred which generated on a decades’ long lawsuit in the highest pinnacle of justice in the country thereby raising questions on the existing theories of secularism in India.

Another aspect of the debate on secularism in India is the mistaken interpretation of nationalism which is nothing but a complex combination of religious fundamentalism blended with the political conditions of the country. For instance, Hindutva campaign spearheaded by the Vishwa Hindu Parishad (VHP), Bharatiya Janata Party(BJP) and Rashtriya Samaj Sevak (RSS) promotes nationalism and Indianess by giving exaggerated emphasis on Hinduness. The depiction of our country in pictures by a woman which resembles Hindu Goddess is a glaring example in this aspect.

The undue weightage given to the aspects of one particular religion by such political and religious outfits exploit the religious sentiments of others for their own vested interests by intentionally neglecting other important aspects, such as development and prosperity of all, and this leads to protests and communal hatred, often resorting to linguistic, regional, cultural and religious identities consequently leading to polarization among the masses. It would not be proper and rationale to limit the understanding of secularism in terms of Hindu-Muslim

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question because it would than mean that over emphasis is being given to passive secularism, thus deviating from the true intention of the Drafting Committee. Rather it would be an amicable approach to understand the true idea of secularism by adopting a uni-dimensional passive secularism, multi-dimensional secularization as an apt way of dealing with problems caused by over emphasis on Hindu Muslim issues.

Mohanty (1989) differentiates between hegemonic secularism and democratic secularism, in India, he asserts that the State resorts to hegemonic kind of secularism through strengthening their grip on power. It only serves the interests of the ruling forces by manipulating various religious groups.

Democratic secularism, on the contrary is a wider concept which stands against socio-political domination and is actually a reality of the debate on secularism in India. It is a democratic struggle against the discrimination based on caste, creed, and ethnic domination. The role played by religion as a social institution thus overlooks the actual chaos between reason and rationality in the socio-political domains of the society.

VII. RAMIFICATIONS OF SECULARISM IN INDIA:

Firstly, the issue of various regional communities which demand for statehood based on religious, ethnic, cultural and linguistic differences such as the demand for Khalistan, Gorkhaland, Vidrabhand, being the most recent raised on demands made by certain factions in the state of Telangana. Secondly, the issue in the North eastern corridor of the country like the ever-increasing Assam and the neighbouring states border issues which is why natives of the tribal states merely because of their affiliation to a religion thought to have been borrowed from the West, i.e., Christianity, are often discriminated due to their ethnicity and are not even considered as Indian by the North Indians.

Thirdly the disharmony between the Hindus and Muslims which has been escalated ever since the Babri Masjid issue is far from ever finding a permanent solution merely due to a

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lack of a collective political will. Communalism is one of the biggest threats to secularism in India. Fourthly, the establishment of Uniform Civil Code which began with the Shah Bano case in 1985 envisaged by the founding fathers of our Constitution to be equally applicable to all the communities, irrespective of differences based on religion, ethnicity, caste and creed etc.

VIII. CONCLUSION:

The crux of the debate on secularism in India is basically between the questions whether secularism is actually practiced in India as a policy as well as an ideology or is secularism merely used as a tool to camouflage the political appeasement done by political leaders with vested interests for communal vote banks. There are several issues which find its origin in the above two questions, however few of them are grave and require immediate attention forcing us to rethink our understanding of secularism.

A. B. Shah (1968) argues that the Indian state has half-hearted attitude towards secularism and looks at the Indian society itself being anti-secular when it comes to the dealings between two major communities – Hindus and Muslims which are equally skeptical about each other. It may be thus accepted that while secularism means equal respect to all the religions it should not mean equal encouragement to fundamentalism of all communities.

Secularism is not just something that is written in our constitution it's something which we have to live with in our everyday lives. What are the virtues required of citizens in a secular state? We have to accept that other people have views different from our own, we have to adopt a measure of tolerance in our dealing with others, a bit of give-and-take, be willing to extend freedom of speech, freedom of worship to those even that we might disagree with. That can be very hard but it's not impossible rather it is the most effective way to guarantee a peaceful and a stable secular society.