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India: The Struggle of Identity Politics in India¹

Introduction: Imagining Nation in Plural Form

The phenomenon of a nation is predominantly understood in its singular, homogenised form. The idea of ‘Progress’ is centrally linked to the idea of the homogenised form of a nation-state². Thus, the European model of a singular, monolithic, homogenised nation state remains ‘the ideal, perfect model’ to be emulated in other parts of the world. During my research stay in Europe (taking place in Germany, France and the UK from August 2004 to February 2006, thanks to an AVH post-doctoral fellowship) I was often faced with the question: *Is India a nation?* Most European scholars that I encountered during this period were dismissive about entertaining the idea of India as ‘nation’. The European apprehension to consider India as ‘nation’ was not difficult for me to understand as the

¹. An earlier version of this piece was published as ‘India: Political Experience of a Multi Ethnic Nation- State’, in H. C. Günther, ed. *Ethnic and Religious Cohabitation and Conflict: East and West Band 4*, Verlag Traugott Bautz GmbH, Nordhausen, Germany, 2017, pp 173-215,

² The present form of nation-state in Western Europe is the result of long process of, what Heather Rae called, ‘Pathological homogenisation’.see, Heather Rae, *State Identities and the Homogenisation of Peoples*, Cambridge University Press, Cambridge, 2002. For the role of state in the creation of nation, see, Brian Jenkins and Nigel Copsey, ‘ National, Nationalism and National Identity in France’ in Brian Jenkins and Spyros A. Sofors, *Nation and Identity in Contemporary Europe*, Routledge: London and New York, 1996,pp 101-124, Paul R. Brass, *Ethnicity and Nationalism: Theory and Comparison*, (New Delhi Sage, 1991), Jennifer Jackson Prece, *National Minorities and the European Nation-State System*, Oxford: Clarendon Press, 1998, Charles Tilly, *Coercion, Capital and European States, AD 990-1990*, Oxford: Basil Blackwell, 1990, Charles Tilly, ‘ States and Nationalism in Europe 1492-1992, *Theory and Society* 23:1, 1994, Eugen Weber, *Peasants into Frenchmen: The Modernization Of Rural France, 1870-1914*, Stanford, Stanford university Press, 1976).

dominant European imagination is accustomed to view a nation and nation-state in a homogenised form. Certainly, attempts to imagine a nation in the plural form lacks popular legitimacy. Hence, even a society as diverse as India desires to usher in a homogenized society and nation-state. There are plenty of provisions in the Indian constitution, for example, the Uniform Civil Code and the promotion of the Hindi language at national level along with its centralising tendency that point to this desirability.

Notwithstanding this desirability of the ruling elites of India, the Indian trajectory of the nation-building process greatly diverges from European experience in which the present form of the nation-state was achieved at the cost of brutal elimination of diversity. On the contrary, the maxims of ‘unity in diversity’ and ‘diversity in unity’ have been the guiding principles of the Indian state for conducting the nation building process since its inception; a political process that resulted not only in strengthening the federal character of the nation but also in making pluralism, diversity and democracy essential features of Indian nationhood along with the functioning of India as a multiethnic nation-state. This is evident from the recent display of apprehensions and concerns among many quarters about the maintainability of the ‘idea of India’ (symbolising pluralism, democracy and diversity) in wake of the decisive victory of BJP, the right-wing homogenising, Hindu nationalist force, in the parliamentary election of 2014.

The multiethnic character of the Indian nation-state here does not necessarily refer to the horizontal and vertical distribution of power among religious, casts and linguistic groups, a trend though very much visible, but primarily refers to the Indian nation-state’s capacity and flexibility to accommodate the diverse cultural, religious and linguistic identities. Within the above frame this paper consists of three parts. The first deals with the definition of ethnicity and its application to the Indian state as well as the constitutional provisions that qualify the multiethnic character of the Indian state. The second part deals with how the identity-centred and flexible Indian democratic process has been successful in integrating the diverse social, cultural, linguistic, and religious groups and communities into the Indian nationhood as well as thwarting successionist movements

and managing the threat of Islamic militancy. The last section will shed light on whether the current right-wing Hindu nationalist BJP government, under the leadership of Prime Minister Narendra Modi, poses any effective threat to the 'idea of India', including the well-being of minority communities, particularly the Muslim community.

Ethnic Diversity of India

The term 'ethnic' here is referred to in a broader sense of the term which includes all ascriptive group identities based on race, religion, language, caste and tribe³. According to this definition of ethnicity, India is the world's most complex and comprehensively pluralistic ethnic society, as it is home to a vast variety of castes, tribes, communities, religions, languages, customs and living styles. *The People of India* project of the Anthropological Survey of India estimated that there are nearly 4,599 separate communities in India with as many as 1,652 languages and dialects in 12 distinct language families and some 24 scripts. India's linguistic diversity is even more bewildering⁴. It has 22 officially recognized, scheduled languages and innumerable caste groups within all religious traditions including Hinduism, Islam, Christian, Buddhism, Jainism, Sikhism and Zoroastrianism. In addition, India has a significant number of tribal groups. Weaving such a mosaic of ethnic diversities into a nation is indeed a difficult task. The fathers of the Indian Constitution sought to construct a modern nation by combining the constitutional recognition of the individual and collective cultural rights of all social groups in general, (guaranteeing the constitutional protection of linguistic and religious minorities and constitutional recognition of legal pluralism, applicable to all socio-religious groups' rights) and by deliberately keeping the definition of secularism, as well as core values of the nation, ambiguous and vague.

³ Donald Horowitz, *Ethnic Groups in Conflict*, Berkeley. University of California Press, 1985, pp 41-54.

⁴ Anthropological Survey of India, Ministry of Culture, Government of India, http://www.ansi.gov.in/people_india.htm , accessed on 20th July 2014.

Constitutional Provisions: Individual and Group Rights

Part III of the Constitution of independent India provides a set of fundamental rights for all of its citizens as inscribed under Right to Equality (Article 14-18), Right to Freedom (Article 19-22) and Right to Freedom of religion (Articles 25-28). Their justiciability makes sure that any infringement of these rights can be contested in the judiciary of the country and the state has to provide adequate constitutional grounds for its suppression. Some of the key rights in the Fundamental Rights Chapter of the Indian Constitution embody the principle of non-discrimination. Article 15 (1) reads thus: “The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them”. Article 16 suggests that “no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against in respect of, any employment of office under the state.” Another area in which the Indian Constitution has extended the principle of non-discrimination is that of education. Clause 2 of article 29 provides that “no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of the state funds on grounds only of religion, race, caste, language or any of them.” However, the Constitution provides exception to the principles of non-discrimination and equality. For instance, it can make special provisions for the welfare of socially and educationally backward classes, the Schedule Castes and Tribes, and women and children. Using this provision, various central governments have implemented the policy of positive discrimination, or what is called affirmative policies, such as reservations in public employment and educational institutions to various weaker sections such as Schedule Castes, Schedule Tribes, other backward classes, women and vulnerable groups belonging to all communities⁵.

⁵ The affirmative policies and programmes of the Central government includes reservation in all India Services and educational institutions for Schedule Castes, Schedule Tribes and Other Backward Class which correspond to 15%, 7.5% and 27% respectively . Besides, the various state governments have evolved its own system of reservation in state public employment structure and educational institutions that often goes up to 70-80%, despite the 50% cap on reservation policy by the Supreme Court of India.

Furthermore, in order to allay the fear of cultural homogenisation, during the process of nation building, the Constitution lays down certain specific collective cultural rights to be enjoyed by members of religious and linguistic minorities alone, usually referred to as 'minority rights'. These 'cultural rights' of minority communities are the product of 'difficult negotiations' that were carried out during the process of making the constitution. Thus Article 29 (1) empowers any section of citizens residing in a territory of India, or any part thereof having a distinct language, script, or culture of its own, to have the right to conserve the same. Whereas, Article 30 (1) is specific to religious and linguistic minorities. It states that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. Further still, Article 30 (2) states that 'the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language'. Besides the above-mentioned articles, the Constitution of India also contains special provisions for the education of the linguistic minorities. Article 347 of the Constitution states that on a demand being made in regard to education institutions the President may, if he is satisfied that a substantial proportion of the population of a State desires, officially recognised the use of any such language throughout that State or any part thereof, for such purpose as he may specify. The constitution also allows persons to submit their petitions for the redress of grievances to the state in any language (Article: 350).

Thus, the overall objective of the above constitutional provisions clearly has to do with the protection of the distinctive identities of the various socio-religious groups including linguistic and religious minorities of the country. In this regard, the practice of the Indian state radically differs from the European experience of nation building. Firstly, it is in strong contrast to European liberalism, in which the individual autonomy is believed to be the best guarantor of religious tolerance and cultural diversity. Consequently, little attention is paid in the West to the ways in which cultural differences can be represented in the public arena. In India, however, differences are considered to be both a source of

discrimination and diversity. Hence, it regards religious and cultural autonomy of the group as the best guarantor of religious tolerance and cultural diversity. In fact, the framework of individual rights was considered to be insufficient because it saw differences only as a source of discrimination⁶. Hence, the Constituent Assembly realized that they would need to create conditions in which cultural diversity of the polity would be protected. While it accepted and endorsed the twin ideals of autonomy and non-discrimination it regarded autonomy for religious communities to be the best guarantor of equal treatment. Hence the constitution guaranteed (Article 25-30) the minority rights.

It is interesting to note that while the Constitution placed limited obligation on the state in this regard, the scope of collective rights was gradually expanded partly due to the judiciary innovative interpretation of these provisions. It was also partly due to the system of ‘competing electoral democracy’ that prevails in India under which ‘caste and community vote’, or what is pejoratively called the ‘politics of vote bank’, plays a significant role in affecting the political outcomes. Referring to Article 29(1), the Supreme Court declared this right to be more or less “absolute”, “unqualified” and “positive” and includes even the citizens’ “right to agitate for its protection”⁷..

India State and Nation Building Process: Creation of Ethnic States

The post colonial Indian state led by the Congress party, that ruled India for the major part of the post-independent period, conducted the nation building process broadly within the above constitutional framework. we must remember that the horrific political context and experience of ‘Partition’ (leading to the creation of Pakistan) led to a gravitation towards a preference for Strong Centre (as underlined in the various provisions of

⁶ Gurpreet Mahajan, *Identities and Rights: Aspects of Liberal Democracy in India*, Oxford University Press, Delhi, 1998.p, 67.

⁷ Wadhwa, K.K: 1975, *Minority Safeguards in India*, Delhi, Thompson Press LTD, p.98

Constitution⁸) and influenced the development of the political outlook across all national political spectrums that were hesitant, cautious and even deeply suspicious of conceding ascriptive-based political demands, such as sub regionalism or the demand for statehood based on language, cultural and regional considerations. One was afraid this may lead to a kind of successionist movements leading to Balkanisation of the country. However, notwithstanding this political sensitivity of the Indian political class towards ascriptive-based political movements, either for a separate state or inclusion in the public opportunity structure through the system of reservation or cultural-religious concessions, the actual nation building political process, since the inception of Indian Republic (1947), has been conducted through political strategy that includes the ‘policy of wait and watch’, employment of coercive power to weaken the sub-nationalist political movements, political co-optation of leaders of movements and serious political negotiation leading to concede the ascriptive-based political demands — all depending upon the political context. This paradox led Chadda to remark, ‘the first reorganization did precisely the opposite: it legally acknowledged India as a federation of ethnic subunits’⁹..

The constitutional provisions related to the nature of Indian federalism and the creation of new states have enabled the governments to rearrange the existing boundaries and create new states and other administrative structure on the basis of language, tribal and geographical considerations in order to ‘control, regulate, and manage’ the political crisis that seriously threatens the law and order situation or poses a challenge to the national unity and integrity. Thus, Article I of the Indian Constitution lays down the broad framework of Indian federalism stating, ‘Indian, that is Bharat, shall be Union of States’. The phrase ‘Union of States’ clearly expresses that the Indian Federal Union is neither

⁸ Some of the Constitutional Provisions that gives wide powers to Centre are : Emergency Power enshrined under Articles 352, 356, and 360 of the Constitution that empowers the Centre to dissolve state assemblies and impose governor’s or president’s rule in the provinces. According to Articles 256 and 257, the union government can demand that a state comply with union laws. Non-compliance can lead to dismissal under Article 360. Residuary powers which are not listed in Centre, State and Concurrent list of the Indian Constitution, belongs to the Central government. The financial distribution of proceeds of all taxes is highly eschewed in favour of the Central government.

⁹ Maya Chadda, ‘Integration through Internal Reorganization: Containing Ethnic Conflict in India’, *The Global Review of Ethnopolitics*, Vol. 2 no. 1, September 2002, 44-61. p. 49.

the product of any agreement among its constituent states, save Jammu and Kashmir¹⁰., as is the case with the formation of United States of America, in which states retain the right to secede at their own will, nor does it adhere to the erstwhile Soviet model of excessive centralisation that concedes the right of federating units to secede, at least in theory. Article 2 of the Constitution decreed that Parliament ‘may by law admit into the Union, or establish new states on such terms and conditions as it thinks fit.’ Article 3 states that Parliament ‘may by law form a new state by separation of territory from any state or by uniting two or more States or parts of states.’ Additionally, it may ‘increase the area of any state, diminish the area of any state, alter the boundaries of any state’ and ‘alter the name of any state’. Thus, under this constitutional framework, the first State Reorganisation Commission (1956) recommended the creation of 16 states and 3 union territories, though the government in effect changed the existing boundary to 14 states, while retaining some existing and creating some new states and creating 6 union territories on the basis of ‘dominance and geographical concentration of ethno-linguistic communities’. This process has since been continued and various governments have carved out new states by altering the boundary of new states based on ethnic considerations. In this context, the government moved very cautiously while creating many states in the North Eastern Region out of the State of Assam in view of the problem with the People’s Republic of China and strong successionist movements. The central government thus first placed Tripura and Manipur under the status of Union Territories (1956-1972), and Meghalaya under the status of ‘Autonomous State’ before granting them full-fledged statehood in 1972. Similarly, due to the NEFA (North East Frontier Administration), part of Assam was renamed Arunachal Pradesh and placed first under the status of Union Territories in 1972 and then made an ‘Associate State’ before being converted into a full-fledged state in 1987. The most recently created states, through this process and based on ethnic considerations, are Uttaraanchal (predominantly hill based

¹⁰ The State of Jammu and Kashmir (J &K) became a member of Indian Union through a special agreement concluded in 1948 between government of India and Raja Hari Singh, the then ruler of Jammu and Kashmir. Article 370 of the Indian Constitution binds the J and K to the Union of India. As per this article the J &K is the only state that have privilege of its own constitution, flag, Prime Minister and has jurisdiction to legislate on any matter except matters concerning foreign policy, national security, communication and currency.

Upper Caste Hindus), Jharkhand (a tribal identity), Chattisgrah (a tribal identity) in 2000 and Telangana (a tribal identity and backward class) in 2014; at present this makes the total number of Indian states 29.

The government also created new administrative structures such as the 'District Council' and 'Regional Council' in tribal concentrated areas such as the Karbi Anglong Autonomous Council (KAAC), the Dima Hasao District Autonomous Council (DHDAC) and the Bodoland Territorial Council (BTC) within the State of Assam and the Darjeeling Gorkha Developmental Hill Council (GDHC) in the Darjeeling Districts of the State of West Bengal, all of which endowed the 'local communities with wide ranging powers over the local economy, culture, religion, and customs'¹¹. These measures were mainly intended to 'weaken and manage' the various separatist movements (such as the Mizo nationalist movement of Lal Denga in the 1960s and 1970s in Meozaram, the Naga based insurgency movement in Nagaland, and the Bodoland movement in the existing state of Assam) and bring them into the mainstream Indian political process. It would not be an exaggeration to remark that through the combination of hard (military operation) and soft (power sharing, administrative decentralisation and concessions to identity specific demands) policy, the government of India did succeed in weakening the separatist and insurgency movements in the Northeast and Punjab, if not completely eliminate the threat of such movements.

India: Nation without Core Values

Another noticeable feature of the Indian nation-building process is the lack of core values or beliefs of the nation¹². The framers of the Indian Constitution remained deliberately vague in their formulation of the core values of the Indian nation. Though the preamble describes India as a 'Sovereign Socialist, Secular, Democratic Republic', it does not constitute a *value* to be a factor in nullifying the legislation and administrative action of

¹¹ Chadda, 'Integration through Internal Reorganization', opcit, p. 51

¹² Subrata. K. Mitr, 'Constitutional Design, Democratic Vote Counting, and India's Fortuitous Multiculturalism', *Heidelberg Papers in South Asian And Comparative Politics*, Working Paper No.4: 1-3, 2001, p5.

the government on account of contravention of the Preamble by the Court of Law. They are rather broad principles to guide (voluntarily, rather than mandatorily) the state's actions. Thus, there has never been a case in which the government's action and legislation has been struck down by the Court of Law on the grounds of being in violation of the principles inscribed in the Preamble of Indian Constitution. Even an attempt to establish Hindi as the national language during the 1950s quickly became an open invitation for the different social and cultural groups of India to assert their differences as the opening gambit in the upcoming negotiation of their status within the new Republic. The federal resistance towards any kind of cultural imposition has remained strong. Thus, despite the national spread of the Hindi language in India over the last 60 years, the official circular (issued by the incumbent Modi government in 2014, that directed its Central Minister to make use of the Hindi language in social media) was seen as an attempt to impose Hindi on non-Hindi regions, leading to strong protests which ultimately forced the government to clarify that circular was applicable only to Hindi speaking states¹³. Similarly the University Grant Commission withdrew its controversial circular on making Hindi as mandatory language to be taught under undergraduate course of all universities in India¹⁴.

As such, the post-colonial state of India abandoned, at least for the time being, the path taken by other nineteenth century nation states to pulverise cultural differences for the greater cause of the nation¹⁵. Commenting on this process of nation building in India, Dipanker Gupta wrote, 'This however took courage, statesmanship, and a disregard for

¹³ BJP relents as parties slam push for Hindi, Deccan Chronicle, Jun 21, 2014, <http://www.deccanchronicle.com/140621/nation-current-affairs/article/bjp-relents-parties-slam-push-hindi>, accessed on 21st January 2016.

¹⁴ University Grants Commission backs off on Hindi imposition, Deccan Chronicle, Sep 19, 2014, <http://www.deccanchronicle.com/140919/nation-current-affairs/article/university-grants-commission-backs-hindi-imposition>, accessed on 21st January 2016.

¹⁵ Ibid, p. 10

western textbook notions of the ideal nation-state'¹⁶. It was argued that India would be better governed as a democracy, if democracy functioned in the languages and culture of its people. This lack of core values of Indian nationhood not only guided the post-colonial state to trek along the line of a “moderate” and “cautious” nation-building process, that helped to smooth the accommodation of various regional, cultural and religious aspirations and identities at the national level¹⁷. but it also saved the Indian state from facing a situation similar to that in France in which the state refused to concede the religious demands of Muslim immigrants, to wear the headscarf in public schools, on the plea that such a concession amounts to the undermining of the heritage and identity of the French nation), the very principle of Republicanism and Secularism India also avoided a situation like that of Turkey in which successive military coups took place in the name of defending and restoring the secular legacy of Kemal Ataturk, the founder of modern Turkey, and where even the government was dismissed by the Court of Law in the name of violating or compromising the secular principles of modern Turkey. This flexible and accommodating process of the nation-building process helps the various castes and communities to identify themselves within the ‘nation’.

Principle of Legal Pluralism

The multiethnic character of the Indian nation-state is also personified in its doctrine of ‘legal pluralism’ that prevails in the Indian society without any ‘expressive’ constitutional provision for the same. The doctrine of legal pluralism lays down that every community is entitled to live in accordance with their respective religiously prescribed laws regarding ‘personal’ matters such as marriage, divorce, adoption, inheritance, and succession etc. while the rest, including commercial and criminal

¹⁶ Dipanker Gupta: *Culture, Space and the Nation State*, Sage Publication: New Delhi, 2000, p, 240

¹⁷ Harihar Bhattacharya, , ‘Multiculturalism in Contemporary India’, *International Journal on Multiculturalism (IJMS)*, vol.5, No.2, 2003, pp 151-164.

matters, will be governed by the unified framework of secular law. Galanter has denoted this system of personal laws as ‘principle eclecticism’¹⁸ that holds constitutional recognition as ‘laws in force’¹⁹ and is considered to be vital for the survival of India’s unity and integrity.²⁰ The sole responsibility of administering, interpreting and adjudicating the matters related to all personal laws rests with the unified structure of secular courts in India. However, people in India, mostly belonging to the lower substratum who cannot afford the ‘costly deliberation’ of the Indian judiciary system, prefer to resolve their personal law disputes or other disputes via the existing parallel structure of non-state and informal bodies. This non-state, substitute structure is comprised of among others, the *shariat* courts for Muslims and caste and village *panchayats* for Hindus and Muslims living in the villages or council of elders associated with local religious organisations. Though these non-state judicial structures are not legally recognized and do not hold any legal sanctity²¹, their decisions do carry weight, and even get implemented, on account of the social legitimacy that these courts enjoy in the Indian society. These courts have been very controversial in recent times due to their mostly anti-women decisions that run contrary to modern ethos and values.

Nature of Indian Secularism and Its Role in the Integration of Social Diversity

Along with the constitutional protection of the ethnic groups’ rights, whether belonging to majority or minority communities, the system of legal pluralism as the doctrine of Indian secularism also conditions the functioning of the larger ethicized political process

¹⁸ Marc Galanter, *Competing Equalities: law and the Backward Classes in India*, London: university of California Press, 1984, p, 576.

¹⁹ P. D, Mathew, *Do We Need A Uniform Civil Code?* New Delhi: Indian Social Institute, 1998, p. 15.

²⁰ John H Mansfield, ‘The Personal Laws or a Uniform Civil Code in Robert D. Baird, ed, *Religion and Law in Independent India*, Manohar , Delhi , 1993, pp 139-177.

²¹ See a recent Supreme Court Judgement On the legal status of Shariat Courts, ‘Sharia courts not legal, can’t enforce fatwas, says SC, *Hindustan Times*, July 7, 2014, available at <http://www.hindustantimes.com/india-news/shariat-courts-have-no-legal-sanctity-says-supreme-court/article1-1237635.aspx> , accessed on 25th July 2014

of the country and has important influence on the political outcomes throughout the multilayered, social composition of the Indian state. It is not the doctrine of separation but rather the principle of equidistance to all religions, equity and non-discrimination that qualify the meanings of Indian secularism. Article 15, 16, 25, 26, 27, and 28 of the Indian Constitution underlines these principles of Indian secularism. Article 15 (1) states that 'the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them'. Article 16 provides equal opportunities to all in the public opportunity structure, with a provision that the government may provide the reservation of public employments to socially and economically backward classes. Article 25 (1) confers the right to all persons 'the freedom of conscience and the right freely to profess, practice and propagate religion', while Article 26 empowers every religious denomination to acquire property and manage its own affairs in matters of religion subject to public order, morality and health. Article 27 debars the state to utilize the public tax to promote any particular religion; whereas Article 28 prohibits the imparting of religious instructions in the educational institution wholly maintained out of State funds. The non-adoption of any religion by the Indian state, unlike its neighbours and many other post-colonial states, further buttress its secular character.

A close reading of these constitutional provisions and an observation of the secular practices of the Indian state points towards the *three distinct features* of Indian secularism not to be found anywhere in the world but significant for the integration of diverse groups, particularly the minority communities. First it derecognizes, if not rejects, the principle of strict religious neutrality of the state in favour of the principle of 'relational neutrality' of the state. For the former is not only unachievable but also an understandable utopia, and taking into account the actual religious bias of existing states, as well as the unequal chances of organized religions, the most important issue becomes how to achieve degrees of 'relational neutrality' and more evenhandedness with regard to existing majority and minority religion. This relational neutrality of the Indian state has been maintained by way of avoiding any constitutional definition of secularism and the adoption of the *kind* of operative definition of secularism (*Sarva Dharam Sambhav*) that neither endorses the American model of secularism, in terms of complete separation of

religion and politics (constitutionally speaking, if not realized in political practice), nor the European model of secularism, save France, that recognises the varying forms of associationship of religion and state at the constitutional level. Clarifying the meaning of secularism, H. V. Kamath said: ‘The State represents all the people who live in its territories, and, therefore it can not afford to identify itself with any particular section of the population----- We have certainly declared that India should be a Secular state. But----*a secular state is neither a Godless State nor an irreligious, nor an anti-religious, state*’²² (emphasis mine). Second, it not only underlines the principle of *non-discrimination* but proclaimed equality of religions in the public realm along with the equality to religion in that arena²³. Just three years before his death, Nehru remarked, “We talk about a secular state in India. It is perhaps not very easy to find a good word in Hindi for ‘secular’. Some people think it means something opposed to religion. That obviously is not correct. It is a state which honours all faiths equally and gives them equal opportunities”²⁴. Third, it provides a degree of associational religious freedom and communal autonomy that is required, in particular, for religious minorities if only to protect them from “intrusive interference” by states and majority religions.

It is the above dimension of secularism in India, which provides the *institutionalised space* for members of various communities, including minorities, to live with dignity and without fear, to affirm their identity and participate in national affairs, thereby strengthening the cause of national integration.

Indeed, the system of robust group rights that prevails in India has multiple advantages from the point of view of enhancing the legitimacy of the state and strengthening the cause of national integration. Commenting upon the positive role of ambiguity

²² Quoted in T. N. Madan, *Modern Myths, Locked Minds*. Oxford: Oxford University Press, 1997, p, 244

²³ Gurpeet Mahajan, *Identities and Rights: Aspects of Liberal Democracy in India*, p., 69.

²⁴ Quoted in Gopal, Sarvepalli . 1980. *Jawaharlal Nehru An Anthology*. Ed. Delhi: Oxford University Press, pp, 330-1

surrounding the meaning of secularism in facilitating the integration of various communities in the Indian context, Imtiaz Ahmad, a renowned Indian political sociologist, observed: “On a practical view, it would appear that leaving secularism largely undefined and neither rejecting nor accepting the idea that the state in India would function on the principles which had become established since the rise of secular ideology in Europe was after all not a bad strategic choice. One positive feature that flowed out of this deliberately left ambiguity was that it allowed secularism to be accepted widely among the different social and religious communities in India. Of course, the readiness for acceptance of secularism, the speed with which it was accepted and the reasons that prompted acceptance varied across social communities and groups. For example, secularism found relative readiness among a large body of Hindu rights in the beginning. On the other hand, Muslims and a few other groups were initially quite sceptical of what secularism might entail and whether the state was actually seriously committed to upholding it in the future. They first preferred to wait and watch. Then they rejected it, claiming that it carried the potential to deny them a basis for their preservation of their cultural distinctiveness and religious integrity. Finally, they recognise the positive role of secularism and accepted it with a view to using it to their advantage wherever possible”²⁵.

The Indian State System and Ethnic Groups

The success of democratic integration of diverse social groups in the Indian nationhood is better understood when considering the particular *manner* in which the Indian state system functions and relates itself to the various social groups including the minority communities in the society. The noticeable features about this particular manner within which the Indian state system has, till very recently, been functioning are its flexibility about norms, doctrines and principles, its being non-definitional, its fuzziness about the things ‘political’ and decision making process, its capacity to live with uncertain situations, its tendency to look for context-specific solutions and develop a political

²⁵ Imtiaz Ahmad, “Secularism in Search of Meaning’, unpublished paper, p.3

grammar that recognizes the public-private, formal-informal distinctions without making them officially. For instance, while the Constitution and law of the land speaks about both the rights of the individual and the groups, no specific procedure or guideline was laid down in the Constitution; nor was any attempt ever made by the Supreme Court or by the Indian Parliament to realize the same, so as to determine why the state should support one or the other the case of conflict between the two. Over the years, this flexibility, accommodation, fuzziness, vagueness and non-doctrinal tendencies of the Indian political process has proved to be its strength rather than its weakness, as the many advocates of the rational-modernist model of development would like to subscribe in dealing with the complex issues of integrating the large social diversities that exist in India without undertaking a violent route. The second important recognizable feature connected with the functioning of the state system is the ‘indeterminate’ character of the Indian political process that does not privilege or de-privilege any social groups in perpetuity. Any student of social transformation regarding the Indian society in the post-colonial period will testify to the gradual upward mobility of hitherto excluded social groups of lower castes and classes to the higher echelon of state administration, and others areas, without any large-scale, violent backlash. Today, the state is becoming the site of intense inter-group competition for access to the resources, given the very social arithmetic of the Indian electoral democracy. Such inter-group and inter-community competition and bargain in the public arena, if not in the Habermasian public sphere, is increasingly becoming a legitimate public norm.

The most important aspect of the functioning of the Indian state system and the larger political process is its *ambiguity* concerning the issue of private-public distinction. The principle of separation between the public and private realm has long been considered in Western political discourses as a central necessity for the maintenance of the idea of ‘absolute neutrality’ of the liberal-democratic state as well as the idea of dissociation of the religious and the political²⁶. In the Indian context, neither the constitutional

²⁶ In recent years the public-private debate has again resurfaced in the West, particular in Western Europe, in the context of the issue of integration of Muslim immigrant communities. Critics, mostly from the side of advocates of multiculturalism and Feminism, have argued that the ideal of public-private distinction is at best a theoretical myth and points out how the façade of

provisions nor the overall political practices of the Indian state/government points to either the desirability of *the distinction or the fusion* between the two. Thus, while a reading of the right to religious equality (enshrined under article 15, 25 and 26) along with article 27 that ‘debars the state from imposing a tax for promotion of *any particular religion*’, and the non-adoption of state religion might suggest supporting the concept of neutrality of the state, the principle of public-private distinction and the separation of religion from political in the Indian setting. However, another version of Article 27 and the ‘non-adoption of religion’ can totally negate the underlying assumptions of earlier versions. For, Article 27 neither prevents the state from using the proceeds of taxes for the promotion of *all* religions, if not any particular religion, nor does the absence of state religion debar, unlike the American Constitution, the Indian state from the adoption of religion in future.

Let me take another example of this ambiguity and vagueness in the governing behaviour of Indian state. While the concern for the equal rights of all communities led to the recognition, even legitimisation, of collective religious worship, as well as observances of religious practices in the public-political realm, the modern sensibility of constructing a liberal-secular state, that demands the separation of religion from politics, led to the incorporation of the provision in the Representation of Peoples Act, 1952, (further amended in 1961), that prevents the misuse of religion for corrupt (*political, emphasis mine*) practice²⁷. However, what constitutes the ‘misuse of religion’ depends upon the

the neutrality of the public essentially privileges/protects the culture, norms and interest of the dominant social group by excluding the concerns of the marginalized and subordinated groups. Therefore they advocate the moderate interpretation of this distinction and argue that the positive inclusion of religious group in the public sphere will help in integrating the non-European immigrant communities, particularly the Muslims. See, Tariq Modood, 2005: *Multicultural Politics: Racism: Ethnicity and Muslims in Britain*, Edinburgh University Press, the Regents of the University of Minnesota, 2005, pp 131-170

²⁷ Art. 127(3) of the Representation of Peoples Act, 1952, as enacted defined “corrupt practice” as:” The systematic appeal by a candidate or his agent or by any other person, to vote or refrain from voting on grounds of---religion or the use of, or appeal to, religious symbols---for the furtherance of the prospects of that candidates election.” In 1961, it was amended to read as follows: “ The appeal by a candidate or his agent or by any other person with consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion-----or the use or appeal to religious symbols----- for the furtherance of the prospects of

definition of religion, which is subject to the judicial interpretation. The pattern of judicial ruling in this regard has been that while references to a candidate's religion or to the religion of the contender was considered as constituting corrupt electoral practices, it has not ruled against the general reference to religion in political campaigns²⁸ despite the political rhetoric of separating religion from politics that dominates the public sphere. Thus, the Supreme Court did not consider use of the expression 'Hindutava' in the political campaign as a violation of Article 127 (3) of the Representation of Peoples Act²⁹.

What emerges from the above analysis is that the Indian Constitution and the state have neither (totally) accepted nor rejected the principle of a private-public distinction and the separation of religion from politics, and have rather preferred something in between; a kind of 'relational neutrality', as noted above, against the doctrine of 'absolute neutrality' of the state and the principle of 'equi-distance' to all religions and the equal treatment of all religions, against the principle of 'absolute' separation between the two, as the governing principles that provides flexibility to maintain links with the organized religions in the service to the nation. It seems that there were three larger considerations that influenced the Indian political elite to evolve and adhere to the latter course without acknowledging the same at the official level. First was the general understanding of the role of religion in the Indian society, wherein it was, historically, not considered as a threat to the secular order or state, unlike in the West. Therefore a general recognition of religion and culture and its various symbols in the public arena was considered perfectly legitimate from the governing point of view without conceding the right to occupy the

election of that candidate or for prejudicially affecting the election of any candidate." Quoted in V.S. Rekhi, 'Religion, Politics and Law in Contemporary India: Judicial Doctrine in Critical Perspective' in Robert D. Baird, ed, *Religion and Law in Independent India* (Manhoar, Delhi, 1993), p. 182, foot note no. 17)

²⁸ V. S. Rekhi, 'Religion, Politics and Law in Contemporary India: Judicial Doctrine in Critical Perspective' in Robert D. Baird, ed, *Religion and Law in Independent India* , Manhoar, Delhi, 1993, pp 183-198

²⁹ Ramesh Yashwant Prabhoo (Dr). vs Prabhakar K. Kunte (1996) 1SCC 130, Manhoar Joshi vs Nitin Bhau Rao Patil (1996) 1SCC 169, Ramchandra K. Kapse vs Haribansh R. Singh (1996), 1 SCC 206).

political role. Second, as an agency of modernity, the political elite urgently felt the necessity to ‘reform and regulate’ the religious institution at least in relation to majoritarian community, if not the minority community, without thoroughly subjugating them to the instrumentalities of the state, again something that happened in the West. However, the Supreme Court, by arrogating itself the right to define what constitutes the “essential” of religion, sets the limit of the Indian state to interfere in the religious affairs. Thus in many cases the Supreme Court upheld the legislation and executive order to regulate religious institutions but in many cases the court struck down the state’s laws as contravention to the ‘essential practice’ of religion that is given under the fundamental rights of the constitution³⁰. Third, the state policy of equality to and equality of religion in public sphere was also designed to enhance the legitimacy of the Indian state.

One of the positive implications of the above narrated ambiguous, flexible, vague and non-doctrinal nature of secularism, in particular and within the larger political process in general, is that the religious and cultural symbols continue to enjoy the due recognition in the public realm as a part of the evolved political culture, if not as an outright constitutional right. This is reflected not only in the observance of national public holidays connected with all religions, but also in relation to important state ceremonies. For instance, out of 14 declared national religious holidays 4 belong to Hindus, 4 to Muslims, 2 to Christians, 2 to Sikhs, 1 to Buddhists, and 1 to Jainists. It is a general practice that the Quran and Bible are recited along with the Hindu scriptures during national mourning. In addition, there are a varied numbers of other religious public holidays that are celebrated at state level. Furthermore, the state subsidizes the pilgrimage costs to all religious communities.

Absence of Majoritarianism as Political Creed

³⁰ For details, see, Mahajan: 1998, ch, Religious Freedom and State Intervention, Rajeev Dhavan; 2001, ‘ The Road to Xanadu: India’s Quest for Secularism’ in Gerald James Larson, ed; *Religion and Personal Law in Secular India: A Call to Judgement*. Bloomington: Indiana University Press

Connected with the ambiguity of state behaviour, particularly in relation to the doctrine of secularism within which the bulk of 'group politics' takes place in India, is another crucial feature of the Indian political process that helps in protecting the interest of ethnic communities, whether belonging to majority or minority. This refers to the *lack* of development of 'majoritarianism' as a political creed and as a basis of governance. Both the internal structure of the constitution and the social diversities of the Indian society greatly constrain the possibility of the emergence of majoritarianism, if not the development of majoritarian politics. Majoritarianism is a fixed and relentless position, which is incapable of alteration, whereas a majority rule is open to transformation and change. Needless to say, majoritarianism should be distinguished from the various shades of majority rule that is constantly under democratic pressure to change. The 'politics of majoritarianism' is one thing, its transformation into 'creed of majoritarianism' is another. The fact that a political decision in a (majoritarian) democracy is democratically arrived at leaves open the option for further representations and the possibility of a reversal of the earlier decision. As the majority opinion keeps changing in the public sphere, what the majority view is today could be the minority view tomorrow. It is through this process that ethnic minorities, as well as women, have succeeded in getting their due rights in the democratic societies of the world.

Thus, in the Indian context the attitude of various governments, at the central and the state levels, towards the demands of Muslim minority communities has neither been one of 'outright rejection' or 'total acceptance' but rather of 'a gradual concession' to the community depending upon the 'context' and the 'political weight' of the Muslim communities. This has been reflected in all major initiatives of the governments: ranging from the government grants to minority educational institutions as well conferment of minority status to various Muslim educational institutions³¹, extending the benefit of the affirmative policy of reservation in government employments and educational institutions

³¹ The Conferment of minority status to Educational institution allows the concerned the minority educational institution to reserve 50% of total seats for admission of students to its co-religionist

to Muslims³², inclusion of Urdu in 8th schedule of the Indian Constitution that commits the state to protect and promote the Urdu language, declaration of Urdu as the second official language in many states³³, setting up the National Council for Promotion of Urdu Language Board (NCUPLB) with its headquarters in Delhi, setting up an Urdu University, Hyderabad, Protection Of Religious Place of Worship Act (1992), Muslim Women Protection of Divorce Act (1987), the Prevention of Terrorism (Repeal) Ordinance, 2004, setting up various commission to look into the grievances of the minority communities³⁴, the setting up of Maulana Azad Education Foundation, 1989, and the National Minority Development and Financial Corporation, 1992, (NMDFC), the passing of National Commission for Minority educational Institutions Bill 2004 that removes the bureaucratic hurdle for the Minority educational institution to secure affiliation to the nearby university, and the setting up the National Commission for the Minority Rights (1978) and Minority Right Commission at the state level. In addition to these measures, the government and ruling parties ensures the representation of Muslims in decision-making bodies by ensuring nomination of members of minority communities to elective offices and partly through their promotion to positions of power and authority in government. Whether this did in fact ensure that the minorities were able to affect

³² Muslim groups now receive reservation in Kerala, Tamil Nadu and Karnataka and Andhra Pradesh. In Kerala, 12% of government jobs are currently reserved for Muslims, who account for 22% of the state's population. But this benefit is available to those who come from families earning less than Rs 2.50 lakh annually. In Tamil Nadu, Muslims are entitled to reservation under the 30% category earmarked for OBCs. Karnataka brought in 4% reservation for Muslims in 1994; again the benefit is given to applicants who come from families that have an annual income below Rs 2 lakh or hold land below a certain ceiling or do not have a gazetted officer as parent. Andhra Pradesh brought 5% reservation for the Muslims in 2005. In addition, some 80 lower caste Muslim groups enjoy the benefit of 27% reservation in central government services and educational institutions as per the Mandal Commission Recommendation.

³³ The importance of second official language status lies in the fact that all government notifications and orders will also be made available in this language as well as the official language. This creates employment opportunities in terms of appointment of translators in all the departments of the government, as well as the appointment of teachers in the public schools. Currently Urdu enjoys the status of second official language in state of Bihar and Delhi, in 13 districts of state of Andhra Pradesh and also in certain pockets of Karnataka. In the state of Uttar Pradesh, Urdu was declared as second language in the western parts of the state in the early 1980s through an ordinance that subsequently lapsed.

³⁴ Some of the important Commission on the conditions of Muslim Community are : Congress Committee Report, 1957, the Gujral Committee Report, The Gopal Singh Panel report, 1983 and the Prime Minister's High Level committee For Preparation of Report on Social. Economic and Educational Status of the Muslim Community of India, 2005.

political decisions remains an open question, the political practice did give to the minorities a sense of representation and participation in the decision making process. The open democratic political process in India provides an ample opportunity for the Muslim communities to renegotiate their demands depending upon the political context. This partly explains the absence of home grown, large scale Islamic militancy/ terrorism (save a minuscule trend such as Indian Mujahedeen that flourished on account of trans-border terrorism) despite growing alienation and relative material, if not cultural, deprivation, among the community as well as India being surrounded by geographical centres of Islamic radicalism such as Pakistan, Afghanistan, Iran and the Arab World.

In lieu of conclusion

In fact the alarmist view, that was generated in certain quarters of liberally minded people, regarding the possibility of the development of majoritarianism within the Indian politics in the wake of the rise of Hindu Right as exemplified in the formation of BJP led NDA (National Democratic Alliance) government (1998-2004) under the premiership of Atal Bihari Vajpayee and the current BJP government (2014-current day) under the leadership of Prime Minister Narendra Modi was found to be exaggerated, if not completely false. Certainly a growing number of incidents including 'killing of a Muslim man for supposedly eating beef'³⁵, revival of politics of Ram Mandir³⁶, growing trend of RSS's control over educational and cultural institutions and 'culture of intolerance' mostly against liberal, secular, minority and dalit communities that led a good number of national award winner artist, academician, cultural personalities to return their award in

³⁵ 'UP launches probe into killing over beef' September 30, 2015, *The Hindu*, <http://www.thehindu.com/news/national/other-states/muslim-man-killed-for-eating-beef-in-uttar-pradesh/article7706825.ece>, accessed on 22nd January 2016.

³⁶ Swamy kicks off Ram Mandir seminar at DU, says nothing will be done forcibly', *The Hindu*, January 9, 2016, <http://www.thehindu.com/news/national/subramanian-swamy-kicks-off-ram-mandir-seminar-at-du-says-nothing-will-be-done-forcibly/article8085645.ece> , accessed on 22nd January 2016.

protest³⁷ does represent a worrying trend for many for the future existence of a ‘secular, democratic and plural India’. Nonetheless ‘the threat of majoritarianism’ to the ‘idea of India’ and to the minority, particularly Muslim community and its comparison to European form of fascism in the Indian context were/are appeared to be misplaced due to the following factors:-

First, the very diverse structure of Hinduism itself militates against the one hegemonic and homogenizing national version of Hinduism. The anti-Muslim rhetoric of political Hindutava/Hinduism is in part driven by a *necessity* to unify the internal diversity of Hinduism by projecting Muslim/Islam as a threat to Hindu (read national) identity and unity. Thus, the anti-Muslim plank of BJP is, to a large extent, a political compulsion or instrument to consolidate their Hindu vote, not necessarily a goal to liquidate or legally discriminate Muslims.

Second, it is easier for a majoritarian nationalism to be transformed into fascism under the condition of severe socio-economic crisis, social and cultural homogenization and ‘collective hurt feeling’ as happened in Germany under Hitler. Attempts have been made to draw a parallel between European fascism and political Hinduism. However social diversities, lack of serious socio-economic crisis and absence of any collective hurt (as India itself is the big brother in the South Asian context) precludes such possibility.

Third, the constitutional fabric of India from above and the social diversities of the Indian society from below, along with the robust system of Indian judiciary and media, effectively limit the role of Hindutava in the governance of the country. The fact that the Supreme Court has declared the parliamentary system of governance, federalism, judicial review, secularism and fundamental rights as the ‘basic structure of the constitution’ and, hence, beyond the power of Parliament to amend the constitutional provisions related to

³⁷ Top Indian artists and scientists return awards in protest at alleged ‘climate of intolerance’ under Narendra Modi’, The Telegraph, 22nd January 2016, <http://www.telegraph.co.uk/news/worldnews/asia/india/11963542/Top-Indian-artists-and-scientists-return-awards-in-protest-at-alleged-climate-of-intolerance-under-Narendra-Modi.html>

them, has effectively limited the legislative power of the government to tinker with the structure of governance of the country. Most recently the Supreme Court has annulled the Modi government's controversial legislation 'the National Judicial Appointment Commission Act' which was aimed to curtailed the autonomy of judiciary, as null and void³⁸. Further the Supreme Court Collegium rejected at least 38 names recommended by the Modi government for various High Court Judges³⁹.

Finally but not least, as governance including law and order, economy, education and health is primarily a state subject, the federal system does not leave much room for the Centre to intervene or influence the pattern of governance at the level of states. The Centre has leverage only in the context of allocating the Central grants and aids to the state government. Over the years, the federal model of governance has become much stronger, both on account of the 'deepening of democratic federalism' and the coalition era (1990-2014) that together has helped in building a political culture that limits, and has eroded, the capacity of the Central government to directly intervene in state affairs, a political practice reminiscent during the period of the rule of one party (Congress) domination (1947-1990). The federal spirit was tested when the Modi government had to withdraw the circular due to its supposed promotion of the Hindi language.

A second way of examining the issue of the implication of the Hindu Right government at the Central level vis a vis the 'idea of India' and the minority, particularly the Muslim community, is to take into account the pattern of rule, administrative practices and thinking of the BJP government while in power. What comes out clearly is that once in power, the BJP (the political representative of Hindu Right) not only adopts the constitutional language but also does not appear too keen in either raising or

³⁸ 'Supreme Court declares National Judicial Appointments Commission (NJAC) Act unconstitutional', The Economic Times, 16th October 2015, available at http://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-declares-national-judicial-appointments-commission-njac-act-unconstitutional/articleshow/49403764.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, accessed on 22nd January 2016.

³⁹ 'SC collegium rejects 38 names for HC judges, <http://timesofindia.indiatimes.com/india/SC-collegium-rejects-38-names-for-HC-judges/articleshow/51750435.cms>, accessed on 10th April 2016.

implementing the core agenda of majoritarianism such as construction of the Ram Temple, adoption of the Uniform Civil Code and the scrapping of Article 370, that gives special status to Jammu and Kashmir, and the abolition of the National Minority Commission. Even the Modi government, that commands absolute majority in the Parliament, has not indicated its seriousness to implement these issues, rather it prefers to focus on the developmental discourse and even continue the major policy and programmes of the previous government along with minority centric institutions such as the National Minority Commission and the Ministry of Minority Affairs. Even today it could not place a bill in the Parliament to ban the cow slaughter nationwide, despite the fact that the cow has been the central symbol of Hindu politics during the pre and post independence period in India⁴⁰.

⁴⁰ Freitag, Sandria: 1990, *Collective Action and Community: Public Arenas and the Emergence of Communalism in North India*, Delhi: Oxford University Press, chapter 5 and 6.