# SECULARISM, NEUTRALITY AND PERFECTIONISM: AN EXAMINATION OF THE SEPARATION BETWEEN STATE AND RELIGION

Dissertation submitted to the Jawaharlal Nehru University
in partial fulfilment of the requirements
for the award of the Degree of

**MASTER OF PHILOSOPHY**

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1998

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**21 July 1998**

# CERTIFICATE

Certified that the dissertation entitled **"Secularism, Neutrality and Perfectionism: An Examination of the Separation Between State and Religion"** submitted by **Rinku Lamba** in partial fulfilment for the award of the Degree of **Master of Philosophy** has not been previously submitted for any other degree of this or any other university. This is her original work.

We recommend that this dissertation be placed before the examiners for evaluation.

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**For Sai**

## ACKNOWLEDGEMENTS

I want to acknowledge the affection, support and encouragement of my parents and Sai Ganesha without which this dissertation would have been very difficult to write. I can't thank them enough.

My sisters, Neetu and Kutty, helped a lot in reading and correcting the rough drafts of this dissertation. I am especially thankful to Neetu for always being there and helping me out despite all the unreasonable treatment I meted out to her.

I am grateful to Dr Rajeev Bhargava for supervising this dissertation, for the discussions he endured, for going through drafts that were submitted terribly late, for all the suggestions in the writing of this dissertation and for patiently explaining, numerous times, what normative political theory means. Some of us will be forever indebted to him for all that we have learnt from him (and I am, here, not referring only to academic learning).

I am also thankful to the faculty at the Centre for Political Studies for their encouragement.

Many thanks to Jaya Gupta, Tiju Rachel Thomas and Aparajita Narain for making academics so lively and exciting. I deeply value our friendship and am grateful to them for their support and encouragement.

Finally, I wish to thank Vikram Suri and Krishna Rao for help with the typing, especially to Krishna Rao for typing so well and so cheerfully.

**Contents**

# INTRODUCTION

There are many issues involved in the debate over secularism in India, both within and outside academic circles. One aspect of the debate pertains to the kind of separation between state and religion that is envisaged by secularism. Some theorists, D.E.Smith and Partha Chatterjee for instance, assert that secularism is tied to a strict separation between state and religion; on such a view, the state and religion should keep severely aloof from each other.

The Indian state has intervened extensively in religious institutions and practices. In doing so it has sought to promote valuable forms of life and discouraged repugnant ones (and presumably the evaluation of what is valuable and what is repugnant is grounded in good reasons). As such, the state has outlawed the Devadasi system; it has enabled Harijans to enter Hindu places of worship; it has enacted the Hindu Code bill and, among many other reforms, also created a department of the government which is to look to the administration of Hindu religious endowments. The judiciary and the legislature have been active in this process of reform.

There is some controversy about the Indian state's secular practice relating to the issue of the justifiability or otherwise of its intervention in religious matters. The Indian state's treatment of the issue of untouchability, for example, has often involved the state in the interpretation of Hindu religious doctrine and in the reform of the religion from within, as it were. The advocates of strict separation between state and religion object to this interventionist role of the state.

This dissertation takes up the above objection and seeks to examine whether, indeed, an interventionist stance by the state contradicts the commitment to secularism. This examination requires us to address two principal questions. First, we have to consider seriously whether it is generally justifiable for a liberal - democratic state to intervene at all in any conception of the good, religious or non-religious. In other words, is it possible to provide a normative justification for state intervention in the different conceptions of the good ? Second, if we find that state intervention is morally justifiable, then we need to ponder over whether state intervention (specifically) in religious conceptions of the good is compatible with a broader commitment to secularism. For this, we need to unravel the claim about secularism being tied to strict separation of state and religion. This study approaches these two questions from the vantage point of the judgement of the Supreme Court of India in the Satsangi case which is an instance of state intervention in a religious matter.

An answer to the first question seems possible if we draw upon the conceptual resources of contemporary liberal theory; there are two kinds of response within liberal philosophy to the question of what stance the state should adopt when faced with diverse conceptions of the good life. The first advocates neutrality while the second response endorses perfectionism. Chapter I consists of a detailed account of neutrality and perfectionism in order to enable a clear understanding of what these two concepts mean. The discussion of neutrality is posited against the backdrop of John Rawls' political liberalism; it also draws extensively upon the arguments of Charles Larmore (who also endorses political liberalism). As would emerge from the discussion, the principle of neutrality requires the state to be neutral with reference to different

conceptions of the good. Neutrality is a political ideal. Political neutrality, basically, consists in a constraint on what reasons can be invoked to justify a political decision. It allows the state to intervene in those instances where its policies are neutrally justifiable. Neutral justification refers to those reasons for state action which do not appeal to the presumed intrinsic superiority of any one conception of the good. The state may intervene in all those instances where the intention of the policies is to help or hinder all conceptions of the good to an equal degree. Further, neutrality does not prevent the state from intervening to promote, what John Rawls refers to as, primary goods. These are goods the promotion of which enable persons to advance their respective conceptions of the good life. Examples of these are civil and political rights.

After examining neutrality, we move to a detailed account of perfectionism; the discussion gains significantly from the arguments of Joseph Raz. On the perfectionist view, in sharp contrast to the neutralist position, it is the business of state action to encourage valuable ways of life and discourage repugnant ones to enhance human flourishing. According to Raz, perfectionism is compatible with value-pluralism and a certain understanding of autonomy. For Raz, autonomy is meaningful only when there exists a valuable range of options for the individual to choose from in her/his pursuit of the good life. As such, it is the duty of the perfectionist state to intervene actively in evaluating different ways of life; the state has to provide and ensure meaningful options and eliminate repugnant ones. Perfectionism does not imply that the state foster only one way of life. Rather, given the commitment to value-pluralism, perfectionist political action entails that the state may promote all those valuable conceptions which enjoy popular support. And further, popular backing by itself is not a sufficient condition; the promotion of certain forms requires that there be good reasons for the

same, independent of the fact that they obtain in society and that people support them. Further, perfectionism does not allow the state to foster any form of life that it considers good; in pursuing or eliminating a certain conception of the good the state has to be goaded on by good reasons

From the discussion in the first chapter we find that, indeed, there are philosophical justifications for state intervention in diverse conceptions of the good life. We should take note that neutrality and perfectionism do not represent non-interventionist and interventionist positions respectively. Perfectionism, it is very clear, is compatible with intervention but so is neutrality. The principle of neutrality permits the state to intervene whenever primary goods are in danger of being violated. Indeed, a neutralist state may intervene to ensure that the basic norms of social co-operation are not violated.

In chapter II we examine the Supreme Court's decision in the Satsangi case. In this decision, the Court averred that the practice of untouchability was contrary to the precepts of Hinduism rightly understood. As such, in interpreting Hinduism in a particular manner the Court was actually promoting a certain conception of Hinduism as a morally better one. Now, this is an instance of the state's interference in a conception of the good inasmuch as the Court (which is the judicial aspect of the state) was involved in supporting and endorsing a particular understanding of Hinduism as a good one. Besides, the Court was intervening not only in an idea of the good but in a religious conception of the good at that. This is one of the many examples of intervention by the judiciary and the legislature in religious matters which is viewed by many as violative of secularism. It is viewed as a violation because by intervening in

religion the Indian state was not observing the norm of strict separation between state and religion. Before attempting to look at the broader issue of whether the interventionist stance in the Satsangi case violates secularism, we turn to look at Marc Galanter's critique of the Court's handling of the same case. Indeed, if in this instance the Court has intervened in an unreasonable manner then we cannot make the discussion of the Satsangi case the vantage point for our examination of the rightness or otherwise of state intervention in religion vis-à-vis an adherence to secularism.

Accordingly, chapter II consists, first, of an enumeration of the details of the Supreme Court's judgement in the Satsangi case. Then we look at Galanter's criticism of the Court's interventionist stance. According to him, the Court's unnecessary bid to interpret the broad features of Hinduism so as to show that untouchability was incongruent with the tenets of the Hindu religion itself represents the tendency within the reformist elite to legitimize governmentally sponsored changes in terms of official interpretations of Hinduism. Basically, it appears that Galanter disapproves of what may be classified as elitist intervention which refers to the elite's interpreting Hinduism in terms of its own idea of what the religion should be. But, as is argued in the final section of chapter II, contrary to Galanter's claim, the Court was not imposing its own interpretation. Rather, it's decision was, in tandem with perfectionist stipulations, endorsing a certain conception of Hinduism which was grounded in good reasons and, significantly, was in consonance with the way many Hindus themselves perceived Hinduism. As such, the Court was not forcing its own understanding of Hinduism on the people. Hence, the Court's intervention in the Satsangi case is morally justifiable.

This brings us to the important question of whether state intervention in religious matters is compatible with secularism. Does an interventionist stance, as evident in the Satsangi case, constitute a repudiation of secularism ? For at least one strand of thought, secularism is individuated by a strict separation of state and religion which makes state intervention in religious matters inconsistent with secularism. D.E. Smith subscribes to a quite similar view. Chapter III seeks to understand Smith's theory of secularism as well as his evaluation of the secular practice of the Indian state. For Smith, equality of citizenship and freedom of religion are best preserved by a severe separation of state and religion. He is dismissive of Indian secular practice to the extent that the state in India has intervened in religious affairs. He views the government's management of Hindu religious endowments, the existence of separate personal laws and the extensive reform of Hinduism as violations of equality of citizenship and religious liberty. We examine Smith's stance on the issue of temple-entry rights for Harijans (the very issue involved in the Satsangi case) and find that he views it as contrary to secularism inasmuch as enforcing temple-entry involves reform of religion. This chapter also includes an evaluation of Smith's enunciation of secularism. The critique draws a great deal from Marc Galanter's assessment of Smith's theory. The problem with Smith's conception of secularism is that it fails to recognise that secularism may be compatible with a number of patterns of interaction between total fusion of state and religion on the one hand and complete disengagement of the two on the other. Smith's insistence on separation prevents him from adequately appreciating the various patterns of separation that have evolved in different places in response to the particular needs of different societies. Also a severe separation may not be the only way of preserving religious liberty and equality of citizenship. As such, Smith's theory would not enable a reasonable evaluation of state

intervention in religion more generally and of the Court's interventionist stance in the Satsangi case in particular; rather, it would immediately dismiss the interventionist stance of the Court because it views any and every kind of intervention as detracting from the commitment to secularism. If secularism is constitutively attached to the strict separation thesis, then it is a foregone conclusion that all kinds of intervention in religion are invalid and represent a departure from secularism.

However, fortunately for us, Rajeev Bhargava offers us a competing, and compelling, conception of secularism according to which secularism does not have to be viewed as inextricably intertwined with a strict separation of state and religion. Chapter IV of this dissertation seeks to understand contextual secularism as envisaged by Bhargava. According to Bhargava, secularism (and the concomitant values of equality of citizenship and religious liberty) does not demand a strict separation of state and religion in every context. Instead, he elaborates the idea of principled distance according to which separation does not mean strict non-interference, mutual exclusion or equidistance but any or all of these depending on which better promotes religious liberty, equality of citizenship and civic peace. We also see, in this chapter, how Bhargava delineates between contextual secularism on the one hand and hyper-substantive and ultra-procedural variants of secularism on the other. The final section of chapter IV examines the compatibility between secularism and state intervention in religion in the light of the concept of principled distance. It is argued that since secularism is committed to the values of equality of citizenship and religious liberty, (and given that principled distance permits some contact between religion and politics) any intervention (or non-intervention) by the state in religious matters is justifiable to the extent that the same does not entail a violation of the two values. Upon

examination, then, we find that the Supreme Court's intervention in the Satsangi case does not really constitute an infringement of either religious liberty or equality of citizenship. Hence, the intervention is not incompatible with secularism. On the contrary, the Court's stance provides us with a reasonably good example of the point that in certain contexts it is possible for the state (which is committed to secularism) to justifiably intervene in religious matters.

It is necessary to point out that this study seems to be overwhelmed by the arguments for perfectionism. This has contributed to at least one shortcoming which is the inadequate discussion of neutrality and neutralist intervention by the state. Indeed, invoking the arguments for neutrality would justify state intervention even in religious matters in every one of those instances where the intervention was to protect human life and dignity. But the following study has not devoted enough discussion to this, much to the detriment of this study itself.

The aim of this limited (limited because we examine only one instance of intervention) study is to arrive at at least a partial understanding of the kind of separation between state and religion that secularism envisages. Realizing that not all intervention is incompatible with secularism requires us to desist from making sweeping claims about the unjustifiability of not only the secular practice of the Indian state but also of the theoretical structure of Indian secularism. It is with all this in mind that we may approach the following study.

# Chapter I

## Neutrality and Perfectionism: Understanding the Two Concepts

This chapter seeks only to understand the possible meaning of the terms neutrality (anti-perfectionism), and perfectionism and to see whether a study of these concepts provides some insight on the issue of whether state intervention in ideas of the good may be justifiable. At the outset, it might be all right to say what these terms, broadly speaking, imply. Anti-perfectionism means that governments must be neutral with reference to different conceptions of the good. There is no idea of perfection that motivates the policies of the state — governmental action may be undertaken without the intention of encouraging or hindering or imposing one or the other ideas of the good lest the political liberty of the citizens be endangered. Thus, as Rawls argues, the state is expected to be neutral. Perfectionism on the other hand is the argument that it is the business of state action to encourage valuable ways of life and discourage repugnant ones — as such, the state is not expected to be neutral. And, as Raz argues, it is only a perfectionist state which enables individuals to exercise their autonomy more meaningfully.

Before proceeding any further, it would be helpful to understand why at all we must be exercised by the debate on the issue of anti-perfectionism and perfectionism. One answer to this query lies in recognizing the fact of the sheer diversity of the ideas of the good life that obtains in modern societies. These societies are heterogeneous in the sense that different people have different worldviews — for instance, in India there are the Hindus, the Muslims, the Buddhists, the non-believers, the humanists, the environmentalists and so on. And in these large and heterogeneous societies, it is the task of the modern state to enable people with different comprehensive worldviews to

live together. We need a large organizational set-up to manage all this[1] — to coordinate the actions of people and to make sure that there are no violations of some of the basic norms that have been agreed upon. And since the state can legitimately coerce, the point is to understand exactly what kind of reasons the state can give for action undertaken by it — can the state invoke various ideas of the good in justifying its policies or can it undertake only that action the reasons/justification for which involves no basis in any particular (controversial) conception of the good.

This essay has three sections. For a clear understanding of the concept of neutrality, the same will be examined with reference to Rawls' political liberalism which is accepted as the contemporary liberal position on state neutrality. Hence, the first section of the paper is devoted to a summary description of some tenets of the Rawlsian scheme of affairs. This section would help us understand how the issue of neutrality comes up for discussion. In this section, we would try and understand the need for shared principles of justice, in a society faced with reasonable pluralism, to ensure the basis for social unity and cooperation. Indeed, Rawls claims, political liberalism endorses the two principles of justice without invoking any comprehensive conception of the good, and the neutrality of the Rawlsian state is intact to the extent that its actions are in tune with these principles of justice; the Rawlsian state cannot purport to justify its actions by invoking any comprehensive conception of the good.

[1] The use of the words 'manage' and 'coordinate' should not lead to the conclusion that one is, here, endorsing a technocratic or managerial model. The moot point here is that the sheer complexity that informs modern societies requires an administrative set-up with some people to run it all the time.

The second section is a detailed discussion of procedural neutrality as envisaged by political liberalism. This section will draw upon the arguments of Charles Larmore who also endorses political liberalism. It is Larmore's contention that the state should undertake only those actions for which it can provide a neutral justification and that the norm of a rational dialogue warrants an anti-perfectionist state. This section may illuminate to us that (political) neutrality of the liberal state does not entail that it also be morally neutral. Neutrality is envisaged only with regard to controversial conceptions of the good and not with reference to all values and norms whatsoever. It is also sought to be elucidated that neutrality is a political ideal. We notice, also, that neutrality does not entail non-intervention; all it seeks is to help or hinder all to an equal degree.

The third section examines the seeming anti-thesis of neutrality, that is, perfectionism. This section draws upon the arguments of Joseph Raz on whose view the ideal of autonomy requires of the liberal state that it actively foster the reasonable pluralism which informs modern societies. But for a perfectionist state, it is feared that valuable social forms would be lost. In this part of the paper, we may also distinguish between the commonsensical or popular understanding of perfectionism on the one hand and a more reasonable conception of the same on the other. Reasonable perfectionism is the view that perfectionist political action may not be taken to endorse or foster what the state considers good. Rather, perfectionist political action to promote or discourage certain goods should be backed by sound reasons and may be taken in support of matters that enjoy considerable popular support. We also get a detailed account of how Raz reconciles autonomy with the legal enforcement of

morality (which perfectionism entails) through his interpretation of Mill's harm principle. The paper concludes with some general remarks about the anti-perfectionist and perfectionist positions.

## I

For Rawls, it is the plurality of the incompatible though reasonable comprehensive conceptions of the good coupled with the assumption of the need for social cooperation between free and equal citizens that necessitates the search for the principles of justice which will regulate social policy and secure the basis of social unity.[2] In order to respect one another's freedom and equality, citizens of constitutional democracies would not use the coercive power of the state against their fellow citizens except in ways that those subject to that coercion might reasonably be expected to endorse.

The principles of justice have to be arrived at by free and equal citizens. Citizens are free in the sense that they are free to choose any conception of the good and change or revise the same at will. They are equal in that when they decide on the principles of justice, social and natural differences are deemed irrelevant in order to avoid inequalities in bargaining power.[3] By reasonable pluralism with reference to the plurality of comprehensive conceptions of the good, the following is implied. The 'reasonable' in reasonable pluralism implies that the different conceptions of the good are not unthought out ones — they are the work of human reason over time — they are not borne out of mere self or class interest. And these reasonable

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[2] John Rawls, Political Liberalism, New York, Columbia University Press, 1993, p. 133

3 S. Mulhall & Adam Swift, Liberals and Communitarians, Oxford, Blackwell, 1992. p. 4

doctrines, says Rawls, are affirmed by reasonable citizens. Again, the point is that there are many different and incompatible reasonable conceptions of the good, hence reasonable pluralism. By comprehensive doctrines/conceptions of the good, we mean a conception or an idea of what is valuable and worthwhile in human life — an idea of what ends must be pursued. It is comprehensive in the sense that it gives a framework with which to relate to the world and perform almost all of ones actions in accordance with. Religion is an example of a comprehensive doctrine. There may be other moral and philosophical doctrines too.

The two principles of justice are chosen by rational agents as free and equal in what Rawls has termed the original position. The original position is a kind of conceptual device that is to enable us to arrive at a point of view 'undistorted' by knowledge of the particular features and circumstances of the agents. There is a veil of ignorance which prevents the agents in the original position from knowing anything about their gender or social or economic status or their respective ideas of the good which might come in their way of arriving at neutral principles. What they do, however, know are ideas latent in the shared public culture of the liberal democratic regime they are members of. The idea of public culture needs some explanation in this context. The principles of justice are an expression of the ideas latent in the shared public culture of a democratic society. The settled convictions in the public culture like, say, the belief in religious toleration and of the rejection of slavery are sought to organize the basic principles implicit in the conception of justice. Indeed, the basic idea of society as a fair system of cooperation is also taken to be implicit in the public culture of a democratic society. Rawls explains that "this public culture comprises the

political institutions of a constitutional regime and the public traditions of their interpretation as well as historic texts and documents that are common knowledge. This public culture is distinct from the social culture that comprises comprehensive doctrines of all kinds. Since the principles of justice are a manifestation of the public culture they constitute public conception of justice".[4]

Two other ideas are implicit in Rawls' original position — the first being the political conception of the person and the second, the idea of a well-ordered society. The political conception of the person entails that citizens are political beings, free to have their own ideas of the good. They are also seen as bearing the responsibility for ordering their non-political commitments in accordance with their political commitment to sustain the conditions necessary for the realization of the public conception of justice, once it has been arrived at. The companion idea of a well-ordered society implies that the principles of justice should be publicly recognized and that citizens comply with the basic institutions seen as just.[5]

It should be noted that individual persons are, according to Rawls, endowed with moral capacities, they possess the powers of moral personality, namely, the capacity for a sense of justice and the capacity for a conception of the good.[6] As such, they are not akin to Hobbesian individuals who are motivated purely by narrow self-interest. In fact, the Rawlsian conception of the person is broadly Kantian. According to the Kantian conception, we are not simply defined as the sum of our desires, nor are we beings whose perfection consists in realizing certain purposes or

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4 John Rawls, Political Liberalism, New York, Columbia University Press, 1993, p.14

5 Ibid., p.30

6 Ibid., p. 34

ends given by nature. Rather, we are free and independent selves, capable of abstracting from our ties and commitments and are endowed with the capacity for reason, we are not exhausted by our purely personal and selfish interest. The persons in the original position are imbued with these moral capacities and are able to abstract from their personal interest and think beyond the same. Hence, it might be unwarranted to conflate the Rawlsian conception of the person with those that obtain in other strands of liberalism, Hobbesian, Lockean or Nozickean as the case may be; we may not ground the Rawlsian project as one motivated purely by unabashed self-interest.

The two principles of justice are — first, the principle of equal political liberty, assuring everyone equal measure of an enumerated list of basic liberties, i.e., the freedom of expression, religion etc. and second, the difference principle according to which there should be as equal an allocation of wealth, income, opportunities and status as possible, inequalities must be to the greatest benefit of the least advantaged members of society. Lexically prior to both these principles is the principle requiring that all citizens' basic needs be met so they may be able to actually exercise their rights and liberties. The principles of justice guarantee what are called primary goods. These are goods which citizens need, inspite of the difference in the content of their various conceptions of the good; they need these goods to advance their conceptions of the good, and they all need roughly the same primary goods. They are also essential to realize citizens' higher order interests — that is, to further develop their moral capacity for a sense of justice as also that for a conception of the good life — they provide an adequate social world for the furtherance of these.

Given the conflicting conceptions of the good, it is difficult to recognize what are the appropriate claims that citizens may make on the state. The government cannot

act to maximize some citizens' rational preferences or ideas of perfection, or a particular religion because none of these views is affirmed by citizens generally — the pursuit of any of these by the state would give to it a sectarian character.[7]

## II

This is where the issue of neutrality arises in Rawls' scheme of affairs. It has ramifications for what the state can do and on what basis it may undertake the action it does. So, what does neutrality of the Rawlsian state entail ?

The Rawlsian state is justified in promoting primary goods. Citizens' claims for primary goods are appropriate claims for the state to address because these claims do not depend on religious affiliations and class positions or the holding of any particular conception of the good. And the state can make policies to further these because it can give publicly justifiable reasons for its action — again, the state, by furthering these goods is not promoting any particular idea of the good. It is permissible to design public institutions to achieve these goals. Justice as fairness, when viewed as a whole, "hopes to articulate a public basis of justification for the basic structure of a constitutional regime" (the basic structure includes the political, social and economic institutions), "working from fundamental intuitive ideas implicit in the public culture and abstracting from comprehensive religious, philosophical and moral doctrines". A neutral ground is sought for justifying state action. In other words, the institutions and policies of the state are neutral in the sense that they can be endorsed by citizens generally as within the scope of a public political conception. It also means that the

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[7] Ibid., p.180

state is to ensure for all citizens the equal opportunity to advance any permissible conception of the good. What the state cannot do, however, is anything intended to favour or promote any one comprehensive doctrine rather than another. Basically, then, political neutrality consists in a constraint on what factors can be invoked to justify a political decision. A decision can count as neutral only if it can be neutrally justified without appealing to the presumed intrinsic superiority of any particular conception of the good. The state is not to rank the value of different ways of life.

This is procedural neutrality; it permits the state to pursue all those goals which are neutrally justifiable — and, as Larmore says, the goals of protection of life and property are not the only ones that are neutrally justifiable. To use Larmore's example, the state will not be less neutral if it involves in action to ensure a particular pattern of wealth distribution, provided the desirability of this pattern does not hinge on the superiority of some views of human flourishing over others held in society. Thus, a neutral state need not be a minimal night-watchman state. The ideal of neutrality is not violated by the demand for a more active interventionist role for the state with reference to the nature of the free market. And the Rawlsian state is indeed an egalitarian liberal state which seeks to involve itself in the redistribution of wealth and resources — without compromising on political neutrality.

It is important to understand that procedural neutrality is distinct from neutrality of outcome.[8] That is, it is possible, and indeed, it does happen, that the decisions and policies of the state benefit some person more than others — some conceptions of the good are bound to fare better than others. So, the outcome of the

[8] Ibid. p.194 and Charles Larmore, Patterns of Moral Complexity, Cambridge, Cambridge University Press, 1987, p. 44

policy cannot have a neutral effect — or affect everyone equally well or badly. What can, however, be ensured is neutrality of intention, or neutrality of aim. So, when the policy is formulated, it can be hoped that all people benefit, but the outcome cannot be guaranteed. There are sure to be gains and losses. For Larmore, procedural neutrality is also compatible with the idea that through public discussion one can clarify one's notion of the good and try to convince others of the superiority of one's idea of human flourishing. It is only so long as there is dispute or disagreement over some view of the good that the state is not supposed to act on such a view because that would amount to a state being unable to give a neutral justification for its action.

Neutrality is not purposeless or pointless — it is always with reference to some larger idea of well-being and human flourishing [and this is different from the earlier particular conception of the good — this broader vision is one that may transcend different conceptions of the good life as understood previously in the paper]. As such, there would necessarily be some moral principle which grounds the claim for neutrality. For Larmore this neutral justification comes from what he calls the universal norm of rational dialogue[9] according to which, in the face of disagreement, those who wish to continue the conversation should retreat to neutral ground. This does not imply that abstracting from the controversial belief means that one believes in it any less; only, one wants to keep the conversation going to reach some reasoned agreement on the issue at hand. And the conversation must be kept going because of the equal respect we owe other persons — to the capacity that each person has to develop his own view of the world. We are obliged to justify our actions to those

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[9] Charles Larmore, Patterns of Moral Complexity, Cambridge, Cambridge University Press, 1987, p. 55

who have the capacity for a perspective on the world — this capacity of theirs is a reason for us to be discussing the merits of our action rationally with these equal others.[10]

The argument for neutrality, as developed by Larmore, is not 'morally' neutral. Equal respect for all human persons and the bid to continue a conversation with them in order to arrive at what ought to be collectively binding principles does involve a commitment to certain norms and values. And the kind of political neutrality being insisted upon here may not imply neutrality with regard to all values and norms[11] but only with regard to controversial conceptions of the good life. As Larmore says, the argument does not aim at complete moral neutrality. Larmore calls this a neutral justification for neutrality, the justification comes from the fact of equal respect for others which in turn is something we owe others with reference to their capacity to have a worldview, without having to cohere with their ideas of the good life.

Political liberalism is motivated by the desirability of social cooperation in a society characterized by reasonable pluralism. The principles of justice that would enhance the possibility for social cooperation do not hinge on the intrinsic superiority of any particular conception of the good; nor is there any substantive idea that the Rawlsian state purports to foster, unlike, say, Raz who believes, as we shall see, that the state must further the capacity for autonomy. Rawlsian liberalism is not motivated by any such substantive ideal as may be unacceptable to some social group within society. For instance, there may be a set of persons with whose idea of the good the

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[10] Ibid., p. 64

[11] Ibid., p. 55

perfectionist ideal of autonomy may clash. Hence, Rawls' advocacy of political liberalism and a neutral state.

This neutral state upholds the right, which is a moral standpoint and, really, a thin theory of the good. It refers to that space which can be shared by a large number of people inspite of their different conceptions of the good life. The right here obtains in the form of certain basic liberties which may help everyone equally in their capacity to choose or endorse any comprehensive conception of the good and pursue the same. This, to put it very broadly, is rights-oriented liberalism (of the egalitarian stream as distinct from the libertarian one) which stresses the primacy of rights. State action and laws reflecting only the majority's conception of the good are unacceptable; therefore, the neutrality thesis. That is, the state's actions and justifications for those actions have to remain outside of the domain of controversial incompatible conceptions of the good. The norm of a rational dialogue thus serves to shape a political culture in which the public could continue to discuss disputed views of the good life with the hope of expanding agreement, alongside the imperative that the state's decisions cannot be justified by an appeal to the intrinsic superiority of any such view that remains disputed. A state which is neutral in the way outlined in our discussion on neutrality is what has been termed as an anti-perfectionist state.[12] Anti-perfectionism refers to the rejection of the idea that the state has a right to impose a conception of the good on its citizens[13] It is also held to be the best way of handling a state of affairs

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[12] It is debatable as to how anti-perfectionist the Rawlsian state actually may be. Indeed, the distinction that Rawls makes between reasonable and unreasonable conceptions of the good [with reference to the principles of the right] may lead us to question exactly how neutral political liberalism really is. But this paper does not seek to enter into that debate. Here we are interested only in, broadly speaking, the anti-perfectionist position that emerges from Rawlsian liberalism

[13] Joseph Raz, The Morality of Freedom, Oxford, Clarendon Press, 1986, p. 161

characterized by reasonable pluralism. The state wields coercive power and hence must be limited, as we saw, to remain neutral regarding different people's conceptions of the good.

Again, neutrality is a political,[14] not a general social ideal — it governs the public relations between the state and persons — it is an ideal for the state to pursue. It is a political ideal that governs the public relations between persons and the state, and not the private relations between persons and other institutions. Other institutions in society are not required to be neutral.

Political neutrality is linked with the idea of freedom in that by denying the state the right to act on the basis of a conception of the good life that some people may reasonably disagree with, neutrality emphasizes the equal freedom that all persons should have to pursue their own conceptions of the good.

## III

This section is devoted to the discussion of perfectionism which is the seeming anti-thesis of anti-perfectionism. For Raz, autonomy is the constitutive feature of liberalism. And this conception of autonomy is compatible with and, indeed, is exercised best in the context of value pluralism. Raz is, then, providing a comprehensive ethical ideal as the grounding for liberalism — the ideal of autonomy[15]

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[14] Charles Larmore, Patterns of Moral Complexity, Cambridge, Cambridge University Press, 1987, pp. 45-46

[15] Raz is not insensitive to the fact that there may be communities whose culture does not support autonomy — such as that of the indigenous peoples or religious sects. The imposition of the ideal of autonomy on them may smack of cultural imperialism on the part of liberal theorists. As a partial response to this, Raz states that if the culture of the particular community in question does not harm others and enables its members to have a satisfying life,

— this is in contrast to Rawlsian liberalism which seeks to steer clear of any comprehensive ideals. For Raz, autonomy consists in being able to choose from a range of valuable options [indeed, individuals' well-being is ensured only if they are able to make meaningful choices from among a multiplicity of valuable options] and being able to engage in the pursuit of valuable projects.

For Raz, the realization of this liberal ideal of autonomy can only be secured by a liberal state which takes upon itself the task of providing and ensuring these meaningful options and eliminating repugnant ones. Unlike in the case of the strictly anti-perfectionist state which did not have to involve itself in assessing the worth or otherwise of different ways of life as these are deemed matters irrelevant to politics, the perfectionist liberal state will have to intervene actively in evaluating different ways of life — the state here is engaged as much in ensuring that the individual be able to make a choice as in ensuring that the options available are of value too — politics is used to achieve the same.

Raz is sensitive to some of the arguments against perfectionism and these he seeks to address. In addressing these arguments Raz is distinguishing between the commonsensical or popular understanding of perfectionism on the one hand and reasonable perfectionism on the other. The popular version rests on the assumption that perfectionism implies that the state fosters only one idea of the good to the detriment of all other diverse conceptions. It is further feared that the perfectionist state forces a certain way of life on all its citizens. The assumption of those who are wary of perfectionism is that the state would indulge in such illiberal practices.

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then there is a case to tolerate the same and the necessary action may be taken to protect such forms of life. Joseph Raz, The Morality of Freedom , pp. 423-24

But Raz is not defending this commonsensical understanding of perfectionism. Rather, he is articulating a more reasonable version of perfectionism. He shows that perfectionism does not amount to allowing the beliefs of some to ride over those of others. The state is not involved in fostering some 'beliefs' or 'desires'. What is stressed instead is the reason dependent character of goals and desires. In acting according to our beliefs and desires, we must have good reasons which should be grounds for action.[16] The forms of life that the state will encourage will have to be of value in this sense. It is not an 'anything goes' kind of situation where any way of life endorsed by the individual is sought to be encouraged. The point that the individual endorses it is important, but it is equally important that an individual's desire to follow a way of life must be informed with good reasons for the same. The way of life is valuable for reasons independent of the individual's 'belief' in its value.[17] And for Raz, if there can be agreement on the moral considerations such as the right to life, to free expression or free religious worship that should influence political action, there should then be no reason to think that one is more likely to be wrong about the character of the good life.[18] If this is right then the state can, indeed, be required to act on judgements as to what makes a life meaningful and which way of life is better than some others; the case for perfectionism does get strengthened.[19]

Raz also points out that perfectionism does not imply that the state will approve of only one way of life and suppress all others. Instead, he refers to the fact

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[16] Ibid., p.159

[17] S. Mulhall & Adam Swift, Liberals and Communitarians, Oxford, Blackwell, 1992, p. 313

[18] Joseph Raz, The Morality of Freedom, Oxford, Clarendon Press, 1986, p. 160

[19] S. Mulhall & Adam Swift, Liberals and Communitarians, Oxford, Blackwell, 1992, p. 316

of value pluralism which means the following. It is an affirmation of diverse values which, even as they are incompatible with and irreducible to each other, have worth. And the perfectionist commitment to autonomy requires of the state to foster all these diverse valuable forms of life. These diverse valuable forms have to be encouraged because they provide the context within which human agents can exercise their autonomy. Hence, the state is not expected to play a neutral role — the commitment to the comprehensive ideal of autonomy requires a perfectionist state. It is the business of the state to encourage valuable social forms. For a human individual, not only is autonomy valuable solely for the pursuit of the good, but also, it is only autonomy if a plurality of valuable options are available, so that the agent is choosing between goods.[20] The point is that well-being depends upon success in one's comprehensive goals which are goals that people have, the ramifications of which obtain on all important dimensions of their lives — they provide the general framework within which others goals are set. These comprehensive goals are based, for Raz, on existing social forms, i.e., "on forms of behaviour which are widely practised in society". The general idea is that our actions derive their meaning from the social or cultural practices and conventions that surround them. So, this is how important dimensions of our lives are related to social forms. But this is not to be interpreted as meaning, also, that "whatever is practised with social approval is for that reason valuable".[21]

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[20] Ibid., p.325

[21] Joseph Raz, The Morality of Freedom, Oxford, Clarendon Press, 1986, p. 310

And because social forms are relevant in the above manner — well-being and autonomy are related to social forms — perfectionist political action is required to sustain those social forms for it is the duty of the state to promote the well-being of its citizens.[22] For Raz, then, "perfectionist ideals require public action for their viability. Anti-perfectionism in practice would lead not merely to a political stand-off from support for valuable conceptions of the good. It would undermine the chances of survival of many cherished aspects of our culture".[23]

For Raz, enhancing the capacity for autonomy may require the state to go far beyond the negative duties of non-interference which seem to be the only ones recognized by some defenders of autonomy.[24] Securing the conditions for autonomy entails the duty of creating an adequate range of options for the agent to choose from. But this autonomy-based duty does not extend to the morally bad and repugnant. Raz contends that autonomy is valuable only if it is directed at the good, hence there is no reason to protect or provide worthless options. Raz agrees that autonomy itself is blind to the quality of options chosen and that a person is autonomous even if he chooses the bad.[25] Also, it is plausible that a person may believe that she can be autonomous only if she has valuable options to choose from in order to pursue the good as she sees it and all this could be consistent with many of her valued options being bad ones. "But while autonomy is consistent with the presence of bad options, they contribute nothing

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[22] S. Mulhall & Adam Swift, Liberals and Communitarians, Oxford, Blackwell, 1992, p. 331

[23] Joseph Raz, The Morality of Freedom, Oxford, Clarendon Press, 1986, p. 162

[24] Ibid., p.408

[25] Ibid., pp411-412

to its value".[26] In other words, Raz is primarily interested in enhancing autonomy which is valuable because he believes that since our concern for autonomy is a concern to enable people to have a good life it furnishes us with reason to secure that autonomy which is valuable. We see, then, that Raz seeks to foster valuable autonomy. Providing, preserving or protecting bad options does not enable one to enjoy valuable autonomy.[27]

Raz addresses the important question of whether the principle of autonomy is consistent with the legal enforcement of morality. He argues against such an inconsistency by interpreting J.S.Mill's harm principle in a manner that justifies state enforcement of morality as a condition for enhancing the capacity for autonomy. This requires explanation.

Mill's harm principle justifies coercive interference with a person to prevent him from harming others. Raz extends this further and states that interfering in a person's activity may be justified to prevent harm to even his own self. Now, what does harm mean? How can anybody be harmed ? Broadly speaking, we may say that those acts of omission or commission which frustrate an agent's ability to use opportunities for leading a good life or which seek to deny even the availability of such opportunities are acts which are harmful to that agent. Such harmful acts ill-affect a person's pursuit of his/her options, projects and future well-being. "To harm a person is to diminish his prospects, to affect adversely his possibilities".[28] For a discussion of

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[26] Ibid., p.412

[27] Ibid.

[28] Ibid., p.414

the connection between autonomy and the harm principle it is sufficient to understand harm as outlined above.

Raz points out that causing harm is understood as wrong and that it is perceived as wrong from the vantage point of some moral theory. Indeed, according to Raz, without such a connection to a moral theory the harm principle is a formal principle lacking specific concrete content and leading to no policy conclusions. The harm principle justifies coercive intervention to prevent harm. And if coercive interventions are justified on this ground then they are used to enforce morality (because, as we just saw, the harm principle is rooted in some moral theory). What Raz is saying, then, is that the idea of legal enforcement of morality is not odd. But this still leaves the question about the compatibility of autonomy with the legal enforcement of morality unanswered.

Given that the harm principle justifies coercive intervention to enforce some morality Raz suggests enforcing the "rest of morality" too. He sees little reason in stopping with the prevention of harm.[29] Thus, it should be the business of governments to promote morality; they should be involved in promoting the moral quality of life of their population. Raz says that on the face of it the advocacy of this kind of involvement by the government would seem to imply the rejection of the harm principle, particularly to those who subscribe to the common conception which regards the aim and function of the principle as being to curtail the freedom of governments to enforce morality. But Raz sees the principle differently and he elucidates how it fits

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[29] Ibid., p.415

with a morality which regards personal autonomy as an essential ingredient of the good life. So, what is Raz saying ?

According to Raz the legal enforcement of morality is consistent with the harm principle. Next, he avers that autonomy is a very important moral principle. Hence, given that morality is enforceable and that autonomy is an important part of morality, the legal enforcement of morality is not inconsistent with the principle of autonomy. And, autonomy requires that all the conditions of autonomy be ensured. Given this, governments are required to fulfil certain autonomy-based duties which are justified so long as they are performed with a view to prevent harm. The state has the duty not merely to prevent denial of freedom but also to promote it by creating the conditions for autonomy. Not performing these duties would tantamount to harming the citizens because it deprives citizens of being able to pursue an autonomous life which is valuable only if it is spent in the pursuit of valuable projects and relationships. To sum up, the state is bound to perform certain autonomy-based duties; the duty arises out of peoples interest in having a valuable autonomous life. Its violation will harm those it is meant to benefit. Therefore, its fulfilment is consistent with the harm principle.[30] Viewed in this light, the harm principle is a principle of freedom inasmuch as it warrants state intervention to ensure the availability of an adequate range of options which in turn are seminal to a meaningful exercise of autonomy. Hence, the principle of autonomy is consistent with the legal enforcement of morality.



[30] Ibid., p.418

Raz points out that his stance on autonomy deviates from some liberal writings on the subject in its ready embrace of various paternalistic measures. Paternalism, broadly speaking, refers to that situations where A (which in our discussion represents the state) tells B (the citizen) to do Y, the doing of which is purported to be in B's interest. In this case, A may be seen as adopting a paternalistic attitude towards B. Paternalism is often viewed with suspicion on account of the manipulation by A of B to do Y that is assumed to accompany it. This is seen as violative of the dignity of B; respect for B requires leaving B free to make his/her own decisions. As such, paternalism seems inconsistent with respect for B. But Raz is not satisfied with such a simplistic interpretation and he puts forth a more reasonable and defensible way of perceiving paternalism.

Raz points out that even though many liberals oppose paternalism they have begun to accept indirect paternalism.[31] This is evident from their support and, indeed, even demand for laws improving safety controls and quality controls of manufactured goods; similarly, it is demanded that strict qualifications be a condition for advertising one's services in medicine, law or the other professions. These measures are not manipulative but are designed to stop people from inflicting harm on others. They do not coerce whom they protect ; their net effect is to reduce people's choices on the ground that it is to their own good not to have those choices.

So, how are we to understand the impact of paternalism on autonomy ? Basically, Raz wants us to have a nuanced understanding of paternalism and not

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[31] Ibid., p.422

formulate any general pro- or anti-paternalistic conclusion. Paternalism, when it interferes with matters that are of only instrumental value, does not interfere with autonomy. Matters of instrumental value refer to those like, say, compulsory wearing of helmets while on the road on two-wheelers or to the prohibition of smoking in public places where the basic idea is only to improve the safety of people by making the activities affected more likely to realize their aim.

But perfectionism goes beyond that paternalism which deals with matters of instrumental value.[32] Perfectionism as advocated by Raz sanctions measures which encourage the adoption of valuable ends and discourage the pursuit of bad ones. The chief restriction on paternalism as it obtains in the perfectionist scheme of affairs is that it be compatible with respect for autonomy. Perfectionist policies should be confined to the creation of the conditions of autonomy. Autonomy means that a good life is a life which is freely created. As such, we may not equate a perfectionist state with one which can force people to do what it considers good for them against their will. Besides, on the perfectionist view, it is not as if it is the state's considering anything to be valuable or otherwise which is a good enough reason to promote or discourage anything; its being valuable or valueless is the only reason. Indeed, the state is not imposing any idea of the good from above but only fostering those social forms which obtain within a given society. Altogether, then, Raz affirms that autonomy and paternalism, if understood well, are not entirely incompatible. Adequate recognition of the dependence of human well-being on social forms calls for the creation of conditions of autonomy through the pursuit of perfectionist policies.

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[32] Ibid., p.423

Perfectionism also implies that repugnant ways of life be discouraged by the state. Raz, however, is cautious in this respect to the extent that the state may be mistaken in identifying what is really a valueless way of life. Besides, he says that interference with one's repugnant options may interfere with one's other choices. Again, Raz is aware that even as it may be possible to discern which ideals are valid, the danger that the government may not act on them is ever-present. Again, the possibility of mistakes being made by those whose judgements about the validity of ideals determines what the government should do cannot be ruled out. Raz points out the dangers inherent in the concentration of power in few hands, the dangers of corruption and the fallibility of judgement. Also, he says that there is a likelihood that the pursuit of perfectionist policies, even of those that are "entirely sound and valid", may lead to popular resistance resulting in civil strife. In such circumstances, Raz advocates caution and compromise.

At least two more points need to be stated to prevent the discussion on perfectionist political action from being altogether incomplete. First, perfectionist political action does not entail that the state pursue an ideal which it considers to be valuable.[33] What needs careful attention is the fact that in pursing or eliminating an option, the same is being done because that option is either valuable or valueless. In fostering an idea of the good the state has to be goaded on by good reasons that justify the value of the good in question; similarly, in eliminating certain social forms or some elements of a social form, what is being removed has to be proved as morally unjustifiable too. This caveat is in

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[33] Ibid., p.412

order to elucidate the point that a perfectionist state cannot intervene unreasonably – it cannot arbitrarily force certain ways of life out of existence. The state is undoubtedly engaged, here, in the evaluation of different conceptions of the good; nevertheless, a perfectionist state's policies have to be backed by sound reasons.

Second, perfectionist measures may be taken in support of institutions that enjoy a measure of social consensus.[34] It does seem, then, that perfectionist intervention is an endorsal by the state of something that people are already demanding and are at least familiar with. In other words, perfectionism does not imply that the state is forcing some altogether unfamiliar way of life on an unsuspecting population; the state is not involved in the business of evaluation of the diverse conceptions of the good life in a social vacuum. The state is only endorsing that which obtains in society. And to clarify further, popular backing by itself is not sufficient – what is being endorsed should also be justifiable with good reasons, independent of the fact that it enjoys people's support.

To sum up the perfectionist position, a commitment to the well-being of human persons by enabling them to pursue valuable forms of life renders it appropriate that politics should be used to help them do so.

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By way of concluding, the following may be said. It may not be entirely incorrect to say that there is a difference in the way Rawls and Raz [who we have

[34] Ibid., p.161

assumed represent respectively, broadly speaking, the anti-perfectionist and perfectionist strands of liberalism] perceive perfectionism. For Rawls, perfectionism is unacceptable because it implies that a particular view or range of views determine what attributes are most worth developing with resources distributed accordingly.[35] In contrast to this Rawls advocates a thin theory of the good on the basis of which primary goods are to be distributed so as to advance many different ways of life.[36] This is felt to be the most appropriate way of promoting people's essential interest in leading a good life. Rawls is opposed to the perfectionism that is associated with a 'well-ordered utilitarian society' where the government would undertake all action in the pursuit of only one rational good, which is the satisfaction of desire or preferences where the same is assumed to be the shared highest order preference motivating state policies. Nor can Rawls endorse a state which designs its public institutions to advance a particular religion. What Rawls endorses instead is anti-perfectionism which he states is compatible with the diversity of incompatible though reasonable ideas of the good that obtain in modern societies. But if we view perfectionism in the manner presented by Raz, it does seem that the two parties are looking at perfectionism from different vantage points. Political liberalism views perfectionism as full of dangers — on this view, the pursuit of substantive goals would lead to a sectarian state. It does seem that Rawls is reacting against what we had earlier called the popular understanding of perfectionism. But, by advocating perfectionism, Raz is not seeking to allow only one idea of the good to flourish. It is compatible with value pluralism. Raz, in fact, sees perfectionism as the best answer to enhance the autonomy of human

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[35] Will Kymlicka, Contemporary Political Philosophy, Oxford, Clarendon Press, 1990, p.205

[36] Ibid.

persons. The view that he endorses implies the inclusion of substantive ideals within democratic procedures. Raz's idea of value pluralism is consistent with his advocacy of perfectionism. The whole debate, as such, is between a rights-oriented version of liberalism and a substantive variety of liberalism. The Rawlsian position endorses the former, that is, it recognizes the fact of reasonable pluralism and is content with ensuring certain basic rights to all persons which would help them to pursue their respective ideas of the good life. The sheer diversity of worldviews coupled with the desirability of living together through social cooperation requires that disputable substantive ideals be kept outside of the purview of, both, state action and grounds for justification of state action — hence neutrality of the state. The other substantive notion of liberalism goes beyond this rights discourse and seeks to inform the decision-making procedures with certain substantive ideals. This is premised on the possibility of deliberation and persuasion through the democratic processes of dialogue and talk. The emphasis on 'good reasons' and so on is a manifestation of this optimism in the democratic process.

Even as they differ with each other, the advocates of neutrality and of perfectionism, both, agree on certain points. Both are committed to the fact of value pluralism and human well-being. The ideal situation for the two different points of view is the same in that they view the good as plural and not one single unitary entity. Both sides recognize the sheer diversity which exists. Only, they differ on how best to enable human persons to lead a good life within the context of this reasonable pluralism. In fact, it cannot be overlooked that the perfectionist state is also a liberal state — as such, perfectionist liberalism does not debunk or deny the significance of

the rights of human persons, it does not compromise on basic liberal tenets such as the respect for life of all human persons and of the recognition of the sheer diversity of the conceptions of the good. Inspite of their different responses to moral pluralism, they share an agreement on upholding some principles and values which none may violate without incurring the wrath of the state.

Before finally summing up, it is tempting to mention the following. Even as the two concepts, neutrality and perfectionism are seemingly antithetical to each other, there could be another way of looking at the relation between the two concepts. Neutrality itself can mean at least two different things; it could imply either that no preference be given to any reasonable idea of the good life or it could mean that equal preference be given to the plural reasonable conceptions of the good. As such, it could be said that an anti-perfectionist state is just one end of neutrality; the other end of the spectrum could imply equal help to all and yet not involve abandoning neutrality. Again, is it possible to reconcile the claims of the neutralists and perfectionists? Tentatively speaking, some kind of reconciliation seems possible on the lines of the argument developed by Charles Larmore. According to Larmore, in contrast to Rawls, political neutrality does not require the state to be neutral with respect to all conceptions of the good life but only with these actually disputed within society.[37] This does seem more flexible than Rawls' position which requires the state to be neutral with reference to all conceptions of the good. Even as state neutrality is necessary in conditions of value pluralism, Larmore reminds us that there is the need

[37] Charles Larmore, Patterns of Moral Complexity, Cambridge, Cambridge University Press, 1987, p. 67

for some decision to be made about what principles should govern basic liberties and distribution and we have to consider tradeoffs between these two positions.[38]

These are the various issues that come up when we talk of perfectionism and neutrality. It is beyond the scope of this paper to advance one position as more feasible or desirable than the other. The limited endeavour of this paper was to examine the two concepts and to see what, if any, are the philosophical justifications we may get for state intervention in different conceptions of the good. We notice that state intervention is justifiable on both neutralist and perfectionist grounds. Broadly speaking, neutrality justifies all such state intervention as is consistent with and necessary for the protection of the basic liberties of citizens. State intervention is justified insofar as reasons for such action do not emanate from controversial conceptions of the good. And, on the neutralist view, state action must help or hinder all persons and groups to an equal degree in their pursuit of the good. As such, neutrality is not co-terminus with non-intervention. Perfectionism, on the other hand, seems to be individuated by a commitment to use public power to foster the reasonable pluralism that obtains. Perfectionism does not imply that the state can do what it wills; rather, in promoting or eliminating social forms, the state should be guided by sound reasons for its action. Perfectionist action does not entail that some group's values or beliefs dominate the state's policy considerations to the detriment of others' values and beliefs. Perfectionism is committed to value-pluralism and as such the state may seek to intervene and endorse its support to practices that have popular support. But popular support by itself is inadequate; the promotion or elimination of practices must

[38] Ibid., p.68

also be grounded in good reasons. All in all, state intervention in ideas of the good life is justifiable with reasonable limits being imposed by both neutrality and perfectionism.

# Chapter II

## Justifying State Intervention: An Examination of the Supreme Court's Judgement in the Satsangi Case

This chapter has a detailed discussion of the Supreme Court's judgement in the Satsangi case which represents an instance of the Indian state's intervention in a conception of the good, more specifically, in promoting a certain conception of Hinduism.* In this dissertation we make the Satsangi case the vantage point for our examination of the question about whether state intervention in religion is contrary to the commitment to secularism (which is supposed to be tied to the strict separation of state and religion). Before addressing this question it is important to see if the Satsangi case, which we have selected as our vantage point, is an instance of a reasonably justifiable intervention by the state in a conception of the good (regardless of the good in question having been a religious one). Marc Galanter considers the Court's stance in this case as unjustifiable because, as he sees it, the Court here seems to be enforcing its own views of Hinduism. In this chapter, then, we seek to look at whether Galanter is right in rejecting the Court's stance as unjustifiable.

This essay has three sections. The first section has a detailed account of the Satsangi case. The main issue involved in all stages of the case centered around whether or not the Swaminarayan sect (a Vaishnavite sect whose followers are referred to as Satasangis) is part of Hindu religion. The Satsangis sought to prevent the entry of non-Satsangi Harijans into their temples by claiming to be a religious group distinct from and not connected with Hinduism. When the matter reached the apex Court, what had to be decided was whether it was right (for the Trial Court and the High Court) to have held that the Swaminarayan sect was not distinct and separate from Hinduism and that the temples of the sect were within the purview of the legal provisions that enabled Harijans to enter all

* We refer to this case as embodying 'state' intervention because the Supreme Court is the judicial aspect of the state.

Hindu places of worship. For Chief Justice Gajendragadkar a decision on this matter "inevitably" required a broad enquiry into the features of Hinduism. The Court outlined certain basic features of Hinduism and in the light of these evaluated the Swaminarayan sect's claims to distinctness. In its decision the Court found that the sect was, indeed, a part of Hinduism. The Court urged the Satsangis to avoid a complete misunderstanding of the teachings of Hindu religion and of the significance of the philosophical tenets of Swaminarayan himself, both of which opposed untouchability. The Court's stance is seen as interventionist because instead of conducting a technical and narrow enquiry into the scope of temple entry rights guaranteed by the constitution that could have settled the dispute in the Satsangi case, the Court sought to enumerate the broad features of Hinduism to evaluate Satsangi claims to distinctness. This involved the Court in endorsing and supporting a particular conception of Hinduism as constituting a better way of understanding the religion.

The second section looks at Galanter's evaluation of the Supreme Court's interventionist stance in the Satsangi case. Galanter's treatment of the issue of state intervention in religion gives us some interesting insights for a better understanding of secularism. For Galanter, secularism does not entail formal neutrality on the part of the state; rather, he claims that secularism involves a normative disposition towards religion on the part of the state. However, the primary aim of this section is to understand Galanter's views on the Court's intervention in the Satsangi case. Galanter views this intervention as highly suspect. According to him the Satsangi case reflects the tendency among the elite within the government to impose its own reformulation of Hinduism in the name of secularism and progress. He is wary about the bid by the official elite to legitimize governmentally sponsored changes in terms of official interpretations of Hinduism. It

seems, then, that Galanter it reacting against one kind of state intervention which has been classified as elitist intervention. But is intervention exhausted by the elitist variant ? Is elitism of the kind which Galanter opposes constitutive of all intervention by the state? This chapter contends that such is not the case. There is another, more defensible, variant of intervention which we may classify as perfectionist intervention. The third section of this chapter seeks, broadly, to justify the Court's interventionist stance in the Satsangi case by viewing it is an instance of perfectionist intervention.

The argument in the third section begins by appreciating the link between people's conceptions of the good life and the social forms that embed them. Social forms may generally be understood as forms of behaviour which are in fact widely practised in society. Given the significance of social forms perfectionism requires the state to foster or discourage them with a view to enhance human flourishing. It is further argued that Hindu religion, in many respects, constitutes a social form. So, the state may justifiably intervene to promote valuable elements or eliminate undesirable ones in this social form. It will be seen that, importantly, what justifies the Court's evaluation of a particular conception of Hinduism as being a desirable one is the point that the Court's promotion of a certain understanding of Hinduism was one that was, apart from being grounded in good reasons, popularly backed by many Hindus as well. There have, indeed, been many currents of thought within Hinduism which have abhorred untouchability and have sought to dislocate the connection between this practice and Hindu religion. As such, the Satsangi case may not be construed as an example of elitist intervention; rather, it is an instance of justifiable intervention.

I

This part of the essay pertains to the Satsangi case of 1966. The judgement of the Supreme Court was delivered by a bench that included, apart from Chief Justice P.B. Gajendragadkar, Justices K.N. Wanchoo, M. Hidayatullah, V. Ramaswami and P. Satyanarayana Raju. To understand the issues raised in the case in question it would be helpful to trace the course of events that eventually brought the matter to the Supreme Court of India.

In 1948 some followers of the Swaminarayan sect, known as Satsangis, apprehended the entry by non-Satsangi Harijans[1] into the (precincts of the) Satsangi temple of Ahmedabad. It was feared by these Satsangis (who shall henceforth be referred to as the appellants) that the non-Satsangi Harijans would enter the said temple in exercise of the legal rights granted to them by the provisions of the Bombay Harijan Temple Entry Act which came into force in November 1947. Accordingly every temple to which this Act applied was open to Harijans for worship in the same manner and to the same extent as to other Hindus in general. The appellants contended that the Satsangi temples in question were not 'temples' within the scope and meaning of the 1947 Act because, as perceived by them, the Swaminaryan sect represented a sect distinct and separate from and not connected with the Hindus and Hindu religion. The Act of 1947 was also alleged by the appellants to be outside the scope of the powers of the state of Bombay and they urged the Trial Court to issue the necessary injunctions to prevent non-Satsangi Harijans from entering and worshipping in the said temple.

[1] They were the respondents in this case.

The plaint was amended by the appellants in November 1950 following an amendment in 1948 of the Act of 1947 ( which shall from now on be referred to as the Act of 1947 as amended) as also the enforcement of the Constitution of India in January 1950. In the amended application it was reiterated that the Act of 1947 as amended was ultra vires the powers of the State of Bombay inasmuch as it was inconsistent with the Constitution and the fundamental rights guaranteed therein. Also, there was the renewed claim of the appellants that the Swaminarayan sect was an 'institution'[2] distinct and different from Hindu religion and hence the sect's temples were beyond the purview of the Act of 1947 as amended.

These claims of the appellants were disputed by the respondents who questioned the appellants right to represent the Satsangis of the Swaminarayan sect and stated that a number of Satsangis did, indeed, favour Harijans' entry into the sect's temples even though such Harijans may not have been followers of the Swaminarayan Sect. The respondent also averred that the suit temples were well within the meaning of the Act of 1947 as amended and that non-Satsangi Harijans had a legal right of entry and worship in these temples. Finally, the respondent challenged the appellant's claim that the Act of 1947 as amended was ultra vires.

The judgement by the Trial Court after the proceedings that ensued was pronounced on 24 September 1951. The decision upheld the respondent's view that the Act of 1947 as amended was, indeed, not ultra vires the legislative powers of the State of

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[2] All India Reporter, Supreme Court, 1966, p.1121 (henceforth referred to as AIR SC, 1966.)

Bombay and in fact did not infringe upon the fundamental rights of the appellants. Having considered all the oral and documentary evidence in support of the respective parties, the Trial Judge did not find the Swaminarayan Sect to be distinct from Hindu religion. Hence, it was established that the suit temples "were temples which were used as places of religious worship by the congregation of the Satsang which formed a section of the Hindu Community."[3]

However, even as these issues were decided in favour of the respondent, the Trial Judge concluded that it was still not established that the suit temples had been used by non-Satsangi Hindus as places of religious worship. Consequently in the result, the decree was passed in favour of the appellants who were given the injunctions they had pleaded for; non-Satsangi Harijans were, hence, debarred from entering the suit temple. This is what obtained at the Trial Court stage of the case. It should be noted that even as the appellants were granted the injunctions they had pleaded for, the Trial Court had declared that the Satsangi sect was to be construed as adhering to Hinduism, that it was not distinct from Hinduism as claimed by the appellants.

This brings us to the second stage, so to say, of the Satsangi case. The decision of the Trial Court was challenged by the respondent and the High Court proceeded to consider the merits of the case. It was averred by the respondent that the injunctions granted to the appellants could not be allowed based as they were on the Act of 1947 as amended which Act had, since, been repealed by the Central Untouchability Act of 1955. The High Court did not accept this contention on the ground that the injunctions were

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[3] Ibid.

granted (to the appellants) by the Trial Court not by drawing on the provisions of the Act of 1947 as amended but in respect of those rights which were not affected by the same Act.[4] It was felt that the objections raised by the respondent could be dealt with adequately by elucidating that the reliefs granted to the appellants by the Trial Court were not based on the provisions of the Act of 1947 as amended but instead, (on the Trial Court's view), on the ground that the provisions of the said Act did not apply to the temples in suit[5] and therefore, these reliefs could survive the passing of the Central Untouchability Act of 1955 which had repealed the Act of 1947 as amended.

But the High Court noticed that the respondent's arguments against the injunctions granted to the Satsangi appellants relied also on the Bombay Act of 1956 which had been passed after the Trial Court pronounced its judgement. This Act had been passed to obviate certain apparent difficulties in the Central Untouchability Act of 1955 which seemed to preserve certain denominational prerogatives by virtue of which only those untouchables were given the right to enter temples who were members of the Hindu sect or denomination in question.[6] Section 3 of the Act of 1956 emphasized that no section or class of Hindus could be prevented from worshipping in any place of public worship that is open to Hindus generally, or to any section or class thereof, this notwithstanding any custom, usage or law to the contrary. No section of Hindus could be disallowed from worshipping in the manner and to the extent that other Hindus entered or prayed in the place of worship.[7]

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[4] Bombay Law Reporter, Vol. LXI, 1958, p. 702 (henceforth BLR LXI, 1958.)
[5] AIR SC, 1966, p. 1122
[6] Marc Galanter, Law and Society in Modern India, Delhi, OUP, 1989, p.42
[7] AIR SC, 1966, p. 1126

Hence, even as that plea of the respondent which urged that the injunctions granted by the Trial Court were invalid in view of the provisions of the Central Untouchability Act of 1955 was rejected by the High Court, it took up the same issue (of having to determine whether or not the Satsangi temples were Hindu places of worship and hence of having to examine the broader claim of the Satsangis that they were not adherents of Hindu religion) although the field of dispute was altered. The court was now proceeding to gauge the validity of the Satsangi claims by probing into whether the sect's temples were within the purview of the Bombay Act of 1956. The Appellants had challenged the vires of Act of 1956 on the ground that it violated Articles 25 and 26 [8] of the constitution. The High Court dealt with the case in the following manner.

It sent the case back to the Trial Court for the latter to ascertain whether the Swaminarayan Sect temple at Ahmedabad and the temples subordinate thereto were Hindu religious institutions within the meaning of Article 25 (2) of the constitution.[9] In these remand proceedings it was not contested before the Trial Court that the suit temples were public religious institutions. The only contention related to whether these temples could be regarded as Hindu temples. The Trial Judge ( for the remand proceedings) reiterated what his predecessor had stated that the "congregation of the Satsang constituted a section of the Hindu Community"; regarding the nature of the suit temples, after carefully considering the evidence on the record, he declared that the sect's temples were "Hindu religious institutions within the meaning of Article 25 ( 2 ) ( b) of the constitution"[10].

[8] Articles 25 and 26 are enumerated in the appendix to this chapter.
[9] See appendix to this chapter for Article 25(2) (b).
[10] BLR LXI, 1958, p.703

These findings were strongly resisted by the appellants – they argued that the members belonging to the Swaminaryan Sampradaya "do not profess the Hindu religion and, therefore their temples are not Hindu temples".[11] They, however, conceded that should their temples be construed as within the scope of the provisions of the Act of 1956, they would not dispute the respondent's invalidation of the injunctions granted to them by the Trial Court in 1951. It was in this manner that the determination of the following issue became the seminal point for the High Court – the issue about whether the followers of the Swaminarayan sect could be said to profess Hindu religion and be regarded as Hindus or not.

The appellants pointed out that even as the Satsangis may be members of the Hindu Community for cultural and social purposes, they were not persons who professed the Hindu religion and hence could not form a sect or denomination of Hindu religion. They asserted that their system of faith and worship was essentially distinct from Hindu religion for at least four reasons. First, Swaminarayan considered himself as the Supreme God; second, he established temples for his own worship; third, the sect propagated the idea that worship of any God other than Swaminarayan would constitute a betrayal of faith; finally, there was a procedure of initiation, endorsed by Swaminarayan, which marked the assumption of a distinct and separate character of the Satsangi as a follower of the sect.

The High Court, in the course of the proceedings, pointed out to two earlier judgements in which the Swaminaryan Sect was seen as belonging to the Vallabhacharya sect of Vaishanavites. (The judgements referred to were those of Mr. Knight, District

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[11] Ibid.

Judge, dated June 1905 and of Justice N.J.Wadia dated October 1904.) Even as the Court accepted the appellant's plea that such descriptions had little value given that the point at hand was not at issue in these prior suits, the court did not ignore this description by stating that the sect had so far made no claim that it represented a religion distinct from Hinduism.[12] The Court noted the following facts too. One was that in the gazetteer of the Bombay Presidency, vol. IX, the (Swaminarayan) sect had been described as the most modern of the Vaishnav sects. The other point related to the census operations of 1951; the followers of the Sect were shown as Hindus – these census returns were based on slips filled by individuals and from information collected by the census personnel – it was quite clear that many of the Satsangis raised no objection to their being counted as a sect professing the Hindu religion.

Furthermore, the Court also gained evidence through books on Swaminarayan – some of these referred to how he brought non-Hindus within the fold of Hindu religion[13], while still others pointed out the essence of Swaminarayan's teachings, namely devotion to Sri Krishna as the Supreme Being.[14] Passages from the sect's scriptures affirmed that the teachings of the Sampradaya attempted at purifying Vaishnavism and did not intend constituting a separate religion.[15] As such, the High Court concluded that the Swaminarayan sect, its teachings and its principles do not fall beyond the pale of Hinduism (whose "essence", it was averred by the court, "is very elastic in its scope")[16] and hence it cannot be accepted that the sect and Hinduism are not connected.

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[12] Ibid., p. 705
[13] Ibid., p.706
[14] Ibid.
[15] Ibid.
[16] Ibid., p.707

Given this, the Satsangi temples were viewed as within the ambit of the Act of 1956 (even if these temples were used mainly by Satsangis). Consequently, the Court declared that the suit temples would be open to all Hindus generally including Harijans.

The alternative objection raised by the appellant was that the Act of 1956 violated the rights guaranteed by Article 25 of the constitution, pertaining to the equal right to profess, practice and propagate religion. But the High Court settled this question by affirming the primacy of Article 25(2) over Article 25 (1). It was stated by the court that the constitution itself empowered the state "to make any law providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus".[17] It was clarified by the High Court that religious freedom as envisaged in the constitution was not unrestricted and unlimited.

Altogether, then, the High Court reversed the decree passed by the Trial Court which granted injunction to the Satsangis (appellants). The Court had now made it amply clear that the Sect's temples were within the ambit of the Bombay Act of 1956 – that the sect was a Hindu one and consequently, it could not prevent any class or section of Hindus from entering its temples to the same extent as Hindus in general were allowed.

It was against this decision that the appellants brought the case to the Supreme Court of India. The Supreme Court lauded the consistent efforts of the Bombay legislature for not only dismantling the "citadel of orthodoxy" and encouraging and enabling the "progressive" elements in the Hindu community to combat the evil of untouchability but

[17] Ibid., p.710

also to provide for the removal of social disabilities for Hindus. The Court then proceeded to examine the issues brought to fore.

The appellants challenged the constitutional validity of the Bombay Act of 1956 on the grounds that it contravened their fundamental rights guaranteed by article 26.[18] They challenged the vires of the Act by stating that it allowed non-Satsangi Harijans to enter the innermost sanctuary of the Satsangi temple and perform that part of the worship which even the Satsangi Hindus were not permitted to. This, for the appellants, constituted an invasion of the traditional manner of performing worship of the idols: as such, it violated the right which every denomination enjoys, by virtue of Article 26, to manage its own affairs of religion. The Supreme Court did not find any substance in this contention because the Act of 1956 sought to allow all sections of Hindus to offer worship only in the same manner and to the same extent as other Hindus; the main object was to establish complete social equality between all sections of the Hindus in the matter of worship.[19] Besides, the Court rejected this argument of the appellants by stating that it was a new contention they were raising, and a misconstrued one at that.

Having rejected this claim of the appellants, the Court moved on the principal point in the appeal which pertained to whether the Bombay High Court was right in holding that the Swaminarayan sect was not a religion distinct and separate from Hinduism and that the temples belonging to the said sect do come within the ambit of the provisions of the Bombay Act of 1956.[20] For Chief Justice Gajendragadkar, deciding on the principal point

[18] See appendix for Article 26.
[19] AIR SC, 1966, p.1127
[20] The Supreme Court's judgment was delivered by Chief Justice P.B. Gajendragadkar and all other judges on the bench concurred with the same.

of the appeal "inevitably" required an enquiry into what may be the distinctive features of Hinduism. He stated that on the face of it, it did seem "somewhat inappropriate" for a judicial enquiry, in a court of law, to be involved in enquiring into the nature of Hinduism. Even though the appellants were claiming civil rights (to manage their temples according to their religious tenets), the decision on this seemingly secular question would require considerations at once social, sociological, historical, religious and philosophical.[21]

The judges proceeded in the following way; they first sought to outline the basic features, so to say, of Hinduism. Next, they examined the Satsangi precepts and in the light of these, evaluated the Swaminarayan sect's claims to distinctness from Hinduism. The Court began with the questions about who the Hindus were and what constituted the broad features of Hinduism. It drew for answers on these from the writings of Monier Williams and S. Radhakrishnan. Reference was also made to the Encyclopedia of Religion and Ethics (vol.VI ). As an answer the court cited the etymological and historical roots of the word Hindu; it was found that it referred to the occupants of the Indian side of the river Sindhu and that the Persians pronounced Sindhu as Hindu.

Moving on to the broad features of Hindu religion, the Court pointed to the difficulty encountered in attempting to do so on account of the sheer diversity of rituals, philosophical concepts, gods and goddesses that constitute it. Hinduism could at best be identified as a complex creed which had steadily absorbed the customs and ideas of the people it came into contact with.[22] While recognizing the implausibility of pinning the religion down to any one text or set of beliefs the court attempted to discern, what may be

[21] AIR SC, 1966, p.1128
[22] Ibid.

so called, the background features of Hinduism and these included the following. Drawing on Radhakrishnan, the Court stated that Hinduism is motivated by the quest for truth with the simultaneous realization that truth has many facets; there is a near constant preoccupation with the inter-relation between the individual and the universal soul.[23] The acceptance of the Vedas, the general belief in the 'great world rhythm' characterized by vast periods of creation, preservation and destruction which succeed each other and the striving towards liberation from the cycle of birth and death (although different ways of attaining liberation are acknowledged) are some of these common features according to the Court.

The Court emphasized that the development of Hindu religion and philosophy revealed numerous attempts at purging "elements of corruption and superstition" from Hindu thought and practices. Reference was made to the various sects that were formed in the process – Mahavira and Buddha initiated Jainism and Buddhism respectively, Basava founded the Lingayat sect, Guru Nanak inspired Sikhism.[24] It was also stated that the teachings of Ramakrishna and Vivekananda brought Hinduism into its most attractive, progressive and dynamic form. The salience of these reformers lay in their revolt against the dominance of rituals and the power of the priestly class – it pointed to the 'progressive' nature of Hinduism.[25]

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[23] Ibid., p. 1129

[24] Ibid., p. 1130

[25] According to the Court, the framers of the Indian Constitution were aware of the complex nature of Hinduism – that it consisted of a number of sects. The constitution interprets the term Hindu in a comprehensive and broad manner: hence, the explanation to Article 25 makes it clear that the reference to 'Hindu' would be construed as referring to Sikhs, Jains and Buddhists. So also, the Hindu Marriage Act 1955, the Hindu Adoption and Maintenance 1956, the Hindu Succession Act 1956 and the Hindu Minority and Guardianship Act 1956 all include Virashaivas, Lingayats, followers of the Brahmo, Prarthana or Arya Samaj, Buddhists, Sikhs and Jains as within the meaning of the term Hindu in the respective Acts.

Having broadly examined the nature of Hinduism the Court proceeded on to consider whether the theology and philosophy of Swaminarayan could establish that the sect begun by him constituted one that was separate from and not connected with Hinduism. The following were some of the precepts of the sect: Animal sacrifice was prohibited, also disallowed was intake of animal meat, intoxicating liquor, theft, promiscuous intercourse with the opposite sex, caste pollution and the company of atheists and heretics. There was a great deal of emphasis on the worship of Krishna – his name was to be repeated and the story of his life to be heard with reverence. Pilgrimage to Dwarka was important. Others to be worshipped included Vishnu, Shiva, Ganapati, Parvati and Surya. Shiva and Narayana were to be worshipped with equal honour as both have been declared by the Vedas to be forms of Brahma. Visishtadvaita (of Ramanuja) was the philosophical doctrine approved by Swaminarayan.

Having studied the details of the sect the Court did not find it difficult to conclude that the Satsangis were not distinct and separate from Hinduism. The propagation of belief in Krishna, the importance attached to the Vedas, the insistence on Bhakti as a means to salvation and the acceptance of Ramanuja's Visishtadvaita, all this placed Swaminarayan alongside other Hindu saints and reformers who by their teachings had contributed to make Hinduism "ever-alive, youthful and vigorous".[26]

The Court further dismissed some other arguments of the Satsangis according to which the latter claimed to be distinct from Hindus. One argument hinged on the assertion

[26] AIR SC, 1966, p. 1134

that it was only by initiation and not by birth that a person could become a Satsangi. Again, it was pointed by the appellants that the sect considered Swaminarayan as God and in the main temple, worship was offered to him. But the Court found no substance in these pleadings and averred that a study of the development of Hindu religion through the ages showed that there have been various reformers who have fought corrupt practices and established their own sects and tenets, and yet these have all broadly subscribed to Hinduism. Referring to the appellant's plea about Swaminarayan being worshipped in the sect's temples, Chief Justice Gajendragadkar found no inconsistency in this vis-à-vis those teachings of the Bhagavad Gita according to which every saint and reformer was born to restore the balance of religion and was viewed as divine; as such, it was not inconsistent with the Bhagavad Gita that Swaminarayan, primarily, should be worshipped in the Satsangi temples. On the point about the Satsangi sect's giving diksha to followers of other religions without proselytizing, the Court found such an attitude congruent with the basic Hindu philosophical theory that many roads lead to God. In not insisting upon conversions to their sect the Satsangis were in tandem with the Bhagavad Gita which approved and acknowledged that many religions led to God.

Before concluding, the Court noted that the whole issue was actually brought to Court out of the fear that the Harijans might enter Satsangi temples. This apprehension, the Court declared, was founded on 'superstition, ignorance and complete misunderstanding of the true teachings of Hindu religion and of the real significance of the tenets and philosophy of Swaminarayan himself'.[27] The enforcement of the constitution of India, especially Article 17 (the provision against untouchability) had resulted in a fundamental social

[27] Ibid., p.1135

change and invoking this provision itself was enough to undermine the Satsangi claims. But, even as the legal position on the issue was clear, the Court seemed to be wanting the members of the Satsangi sect to endorse the wrong in untouchability from their own specific religious point of view too.

Basically, what the Supreme Court did was the following. It outlined some of the (broad) features of Hinduism and found Satsangi philosophical precepts to be in consonance with Hinduism in general. Some of the Satsangi claims to distinctness were rejected by interpreting the Bhagvad Gita (a Hindu text) in a manner that made the same claims very much part of Hinduism. The judges emphasized also that there has been a tendency to reform within Hinduism – it was almost a feature of Hinduism. There have been moves within Hindu religion to counter retrograde practices (like untouchability, for instance). And given that the Swaminarayan sect was part of Hinduism, a more thorough understanding of the features of Hinduism, by the Satsangis, would make evident the point that their own philosophical precepts do not sanctify untouchability. By viewing themselves as part of the Hindu tradition, which, indeed, the Court established they were, the Satsangis would be able to recognize this point.

II

In this section we look at Marc Galanter's arguments[28] against the justifiability of the judicial intervention in defining the tenets of Hindu religion. Galanter examines and evaluates the Supreme court's handling of the aforementioned Satsangi case. Through a study of this particular case he has sought, more generally, to understand the interaction and relation between law ( the modern legal system ) as a normative enterprise and other

[28] Marc Galanter, Law and Society in Modern India, Delhi, Oxford University Press, 1989. (Henceforth referred to as Galanter, 1989.)

normative traditions ( specifically religion ) and the ramifications of this interaction for secularism and religion.

In the course of his evaluation of the Court's handling of the Satsangi case Galanter gives us some interesting insights on the kind of relation between state and religion that secularism envisages. As such, in keeping with the broader question of the compatibility between state intervention in religion and the commitment to secularism which this dissertation seeks to address, in this section we also look at these insights that Galanter provides on the kind of relation between state and religion that secularism entails. In fact, it is through a discussion of this that Galanter's position on the Court's treatment of the Satsangi case becomes clear as do some of the vulnerable points in his critique.

For Galanter, the idea of a secular state involves a normative view of religion. In espousing a normative view of religion the secular state may either recognize, endorse, encourage, show indifference or just curtail certain aspects of the religions in question. As such, Galanter does not view the regulation of religion by the state (the legal system) as a contravention of the norm of secularism and state neutrality. In fact he states very clearly that we must "avoid equating secularism with a formal standard of religious neutrality or impartiality on the part of the state".[29] According to Galanter, the constitution of India does not envisage the separation-of-powers model of secularism what with the explicit powers granted to the Indian state to transform religion (and this power is more extensive vis-à-vis Hinduism). The separation of powers model refers to that kind of situation wherein the law restricts itself from stepping into a "preordained" sphere of religion; this

[29] Ibid., p.249

model, to put it very roughly, does not envisage any superseding of the religious sphere by the state.

Given this, Galanter goes on to identify certain modes of secularism which would indicate the kinds of 'control', as it were, that the ( Indian ) secular state may exercise in its regulation of the interlocking and working of religion with the secular public order. For Galanter, the regulation may take two forms. The first is the mode of limitation which entails "the shaping of religion by promulgating public standards and by defining the field in which these secular public standards shall prevail, overruling conflicting assertions of religious authority".[30] The other second form of regulation of religion by the state obtains as the "mode of intervention". By this Galanter is referring to the state's efforts to reformulate religion by involving itself in reinterpreting the religious tradition from within.[31] We may try and illustrate these distinct modes with an example; on the limitation mode the prohibition of untouchability and the affirmation of temple entry powers for the Harijans (and this matter ostensibly involves an encounter between the law and Hinduism ) would be justified by appealing to, say, the basic rights of the Harijans and by expounding how the practice of untouchability involves the denial of the basic rights that human beings are entitled to. So, one might say, human dignity could be the public standard promulgated by the law and Hinduism is expected to converge its practices with the same. But the same issue of outlawing untouchability can be handled differently on the interventionist mode of secularism. In this case, the legal discourse would not only highlight the violation of basic human rights but also involve itself in giving reasons from

[30] Ibid., p. 250
[31] Ibid.

within the resources and tenets of Hinduism itself to justify the wrongness of untouchability.

Galanter points out that the Indian constitution has allowed a significant part of Hindu tradition to be regulated by the state, irrespective of Hindu customs and usage; it is the task of the courts to delineate these parts of the religion that need to be transformed and replaced by secular principles. And, for Galanter, all this is (justifiably) possible only on the mode of limitation, not intervention . His main contention is that a reformist elite within the judiciary is trying to impose its own reformulation of Hinduism in the name of secularism and progress.[32] He is suspicious that the Supreme Court is becoming a forum for enunciating "official interpretations of Hinduism"[33] and that governmentally sponsored changes are sought to be legitimized in terms of Hindu doctrine. Galanter perceives this kind of judicial intervention to be a manifestation of the distress which the educated reformist elite experiences when it is faced with the "sprawling, disjointed, unorganized character of Hinduism".[34] On his view, this "diffuse", "fragmented" nature of Hinduism is viewed by the elite as an impediment in mobilizing the masses for reform and development and all this is viewed by the judges as lending legitimacy to judicial activism – "in the absence of credible spokesmen, only the judges can speak to and for Hinduism as a whole".[35]

Galanter then poses a series of (rather rhetorical) questions including the one about whether the constitution has given the court the mandate to participate actively in the

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[32] Ibid., p. 249
[33] Ibid., p. 252
[34] Ibid.
[35] Ibid.

internal reinterpretation of Hinduism, to interpret Hinduism so as to accommodate governmentally sponsored change and to legitimize the same in terms of Hindu doctrine.[36] But, is Galanter right in pointing out the unjustifiability of such intervention on the part of the court as he has pointed out to us wherein the court seems to be seeking to impose its own reformulation of Hinduism ? Does the rightness of Galanter's argument against such intervention by the court imply that no intervention by the government ( or state ) is ever justifiable? What kind of intervention is Galanter suspicious of ? And is this the only possible interpretation of the intervention-mode of secularism?

At this point, it would be especially helpful for us to return to Galanter's formulation of the interventionist mode of secularism. Galanter seems to be referring to two somewhat different kinds of intervention; the variant of intervention (by the Supreme Court ) of which he is disapproving is not altogether similar to the 'ideal type', so to say, of the mode of intervention that he propounds in the first place. An elaboration of this might illuminate the point.

In enunciating the interventionist model of secularism as an ideal type, Galanter views it as the reformulation of religion by drawing from the resources of that particular religion itself. This requires, apart from a high external superiority of legal norms, sound knowledge and a high degree of competence in the exposition of the religious norms on the part of the legal specialists. Next, Galanter moves on to an evaluation of the Supreme Court's application of the interventionist mode of secularism. He questions the legitimacy of the court's interventionist stance with reference to its involvement in the internal

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[36] Ibid.

reinterpretation of Hinduism. Galanter is suspicious of the educated reformist elite who seem to have assumed the role of credible spokespersons who can speak to and for Hinduism as a whole.[37] "In their eyes", the unenlightened have to be taught; given the sprawling nature of Hinduism and the parochialism of its spokespersons, there are no religious leaders who have the mandate to define it for the entire religious community. According to Galanter, on the elite's view such a state of affairs legitimizes intervention by it in defining what the true tenets of a religion may be.

In other words, Galanter is extremely critical of that intervention where a reformist elite within the judiciary (and the government more generally) is trying to impose its own reformulation of religion in the name of secularism and progress. The crucial phrase in the previous sentence is 'its own reformulation' which refers to the modernized elite's own reformulation of religion. It is quite evident, then, that Galanter is reacting against, what could well be classified as, elitist intervention by the state in matters of religion. We may classify it as elitist intervention because it depicts the modernized educated reformist elite's zeal to don the cloak of spokesperson for Hindu religion resulting in the imposition, on Galanter's view, of religious understandings that the masses find alien.[38] (The classification as elitist is purely for descriptive purposes.) Besides, Galanter believes that the elite finds itself in a position to interpret religion the way it wants to on account of the lack of unity and organization in "traditional society". Further, this elite is not keen to reform and organize Hinduism in order that the latter might have a spokesman for itself as it is but so that it might be more readily mobilized to be what they (the elite) think it ought to be. Galanter is also unhappy about the arbitrary nature of the reformist elite in selecting

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[37] Ibid.

[38] Ibid., p.254

those elements of religion which are in tandem with its own ideas on progress and rejecting others. Galanter is, hence, critical of such elitist intervention.

Here is where the need for clarification becomes crucial. Exactly what does Galanter mean by intervention? Is elitism of the kind that Galanter is critical of constitutive of the mode of intervention? It should be noted that there is almost nothing in Galanter's 'ideal type' of state intervention from which we could infer that the only kind of intervention possible is that of the elitist variety. The ideal type expounded by Galanter points basically to the involvement of the legal system in reforming a religion from within – also stressed is the requirement that those involved in this reformulation be sufficiently proficient in providing an authoritative exposition of religious norms. There is, really, no mention of the government's seeking to sponsor changes which would be legitimized in terms of religious doctrine – indeed, it is not at all evident that the ideal type of the interventionist mode is hinged upon a modernized elite's inflicting its own views. Clearly, then, it can be averred that what Galanter is criticizing is only one variant of the mode of intervention; perhaps there are other, better, justifiable versions of a state's intervention in matters of religion. And the point of this essay is to highlight that there is at least one other variant of the mode of intervention – this we may classify as perfectionist intervention; what the alternate variant implies is what the third section of the paper is mainly devoted to.

It is important to clear this issue because if intervention means only the elitist variant, then all kinds of intervention will be deemed unjustifiable (and unconstitutional). How the state intervenes and why it intervenes, only these can justify or otherwise a

state's interference in religion. We have to avoid making blanket statements against the justifiability of state intervention in any and every context. We may now move on to examining the alternative way of interpreting the mode of intervention and, simultaneously, look at whether this alternate conception would enable, broadly, a justification of the Supreme Court's intervention as manifest in the Satsangi case.

## III

The attempt in this section is to outline perfectionist intervention[39] as also to look into whether the judicial intervention in the Satsangi case is justifiable on this perfectionist variant. So, what is perfectionist intervention? And what is it that justifies such intervention?

On the perfectionist view, "it is the goal of all political action to enable individuals to pursue valid conceptions of the good and to discourage evil or empty ones".[40] A person's well-being is tied to her conception of the good life. And these conceptions draw for the most part from ideas and values embodied in, what Raz calls, social forms. Hence, it is the duty of the state to enable the pursuit of valuable ways of life and curtail repugnant ones. This task of judging between ideas of the good and discouraging undesirable ones necessarily involves the state in an interventionist role; it requires the state to intervene in the social form in question. The following discussion might elucidate all this a little.

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[39] This outline extends and draws, almost entirely, from the arguments of Joseph Raz in The Morality of Freedom, Oxford, Clarendon Press, 1986 as also his Ethics in the Public Domain, Oxford, Clarendon Press 1994. (Henceforth these books will be referred to as Raz 1986 and Raz 1994 respectively.)

[40] Raz 1986, p.133

To begin with, we may try to understand what is meant by the term social form. It refers to "forms of behaviour which are in fact widely practiced in society".[41] It consists of shared beliefs, folklore, high culture, collectively shared metaphors and imagination and so on.[42] It refers to those social matrices within which human persons almost always find themselves, within the context of which people commit themselves to leading their lives in a particular way. Social forms hinge upon shared practices and understanding – they provide the arena within which human beings pursue well-being. And these forms (practices, beliefs and understanding) are social – they cannot be sustained singly by any one individual – they embody collective goods. In the category of social forms we may include distinct social / religious groups and their culture (their shared world of meanings and practices) as also other social institutions like marriage and parenthood.

A social form need not be static and fixed-it is constituted by collective practices, by human practices. And it is not even as though these social forms consist of only one homogeneous kind of practices – in fact, a social form may well recognize the existence of variations. These variations centre around that set of core values or the broader 'spirit' of the social form which distinguishes it from other forms in society. Again, there may be various practices within a social form some of which may embody conflicting values. Further, even as a social form expresses certain values, the same does not preclude the simultaneous existence of certain morally repugnant practices.

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[41] Ibid., p.308

[42] Ibid., p.311

Having tried to understand what social forms generally refer to, we may consider the question about their significance. What is it that is so special about them? In large measure, their significance derives from the context they provide for human beings to lead their lives meaningfully, for human well-being. As human beings we are purposive creatures; a lot of our actions are laden with reasons. A human person is often involved in asking the following questions – "What should I do? Is this the best thing to do? How should I do it?" We do, broadly speaking, order the way we lead our lives in accordance with those values that we find most attractive ( and the assumption is that the values in question are morally sound ). Our goals are also constituted by these values and a lot many of these are embedded in social forms. It is in this way that social forms are seminal to human flourishing – they are the conditions that enable us to live well. And it is the business of the state to ensure that these conditions are always available – to this end the state is justified in intervening to endorse certain ways of life and eliminate other repugnant ones. In eliminating the repugnant ones the state is often involved in interfering with the practices of a social form, of say a particular religion or culture.

The normative justifications for state intervention could be seen more clearly in what follows. It is the commitment to a substantive conception of autonomy that propels the case for state perfectionism. The 'substantive conception of autonomy' refers not merely to the freedom to choose between various ideas of the good. What is of importance in addition to the freedom to choose is the point that the options to be chosen be of value too. It is only with the existence of valuable options that autonomy becomes meaningful. Hence, state intervention is justified to the extent that it is compatible with and for the furtherance of (this understanding of) autonomy.

Now, how does this discussion on perfectionist political action and social forms fit into our argument, into our critique of Galanter and the attempt to outline a more justifiable variant of state intervention in religion? The following discussion should be some kind of answer to the above question.

In many respects Hindu religion constitutes a social form. It consists of beliefs, practices and forms of behaviour that are widely recognized and practiced in society. Hinduism, as S. Radhakrishnan puts it, is an inheritance of thought and aspiration, living and moving with the movement of life itself; an inheritance to which every race in India has made its distinct and specific contribution. Its culture has a certain unity, though on examination it dissolves into a variety of shades and colours.[43] Its many sects embody different values in their respective beliefs and practices and these provide the core options for numerous people's lives. By providing such a characterization there is no attempt to homogenize the whole of Hinduism – one is mindful of the diversity of beliefs and practices within the religion. All the same, it is a religious form distinct from say Islam or Christianity.

Even as Hinduism may embody a number of (morally) desirable values, it is simultaneously beset with, to use a strong term, repugnant practices too like untouchability for instance. And, as in most other vibrant social forms, there have been attempts to grapple with this phenomenon of humiliation of sections of people based on caste separatism. Protests against the excessive formalism in the caste system were voiced by

[43] S. Radhakrishnan, Religion and Society, Harper Collins, p.102

the followers of Jainism and Buddhism who emphasized the ideal of human brotherhood. Ramananda, Chaitanya, Kabir, Nanak and Namdev all preached in the same vein. In more recent times, Ram Mohan Roy, Dayanand Saraswati and Gandhi, among others, have contributed to the 'silent revolution'.[44] The point that is sought to be made here is that there have been somewhat consistent attempts at reforming Hinduism – there have been vigorous reformers who have strived to remove the blot of untouchability from Hinduism.

Government intervention (in our case, more specifically, judicial intervention) in this social form through participation in endorsing the need to remove the 'blot' of untouchability from Hinduism has to be evaluated in the context of the already existing movement within society for the reformulation of the religion vis-à-vis the practice of untouchability. Intervention by the state, here, is in order to eradicate the undesirable tendencies within the social form – it is to purge the Hindu conception of the good of the ills of untouchability. The state is here participating in reformulating a particular notion of the good by giving reasons that draw on the resources of the very good in question. So, the judges seek to remove untouchability by pointing out to its impropriety (even) within the Hindu scheme of things. And their views on the subject are pretty much in consonance with those held by the people at large. Perfectionist political action has been taken in support of a 'cause' that enjoys popular support and backing also.

Indeed, for Raz, perfectionist measures may be taken in support of institutions that enjoy a measure of social consensus.[45] It does seem, then, that perfectionist intervention is an endorsal by the state of something that people are already demanding and are at least

[44] Ibid., p.133
[45] Raz 1986, p.161

familiar with. In other words, perfectionism does not imply that the state is forcing some altogether unfamiliar way of life on an unsuspecting population; the state is not involved in the business of evaluation of the diverse conceptions of the good life in a social vacuum. The state is only endorsing that which obtains in society. And to clarify further, popular backing by itself is not sufficient – what is being endorsed should also be justifiable with good reasons, independent of the fact that it enjoys people's support.

One last point needs to be stated to prevent the discussion on perfectionist political action from being altogether incomplete. Perfectionist political action does not entail that the state pursue an ideal which it considers to be valuable.[46] What needs careful attention is the fact that in pursing or eliminating an option, the same is being done because that option is either valuable or valueless. In fostering an idea of the good the state has to be goaded on by good reasons that justify the value of the good in question; similarly, in eliminating certain social forms or some elements of a social form, what is being removed has to be proved as morally unjustifiable too. This caveat is in order to elucidate the point that a perfectionist state cannot intervene unreasonably – it cannot arbitrarily force certain ways of life out of existence. The state is undoubtedly engaged, here, in the evaluation of different conceptions of the good; nevertheless, a perfectionist state's policies have to be backed by sound reasons.

To sum up, we see that state intervention in conceptions of the good is sometimes justifiable on perfectionist grounds. Neutrality vis-a-vis the good may not be the best stance for a liberal-democratic state to adopt. Indeed, the state should engage itself in the

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[46] Ibid., p.412

business of evaluating different conceptions of the good so as to enhance citizens' well being. All this has, to some extent, answered the question about the justifiability of state intervention in a conception of the good ; we saw this answer from the vantage point of the Court's intervention in the Satsangi case. This leaves us with having to, next, answer the question about the compatibility of such perfectionist intervention in, ostensibly so, a religious matter with the broader commitment to secularism.

## APPENDIX

Article 25 *Freedom of conscience and free profession, practice and propagation of religion.* (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

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

Explanation I. - The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II. - In sub-clause (b) of clause (2), the reference to Hindu shall be construed as including a reference to persons professing the Sikh, Jain, or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Article 26 *Freedom to manage religious affairs.* - Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

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

(d) to administer such property in accordance with law.

# Chapter III

## Smith's Theory of Secularism: Evaluating the Strict Separation Thesis

This chapter seeks to understand Smith's arguments for the non-justifiability of state intervention in religious affairs through a detailed examination of Smith's theory of secularism. We will consider whether or not Smith's conception of secularism represents an adequate interpretation of what the principle of separation between state and religion implies within the context of secularism. This is important because if upon examination we find Smith's theorization on the above to be inadequate, then, we need not take seriously his claim about state intervention in religion as always inconsistent with secularism. We need not, then, seek to justify the Court's intervention in the Satsangi case in accordance with Smith's theory of secularism which insists on the strict separation thesis. We may note that in doing all this we are now engaged in the issue of whether state intervention in religious matters is justifiable vis-a-vis the commitment to secularism.

This chapter has two sections. The first section consists of a somewhat descriptive exegesis of Smith's theory of secularism alongside which we look at his evaluation of the secular practice of the Indian state. Smith studies the secular state in India by first looking at the constitutional framework itself (which he approaches via the three principles of secularism as put forth by him) and then by a perusal of the actual policies of the Indian state. In this section we also concentrate on Smith's treatment of the Indian state's intervention in religion as manifest in the enforcement of the temple-entry laws (to enable Harijans to enter Hindu places of worship which is an issue at stake even in the Satsangi case). In the course of all this we detect that Smith is guided by an extremely stringent notion of separation between state and religion. He is dismissive of the Indian state's participation in the reform of Hindu religious institutions because he views it as violating the principle of separation.

The second section attempts an evaluation of Smith's theory of secularism. The argument here draws a great deal from Marc Galanter's assessment of Smith's views on secularism. The evaluation points to one basic problem in Smith's theory which is that of the excessive insistence on strict separation between state and religion. It will be evident that the inadequate recognition by Smith of secularism's involving a normative disposition vis-a-vis religion as also of the subsequent (somewhat inevitable) interaction between state and religion is the Achilles heel of his theory. Insistence on severe exclusion of religion from the affairs of state disables Smith's theory from being able to adequately appreciate the various patterns of separation that have evolved in different places in response to the particular needs of different societies. This lacuna in Smith's conception requires us to look for an alternative formulation of secularism which would enable us to better assess or justify the secular practice of different states including, particularly for us, that of the Indian state.

## I

In conceptualizing the secular state D.E. Smith[1] identifies freedom of religion, citizenship and the separation of state and religion as illuminative of the three distinct but interrelated sets of relationship involving the state, religion and the individual; elaborating each of these is crucial to understanding Smith's characterization of a secular state.

Freedom of religion highlights the relationship between the individual and religion in a secular state.[2] Smith tells us that in using the term religion he is referring to organized

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[1] Donald Eugene Smith, India as a Secular State, Princeton, Princeton University Press, 1963. (Henceforth referred to as Smith 1963.)
[2] Ibid., pp 4-5

religious groups and also to religious beliefs and practices which may or may not be associated with such groups. Freedom of religion would imply that the state may not dictate religious beliefs to an individual nor compel her to profess any particular religion. Smith extends this freedom for the individual to its "collective aspect" as well by which he means that two or more individuals can freely associate for religious purposes and form organizations to further the same. In a secular state freedom of association for religious purposes is to be safeguarded as carefully as the individual's freedom of conscience. The only exception to this freedom of religion involving the absence of constraints by the state is that situation where the state can legitimately regulate the manifestation of religion in the interest of public health, safety or morals. Hence, for Smith, the prohibition of human sacrifices would be upheld even though a religion might require them.

Smith notes that the Indian constitution guarantees freedom of religion in both the individual and corporate sense. Article 25 ( 1 ) equally entitles all persons to freedom of conscience and the right to freely profess, practice and propagate religion, all this being subject to public order, morality and health as also to the other provisions of Part III of the constitution. The freedom of religion assured by Article 25 (1) is limited by Article 25 (2) which, according to Smith, reflects the peculiar needs of Indian society.[3] It is by virtue of the provisions of Article 25(2) that laws have been enacted to provide for the reform of Hindu temples. Further, it has also enabled the modification of Hindu personal law; the opening of Hindu temples to all classes and sections of (Hindu) people is yet another offshoot of this clause.

[3] Ibid., p.107

Smith then points to Article 26 which ensures collective freedom of religion. Even though this clause grants to religious denominations the right to manage their own affairs in matters of religion, to acquire property and administer it in accordance with the law, Smith points out that the internal autonomy granted to religious denominations presupposes a well organized ecclesiastical set-up which Hinduism and Islam do not possess (in contrast to, on Smith's view, the Christian churches in the West ).[4] Hence, the limitations to denominational autonomy in India should be borne in mind. Smith, disparagingly, also draws our attention to the conflict between the internal autonomy of a religious denomination and the interventionist role of the state in initiating social reform. He bemoans excessive state interference in religious affairs which according to him compromises denominational rights to freedom of religion. Smith illustrates this point with the help of certain judicial pronouncements that decided the issues in question in a manner that privileged state intervention in the affairs of the denomination at the cost of the latter's right to manage its own matters.[5]

Returning now to Smith's concept of the secular state, the second relationship is that between the state and the individual. The secular state views the individual as a citizen; the definition of the terms of citizenship and the attendant rights and duties accruing to the individual thereby are not to be mediated by the individual's belonging to any religious group or by a person's religious views. Discrimination by the state on grounds of religion runs directly counter to the conception of the secular state.[6] In his discussion of citizenship as enshrined in the Indian constitution,[7] he points to certain discrepancies vis-à-vis the

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[4] Ibid., p.109

[5] Ibid., pp110 – 112 The decisions referred to are (i) A.I.R. 1953 Bombay (Taher Saifuddin v. Tyebbhai Moosaji) and (ii) A.I.R. 1958 S.C. ( Venkataramana Devaru. v. State of Mysore )

[6] Ibid., p.5

[7] Ibid., pp 115-125

requirements of a secular state. As such, Smith considers the whole system of separate Hindu and Muslim personal law as contrary to equal citizenship as guaranteed by Article 15(1). Coupled with this is the (constitutional) contradiction of the principle of non-discrimination by the state that occurs as a consequence of the special provisions – protective discrimination – for the scheduled castes, scheduled tribes and other backward classes. Smith views these provisions with suspicion because he subscribes to the view that equality is incompatible with meting out differential treatment to citizens. Smith is willing to overlook this lapse by explaining that these provisions might have been envisaged by the framers of constitution to be measures of a temporary nature; in due course, he hopes, there would be "more of equality and fewer special provisions in the state's dealings with its citizens".[8]

We now turn to Smith's examination of the third, and in some sense the most important, component of the secular state; the separation of state and religion. On Smith's view, the separation of state and religion is the principle which preserves the integrity of the other two relationships, freedom of religion and citizenship. "Once the principle of separation of state and religion is abandoned, the way is open for state interference in the individual's religious liberty and for state discrimination against him if he happens to dissent from the official creed".[9] It is in this sense that this third component is perhaps the most important of the three principles that define the secular state. According to Smith, religion and the state function in "two basically different areas of human activity, each with its own objectives and methods. It is not the function of the state to promote,

[8] Ibid., p.125
[9] Ibid.

regulate, direct or otherwise interfere in religion".[10] Again, he points out that just as the state may not tread itself in the sphere of religion so also political power is to be outside the scope of the legitimate aims of religion. The democratic state derives its authority from a secular source and is not subordinate to ecclesiastical power.

So, for Smith, separation of state and religion is the constitutional arrangement that ensures the above. On this view, then, the historical patterns of state-churches stand rejected – these were characterized by the existence of an ecclesiastical department within the government, by the requirement that the head of the state be an adherent of the official religion as also by the practice of using public funds to pay the clergy their salaries. Also to be rejected through the separation of state and religion are the "legal enforcement of religious conformity and the distortion of the rights of citizenship by religious tests".[11] The separation of religion and state is to enable each to develop without interference from the other. Thus, on the one hand religious groups are free to manage their own affairs and activities and may function as autonomous entities and on the other, the state is free to "devote itself to the temporal concerns", it is free from having to financially support an official religion and having to include religious questions as also from the political meddling by vested religious interests.[12]

Smith avers that a thorough-going separation of state and religion does not exist in India.[13] What does this "thorough-going separation" imply ? Something has already been said on this issue, we may now elaborate the same a little more. In his enunciation of the

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[10] Ibid., p.6
[11] Ibid.
[12] Ibid., p.7
[13] Ibid., p.126

separation of state and religion Smith seems to be endorsing the United States version of separation – the Jeffersonian 'wall of separation between church and state' according to which the state cannot set up a church, it cannot pass laws which aid one religion, aid all religions or prefer one religion over another. No tax can be levied to support any religious activities or institutions, whatever they may be called or whatever forms they may adopt to teach or practice religion.[14] It is a conception of two separate and mutually non-interfering organizations, each operating within its own sphere of activity.

And all this, Smith says does not obtain in India; indeed, the Indian constitution itself sanctions state interference in religious matters. Hence, the state has intervened in matters relating to the financial administration of temples and mutts, to the admission of Harijans into Hindu temples, to the practice of excommunication from religious communities, to the modification of religious personal laws etc. Smith attributes state intervention as a corollary of the organizational deficiency of Hinduism given which the tremendous urge for effective social and religious reform which characterizes present day India can only be satisfied by state action.[15] In continuation of the comparison between India and the United States on the issue of the secular state Smith notes again that the courts in India have departed from the firmly established principle in the United States according to which the courts will not decide controversies over matters of religious doctrine or ritual.[16] The Indian judiciary has had to frequently deal with scope of freedom of religion guaranteed in Articles 25 and 26. For instance, Smith points out, the courts have had to determine the correct interpretation of scriptures which forbid the entry of

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[14] Ibid., pp 125-126
[15] Ibid., p.126
[16] Ibid.

untouchables in temples, the doctrinal basis for the practice of polygamy in Hinduism, and similar matters. Altogether, it is Smith's contention that by intervening in religious issues and by virtue of the judiciary's involvement in matters religious the Indian state has strayed from the principle of separation of state and religion which is seminal to (on Smith's view) maintaining a secular state.

Smith assesses the constitutional basis of secularism in India in the following manner. According to Smith "if one evaluates the constitution solely in terms of abstract principles, there will indeed be a lot to criticize. This is especially true if one compares the constitutional basis for secularism in India with that in the United States. However, to do this is to ignore the dynamics of the Indian situation. All aspects of contemporary Indian life, political, economic, social and religious, are in a process of rapid change and the Indian constitution is rightly geared to these changes".[17] What do these lines imply? It does seem from the above statements that an evaluation of Indian secularism in terms of the abstract legalistic principles espoused by the constitution may lead us in the direction of valid criticism of the same. In other words, viewed in abstraction from the dynamics of the Indian situation, the legalistic principles ensured in the Indian constitution are conceptually inadequate. And with reference to what, one may ask, are these inadequate? Presumably, on Smith's view, the constitutional provisions are anomalous vis-à-vis the strict separation model of secularism which is allegedly the yardstick with which to evaluate the secular state in India.

[17] Ibid.,p133

Given this kind of theoretical disposition regarding the secular state, how does Smith view the Indian state's role as a religious reformer? Smith distinguishes between the basic objective and the by-product of state action. According to Smith, religious reform should never be the "motive" behind state regulation.[18] "Valid reforms of religion" can only be the "incidental" results of the state's bid to cope with or eliminate morally repugnant or physically injurious religious practices. Hence, Smith says, state legislation for the prohibition of the dedication of Hindu women as devadasis aimed at protecting the welfare of women; the religious reform effected by the legislation is to be viewed as incidental, as a by-product. But the Indian constitution legitimates religious reform as a motivation for state legislation – it grants to the state sweeping powers to regulate and reform religious and social institutions. This is the anomaly. It is in this context that Smith evaluates temple entry laws – according to him such legislation will either violate religious liberty or promote the interests of religion. Even as temple entry laws are viewed simply as measures of social reform Smith wants us not to overlook the "predominant religious aspect in this area of reform".[19] He concludes by saying that "few would dispute the fact that reform is needed, but the conception of secularism imposes certain limitation on the functions of the state. Not everything that needs to be done should be done by the state".[20]

Clearly, Smith views the state's intervention in the area of religious reform as unjustifiable what with the breach of the principle of separation of state and religion. The reform of Hinduism by the secular state raises acute problems – ordinarily religious reforms should not be carried out by the secular state simply because religious matters are not

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[18] Ibid., p.233
[19] Ibid., p.243
[20] Ibid.

within its proper area of concern. Religious reform per se is not a function of the secular state.[21] Even as he is able to appreciate humanitarian considerations and concern for social welfare inherent in the temple-entry laws, he finds enacting such laws contrary to the functions of a secular state. For Smith, reforms of religion are a means of promoting religion – reforms which eliminate serious defects will enhance the prestige of a religion vis-à-vis other religions. In contrast to this the normal course should be for a religious body to initiate internal reforms and "carry them out on its own authority.[22]

## II

Galanter is critical of Smith's assessment of the secular practice of the Indian state. Galanter attributes the inadequacy of Smith's assessment to certain lacunae in the latter's theory of the secular state. He examines Smith's ruling according to which the Indian experiment with secularism is wide off the mark because, among other things,[23] the Indian state has interfered with and sought to reform Hinduism. Galanter points to us that Smith's evaluation of secularism in India is motivated by the "theoretical undergirding of much secular theory in the West" and that this has led to certain paradoxes that point to the need for a reformulation of the notion of secularism if it is to serve as a useful descriptive category or as an ideal of more than parochial appeal".[24]

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[21] Ibid., p.230
[22] Ibid.
[23] These other things refer to the Indian state's recognition of separate personal laws, the Indian government's continuation of the system of grants-in-aid to schools controlled by religious bodies, state support for culture which often involves support of Hindu religious practices. In Smith's opinion, these are all instances of the Indian state's departure from the principles of secularism.
[24] Marc Galanter, "Secularism, East and West", in Rajeev Bhargava (ed.) Secularism and its Critics, Delhi, Oxford University Press, 1998, p. 236

Indeed, Smith is guided in his assessment of the temple entry laws by an exceedingly stringent notion of secularism, one that hinges upon a very strict separation of state and religion. He is unwilling to see any pattern of interaction between a secular state and religion; anything which deviates from the separation principle is seen by Smith as ostensibly non-secular. The question that arises next is about the conceptual soundness of such a position as Smith's. Why does Smith insist on such strict separation? How do we evaluate Smith's claims? Is secularism tied necessarily to such a conception of separation? What kind of separation between state and religion is to be envisaged by any reasonable theory of secularism?

An examination of Smith's theory finds it wanting on at least two counts. Firstly, we notice certain internal inconsistencies in Smith's account. These are problems that obtain even if one accepts the strict separation thesis. The second criticizm is more basic; it rejects the strict separation thesis as allegedly the sole yardstick of a truly secular state. This criticizm is termed basic because it involves the repudiation of Smith's most important principle of secularism. Let us now turn to an elaboration of this. We will begin by looking at the internal inconsistencies in Smith's theory.

What is the role of separation in Smith's scheme of affairs? It is, as Galanter points out, presumably to promote freedom of religion.[25] But, according to Galanter, there is a certain paradox here which is that in order to enable the separation of state and religion, the government has to transform Indian religions by stripping them of their socio-legal side and

[25] Ibid., p.258

reducing them to a system of private faith and worship.[26] What this aforementioned paradox means and how it obtains requires some explanation.

For Smith, one of the hindrances to the realization of secularism in India is the existence of separate personal laws [27] and he advocates that these be replaced by a uniform civil code. The introduction of a common civil code will result in a revolutionary reform of Hinduism and Islam "for it will strip these two great faiths of the distinctive socio-legal institutions which have made them total ways of life".[28] Smith says that it is paradoxical for a secular state to have to confirm its secularity by involving itself in the "most basic possible" reform of religions thereby reducing two religions to their core of private faith, worship and practice. And yet Smith's theory of secularism requires such intervention because a situation marked by separate laws governing people belonging to separate religions is violative of the second principle of Smith's theory of secularism namely, equal citizenship. Smith's conception of equality is one that does not sit well with separate personal laws because, on his view, the same involves differential treatment which in turn obstructs the creation of a common citizenship. Indeed, for Smith, the conception of the secular state presupposes a uniform civil code.[29] The paradox is that in order to bring about the desired state of affairs, of everyone being governed by only one civil code, the state has to reform Hinduism and Islam and this would tantamount to contravening that important component of Smith's theory of secularism which underlines the need for strict separation between state and religion.

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[26] Ibid.
[27] Smith 1963, p.497
[28] Ibid., p.234
[29] Ibid., p.498

Further, Smith's notion of secularism allows for only a certain type of freedom of religion, one that is akin to divesting religion of its public character which in Smith's own words amounts to reducing traditional religion to a matter of private belief and worship.[30] And this, Galanter remarks, does not sit well with Smith's assertion about a secular state's grounding being irreducible to any creed or dogma. This is so because even as Smith tries to show that secularism does not have a creed of its own he (perhaps unwittingly) already has a normative view of the kind of attitude a secular state will have towards religions – one according to which religion is to be viewed always as essentially private and separate from public life. What Galanter is trying to say is that Smith's theory is not altogether innocent of every 'creed' so to say.

This last point regarding the problems internal to Smith's theory leads us to the second and more basic critique of the same. In discerning the bias (towards privatized religion) in Smith's position Galanter does not purport to claim that it is unjustified for a secular state to have any bias for or against a certain kind of religion. Rather, for Galanter, inherent in the very ideal of secularism is a normative view of religion (and it should not hence be presumed that by having a normative view of religion secularism itself is purporting to become a new religion). Galanter rejects the idea that secularism can be entirely neutral among religions when it undertakes to confine them to their proper sphere.[31] According to Galanter we cannot equate secularism with a formal standard of neutrality or impartiality on the part of the state. A secular state will recognize, promote or discourage different aspects of religion – this will involve some interaction between the

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[30] Ibid., p.234

[31] Marc Galanter, "Secularism, East and West", in Rajeev Bhargava (ed.) Secularism and its Critics, Delhi, Oxford University Press, 1998, p. 259

state and religion; reform and regulation of religion, hence, may not be ruled out as functions of the state. And why, we may now ask, should secularism involve such a normative view of religion ?

Once again, Galanter helps in answering this question. According to him, secularism puts forth an alternative world view, an alternative way of looking at how human institutions should be; it stems from a competing system of "ultimate convictions".[32] The point is that secularism is grounded in certain norms and values which in turn necessitate that secularism view religion in a certain manner. Hence, Galanter affirms that secularism has some normative disposition vis-a-vis religion. And this disposition should be based on the values underlying secularism – the separation of state and religion is to facilitate and enhance the commitment to certain values, Hence, it is with a view to realizing these values that we will have to cull out the kind of separation most desirable and justifiable.

The problem with Smith's theory is the inadequate recognition of precisely this point. Smith's entire account is seemingly overwhelmed by the strict separation thesis. What's missing is a nuanced understanding of what separation entails, of the kinds of interaction between state and religion that may obtain in the practice of secularism. Going by such a conception, the different patterns of interaction between state and religion that have evolved in accordance with different politico-historical contexts will be viewed as deviations from the strict separation model. Rather than being viewed as ways of coping with different situations, Smith views these other secularist positions as

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[32] Ibid.

deficiencies in the secular practice. Consequently says Galanter, the attempts of the Indian Constitution-makers, legislators and judges to "fashion an ingenious set of balances and adjustments that combines their commitment to progress with their respect for freedom" are viewed by Smith as undesirable and, at best, temporary.[33] Instead of viewing secularism as individuated by principles that involve some tension which require compromises and accommodation, we find that Smith insists on the adherence to only one model of separation as significant for all times and places.

What we require instead is to probe into the justifiability or otherwise of these patterns of compromise and accommodation of the separation principle that emerge from the need to cope with the claims of a particular context; we need to be able to see if these so called deviations from the ideal of strict separation are, indeed, inconsistent with a commitment to secularism. And how are we to do this? One way of doing so is by examining these deviations with reference to the values that they sought to realise. That is, we might evaluate the values sought to be furthered by compromising with the strict separation model and see whether pursuing the same constitutes a departure from the commitment to secularism. And to enable this exercise we need some yardstick with which to evaluate the practice of secularism.

According to Galanter, even as secularism is understood as seminal to democracy, equal citizenship, nationhood, freedom of religion and pluralism, the same does not imply that we need to have only this particular strict separation mode of secularism. The above mentioned ideals can be achieved without this brand of

[33] Ibid., p.264

secularism. Indeed the very 'impurities' of a particular secular system may be functional for the production of these values.[34] Galanter rightly points out that the concrete results of particular patterns of secularism must be evaluated in terms of these other values achieved or impeded. According to Galanter, for secularism to serve as an ideal of more than parochial appeal the same needs reformulation.[35] We need to stop thinking of a "single and unvarying model of true secularism" in the light of which all efforts to evolve different patterns of the separation thesis (in accordance with varying religious experience) are seen as deviations from the norm. It is in this context that Smith's theory of secularism is inadequate; by tying secularism to strict separation, the theory is unable to do justice to the situation in India where the task of secularism is not to banish religion from the political order but to transform and curtail it in the social order.[36]

What Galanter enables us to see is that secularism is full of possibilities and is not something static and fixed. He is aware of the variations within secularism and stresses the fact that the transformation of secularism into a transcultural ideal requires a recognition of these different forms as constitutive of secularism more generally. This will enable us to better understand and analyse the relationship between state and religion in different parts of the world without a bias in favour of a single mode of secularism grounded in a strict separation of politics and religion. Hence, what we need is a theoretical formulation of secularism that is sensitive to all this. Smith's formulation is too rigoristic to permit a reasonable evaluation of the secular practice of

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[34] Ibid., p.266
[35] Ibid., p.267
[36] Ibid., p.264

a state. It overlooks the idea that between a hysterical shunning of religion from affairs of the state and a total fusion of the two there may obtain different patterns of separation that do not necessitate the renunciation of secularism itself.

# Chapter IV

## Contextual Secularism and the Idea of Principled Distance

It is clear from Smith's account of things that how we measure India's secular practice depends on what we think secularism is, on the kind of separation between state and religion that we think secularism should envisage. Given that an evaluation of the justifiability for the adoption of an interventionist stance (and we refer here to intervention in religious matters) by a secular state depends upon what we conceive secularism to be, it is necessary for us to look for a reasonably sound conception of secularism, for one that has a nuanced understanding of what the separation of state and religion means. One such conception seems to emerge from Rajeev Bhargava's theorization on the subject. It is towards understanding this that we may now proceed.

This chapter has two sections. The first section consists of an elaboration of Bhargava's theory of secularism. We will notice that secularism as envisaged by Bhargava stresses the idea of principled distance. According to this, the separation between state and religion need not mean strict non-interference, mutual exclusion or equidistance but any or all of these depending on whichever better promotes religious liberty, equality of citizenship and civic peace (and these are the values the safeguarding of which necessitate the separation of state and religion in the first instance). In this section we will also see how contextual secularism overcomes the absolutist hyper-substantive and ultra-procedural variants of secularism. Contextual secularism advocates the strategy of principled distance and does not require either the exclusion of all ideals from politics, or a hostility to religion. We will also discuss the politico-moral and ethical components of contextual secularism.

The second section of this chapter seeks to examine whether, after a detailed understanding of secularism and principled distance, it is possible to justify the Supreme Court's perfectionist intervention in the Satsangi case (as discussed in chapter II) as

compatible with a broader commitment to secularism. The argument in this section is as follows. Given that secularism is individuated by a commitment to the values of religious liberty and equality of citizenship, perfectionist intervention in a religious matter will be deemed compatible with secularism only if it does not disrespect these values. Upon close examination we find that perfectionist intervention, as witnessed in the Satsangi case, is not incompatible with secularism. It should be noted that the assessment in the second section is made possible because of the idea of principled distance that we looked at in the earlier section. Principled distance does not rule out the possibility of state intervention in religion as long as the intervention does not contravene the commitment to the values which secularism seeks to promote. As such, the idea of principled distance allows for interaction between state and religion. It is on the basis of this theoretical postulate that a discussion of the compatibility between perfectionist intervention and secularism is rendered possible. In contrast to this, Smith's strict separation thesis had implied an immediate dismissal of any and every instance of interaction between the state and religion.

## I

For Bhargava, secularism is imperative in multi-religious societies such as ours. Secularism means some form of independence of the political from the religious domain – it involves separation of a certain kind. According to Bhargava, separation may not involve a severe mutual exclusion of the state and religion; secularism on this view is not tied to strict non-interference on the part of the state. Instead, what is implied by separation is the idea of "principled distance", a flexible but value-based relation that accommodates intervention

as well as abstention.[1] He admits the difficulty in separating religious from non-religious matters, especially in sub-continental cultures such as ours but states that what is being asked for is not so much the separation of all religious from non-religious practices as that of some religious and non-religious institutions. He substantiates his point with the example of the demand for electoral constituencies to not be classified along religious grounds and says that this does not simultaneously imply that practically every religious belief be ousted from political practices [2] ; all that is being asked for is a separation of some religious from non-religious practices because the alternative to not doing so is civic discord. Further, he does not subscribe to the view that secularism entails a unique set of state policies valid under all conditions which provide the yardstick by which the secularity of every state is to be judged.

Bhargava begins by distinguishing between broadly two kinds of secularism; hyper-substantive and ultra-procedural secularism.[3] Sometimes religion and politics are separated in order to realize substantive ideals like autonomy, equality or democracy. The kind of separation or interaction between state and religion that may be allowed on this model of secularism, then, would be in accordance with the furtherance of the ideals that are sought to be realized. Here, religion would probably be viewed as detrimental to the achievement of autonomy or equality (both substantive ideals). Now, it is possible that in seeking to attain these ideals the balance tilts overwhelmingly in favour of these at the cost of other different substantive values and even procedures and rules. Bhargava classifies this as hyper-substantive secularism. This secularism has no place for values other than those to

[1] Rajeev Bhargava, "Introduction", in Rajeev Bhargava (ed.), Secularism and its Critics, Delhi, Oxford University Press, 1998, p.9 (Henceforth this book will be referred to as Bhargava 1998.)
[2] Rajeev Bhargava, "What is Secularism for?", in Bhargava 1998, p.489
[3] Ibid ., pp 513-514

which it is (almost) fanatically devoted. It is quite possible, in such a situation, for religion to be totally excluded; it could be subject to much (undue) hostility too.

Just as hyper-substantive secularism is unmindful of procedures, Bhargava outlines another equally absolutist variant of secularism which shuns commitment to every ideal; this variant is obsessed with rules and procedures and views all ideals as potential sources of conflict and hence abstracts from them. Even when a value can be peacefully pursued it still insists on the priority of procedures that are thought to be universally acceptable. This rule bound type of secularism, like hyper-substantive secularism, " is absolutist and seeks an unconditional separation of religion and politics on grounds claimed to be comprehensive, universally applicable, authoritative and final".[4] Both these kinds of secularism are absolutist; they entail a quite hostile attitude to religion. Very often, Bhargava points out, one or the other of these two extreme variants is construed to be the only kind of secularism that is possible and, for reasons quite understandable, many theorists lose no time in seeking to dismiss the need for or even desirability of such secularism and advocate abandoning the ideal altogether.

But, for Bhargava, the resources of secularism are not exhausted by the two absolutist interpretations just mentioned. Like Galanter, Bhargava insists that we need a reformulation of secularism and not an alternative to it. Contextual secularism is the reformulated variant put forth by Bhargava. The problem with the absolutist variants which are hostile to religion lies in the way they construe the principle of separation of state and religion. Contextual secularism transcends the problems of these absolutist variants

[4] Ibid., p.514

because it views the separation thesis as implying more than just severe exclusion. It is to a discussion of all this that we now turn.

What kinds of separation can there be ? Bhargava elaborates two kinds of separation – for the first separation means exclusion while for the second type to separate is to mark distance or boundaries.[5] Those who see separation as implying exclusion demand very strongly that politics must have nothing to do with religion – absolutely no interaction between the two can be tolerated. In its extreme form this stance generates an anti-religious attitude; both, hyper-substantive and ultra-procedural secularism, belong to this category. The milder form of exclusion is, perhaps, categorized by lesser hostility to religion. However, here too, there can be no contact between religion and politics. D.E.Smith's characterization of separation might be included in this category of mild exclusion; on his view the secular state is to have absolutely no interaction with religion. His conception is self-avowedly sympathetic to the existence of religion but religion belongs very strictly to only the private domain.

The second variant of separation, however, does permit that "some contact is possible but some distance too".[6] This kind of "principled distance", as Bhargava calls it, requires neither the "fusion" nor the complete "disengagement" of religion and politics. According to this, separation need not mean strict non-interference, mutual exclusion, or an equidistant stance, but a policy of principled distance that entails a flexible approach on the question of intervention or abstention combining both, depending on the context, nature or

[5] Ibid., p.493
[6] Ibid.

the current state of religion.[7] The idea behind the strategy of principled distance is that intervention or abstention by the state in religious matters is justifiable to the extent that the course adopted by the state is guided by non-sectarian principles consistent with a set of values constitutive of a life of equal dignity for all.[8] The satisfaction of this stipulation does not require adherence to one form of separation as most suitable for all times and contexts.

Is principled distance co-terminus with neutrality ? For Bhargava, this is not the case. Neutrality in the context of secularism implies that the state hinder or help all believers (with different religious leanings) and unbelievers to an equal degree . As such, neutrality seems to demand some kind of equidistant relation between the state and different religious conceptions of the good. At times, however, adhering to such a neutralist, equidistant position may be counterproductive to the values that a secular state seeks to realize. According to Bhargava, it is in this respect that principled distance differs from mere equidistance. From the vantage point of principled distance, the state intervenes or refrains from interfering, depending on which of the two better promotes religious liberty and equality of citizenship. In other words, the relationship between the state and a particular religion or between the state and all religions is guided by those principles for which religion and politics were separated in the first instance (namely, religious liberty and equality of citizenship). Hence, the state may not relate to every religion in the same way, or intervene to the same extent or manner.[9] Thus, principled distance is different from neutrality although it is possible that in certain contexts principled distance may require the state to help or hinder different believers and unbelievers to the same degree.

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[7] Ibid.,p.520
[8] Ibid.,p.515
[9] Ibid.

Let us now see what contextual secularism means. Contextual secularism is different from hyper-substantive and ultra-procedural variants of secularism in that it is non-absolutist. It does not advocate a total and severe exclusion of religion from politics. Instead, it favours principled distance between state and religion. Bhargava calls it contextual secularism because it does not involve "a priori commitment to the absolute priority" of either substantive values or procedures. It is different from ultra-procedural secularism in that it permits ultimate ideals in the political arena. However, when there is a clash of such ideals contextual secularism relies on some minimal procedures (that may involve the removal of all controversial ultimate ideals from the political sphere) to cope with the violent outbursts that may accompany the conflict between incompatible ideals. In this respect it is sensitive to the need for procedures and this distinguishes it from hyper-substantive secularism. Contextual secularism, then, has, both, a politico-moral and an ethical component and these components do not slide into ultra-procedural and hyper-substantive secularism respectively. Let us now look at each of these components in detail in order to facilitate a clear understanding of contextual secularism; we will first examine political (politico-moral) secularism and then discuss the ethical component of contextual secularism.

Political secularism[10] is a philosophical response to that kind of situation which is marked by conflicting ultimate ideals, by the presence of different religious groups whose ideas of the good life are incompatible with one another. Apart from being sensitive to the diversity in religious groups, political secularism, as envisaged by Bhargava, is mindful of

[10] Ibid., pp494 -498

the unbelievers who also co-exist with believers in society – these may adhere to certain ultimate ideals too, for instance they may be committed to substantive versions of autonomy, democracy and so on (which is not to say that believers cannot be also committed to such values). Political secularism is particularly relevant when societies as diverse as described above are faced by conflict between mutually incompatible values. Believers and unbelievers might each get involved in a frenzied campaign against the other group to demonstrate the falseness of the other's beliefs or to impose its own conception of good on the other so much so that a violent showdown cannot be ruled out. Such a conflict may occur not just between believers and unbelievers but also between different kinds of believers themselves (as between Hindus and Muslims). In such a situation political secularism becomes exceedingly significant . It demands that the state's actions and policies be justified by giving reasons that do not emanate from the viewpoint of any ultimate ideal – the attempt is to seek independence and to be neutral vis-à-vis all ultimate ideals. At such points what is required is that everybody give up a little bit of what is of "exclusive importance in order to sustain that which is generally valuable".[11] The idea is that the realm of the political be kept free and independent of ultimate ideals (when they get overly controversial) lest society plunge into a violent quagmire.

In elaborating political secularism Bhargava draws our attention to the very significant point that the emergence of secularism should not be seen solely or even primarily as a response to the conflict between the state and the church but also, equally, if not more important, as a response to the struggle to keep the state relatively independent of deeply conflicting religious groups.[12] This religious strife model, as Bhargava calls it, is

[11] Ibid., p.496
[12] Ibid., p.497

sensitive to and accommodative of deep diversity. This model developed first by tolerating religious others, then by allowing them full liberty and later by granting them equal citizenship rights by making religious affiliation irrelevant to one's citizenship.[13] For Bhargava, this way of looking at secularism enables us to take a less alien stance vis-à-vis secularism. He points out that the religious strife model has deep roots in India where, initially, secularism developed in response to situations of inter-religious conflict. In conditions of religious warfare and more generally in the face of irresolvable conflicts, the only way of excluding the blind pursuit of ultimate ideals, of expelling from public life the frenzy and hysteria that they usually generate, and of protecting ordinary life, is to embrace political secularism.[14] The Indian version of secularism is a response to communal violence and bloodshed which marked the partition. As such, secularism is not all that foreign to India as is purported by many, it has tremendous significance for a society such as ours, indeed it has deep roots in India. According to Bhargava, viewing secularism as more than just separation between church and state or as a gift of Christianity is seminal to understanding and realizing its transcultural appeal.

Political secularism, in principle, need not be hostile to religion. It doesn't ask for an altogether wholesale shunning of ideals from the political realm. Bhargava points out that political secularism has room within it for small ideals "that lie at the intersection of incompatible mutual ideals" – these include the protection of ordinary life and our need to live, eat, talk and relate to one another.[15] These ideals, he says, are small and do not have the potential for big evils which are somewhat inherent in big ultimate ideals when they are

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[13] Ibid., pp525-526 Charles Taylor also points to us these two different models of secularism when he discusses the origins of secularism. Charles Taylor, "Modes of Secularism", in Bhargava 1998, p.32
[14] Rajeev Bhargava, "What is Secularism for?", in Bhargava 1998, p.496
[15] Ibid., pp 498-499

ceaselessly pursued without regard for other values that such pursuits corrode. "Political secularism is incompatible with all kinds of barbarisms". Does political secularism, however, entail a detachment from all ultimate ideals? Bhargava does not think so.[16] He clarifies that what is asked for is not a rejection of such ideals but only that these do not spill over into the sphere of the activities of the state at all times. Also, we need only to exclude those ultimate ideals from the state's activities which are controversy-ridden. Competing high ideals can enter the public sphere and after due deliberation it is possible that some of them are considered worthwhile; the state may then act on the basis of such ideals. But at other times it cannot be ruled out that substantive values may generate much violent conflict upon entering the public domain. It is in such a situation that Bhargava advocates political secularism, for the state to keep away from such controversial ultimate ideals. No once for all doing away with ultimate ideals for all time to come is being suggested here.

Is rights-based political secularism another instance of ultra-procedural secularism? Is it marked by an unflinching commitment to procedures for the sake of procedures? According to Bhargava, the answer is a clear 'no'. He makes this clear in the following way.[17] From the vantage point of rights-based (political) secularism, even as a commitment to rights involves compliance with certain procedures, procedures cannot be understood without reference to the good. This is because rights, for the upkeep of which we need to follow procedures, themselves are in the service of some good – they seek to protect / preserve certain values. So, following the kind of example given by Bhargava, we may elucidate this relation between rights and the good. A society which prohibits murder, we

[16] Ibid., p.499
[17] Ibid., pp538-542

may say, is one that values human life. The right against being physically eliminated, then, is to protect the good we see in human life. Upholding this right requires all in this society to follow certain procedures in dealing with each other. These procedures, as is evident, are in service of the good of human life. The point behind this is to illustrate that a commitment to rights involves a commitment to some good. Rights derive their meaning from the "substantive content of a given good".

We now turn to a discussion of the ethical component of contextual secularism. What model of ethical secularism can we envisage which is not akin to hyper substantive secularism (which as we saw is an absolutist version of ethical secularism that seeks a severe form of exclusion of religion from the activities of the state). We have already seen that political secularism enables believers and unbelievers to co-exist; it is not even unduly hostile to the ultimate ideals of believers (unlike hyper substantive secularism). So, why do we need to think of the ethical mode of secularism? Why do we need to include this ethical conception into the ideal of secularism? Bhargava gives us at least one good reason for this.[18] Should an adherence to the norm of secularism simultaneously imply the giving up of the attractive ideal of a vibrant political community where believers and unbelievers can let politics be intermeshed with the substantive ideals to which they are deeply committed, where various disputes between incompatible ideals can be openly deliberated upon and subsequently form the basis for state action? According to Bhargava, no such renunciation is constitutive of secularism. He agrees that political secularism itself does not say much that would augment the idea of active citizenship or enable living together well.[19] Surely, living together well, even in a context of deep diversity, is a very attractive proposition.

[18] Ibid., pp508-510 and pp 536-538
[19] Ibid., pp508 -509

And the discussion of ethical secularism illustrates just this point; the desirability of a vibrant political community where different people question each others values, deliberate upon them and try and understand as well as accept different ways of being is not at all inconsistent with a broader commitment to secularism. Separation of religion and politics here is ensure that no citizen, on grounds of confessional allegiance, be debarred from participating in this process of deliberation. To ensure this kind of equal membership in the political arena politics and religion should not be allowed to intermingle. But, once we are all within the political arena then many ultimate ideals may be up for grabs. Believers and unbelievers begin deliberation as equals on the validity and desirability of different substantive values.[20]

The aim here is to arrive at a substantive common good which would provide a solid basis for their social and political order as also generate new forms of solidarity.[21] Bhargava points to us that solidarity requires that the people discover a minimally overlapping good within the framework of participatory democracy. The processes of deliberation and negotiation must be informed with a willingness on the part of the participants to transform and mould their own positions and identities vis-à-vis the participating conceptions – it requires a certain open frame of mind. It is via such a process that people can forge new identities and seek to realize an ever expanding common good.

Ethical secularism as seen above is not hostile to believers – it does bring "fairly divergent conceptions of the good into the political process". What is requisite is a principled distance between state and religion, not an exclusion of religious ideals from the

[20] Ibid., pp536-538
[21] Ibid., p.537

political process. The discussions and conflicts (at the level of ideas and values) should be indulged in with a genuine commitment to participatory democracy and openness to a future common good.[22] However, it is not possible to pursue politics of the common good at all times. Sometimes there could be such a sharp difference of viewpoint that violent conflict involving bloodshed cannot be ruled out. When faced with this the desire to prevent the breakdown of society will lead us in the direction of a rights-based secularism, in other words, political secularism.

II

What insight, if any, does the above discussion of contextual secularism give us on the question of the compatibility between perfectionist intervention and secularism ?

It is evident from the account in the previous section that secularism neither permits a fusion of state and religion nor does it sit well with a severe, all time exclusion of religion from politics. By eschewing state support of only one religion to the detriment of all other religions that obtain secularism recognizes religious diversity and does not seek to eliminate the plurality in religious belief; it guarantees religious liberty equally to believers of different hues. Freedom of religion is further enhanced by ensuring that the state does not unduly interfere with religious practices; all religious sects are free to pursue their own ways of being. By not insisting on a severe exclusion of religion, secularism is sympathetic to believers and does not foster or encourage an anti-religious attitude. It treats all believers

[22] Ibid.

and unbelievers as equal citizens of the polity. Altogether, then, secularism is committed to these values of equal citizenship and religious liberty.

Bhargava's account of secularism makes it amply clear that secularism is not tied to the advocacy of only a strict separation between state and religion for the realization of the above mentioned values. Instead, contextual secularism endorses the idea of principled distance according to which some contact is possible as is some distance. In the strategy of principled distance, the state intervenes or refrains from interfering, depending on which of the two better promotes religious liberty and equality of citizenship. On such a view, those actions of the state may be deemed compatible with secularism which emanate from non-sectarian considerations. In the context of secularism what could non-sectarian considerations mean ? Ostensibly, the reference is to those considerations which would seek to provide undue advantage or disadvantage to certain individuals or groups on the basis of their religious affiliations. To put it differently, contextual secularism would be incompatible with any such intervention (or non-intervention) by the state as would violate religious freedom and equal citizenship.

The question now is whether perfectionist intervention (of the kind enumerated in the discussion of the Satsangi case in chapter II) may be viewed as compatible with secularism. Let us recall some of the issues that were involved in the Supreme Court's decision in the Satsangi case. The case, as we saw, was an instance of perfectionist intervention in a religious matter. Perfectionism, to reiterate what has been said in an earlier chapter, endorses the view that it is the goal of all political action to enable individuals (or groups) to pursue valid conceptions of the good and to discourage evil ones. It was also argued that the values in these conceptions are almost always embedded in social forms.

Social forms are significant because they provide the context for human beings to pursue the good life. Hence, it is the duty of the state that in order to promote the well-being of its citizens it promote valuable social forms (and indeed, valuable elements within a single social form itself) and discourage repugnant ones.[23]

It was then claimed that Hinduism (as, indeed, any other religion) constitutes a social form and state intervention to eliminate the repugnant practice of untouchability was in keeping with the perfectionist commitment to foster valuable elements in Hinduism and discourage evil ones. Also emphasized was the significant point that in promoting a certain conception of Hinduism, the Court was not forcing alien ideas on an unsuspecting Hindu population. Rather, it was stated, the Court's intervention in endorsing a particular reformulation of Hindu religion was in tandem with initiatives for such a reformulation among Hindus themselves.

Let us now examine whether the aforementioned intervention in Hindu religion is compatible with a broader commitment to secularism. Given that secularism is individuated by the commitment to religious liberty and to the equality of citizenship, the attempt here will be to see if perfectionist intervention (as evident in the Satsangi case) sits well with these two values and, consequently, with secularism. It may be noted that the perfectionist stance of the Court has already been justified in the second chapter of this

[23] The discussion in Chapters I and II of this dissertation has sought to clarify that perfectionism does not entail that the state, in pursuing certain ways of life and in eliminating others, should act according to what it considers good but on the basis of sound reasons. Again, perfectionist political action doesn't entail that one set of views over-ride all others; rather, it should be understood that the state is acting to preserve those institutions and practices that obtain in society and that enjoy a degree of popular backing. At the same time, the justification for the state to promote a certain form and eliminate another is not to be based on popular backing alone but should be grounded in good reasons as well.

dissertation. What we are now going to look at is whether such intervention constitutes a violation of secularism.

The criticizm that perfectionist intervention violates the strict separation of state and religion will not wash especially after the discussion of contextual secularism and the strategy of principled distance. Principled distance does not entail mutual exclusion; rather, it suggests that religion be included or excluded from politics depending upon which of the two better promotes religious liberty and equality of citizenship. The implication is that any such intermingling of state and religion that violates the commitment to the above values will be deemed incompatible with secularism.

So, what are the grounds on which perfectionist intervention could be criticized as violative of secularism ? A critic would probably make the following objections. First, he would claim that the Court's interference in Hinduism has violated the religious liberty of Hindus. This is the claim that the state may not seek to interfere in a religion, and that too in the reformulation of religion. The second criticism is that this kind of intervention is yet another instance of the state's interfering more with Hindu practices than with those of any other religion such as, say, Islam. It will be averred by the critic that in being partial to the Muslims (by not infringing upon their practices) the state is not meting out equal treatment to all its citizens. Policy measures seem to be tempered by religious considerations and this violates the idea of equality of citizenship. In other words, the intervention is viewed by the critic as sectarian inasmuch as it involves interference in Hinduism alone; Islam is not interfered with to an equal degree. Are these criticizms valid ?

Does the Court's stance really violate the religious liberty of Hindus ? What does religious liberty mean in this context ? It implies that believers should be free to follow their respective religious practices. The state should neither dictate religious beliefs and practices nor may it hinder their observance. Now, does the Court's endorsal and promotion of a particular conception of Hinduism hinder the religious liberty of Hindus ? Religious liberty would, indeed, have been violated had the Court inflicted an altogether unfamiliar religious understanding on the Hindus. But, as has been argued earlier, the Court was giving institutional support and recognition to a conception that enjoyed considerable support among Hindus; resisting untouchability was an issue which had not only popular backing but also a grounding in good reasons. Religious liberty also implies that believers are free to revise their religious conceptions and in endorsing and supporting these revised conceptions the state is not violating religious liberty but actually respecting the same. [24] As such, the court's stance in the Satsangi case may not be an instance of violation of religious liberty.

The critic, however, may further argue that even if a religious reformulation may have been initiated and supported by the followers of the religion in question, the same does not necessitate the state to engage in promoting these reformulations. This is not a criticism of the incompatibility of the Court's position vis-a-vis the idea of religious liberty as much as it is, more generally, an opposition to perfectionism per se, to the idea of the state's promoting any conception of the good. One response to this criticism is that perfectionism justifies state action to provide institutional support and recognition to valuable elements in social forms which embed important values. A perfectionist state is

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[24] This point was suggested by Dr Rajeev Bhargava.

justified in promoting valuable ideals that obtain in society. Even as proponents of perfectionism recognize that the full-blooded pursuit of perfectionist policies may sometimes trigger conflicts, they do not advocate altogether abandoning perfectionism. What is warranted, as Raz says, is to move with caution in such explosive situations; there are other instances when perfectionist policies can be peacefully pursued.

Returning to the main issue of the compatibility between perfectionist intervention and a commitment to secularism, we will now examine the second claim of the critic that the Court's intervention in Hinduism is yet another instance of the state's policies affecting only Hindu religious practices while leaving Islamic practices (some of which also need reform) almost entirely untouched and that this tantamounts to not treating Hindus and Muslims as equal citizens. This empirical critique of state intervention in religious matters is conceptually backed by an understanding of equality as co-terminus with equal treatment. If this is what is meant by equality then, perhaps, the critic is right in stating that policies that intervene selectively do not treat all citizens equally. But the notion of equality does not always entail equal treatment; rather treating individuals or groups as equals may sometimes warrant differential treatment.

How does this apply to Islam ? There are limits to how much the state can intervene in Islam given its minority status. In addition to this minority status, adherents of Islam have been systematically left out of the public discourse and for various reasons face material and cultural impoverishment. They are often the target of attack from chauvinistic Hindu quarters. All this has contributed to much insecurity among Muslims and any attempt from outside, to change their way of being, will undoubtedly be viewed with much suspicion. Such attempts may often be perceived by Muslims as an assault on their identity

as a group. Hence, even when some reasonable reform is externally suggested, there is a tendency to oppose it in order to safeguard the larger group identity that is perceived to be in danger. These compulsions entail differential treatment of Muslims; indeed, meting out differential treatment is sometimes the only way to treat different individuals or groups as equals. Equality, in such situations, does not entail mere equal treatment. Treating Muslims as equals would preclude intervention in their affairs. Besides, the other significant point which justified perfectionist intervention in Hinduism applies here too. The initiative for reform should come from the community concerned and only then can the state support and encourage the reformulation demanded. That is, idea of reformulation of the Muslim conception of the good should emanate from among Muslims themselves.

Thus, as should be evident from the above excursus, the norm of equality of citizenship which secularism seeks to foster is not really violated when the state's policies intervene only in Hinduism. In fact, undue interference by the state in Muslim affairs, as in the affairs of any minority in a similar predicament, would result in not treating them as equals.

Altogether, it can be reasonably asserted that the perfectionist intervention of the kind witnessed in the Satsangi case is compatible with secularism. It is the idea of principled distance from which we draw our justification. It permits the state to mingle with or stay aloof from particular religions as long as doing so preserves the values which secularism seeks to realize by distancing religion and politics.

# CONCLUSION

To sum up, we note that we do have some answer to the two principal questions about state intervention that we began with.

The first question was about whether it is possible at all to provide a normative justification for state intervention in any conception of the good life. Contemporary liberal theory, we found, provides us with at least two positions on state intervention; one emerges from procedural liberalism as espoused by John Rawls and Charles Larmore and the other is manifest in the perfectionist liberalism of Joseph Raz.

On the procedural liberal view, the state should deliberately eschew judgements about the qualitative worth of one or the other way of life and seek only to provide a neutral framework within which people can make their choices. The liberal state, on this view, would be justified in intervening in religious matters whenever the rights of human persons are in jeopardy, and in this sense the liberal state is not morally neutral. Here neutrality is the hallmark of a liberal state. Procedural liberalism allows state intervention of a certain kind; one that is in tandem with the basic rights of human persons. So, it is not strictly neutral in the sense that it disallows absolutely any kind of state intervention. But, it is neutral in that it has to steer clear of all comprehensive conceptions of the good life. Procedural neutrality, then, consists in a constraint on what reasons can be invoked to justify a political decision.

The second position on state intervention within contemporary liberal theory is one that challenges the desirability of state neutrality. For Raz, a liberal state cannot

be neutral with reference to different conceptions of the good. He advocates a perfectionist state which can be justified in acting to encourage particular ways of life and discourage others in order to realize certain ideals which enhance human flourishing. The state here is engaged as much in ensuring that the individual be able to make a choice as in ensuring that the options available are of value too.

Having looked at the philosophical bases for state intervention we then sought to justify the Supreme Court's interventionist stance in the Satsangi case. We found that the Court's position is justifiable on perfectionist grounds. It's endorsal of a certain conception of Hinduism (that viewed untouchability as an evil) was one that, in keeping with perfectionist considerations, had a grounding in sound reasons. Also, we noticed that the conception of Hinduism endorsed by the Court was in tandem with the religious self-understanding of large sections of the Hindu community.

The Satsangi case formed the vantage point for the examination of the claim that state intervention in religious affairs constitutes a violation of the commitment to secularism. Having ascertained that the intervention by the Court was not an unreasonable one (in contrast to Galanter's claims) but one that was justifiable on perfectionist grounds, we moved on to examining whether the Court's intervention constituted a departure from secularism.

We then examined Smith's theory of secularism and noted that Smith holds that any kind of intervention in religious matters detracts from the secular commitment. Smith, we noticed, insists on a very severe separation between the state and religion. According to him, the values of religious liberty and equality of citizenship are best

realized by ensuring that religion and politics never intermingle. Intervention by the state in any religious matter, then, is anomalous with secularism. We found that the rigorisitc nature of this position precludes us from better understanding and evaluating the varying patterns of separation that different countries have evolved their secular practice in response to their needs. (Of course, the assumption is that these different patterns are in consonance with the values that secularism promotes.)

Hence, we considered Smith's conception inadequate for a fair evaluation of the Indian state's secular practice. The strict separation thesis warrants a blanket opposition to absolutely any state intervention in religion and has no room for discussing the possibility of some justifiable kinds of intervention by the state that may not corrode the larger commitment to secularism. This led us to look for a more reasonable account of secularism which could take cognizance of the fact that secularism is full of possibilities and that between a severe exclusion of religion from affairs of the state and a complete fusion of the two there can exist different patterns of separation that do not imply the renunciation of secularism itself. The discussion of Bhargava's contextual secularism and the concomitant idea of principled distance provides us with one such account of secularism.

The discussion of principled distance enabled a nuanced understanding of what the separation principle means in the context of secularism. Principled distance requires neither the fusion nor the complete disengagement of politics from religion; separation need not mean strict non-interference, mutual exclusion, or an equidistant stance but any or all of these depending on which better promotes religious liberty and equality of citizenship. Unlike Smith's principle of separation, principled distance as

espoused by Bhargava does not consider one form of separation as most suitable for all times and contexts. In the light of this alternative formulation of the separation thesis, we sought to look into the justifiability of the Court's interventionist stance in the Satsangi case vis-à-vis the Indian state's commitment to secularism. We found that, indeed, this instance of intervention in religion did not violate either equal citizenship or religious liberty and is, hence, not contrary to secularism. This answers the second question about the justifiability of state intervention in religion in the context of an adherence to secularism.

To sum up, this study does not purport to claim that just because it is possible to justify state intervention in the Satsangi case as consistent with secularism we have to simultaneously consider all the other (numerous) instances of intervention in religious matters as justifiable. The limited point of this dissertation is just to state that in our evaluation of the secular practice of India, or any other state, we should not be guided by a single notion of secularism which is tied to strict separation between state and religion. As such, we may not indulge in a simplistic, blanket condemnation of the Indian state's extensive intervention in religious matters or assume that the state respond similarly to all situations. Instead, we must unravel the issues involved in every instance of intervention and not insist on a single pattern of interaction between state and religion; rather, we must realize, that secularism sits well with different patterns of interaction insofar as civic peace, religious liberty and equality of citizenship are not violated.

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