

Secularism and Tolerance*

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There is little doubt that in the last two or three years we have seen a genuine renewal of both thinking and activism among left-democratic forces in India on the question of the fight for secularism. An important element of the new thinking is the re-examination of the theoretical and historical foundations of the liberal-democratic state in India, and of its relation to the history and theory of the modern state in Europe and the Americas.

An interesting point of entry into the problem is provided by the parallels recently drawn between the rise of fascism in Europe in the 1920s and 1930s, and that of the Hindu right in the India in the last few years. Sumit Sarkar, among others, has noted some of the chilling similarities.¹ But a more careful look at precisely this comparison will, I think, lead us to ask a basic and somewhat unsettling question: Is secularism an adequate, or even appropriate, ground on which to meet the political challenge of Hindu majoritarianism?

The Nazi campaigns against Jews and other minority groups did not call for an abandonment of the secular principles of the state in Germany. If anything, Nazi rule was accompanied by an attempt to de-Christianize public life and to undermine the influence of the Catholic as well as the various Protestant churches. Fascist ideology did not seek the union of state and religion in Italy, where the presence of a large peasant population and the hold of Catholicism

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¹ Sumit Sarkar, 'The Fascism of the Sangh Parivar', *Economic and Political Weekly*, 30 January 1993, pp 163-7; Jan Breman, 'The Hindu Right: Comparisons with Nazi Germany', *The Times of India*, 15 March 1993.

might be supposed to have provided an opportune condition for such a demand—and this despite the virtually open collaboration of the Roman Church with Mussolini's regime. Nazi Germany and fascist Italy are, of course, only two examples of a feature that has been noticed many times in the career of the modern state in many countries of the world: namely that state policies of religious intolerance, or of discrimination against religious and other ethnic minorities, do not necessarily require the collapsing of state and religion, nor do they presuppose the existence of theocratic institutions.

The point is relevant in the context of the current politics of the Hindu right in India. It is necessary to ask why the political leadership of that movement chooses so meticulously to describe its adversaries as 'pseudo-secularists', conceding thereby its approval of the ideal as such of the secular state. None of the serious political statements made by that leadership contains any advocacy of theocratic institutions; and, notwithstanding the exuberance of a few sadhus celebrating their sudden rise to political prominence, it is unlikely that a conception of the 'Hindu Rashtra' will be seriously propagated which will include, for instance, a principle that the laws of the state be in conformity with this or that *sambhitā* or even with the general spirit of the *Dharmaśāstra*. In this sense, the leading element in the current movement of the Hindu right can be said to have undergone a considerable shift in position from, let us say, that of the Hindu Mahasabha at the time of the debate over the Hindu Code Bill some forty years ago. Its position is also quite unlike that of most contemporary Islamic fundamentalist movements, which explicitly reject the theoretical separation of state and religion as 'western' and un-Islamic. It is similarly unlike the fundamentalist strand within the Sikh movements in recent years. The majoritarianism of the Hindu right, it seems to me, is perfectly at peace with the institutional procedures of the 'western' or 'modern' state.

Indeed, the mature and most formidable, statement of the new political conception of 'Hindutva' is unlikely to pit itself at all against the idea of the secular state. The persuasive power, and even the emotional charge, that the Hindutva campaign appears to have gained in recent years does not depend on its demanding legislative enforcement of ritual or scriptural injunctions, a role for religious institutions in legislative or judicial processes, compulsory religious

instruction, state support for religious bodies, censorship of science, literature and art in order to safeguard religious dogma, or any other similar demand undermining the secular character of the existing Indian state. This is not to say that in the frenzied mêlée produced by the Hindutva brigade such noises would not be made; the point is that anti-secular demands of this type are not crucial to the political thrust, or even the public appeal, of the campaign.

Indeed, in its most sophisticated forms, the campaign of the Hindu right often seeks to mobilize on its behalf the will of an interventionist modernizing state, in order to erase the presence of religious or ethnic particularism from the domains of law or public life, and to supply, in the name of 'national culture', a homogenized content to the notion of citizenship. In this role, the Hindu right in fact seeks to project itself as a principled modernist critic of Islamic or Sikh fundamentalism, and to accuse the 'pseudo-secularists' of preaching tolerance for religious obscurantism and bigotry. The most recent example of this is the Allahabad High Court pronouncement on divorce practices among Muslims by a judge well known for his views on the constitutional sanctity of Lord Rama.

Thus, the comparison with fascism in Europe points to the very real possibility of a Hindu right locating itself quite firmly within the domain of the modernizing state, and using all of the ideological resources of that state to lead the charge against people who do not conform to its version of the 'national culture'. From this position, the Hindu right can not only deflect accusations of being anti-secular, but can even use the arguments for interventionist secularization to promote intolerance and violence against minorities.

As a matter of fact, the comparison with Nazi Germany also extends to the exact point that provides the Hindutva campaign with its venomous charge: as Sarkar notes, '...the Muslim here becomes the near exact equivalent of the Jew'. The very fact of belonging to this minority religious community is sufficient to put a question mark against the status of a Muslim as a citizen of India. The term 'communal', in this twisted language, is reserved for the Muslim, whereas the 'pseudo-secular' is the Hindu who defends the right of the Muslim citizen. (Note once more that the term 'secular' itself is not made a target of attack). Similarly, on the vexed question of migrants from Bangladesh, the Hindu immigrant is by

definition a 'refugee' while the Muslim is an 'infiltrator'. A whole series of stereotypical features, now sickeningly familiar in their repetitiveness, are then adduced in order to declare as dubious the historical, civil and political status of the Muslim within the Indian state. In short, the current campaign of the Hindu right is directed not against the principle of the secular state, but rather towards mobilizing the legal powers of that state in order to systematically persecute and terrorize a specific religious minority within its population.

The question then is as follows: Is the defence of secularism an appropriate ground for meeting the challenge of the Hindu right? Or should it be fought where the attack is being made, i.e. should the response be a defence of the duty of the democratic state to ensure policies of religious toleration? The question is important because it reminds us that not all aggressive majoritarianisms pose the same sort of problem in the context of the democratic state: Islamic fundamentalism in Pakistan or Bangladesh, or Sinhala chauvinism in Sri Lanka do not necessarily have available to them the same political strategies as the majoritarian politics of the Hindu right in India. It also warns us of the very real theoretical possibility that secularization and religious toleration may sometimes work at cross-purposes.² It is necessary therefore to be clear about what is implied by these concepts.

² Ashis Nandy makes a distinction between religion-as-faith, by which he means a way of life that is operationally plural and tolerant, and religion-as-ideology which identifies and enumerates populations of followers fighting for non-religious, usually political and economic, interests. He then suggests, quite correctly, that the politics of secularism is part of the same process of formation of modern state practices which promotes religion-as-ideology. Nandy's conclusion is that rather than relying on secularism of a modernized elite we should 'explore the philosophy, the symbolism and the theology of tolerance in the various faiths of the citizens and hope that the state systems in South Asia may learn something about religious tolerance from everyday Hinduism, Islam, Buddhism, and/or Sikhism....' *The Politics of Secularism and the Recovery of Religious Tolerance*, in Veena Das, (ed.), *Mirrors of Violence: Communities, Riots and Survivors in South Asia* (Oxford University Press: New Delhi, 1990), pp 69-93. I am raising the same doubt about whether secularism necessarily ensures toleration, but, unlike Nandy, I am here looking for political possibilities within the domain of the modern state institutions as they now exist in India.

Meaning of Secularism

At the very outset, let us face up to a point that will be invariably made in any discussion on 'secularism' in India, namely that in the Indian context the word has very different meanings from its standard use in the English language. This fact is sometimes cited as confirmation of the 'inevitable' difference in the meanings of a concept in two dissimilar cultures. ('India is not Europe: secularism in India cannot mean the same thing as it does in Europe'). At other times, it is used to underline the 'inevitable' shortcomings of the modern state in India. ('There cannot be a secular state in India because Indians have an incorrect concept of secularism').

Of course, it could also be argued that this comparison with European conceptions is irrelevant if our purpose is to intervene in the Indian debate on the subject. What does it matter if secularism means something else in European and American political discourse? As long as there are reasonably clear and commonly agreed referents for the word in the Indian context, we should go ahead and address ourselves to the specifically Indian meaning of secularism.

Unfortunately, the matter cannot be settled that easily. The Indian meanings of 'secularism' did not emerge in ignorance of the European or American meanings of the word. I also think that in its current usage in India, with apparently well-defined 'Indian' referents, the loud and often acrimonious Indian debate on secularism is never entirely innocent of its Western genealogies. To pretend that the Indian meaning of secularism has marked out a conceptual world all of its own, untroubled by its differences with Western secularism, is to take an ideological position which refuses either to recognize or to justify its own grounds.

In fact, I wish to make an even stronger argument. Commenting upon Raymond Williams's justly famous *Keywords*, Quentin Skinner has pointed out that a concept takes on a new meaning not (as one would usually suppose) when arguments that it should be applied to a new circumstance succeed, but rather when such arguments fail.³ Thus, if one is to consider the 'new' meaning

³ Quentin Skinner, 'Language and Political Change', in Terence Ball, James Farr and Russell L. Hanson, (eds), *Political Innovation and Conceptual Change* (Cambridge University Press: Cambridge, 1989), pp 6-23.

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acquired by the word 'secularism' in India, it is not as though the plea of the advocates of secularism that the concept bears application to modern Indian state and society has won general acceptance, and that the concept has thereby taken on a new meaning. If that had been the case, the 'original' meaning of the word as understood in its standard sense in the West would have remained unmutated; it would only have widened its range of referents by including within it the specific circumstances of the Indian situation. The reason why arguments have to be made about 'secularism' having a new *meaning* in India is because there are serious difficulties in applying the standard meaning of the word to the Indian circumstances. The 'original' concept, in other words, will not easily admit the Indian case within its range of referents.

This, of course, could be a good pretext for insisting that Indians have their own concept of secularism which is different from the Western concept bearing the same name; that, it could be argued, is exactly why the Western concept cannot be applied to the Indian case. The argument then would be about a difference in concepts: if the concept is different, the question of referential equivalence cannot be a very crucial issue. At most, it would be a matter of family resemblances, but conceptually Western secularism and Indian secularism would inhabit entirely autonomous discursive domains.

That, it is needless to say, is hardly the case. We could begin by asking why, in all recent discussions in India on the relation between religion and the state, the central concept is named by the English words 'secular' and 'secularism' or, in the Indian languages, by neologisms such as *dharmā-nispekṣhata* which are translations of those English words and are clearly meant to refer to the range of meanings indicated by the English terms. As far as I know, there does not exist in any Indian language a term for 'secular' or 'secularism' which is standardly used in talking about the role of religion in the modern state and society and whose meaning can be immediately explicated without having recourse to the English terms.

What this implies is that although the use of *dharmā-nirapekṣatā* or *mazhab* in *ghair-mazhabi* might open up conceptual or referential possibilities in Indian discourse which was unavailable to the concept of secularism in the West, the continued use of an awkward neologism, besides of course the continued use of

the English term itself, indicates that the more stable and well-defined reference for the concept lies in the Western political discourse about the modern state.⁴ In fact, it is clear from the discussions among the Indian political and intellectual elites at least from the 1920s that the proponents of the secular state in India never had any doubt at all about the meaning of the concept of secularism; all the doubts were about whether that concept would find a congenial field of application in the Indian social and political context. The continued use of the term 'secularism' is, it seems to me, an expression of the desire of the modernizing elite to see the 'original' meaning of the concept actualized in India. The resort to 'new meanings' is, to invoke Skinner's point once more, a mark of the failure of this attempt.

It might prove instructive to do a 'history of ideas' exercise for the use of the word 'secularism' in Indian political discourse in the last hundred years, but this is not the place for it. What is important for our purposes is a discussion of how the nationalist project of putting an end to colonial rule and inaugurating an independent nation-state became implicated, from its very birth, in a contradictory movement with regard to the modernist mission of secularization.

British Rule, Nationalism, and the Separation of State and Religion

Ignoring the details of a complicated history, it would not be widely off the mark to say that by the latter half of the nineteenth century, the British power in India had arrived at a reasonably firm policy of not involving the state in matters of religion. It tried to keep neutral on disputes over religion, and was particularly careful not to be seen as promoting Christianity. Immediately after the

⁴ Even in the mid-1960s, Ziya-ul Hasan Faruqi was complaining about the use of *ghayr mazhabi* and *la-dini*. '*Ghayr mazhabi* means something contrary to religious commandments and *la-dini* is irreligious or atheistic. . . . The common man was very easily led to conclude that the Indian state was against religion. It is, however, gratifying to see that the Urdu papers have started to transliterate the word 'secular'. 'Indian Muslims and the Ideology of the Secular State', in Donald Eugene Smith, (ed.), *South Asian Politics and Religion* (Princeton University Press: Princeton, 1966), pp 138-49.

assumption of power by the Crown in 1858, the most significant step was taken in instituting equality before the law by enacting uniform codes of civil and criminal law. The area left out, however, was that of personal law which continued to be governed by the respective religious laws as recognized and interpreted by the courts. The reason why personal law was not brought within the scope of a uniform civil code was, precisely, the reluctance of the colonial state to intervene in matters close to the very heart of religious doctrine and practice. In the matter of religious endowments, while the British power in its early years took over many of the functions of patronage and administration previously carried out by Indian rulers, by the middle of the nineteenth century it largely renounced those responsibilities and handed them over to local trusts and committees.

As far as the modernizing efforts of the Indian elite are concerned, the nineteenth-century attempts at 'social reform' by soliciting the legal intervention of the colonial state are well known. In the second half of the nineteenth century, however, the rise of nationalism led to a refusal on the part of the Indian elite to let the colonial state enter into areas that were regarded as crucial to the cultural identity of the nation. This did not mean a halt to the project of 'reform': all it meant was a shift in the agency of reform—from the legal authority of the colonial state to the moral authority of the national community.⁵ This shift is crucial: not so much because of its apparent coincidence with the policy of non-intervention of the colonial state in matters of religion in the late nineteenth century, but because of the underlying assumption in nationalist thinking about the role of state legislation in religion—legal intervention in the cause of religious reform was not undesirable *per se*, but it was undesirable when the state was colonial. As it happened, there was considerable change in the social beliefs and practices of the sections that come to constitute the new middle class in the period leading up to independence in 1947. Not only was there change in the actual practices surrounding family and personal relations, and even in many religious practices, without there being any significant change in the laws of the state, but,

⁵ I have discussed the point more elaborately in *The Nation and its Fragments: Colonial and Post-colonial Histories* (Princeton University Press: Princeton, 1993).

perhaps more important, there was an overwhelming tide in the dominant attitudes among these sections in favour of the legitimacy of 'social reform'. These reformist opinions affected the educated sections in virtually all parts of the country, and found a voice in most religious and caste communities.

One of the dramatic results of this cumulation of reformist desire within the nationalist middle class was the sudden spate of new legislation on religious and social matters immediately after Independence. This is actually an extremely significant episode in the development of the nation-state in India, and its deeply problematic nature has been seldom noticed in the current debates over secularism. It needs to be described in some detail.

Religious Reform and the Nation-State

Even as the provisions of the new Constitution of India were being discussed in the Constituent Assembly, some of the provincial legislatures had begun to enact laws for the reform of religious institutions and practices. One of the most significant of these was the Madras *Devadasis* (Prevention of Dedication) Act, 1947, which outlawed the institution of dedicating young girls to temple deities, and prohibited 'dancing by a woman... in the precincts of any temple or other religious institution, or in any procession of a Hindu deity, idol or object of worship....'⁶ Equally important was the Madras Temple Entry Authorization Act, 1947, which made it a punishable offence to prevent any person on the ground of untouchability from entering or worshipping in a Hindu temple. This act was immediately followed by similar legislation in the Central Provinces, Bihar, Bombay and other provinces, and finally by the temple entry provisions in the Constitution of India.

Although in the course of the debates over these enactments, views were often expressed about the need to 'remove a blot on the Hindu religion', it was clearly possible to justify some of the laws on purely secular grounds. Thus, the *devadasi* system could be declared unlawful on the ground that it was a form of bondage or of enforced prostitution. Similarly, 'temple entry' was sometimes defended by extending the argument that the denial of access

⁶ Cited in Donald Eugene Smith, *India as a Secular State* (Princeton University Press: Princeton, 1963), p. 239.

to public places on the ground of untouchability was unlawful. However, a contradiction appeared in this 'civil rights' argument since all places of worship were not necessarily thrown open to all citizens; only Hindu temples were declared open for all Hindus, and non-Hindus could be, and actually still are, denied entry. But even more problematically, the right of worship 'of all classes and sections of Hindus' at 'Hindu religious institutions of public character', as Article 25(2) of the Constitution has it, necessarily implies that the state has to take up the onus of interpreting even doctrinal and ritual injunctions in order to assert the *religious* legitimacy of forms of worship that would not be discriminatory in terms of caste.⁷

Still more difficult to justify on non-religious grounds was a reformist law like the Madras Animal and Bird Sacrifices Abolition Act, 1950. The view that animal sacrifices were repugnant and represented a primitive form of worship was clearly the product of a very specific religious interpretation of *religious* ritual, and could be described as a sectional opinion even among Hindus. (It might even be described as a view that was biased against the religious practices of the lower castes, especially in southern India). Yet in bringing about this 'purification' of the Hindu religion, the legislative wing of the state was seen as the appropriate instrument.

The period after Independence also saw, apart from reformist legislation of this kind, an enormous increase in the involvement of the state administration in the management of the affairs of Hindu temples. The most significant enabling legislation in this regard was the Madras Hindu Religious and Charitable Endowments Act, 1951, which created an entire department of government devoted to the administration of Hindu religious

⁷ In fact, the courts, recognizing that the right of a religious denomination 'to manage its own affairs in matters of religion' [Article 26(b)] could come into conflict with the right of the state to throw open Hindu temples to all classes of Hindus [Article 25(2)(b)], have had to come up with ingenious, and often extremely arbitrary, arrangements in order to strike a compromise between the two provisions. Some of these judgements are referred to in Smith, *India as a Secular State*, pp 242-3. For a detailed account of a case illustrating the extent of judicial involvement in the interpretation of religious doctrine and ritual, see Arjun Appadurai, *Worship and Conflict under Colonial Rule: A South India Case* (Cambridge University Press: Cambridge, 1981), pp 36-50.

endowments.⁸ The legal arguments here is, of course, that the religious denomination concerned still retains the right to manage its own affairs in matters of religion, while the secular matters concerned with the management of the property of the endowment is taken over by the state. But this is a separation of functions that is impossible to maintain in practice. Thus, if the administrators choose to spend the endowment funds on opening hospitals or universities rather than on more elaborate ceremonies or on religious instruction, then the choice will affect the way in which the religious instruction, then the choice will affect the way in which the religious affairs of the endowment are managed. The issue has given rise to several disputes in court about the specific demarcation between the religious and the secular functions, and to further legislation, in Madras as well as in other parts of India. The resulting situation led one commentator in the early 1960s to remark that 'the commissioner for Hindu religious endowments, a public servant of the secular state, today exercises far greater authority over Hindu religion in Madras state than the Archbishop of Canterbury does over the Church of England'.⁹

Once again, it is possible to provide a non-religious ground for state intervention in the administration of religious establishments, namely prevention of misappropriation of endowment funds and ensuring the proper supervision of what is after all a public property. But what has been envisaged and actually practised since

⁸ Actually, the increased role of the government in controlling the administration of Hindu temples in Madras began with the Religious Endowments Acts of 1925 and 1927. It is interesting to note that there was nationalist opposition to the move at the time. S. Satyamurthi said during the debates in the provincial legislature in 1923 that 'the blighting hand of this Government will also fall tight on our temples and *maths*, with the result that they will also become part of the great machinery which the Hon'ble Minister and his colleagues are blackening every day'. During the debates preceding the 1951 Act, on the other hand, T. S. S. Rajan, the Law Minister, said, '... the fear of interfering with religious institutions has always been there with an alien Government but with us it is very different. Ours may be called a secular Government, and so it is. But it does not absolve us from protecting the funds of the institutions which are meant for the service of the people'. For an account of these changes in law, see Chandra Y. Mudaliar, *The Secular State and Religious Institutions in India: A Study of the Administration of Hindu Public Religious Trusts in Madras* (Fritz Steiner Verlag: Wiesbaden, 1974).

⁹ Smith, *India as a Secular State*, p. 246.

Independence goes well beyond this strictly negative role of the state. Clearly, the prevailing views about the reform of Hindu religion saw it as entirely fitting that the representative and administrative wings of the state should take up the responsibility of managing Hindu temples in, as it were, the 'public interest' of the general body of Hindus.

The reformist agenda was, of course, carried out most comprehensively during the making of the Constitution and subsequently in the enactment in 1955 of what is known as the Hindu Code Bill.¹⁰ During the discussions, objections were raised that in seeking to change personal law, the state was encroaching upon an area protected by the right to religious freedom. B. R. Ambedkar's reply to these objections summed up the general attitude of the reformist leadership:

The religious conceptions in this country are so vast that they cover every aspect of life from birth to death. There is nothing which is not religion and if personal law is to be saved I am sure about it that in social matters we will come to a standstill... There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend it beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession, should be governed by religion... I personally do not understand why religion should be given this vast expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field.¹¹

Impelled by this reformist urge, the Indian Parliament proceeded to cut through the immensely complicated web of local and sectarian variations that enveloped the corpus known as 'Hindu law' as it had emerged through the colonial courts, and to lay down a single code of personal law for all Hindu citizens. Many of the new provisions were far-reaching in their departure from traditional brahmanical principles. Thus, the new code legalized inter-caste marriage; it legalized divorce and prohibited polygamy; it

gave to the daughter the same rights of inheritance as the son, and permitted the adoption of daughters as well as of sons. In justifying these changes, the proponents of reform not only made the argument that 'tradition' could not remain stagnant and needed to be reinterpreted in the light of changing conditions, but they also had to engage in the exercise of deciding what was or was not essential to 'Hindu religion'. Once again, the anomaly has provoked comments from critical observers: 'An official of the secular state [the law minister] became an interpreter of Hindu religion, quoting and expounding the ancient Sanskrit scriptures in defence of his bill'.¹²

Clearly, it is necessary here to understand the force and internal consistency of the nationalist-modernist project which sought, in one and the same move, to rationalize the domain of religious discourse and to secularize the public domain of personal law. It would be little more than reactionary to rail against the 'western-educated Hindu' who is scandalized by the profusion of avaricious and corrupt priests at Hindu temples, and who, influenced by Christian ideas of service and piety, rides roughshod over the 'traditional Hindu notions' that a religious gift was never made for any specific purpose; that the priest entrusted with the management of a temple could for all practical purposes treat the property and its proceeds as matters within his personal jurisdiction; and that, unlike the Christian church, a temple was a place 'in which the idol condescends to receive visitors, who are expected to bring offerings with them, like subjects presenting themselves before a maharaja'.¹³ More serious, of course, is the criticism that by using the state as the agency of what was very often only religious reform, the political leadership of the new nation-state flagrantly violated the principle of separation of state and religion.¹⁴ This is

¹² Smith, *India as a Secular State*, pp 281-2.

¹³ See, for instance, J. Duncan M. Derrett, 'The Reform of Hindu Religious Endowments', in Smith, (ed.), *Smith Asian Politics and Religion*, pp 311-36.

¹⁴ The two most comprehensive studies on the subject of the secular state in India make this point. V. P. Luthera in *The Concept of the Secular State and India* (Oxford University Press: Calcutta, 1964) concludes that India should not properly be regarded as a secular state. D. E. Smith in *India as a Secular State* disagrees, arguing that Luthera bases his conclusion on too narrow a definition of the secular state, but nevertheless points out the numerous anomalies in the current situation.

¹⁰ Actually, a series of laws called the Hindu Marriage Bill, the Hindu Succession Bill, the Hindu Minority and Guardianship Bill and the Hindu Adoptions and Maintenance Bill.

¹¹ *Constituent Assembly Debates* (Government of India: New Delhi, 1946-50), vol. 7, p. 781.

a matter we will now consider in detail, but it is nevertheless necessary to point out that the violation of this principle of the secular state was justified precisely by the desire to secularize.

Anomalies of the Secular State

What are the characteristics of the secular state? Three principles are usually mentioned in the liberal-democratic doctrine on this subject.¹⁵ The first is the principle of *liberty* which requires that the state permit the practice of any religion, within the limits set by certain other basic rights which the state is also required to protect. The second is the principle of *equality* which requires that the state not give preference to one religion over another. The third is the principle of *neutrality* which is best described as the requirement that the state not give preference to the religious over the non-religious and which leads, in combination with the liberty and equality principles, to what is known in US constitutional law as the 'wall of separation' doctrine: namely, that the state not involve itself with religious affairs or organizations.¹⁶

Looking now at the doctrine of the secular state as it has evolved in practice in India, it is clear that whereas all three principles have been invoked to justify the secular state, their application has been contradictory and has led to major anomalies. The principle of liberty, which implies a right of freedom of religion, has been incorporated in the Constitution which gives to every citizen—subject to public order, morality and health—not only the equal

¹⁵ For a recent exchange on this matter, see Robert Audi, 'The Separation of Church and State and the Obligations of Citizenship', *Philosophy and Public Affairs*, 18, 3 (Summer 1989), pp 259–96; Paul J. Weithman, 'Separation of Church and State: Some Questions for Professor Audi', *Philosophy and Public Affairs*, 20, 1 (Winter 1991), pp 52–65; Robert Audi, 'Religious Commitment and Secular Reason: A Reply to Professor Weithman', *Philosophy and Public Affairs*, 20, 1 (Winter 1991), pp 66–76.

¹⁶ The US Supreme Court defined the doctrine as follows: 'Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.... Neither a state nor the federal government can, openly or secretly, participate in the affairs of any religious organization or groups and vice versa'. *Everson v. Board of Education*, 330 U. S. 1 (1947), cited in Smith, *India as a Secular State*, pp 125–6.

right to freedom of conscience but also, quite specifically, 'the right freely to profess, practise and propagate religion'. It also gives 'to every religious denomination or any section thereof certain collective rights of religion'. Besides, it specifically mentions the right of 'all minorities, whether based on religion or language', to establish and administer their own educational institutions. Limiting these rights of freedom of religion, however, is the right of the state to regulate 'any economic, financial, political or other secular activity which may be associated with religious practice', to provide for social welfare and reform and to throw open Hindu religious institutions to all sections of Hindus. This limit to the liberty principle is what enabled the extensive reform under state auspices of Hindu personal law, and of the administration of Hindu temples.

The liberal-democratic doctrine of freedom of religion does recognize, of course, that this right will be limited by other basic human rights. Thus, for instance, it would be perfectly justified for the state to deny that, let us say, human sacrifice or causing injury to human beings, or as we have already noted in the case of *devadasis*, enforced servitude to a deity or temple, constitutes permissible religious practice. However, it is also recognized that there are many grey areas where it is difficult to lay down the limit. A case very often cited in this connection is the legal prohibition of polygamy even when it may be sanctioned by a particular religion: the argument that polygamy necessarily violates other basic human rights is often thought of as problematical.

But no matter where this limit is drawn, it is surely required by the idea of the secular state that the liberty-principle be limited only by the need to protect some other universal basic right, and not by appeal to a particular interpretation of religious doctrine. This, as we have mentioned before, has not been possible in India. The urge to undertake by legislation the reform of Hindu personal law and Hindu religious institutions made it difficult for the state not to transgress into the area of religious reform itself. Both the legislature and the courts were led into the exercise of interpreting religious doctrine on religious grounds. Thus, in deciding the legally permissible limits of state regulation of religious institutions, it became necessary to identify those practices that were *essentially* of a religious character; but, in accordance with the judicial procedures of a modern state, this decision could not be

left to the religious denomination itself but had to be determined 'as an objective question' by the courts.¹⁷ It can be easily seen that this could lead to the entanglement of the state in a series of disputes that are mainly religious in character.

It could, of course, be argued that given the dual character of personal law—inherited from the colonial period as religious law that had been recognized and codified as the laws of the state—and in the absence of appropriate institutions of the Hindu religion through which religious reform could be organized and carried out outside the arena of the state, there was no alternative to state intervention in this matter. Which other agency was there with the requisite power and legitimacy to undertake the reform of religious practices? The force and persuasiveness of this argument for the modernist leadership of independent India can hardly be overstated. The desire was in fact to initiate a process of rational interpretation of religious doctrine, and to find a representative and credible institutional process for the reform of religious practice. That the use of state legislation to achieve this modernist purpose must come into conflict with another modernist principle, of the freedom of religion, is one of the anomalies of the secular state in India.

The second principle—that of equality—is also explicitly recognized in the Indian Constitution which prohibits the state from discriminating against any citizen on the basis only of religion or caste, except when it makes special provisions for the advancement of socially and educationally backward classes or for scheduled castes and scheduled tribes. Such special provisions in the form of reserved quotas in employment and education, or of reserved seats in representative bodies, have of course led to much controversy in India in the last few decades. But these disputes about the validity or positive discrimination in favour of underprivileged castes or tribes have almost never taken the form of a dispute about equality on the ground of religion. Indeed, although the institution of caste itself is supposed to derive its basis from the doctrines of the brahmanical religion, the recent debates in the political arena about caste discrimination usually do not make any appeals at all to religious doctrines. There is only one significant way in which the

¹⁷ *Durgah Committee v. Hussain*, A. 1961, S. C. 1402 (1415), cited in Durga Das Basu, *Constitutional Law of India* (Prentice-Hall of India: New Delhi, 1977), p. 84.

question of positive discrimination in favour of scheduled castes is circumscribed by religion: in order to qualify as a member of a scheduled cast, a person must profess to be either Hindu or Sikh; a public declaration of the adoption of any other religion would lead to disqualification. However, in some recent provisions relating to 'other backward classes', especially in the much disputed recommendations of the Mandal Commission, attempts have been made to go beyond this limitation.

The problem with the equality principle which concerns us more directly is the way in which it has been affected by the project of reforming Hindu religion by state legislation. All the legislative and administrative measures we have mentioned before concern the institutions and practices of the Hindus, including the reform of personal laws and of religious endowments. That this was discriminatory was argued in the 1950s by the socially conservative sections of Hindu opinion, and by political parties like the Hindu Mahasabha which were opposed to the idea of reform itself. But the fact that the use of state legislation to bring about reforms in only the religion of the majority was creating a serious anomaly in the very notion of equal citizenship, was pointed out by only a few lone voices within the progressive sections. One such belonged to J. B. Kripalani, the socialist leader, who argued: 'If we are a democratic state, I submit we must make laws not for one community alone.... It is not the Mahasabhites who alone are communal: it is the government also that is communal, whatever it may say'. Elaborating, he said,

If they [the Members of Parliament] single out the Hindu community for their reforming zeal, they cannot escape the charge of being communalists in the sense that they favour the Hindu community and are indifferent to the good of the Muslim community or the Catholic community.... Whether the marriage bill favours the Hindu community or places it at a disadvantage, both ways, it becomes a communal measure.¹⁸

The basic problem here was obvious. If it was accepted that the state could intervene in religious institutions or practices in order to protect other social and economic rights, then what was the ground for intervening only in the affairs of one religious community and not of others? Clearly, the first principle—that of freedom

¹⁸ Cited in Smith, *India as a Secular State*, pp 286, 288.

of religion—could not be invoked here only for the minority communities when it had been set aside in the case of the majority community.

The problem has been got around by resorting to what is essentially a pragmatic argument. It is suggested that for historical reasons, there is a certain lag in the readiness of the different communities to accept reforms intended to rationalize the domain of personal law. In any case, if equality of citizenship is what is desired, it already stands compromised by the very system of religion-based personal laws inherited from colonial times. What should be done, therefore, is to first declare the desirability of replacing the separate personal laws by a uniform civil code; but to proceed towards this objective in a pragmatic way, respecting the sensitivity of the religious communities about their freedom of religion, and going ahead with state-sponsored reforms only when the communities themselves are ready to accept them. Accordingly, there is an item in the non-justiciable Directive Principles of the Constitution which declares that the state should endeavour to provide a uniform civil code for all citizens. On the other hand, those claiming to speak on behalf of the minority communities tend to take a firm stand in the freedom of religion principle, and to deny that the state should have any right at all to interfere in their religious affairs. The anomaly has, in the last few years, provided some of the most potent ammunition to the Hindu right in its campaign against what it describes as the 'appeasement' of minorities.

It would not be irrelevant to mention here that there have also occurred, among the minority religious communities in India, not entirely dissimilar movements for the reform of religious laws and institutions. In the earlier decades of this century, there were organized attempts, for instance, to put an end to local customary practices among Muslim communities in various parts of India and replace them with a uniform Muslim personal law. This campaign, led in particular by the Jamiyat al-*ulama-i-Hind* of Deoband—well known for its closeness to the Indian National Congress—was directed against the recognition by the courts of special marriage and inheritance practices among communities such as the Mapilla of southern India, the Memon of western India, and various groups in Rajasthan and Punjab. The argument given was not only that such practices were 'un-Islamic'; specific criticisms were also made

how these customs were backward and iniquitous, especially in the matter of the treatment of women. The preamble to a Bill to change the customary succession law of the Mapilla, for instance said, using a rhetoric not unlike what would be used later for the reform of Hindu law, 'The Muhammadan community now feels the incongruity of the usage and looks upon the prevailing custom as a discredit to their religion and to their community'.¹⁹

The reform campaigns led to a series of new laws in various provinces and in the central legislature, such as the Mapilla Succession Act 1918, the Cutchi Memons Act 1920 and 1938, and the NWFP Muslim Personal Law (Shari'at) Application Act 1935 (which was the first time that the terms 'Muslim personal law' and 'Shari'at' were used interchangeably in law). The culmination of these campaigns for a uniform set of personal laws for all Muslims in India was reached with the passing of the so-called Shari'at Act by the Central legislature in 1937. Interestingly, it was because of the persistent efforts of Muhammad Ali Jinnah, whose political standing was in this case exceeded by his prestige as a legal luminary, that only certain sections of this Act were required to be applied compulsorily to all Muslims; on other matters its provisions were optional.

The logic of completing the process of uniform application of Muslim personal law has continued in independent India. The optional clauses in the 1937 Act have been removed. The Act has been applied to areas that were earlier excluded: especially the princely states that merged with India after 1947, the latest in that series being Cooch Behar where the local customary law for Muslims was superseded by the Shari'at laws through legislation by the Left Front government of West Bengal in 1980.

Thus, even while resisting the idea of a uniform civil code on the ground that this would be a fundamental encroachment on the freedom of religion and destructive of the cultural identity of religious minorities, the Muslim leadership in India has not shunned state intervention altogether. One notices, in fact, the same attempt to seek rationalization and uniformity as one sees in the case of Hindu personal law or Hindu religious institutions. The crucial difference after 1947 is, of course, that unlike the majority

¹⁹ Cited in Tahir Mahmood, *Muslim Personal Law: Role of the State in the Indian Subcontinent* (All India Reporter: Nagpur, 1983), p. 21.

community, the minorities are unwilling to grant to a legislature elected by universal suffrage the power to legislate the reform of their religions. On the other hand, there do not exist any other institutions which have the representative legitimacy to supervise such a process of reform. That, to put it in a nutshell, is the present impasse on the equality principle.

The third principle we have mentioned of the secular state—that of the separation of state and religion—has also been recognized in the Constitution, which declares that there shall be no official state religion, no religious instruction in state schools, and no taxes to support any particular religion. But, as we have seen, the state has become entangled in the affairs of religion in numerous ways. This was the case even in colonial times, but the degree and extent of the entanglement, paradoxically, has increased since Independence. Nor is this involvement limited only to the sorts of cases we have mentioned before, which were the results of state-sponsored religious reform. Many of the older systems of state patronage of religious institutions, carried out by the colonial government or by the princely states, still continue under the present regime. Thus, Article 290A of the Constitution makes a specific provision of money to be paid every year by the governments of Kerala and Tamil Nadu to the Travancore Devaswom Fund. Article 28(2) says that although there will be no religious instruction in educational institutions wholly maintained out of state funds, this would not apply to those institutions where the original endowment or trust requires that religious instruction be given. Under this provision, Banaras Hindu University and Aligarh Muslim University, both central universities, do impart religious instruction. Besides, there are numerous educational institutions all over the country run by religious denominations which receive state financial aid.

The conclusion is inescapable that the 'wall of separation' doctrine of US constitutional law can hardly be applied to the present Indian situation (as indeed it cannot in the case of many European democracies, but there at least it could be argued that the entanglements are politically insignificant and often obsolete remnants of older legal conventions). This is precisely the ground on which the argument is sometimes made that 'Indian secularism' has to have a different meaning from 'Western secularism'. What is suggested in fact is that the cultural and historical realities of the

Indian situation call for a *different* relationship between state and civil society than what is regarded as normative in Western political discourse, at least in the matter of religion. Sometimes it is said that in Indian conditions, the neutrality principle cannot apply; the state will necessarily have to involve itself in the affairs of religion. What must be regarded as normative here is an extension of the equality principle, i.e. that the state should favour all religions equally. This argument, however, cannot offer a defence for the selective intervention of the state in reforming the personal laws only of the majority community. On the other hand, arguments are also made about secularism having 'many meanings',²⁰ suggesting thereby that a democratic state must be expected to protect cultural diversity and the right of people to follow their own culture. The difficulty is that this demand cannot be easily squared with the homogenizing secular desire for, let us say, a uniform civil code.

Where we end up then is a quandary. The desire for a secular state must concede defeat even as it claims to have discovered new meanings of secularism. On the other hand, the respect for cultural diversity and different ways of life finds it impossible to articulate itself in the unitary rationalism of the language of rights. It seems to me that there is no viable way out of this problem within the given contours of liberal democratic theory, which must define the relation between the relatively autonomous domains of state and civil society always in terms of individual rights. As has been noticed for many other aspects of the emerging forms of non-Western modernity, this is one more instance where the supposedly universal forms of the modern state turn out to be inadequate for the post-colonial world.

To reconfigure the problem posed by the career of the secular state in India, we will need to locate it on a somewhat different conceptual ground. In the remainder of this paper, I will suggest the outlines of an alternative theoretical argument which holds the promise of taking us outside the dilemmas of the secular modernist discourse. In this, I will not take the easy route of appealing to an 'Indian exception'. In other words, I will not trot out yet another version of the 'new meaning of secularism' argument. But to avoid that route, I must locate my problem on a ground which will

²⁰ Sumit Sarkar, 'The Fascism of the Sangh Parivar'.

include, at one and the same time, the history of the rise of the modern state in both its Western and non-Western forms. I will attempt to do this by invoking Michel Foucault.

Liberal-Democratic Conundrum

But before I do that, let me briefly refer to the current state of the debate over minority rights in liberal political theory, and why I think the problem posed by the Indian situation will not find any satisfactory answers within the terms of that debate. A reference to this theoretical corpus is necessary because, first, left democratic thinking in India on secularism and minority rights shares many of its premises with liberal-democratic thought, and second, the legally instituted processes of the state and the public domain in India have clearly avowed affiliations to the conceptual world of liberal political theory. Pointing out the limits of liberal thought will also allow me, then, to make the suggestion that political practice in India must seek to develop new institutional sites that cut across the divide between state sovereignty on the one hand and people's rights on the other.

To begin with, liberal political theory in its strict sense cannot recognize the validity of any collective rights of cultural groups. Liberalism must hold as a fundamental principle the idea that the state, and indeed all public institutions, will treat all citizens equally, regardless of race, sex, religion or other cultural particularities. It is only when everyone is treated equally, liberals will argue, that the basic needs of people, shared universally by all, can be adequately and fairly satisfied. These universal needs will include not only 'material' goods such as livelihood, health care or education, but also 'cultural' goods such as religious freedom, free speech, free association, etc. But in order to guarantee freedom and equality at the same time, the locus of rights must be the individual citizen, the bearer of universal needs; to recognize rights that belong only to particular cultural groups within the body of citizens is to destroy both equality and freedom.

Needless to say, this purist version of the liberal doctrine is regarded as unduly rigid and narrow by many who otherwise identify with the values of liberal-democratic politics. But the attempts to make room, within the doctrines of liberalism, for some recognition of collective cultural identities have not yielded

solutions that enjoy wide acceptance. I cannot enter here into the details of this controversy which, spurred on by the challenge of 'multiculturalism' in many Western countries, has emerged as perhaps the liveliest area of debate in contemporary liberal philosophy. A mention only of the principal modes of argument in so far as they are relevant to the problems posed by the Indian situation will have to suffice.

One response to the problem of fundamental moral disagreements caused by a plurality of conflicting—and sometimes incommensurable—cultural values is to seek an extension of the principle of neutrality in order to preclude such conflicts from the political arena. The argument here is that, just as in the case of religion, the existence of fundamentally divergent moral values in society would imply that there is no rational way in which reasonable people might resolve the dispute; and since the state should not arbitrarily favour one set of beliefs over another, it must not be asked to intervene in such conflicts. John Rawls and Thomas Nagel, among others, have made arguments of this kind, seeking thereby to extend the notions of state impartiality and religious toleration to other areas of moral disagreement.²¹

Not all liberals, however, like the deep scepticism and 'epistemic abstinence' implied in this view.²² More relevant for us, however, is the criticism made from within liberal theory that these attempts to cope with diversity by taking the disputes off the political agenda are 'increasingly evasive. They offer a false impartiality in place of social recognition of the persistence of fundamental conflicts of value in our society'.²³ If this is a judgement that can be made for societies where the 'wall of separation' doctrine is solidly established, the remoteness of these arguments from the realities of the Indian situation hardly needs to be emphasized.

21 John Rawls, 'Justice as Fairness: Political not Metaphysical', *Philosophy and Public Affairs*, 14 (1985), pp 248–51; John Rawls, 'The Priority of the Right and Ideas of the Good', *Philosophy and Public Affairs*, 17 (1988), pp 260–4; Thomas Nagel, 'Moral Conflict and Political Legitimacy', *Philosophy and Public Affairs*, 16 (1987), pp 218–40.

22 For instance, Joseph Raz, 'Facing Diversity: The Case of Epistemic Abstinence', *Philosophy and Public Affairs*, 19 (1990), pp 3–46.

23 Amy Gutmann and Dennis Thompson, 'Moral Conflict and Political Consensus', *Ethics*, 101 (October 1990), pp 64–88.

However, rather than evade the question of cultural diversity, some theorists have attempted to take up the 'justice as fairness' idea developed by liberals such as John Rawls and Ronald Dworkin, and extend it to cultural groups. Justice, according to this argument, requires that undeserved or 'morally arbitrary' disadvantages should be removed or compensated for. If such disadvantages attach to persons because they were born into particular minority cultural groups, then liberal equality itself must demand that individual rights be differentially allocated on the basis of culture. Will Kymlicka has made such a case for the recognition of the rights of cultural minorities whose very survival as distinct groups is in question.²⁴

We should note, of course, that the examples usually given in this liberal literature to illustrate the need for minority cultural rights are those of the indigenous peoples of North America and Australia. But in principle there is no reason why the argument about 'being disadvantaged' should be restricted only to such indubitable cases of endangered cultural groups; it should apply to any group that can be reasonably defined as a cultural minority within a given political entity. And this is where its problems as a liberal theory become insuperable. Could a collective cultural right be used as an instrument to perpetuate thoroughly illiberal practices within the group? Would individual members of such groups have the right to leave the group? If an individual right of exit is granted, would that not in effect undermine the right of the group to preserve its identity? On the other hand, if a right of exit is denied, would we still have a liberal society?²⁵

Clearly, it is extremely hard to justify the granting of substantively different collective rights to cultural groups on the basis of liberalism's commitment to procedural equality and universal citizenship. Several recent attempts to make a case for special rights for cultural minorities and oppressed groups, have consequently gone on to question the idea of universal citizenship itself: in doing

²⁴ Will Kymlicka, *Liberalism, Community and Culture* (Oxford University Press: Oxford, 1989).

²⁵ See, for example the following exchange: Chandran Kukathas, 'Are there any Cultural Rights?' and Will Kymlicka, 'The Rights of Minority Cultures', *Political Theory*, 20, 1 (February 1992), pp 105-46; Kukathas, 'Cultural Rights Again', *Political Theory*, 20, 4 (November 1992), pp 674-80.

this, the arguments come fairly close to upholding some sort of cultural relativism. The charge that is made against universal citizenship is not merely that it forces everyone into a single homogeneous cultural mould, thus threatening the distinct identities of minority groups; but that the homogeneous mould itself is by no means a neutral one, being invariably the culture of the dominant group, so that it is not everybody but only the minorities and the disadvantaged who are forced to forego their cultural identities. That being the case, neither universalism nor neutrality can have any moral priority over the rights of cultural groups to protect their autonomous existence.

Once again, arguments such as this go well beyond the recognized limits of the liberal doctrine; and even those who are sympathetic to the demands for the protection of plural cultural identities feel compelled to assert that the recognition of difference cannot mean the abandonment of all commitment to a universalist framework of reason.²⁶ Usually, therefore, the 'challenge of multiculturalism' is sought to be met by asserting the value of diversity itself for the flowering of culture, and making room for divergent ways of life *within* a fundamentally agreed set of universalist values. Even when one expects recognition of one's 'right to culture', therefore, one must always be prepared to act within a culture of rights and thus give reasons for insisting on being different.²⁷

None of these liberal arguments seems to have enough strength to come to grips with the problems posed by the Indian situation. Apart from resorting to platitudes about the value of diversity, respect for other ways of life, and the need for furthering understanding between different cultures, they do not provide any means for relocating the institutions of rights or refashioning the practices of identity in order to get out of what often appears to be a political impasse.

²⁶ See for example Charles Taylor, *Multiculturalism and The Politics of Recognition* (Princeton University Press: Princeton, 1992); Amy Gutmann, 'The Challenge of Multiculturalism in Political Ethics', *Philosophy and Public Affairs*, 22 (1993), pp 73-206.

²⁷ Rajeev Bhargava has sought to make the case for the rights of minorities in India in these terms. See 'The Right to Culture', in K. N. Panikkar, (ed.), *Communalism in India: History, Politics and Culture* (Manohar: New Delhi, 1991), pp 165-72.

Governmentality

I make use of Foucault's idea of governmentality not because I think it is conceptually neat or free of difficulties. Nor is the way in which I will use the idea here one that, as far as I know, Foucault has advanced himself. I could have, therefore, gone on from the preceding paragraph to set out my own scheme for re-problematizing the issue of secularism in India, without making this gesture towards Foucault. The reason I think the reference is necessary, however, is that by invoking Foucault I will be better able to emphasize the need to shift our focus from the rigid framework laid out by the concepts of sovereignty and right, to the constantly shifting *strategic* locations of the politics of identity and difference.

Foucault's idea of governmentality²⁸ reminds us, first, that cutting across the liberal divide between state and civil society there is a very specific form of power that entrenches itself in modern society, having as its goal the well-being of a population, its mode of reasoning a certain instrumental notion of economy, and its apparatus an elaborate network of surveillance. True, there have been other attempts at conceptualizing this ubiquitous form of modern power: most notably in Max Weber's theory of rationalization and bureaucracy, or more recently in the writings of the Frankfurt School, and in our own time in those of Jürgen Habermas. However, unlike Weberian sociology, Foucault's idea of governmentality does not lend itself to appropriation by a liberal doctrine characterizing the state as a domain of coercion ('monopoly of legitimate violence') and civil society as the zone of freedom. The idea of governmentality—and this is its second important feature—insists that by exercising itself through forms of representation, and hence by offering itself as an aspect of the self-disciplining of the very population over which it is exercised, the modern form of power, whether inside or outside the domain of the state, is capable of allowing for an immensely flexible braiding of coercion and consent.

²⁸ See, in particular, Michel Foucault, 'Governmentality', in Garham Burchell, Colin Gordon and Peter Miller, (eds), *The Foucault Effect: Studies in Governmentality* (University of Chicago Press: Chicago, 1991), pp 87–104; and 'Politics and Reason', in Foucault, *Politics, Philosophy, Culture: Interviews and Other Writings 1977–84* (Routledge: New York, 1988), pp 57–85.

If we bear in mind these features of the modern regime of power, it will be easier for us to grasp what is at stake in the politics of secularization. It is naive to think of secularization as simply the onward march of rationality, devoid of coercion and power struggles. Even if secularization as a process of the decreasing significance of religion in public life is connected with such 'objective' social process as mechanization or the segmentation of social relationships (as sociologists such as Bryan Wilson have argued),²⁹ it does not necessarily evoke a uniform set of responses from all groups. Indeed, contrary phenomena such as religious revivalism, fundamentalism, and the rise of new cults have sometimes also been explained as the consequence of the same processes of mechanization or segmentation. Similarly, arguments about the need to hold on to a *universalist framework of reason even as one* acknowledges the fact of difference ('deliberative universalism' or 'discourse ethics') tend to sound like pious homilies because they ignore the strategic context of power in which identity or difference is often asserted.

The limit of liberal-rationalist theory is reached when one is forced to acknowledge that, within the specific strategic configuration of a power contestation, what is asserted in a collective cultural right is in fact *the right not to offer a reason for being different*. Thus when a minority group demands a cultural right, it in fact says, 'We have our own reasons for doing things the way we do, but since you don't share the fundamentals of our worldview, you will never come to understand or appreciate those reasons. Therefore, leave us alone and let us mind our own business'. If this demand is admitted, it amounts in effect to a concession to cultural relativism.

But the matter does not necessarily end there. Foucault's notion of governmentality leads us to examine the other aspect of this strategic contestation. Why is the demand made in the language of rights? Why are the ideas of autonomy and freedom invoked? Even as one asserts a basic incommensurability in frameworks of reason, why does one nevertheless say, 'We have our own reasons'?

²⁹ Bryan Wilson, *Religion in Secular Society* (Watts: London, 1966); Wilson, *Religion in Sociological Perspective* (Oxford University Press: Oxford, 1982). Also, David Martin, *A General Theory of Secularization* (Basil Blackwell: Oxford, 1978).

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Consider then the two aspects of the process that Foucault describes as the 'governmentalization of the state': juridical sovereignty on the one hand, governmental technology on the other. In his account of this process in Western Europe since the eighteenth century, Foucault tends to suggest that the second aspect completely envelops and contains the first.³⁰ That is to say, in distributing itself throughout the social body by means of the technologies of governmental power, the modern regime no longer retains a distinct aspect of sovereignty. I do not think, however, that this is a necessary implication of Foucault's argument. On the contrary, I find it more useful—especially of course in situations where the sway of governmental power is far from general—to look for a disjuncture between the two aspects, and thus to identify the sites of application of power where governmentality is unable to successfully encompass sovereignty.

The assertion of minority cultural rights occurs on precisely such a site. It is because of a contestation on the ground of sovereignty that the right is asserted *against governmentality*. To say 'We will not give reasons for not being like you' is to resist entering that deliberative or discursive space where the technologies of governmentality operate. But then, in a situation like this, the only way to resist submitting to the powers of sovereignty is literally to declare oneself unreasonable.

Toleration and Democracy

It is necessary for me to clarify here that in the remainder of this paper, I will be concerned exclusively with finding a defensible argument for minority cultural rights in the given legal-political situation prevailing in India. I am not therefore proposing an

³⁰ 'Maybe what is really important for our modernity—that is, for our present—is not so much the *étatisation* of society, as the "governmentalization" of the state.... This governmentalization of the state is a singularly paradoxical phenomenon, since if in fact the problems of governmentality and the techniques of government have become the only political issue, the only real space for political struggle and contestation, this is because the governmentalization of the state is at the same time what has permitted the state to survive, and it is possible to suppose that if the state is what it is today, this is so precisely thanks to this governmentality, which is at once internal and external to the state....' Foucault, 'Governmentality', p. 103.

abstract institutional scheme for the protection of minority rights in general. Nor will I be concerned with hypothetical questions such as: 'If your proposal is put into practice, what will happen to national unity?' I am not arguing from the position of the state; consequently, the problem as I see it, is not what the state, or those who think and act on behalf of the state, can grant to the minorities. My problem is to find a defensible ground for a strategic politics, both within and outside the field defined by the institutions of the state, in which a minority group, or one who is prepared to think from the position of a minority group, can engage in India today.

When a group asserts a right against governmentality, i.e. a right not to offer reasons for being different, can it expect others to respect its autonomy and be tolerant of its 'unreasonable' ways? The liberal understanding of toleration will have serious problems with such a request. If toleration is the willing acceptance of something of which one disapproves, then it is usually justified on one of three grounds: a contractualist argument (persons entering into the social contract cannot know beforehand which religion they will end up having and hence, will agree to mutual toleration),³¹ a consequentialist argument (the consequences of acting tolerantly are better than those of acting intolerantly),³² or an argument about respect for persons.³³ We have already pointed out the inappropriateness of a contractualist solution to the problems posed by the Indian situation. The consequentialist argument is precisely what is used when it is said that one must go slow on the universal civil code. But this is only a pragmatic argument for toleration, based on a tactical consideration about the costs of imposing what is otherwise the right thing to do. As such, it always remains vulnerable to righteous moral attack.

The principle of respect for persons does provide a moral argument for toleration. It acknowledges the right of the tolerated,

³¹ The most well-known such argument is in John Rawls, *A Theory of Justice* (Oxford University Press: London, 1971), pp 205–21.

³² See for instance Preston King, *Toleration* (George, Allen and Unwin: London, 1976); D. D. Raphael, 'The Intolerable', in Susan Mendus, (ed.), *Justifying Toleration: Conceptual and Historical Perspectives* (Cambridge University Press: Cambridge, 1988), pp 137–53.

³³ For instance, Joseph Raz, 'Autonomy, Toleration and the Harm Principle', in Mendus, (ed.), *Justifying Toleration*, pp 155–75.

and construes toleration as something that can be claimed as an entitlement. It also sets limits to toleration and thereby resolves the problem of justifying something of which one disapproves: toleration is required by the principle of respect for persons, but practices which fail to show respect for persons need not be tolerated. Applying this principle to the case of minority cultural rights, one can easily see where the difficulty will arise. If a group is intolerant towards its own members and shows inadequate respect for persons, how can it claim tolerance from others? If indeed the group chooses not to enter into a reasonable dialogue with others on the validity of its practices, how can it claim respect for its ways?

Once again, I think that the strategic location of the contestation over cultural rights is crucial. The assertion of a right to be different does not exhaust all of the points where the contestation is grounded. Equally important is the other half of the assertion: 'We have our own reasons for doing things the way we do'. This implies the existence of a field of reasons, of processes through which reasons can be exchanged and validated, even if such processes are open only to those who share the viewpoint of the group. The existence of this autonomous discursive field may only be implied and not activated, but the implication is a necessary part of the assertion of cultural autonomy as a matter of *right*.³⁴

The liberal doctrine tends to treat the question of collective rights of cultural minorities from a position of externality. Thus, its usual stand on tolerating cultural groups with illiberal practices is to advocate some sort of right of exit for individual dissident members. (One is reminded of the insistence of the liberal Jinnah that not all sections of the Shari'at Bill should apply compulsorily to all Muslims.) The argument I am advancing would, however,

³⁴ In some ways, this is the obverse of the implication which Ashis Nandy derives from his Gandhian conception of tolerance. His 'religious' conception of tolerance 'must impute to other faiths the same spirit of tolerance. Whether a large enough proportion of those belonging to the other religious traditions show in practice and at a particular point of time and place the same tolerance or not is a secondary matter. Because it is the imputation or presumption of tolerance in others, not its existence, which defines one's own tolerance....' Nandy, 'The Politics of Secularism'. My search is in the other direction. I am looking for a 'political' conception of tolerance which will set out the practical conditions I must meet in order to demand and expect tolerance from others.

give a very different construction to the concept of toleration. Toleration here would require one to accept that there will be political contexts where a group could insist on its right not to give reasons for doing things differently, provided it explains itself adequately in its own chosen forum. In other words, toleration here would be premised on autonomy and respect for persons, but it would be sensitive to the varying political salience of the institutional contexts in which reasons are debated.

To return to the specificities of the Indian situation, then, my approach would not call for any axiomatic approval to a uniform civil code for all citizens. Rather, it would start from the historically given reality of separate religion-based personal laws and the intricate involvement of state agencies in the affairs of religious institutions. Here, equal citizenship already stands qualified by the legal recognition of religious differences; the 'wall of separation' doctrine cannot be strictly applied either. Given the inapplicability of the neutrality principle, therefore, it becomes necessary to find a criterion by which state involvement, when it occurs in the domain of religion, can appear to the members of a religious group as both legitimate and fair. It seems to me that toleration, as described above, can supply us with this criterion.

Let us construct an argument for someone who is prepared to defend the cultural rights of minority religious groups in India. The 'minority group', she will say, is not the invention of some perverse sectarian imagination: it is an actually existing category of Indian citizenship—constitutionally defined, legally administered and politically invoked at every opportunity. Some people in India happen to be born into minority groups; a few others choose to enter them by conversion. In either case, many aspects of the status of such people as legal and political subjects are defined by the fact that they belong to minority groups. If there is any perversity in this, our advocate will point out, it lies in the specific compulsion of the history of the Indian state and its nationalist politics. That being so, one could not fairly be asked to simply forget one's status as belonging to a minority. What must be conceded instead is one's right to negotiate that status in the public arena.

Addressing the general body of citizens from her position within the minority group, then, our advocate will demand toleration for the beliefs of the group. On the other hand, addressing other

members of her group, she will demand that the group publicly seek and obtain from its members consent for its practices, in so far as those practices have regulative power over the members. She will point out that if the group was to demand and expect toleration from others, it would have to satisfy the condition of representativeness. Our advocate will therefore demand more open and democratic debate within her community. Even if it is true, she will say, that the validity of the practices of the religious group can be discussed and judged only in its own forums, those institutions must satisfy the same criteria of publicity and representativeness that members of the group demand of all public institutions having regulatory functions. That, she will insist, is necessary implication of engaging in the politics of collective rights.

She will not of course claim to have a blueprint of the form of representative institutions which her community might develop, and she will certainly resist any attempt by the state to legislate into existence representative bodies for minority groups as prerequisites for the protection of minority rights. The appropriate representative bodies, she will know, could only achieve their actual form through a political process carried out primarily within each minority group. But by resisting, on the one hand, the normalizing attempt of the national state to define, classify and fix the identity of minorities on their behalf (the minorities, while constituting a legally distinct category of citizens, can only be acted upon by the general body of citizens; they cannot represent themselves), and demanding, on the other, that regulative powers within the community be established on a more democratic and internally representative basis, our protagonist will try to engage in a strategic politics that is neither integrationist nor separatist. She will in fact locate herself precisely at the cusp where she can face, on the one side, the assimilationist powers of governmental technology and resist, on the grounds of autonomy and self-representation, its universalist idea of citizenship; and, on the other side, struggle, once again on the grounds of autonomy and self-representation, for the emergence of more representative public institutions and practices within her community.

Needless to say, there will be many objections to her politics, even from her own comrades. Would not her disavowal of the idea of universal citizenship mean a splitting up of national society into mutually exclusive and rigidly separated ethnic groups? To this

question, our protagonist could give the abstract answer that universal citizenship is merely the form offered by the bourgeois-liberal state to ensure the legal-political conditions for the deployment and exploitation of differences in civil society; universal citizenship normalizes the reproduction of differences by pretending that everyone is the same. More concretely, she could point out that nowhere has the sway of universal citizenship meant the end of either ethnic difference or discrimination on cultural grounds. The lines of difference and discrimination dissolve at some points, only to reappear at others. What is problematic here is not so much the existence of bounded categories of population, which the classificatory devices of modern governmental technologies will inevitably impose, but rather the inability of people to negotiate, through a continuous and democratic process of self-representation, the actual content of those categories. That is the new politics that one must try to initiate within the old forms of the modern state.

She will also be asked whether, by discounting universal citizenship, she is not throwing away the possibility of using the emancipatory potential of the ideas of liberty and equality. After all, does not the liberal-secular idea of equal rights still hold out the most powerful ideological means to fight against unjust and often tyrannical practices within many religious communities, especially regarding the treatment of women? To this, the answer will be that it is not a choice of one or the other. To pursue a strategic politics of demanding toleration, one would not need to oppose the liberal-secular principles of the modern state. One would, however, need to rearrange one's strategic priorities. One would be rather more sceptical of the promise that an interventionist secular state would, by legislation or judicial decisions, bring about progressive reform within minority religious groups. Instead, one would tend to favour the harder option, which rests on the belief that if the struggle is for progressive change in social practices sanctioned by religion, then that struggle must be launched and won within the religious communities themselves. There are no historical shortcuts here.

A strategic politics of demanding toleration does not require one to regurgitate the tired slogans about the universality of discursive reason. Instead, it takes seriously the possibility that at particular conjunctures and on specific issues, there could occur an honest

refusal to engage in reasonable discourse. But it does not, for that reason, need to fully subscribe to a theory of cultural relativism. Indeed, it could claim to be agnostic in this matter. All it needs to do is to locate itself at those specific points where universal discourse is resisted (remembering that those points could not exhaust the whole field of politics: e.g. those who will refuse to discuss their rules of marriage or inheritance in a general legislative body might be perfectly willing to debate in that forum the rates of income tax or the policy of public health); and then engage in a two-fold struggle—resist homogenization from the outside, and push for democratization inside. That, in brief, would be a strategic politics of toleration.

Contrary to the apprehensions of many who think of minority religious groups as inherently authoritarian and opposed to the democratization of their religious institutions, it is unlikely, I think, that the principal impediment to the opening of such processes within the religious communities will come from the minority groups themselves. There is considerable historical evidence to suggest that when collective cultural rights have been asserted on behalf of minority religious groups in India, they have often been backed by the claim of popular consent through democratic processes. Thus, the campaign in the 1920s for reform in the management of Sikh gurdwaras was accompanied by the Akali demand that Sikh shrines and religious establishments be handed over to elected bodies. Indeed, the campaign was successful in forcing a reluctant colonial government to provide, in the Sikh Gurdwaras and Shrines Bill 1925, for a committee elected by all adult Sikhs, men and women, to take over the management of Sikh religious places.³⁵ The Shiromani Gurdwara Prabandhak Committee was perhaps the first legally constituted public body in colonial India for which the principle of universal suffrage was recognized. It is also important to note that the so-called 'traditional' *ulema* in India, when campaigning in the 1920s for the reform of Muslim religious institutions, demanded from the colonial government that officially appointed bodies such as Wakf committees be replaced by representative bodies elected by local Muslims.³⁶ The persuasive

force of the claim for representativeness is often irresistible in the politics of collective rights.

The more serious opposition to this proposal is likely to come from those who will see in the representative public institutions of the religious communities, a threat to the sovereign powers of the state. If such institutions are to be given any role in the regulation of the lives and activities of its members, then their very stature as elected bodies representative of their constituents will be construed as diminishing the sovereignty of the state. I can hear the murmurs already: 'Remember how the SGPC was used to provide legitimacy to Sikh separatism? Imagine what will happen if Muslims get their own parliament!' The deadweight of juridical sovereignty cannot be easily pushed aside even by those who otherwise subscribe to ideas of autonomy and self-regulating civil social institutions.

I do not, therefore, make these proposals for a reconfiguration of the problem of secularism in India and a redefinition of the concept of toleration with any degree of optimism. All I can hope for is that, faced with a potentially disastrous political impasse, some at least will prefer to err on the side of democracy.

³⁵ For this history, see Mohinder Singh, *The Akali Movement* (Macmillan: Delhi, 1978).

³⁶ Tahir Mahmood, *Muslim Personal Law*, pp 66–7.