

CONSTITUTIONAL MULTICULTURALISM — CONCEPTUALISATION AND JURISPRUDENTIAL SIGNIFICANCE

P. Ishwara Bhat*

I. INTRODUCTION

The term multiculturalism is often employed in American juristic writing in recent decades.¹ Although there is no consistent or coherent set of ideas behind it to make it an 'ism', it theoretically represents a sensibility of openness to the enormous cultural difference that has always existed in American life. As opposed to assimilationist approach, multiculturalism or cultural pluralism emphasizes the importance of "manyness, variety and differentiation". According to Horace Kallen, "democracy involves, not the elimination of differences, but the perfection and conservation of differences... It involves a give and take between radically different types, and a mutual respect and mutual cooperation based on mutual understanding".² According to him, it is a pious stupidity to strive at unison of culture.³ The other alternative, harmony, requires concerted public action in conformity with the fundamental law. "Starting with our existing ethnic and cultural groups, it would seek to provide conditions under which each may attain the perfection that is proper to its kind".⁴

'Melting pot' or 'amalgamation' concepts seek fusion of cultural groups to bring new cultural identity and in practice unify society around

* Reader, Department of Studies in Law, University of Mysore, Manasagangotri, Mysore.

1. See Charles R. Lawrence, *Race, Multiculturalism and the Jurisprudence of Transformation*, 47 STANFORD LAW REVIEW, 1995 at 819; Jurgen Habermas, *Multiculturalism and the Liberal State*, 47 STANFORD LAW REVIEW, 1995 at 849; Doriane Lambelet Coleman, *Individualising Justice through Multiculturalism: The Liberal's Dilemma*, 96 COLUMBIA LAW REVIEW, 1996 at 1093; Leti Vol pp, *Talking 'Culture': Gender, Race, Nation and the Politics of Multiculturalism*, 96 COLUMBIA LAW REVIEW, 1996 at 1573; Robert C. Post, *infra* n. 2.
2. Horace M. Kallen, *CULTURE AND DEMOCRACY* (1924) at 61; Also see H. Kallen, *CULTURAL PLURALISM AND THE AMERICAN IDEA* (1956) Cited by Robert C. Post, *Cultural Heterogeneity and Law: Pornography, Blasphemy, and the First Amendment*, 76 CALIFORNIA LAW REVIEW, 297 at 301.
3. See Horace M. Kallen, *Democracy versus the Melting-pot: A Study of American Nationality* in Werner Sollars, ed., *THEORIES OF ETHNICITY* (New York: New York University Press, 1996) at 90.
4. *Ibid.*

the cultural values of one dominant group. Contrary to this, according to Robert Post, pluralist law attempts to create ground rules by which diverse and potentially competitive groups can retain their identities and yet continue to co-exist.⁵ Harold Laski considers that very structure of federalism seeks to the extent possible to preserve the heterogeneity inherent in local and regional differentiation.⁶ Cultural pluralism is defined by R. Havighurst as “aspiring toward a plurality of cultures with their members seeking to live together in amity and mutual understanding and mutual cooperation, but maintaining separate cultures”.⁷

Although Horace Kallen and others use the phrase ‘cultural pluralism’ or ‘multiculturalism’ in a larger sense to include diversity in race, religion and language, the post-Brown development on racial equality in public life has made the academicians to use the term to denote racial equality, the situation of multiracial schools and the school syllabus to promote amicable racial relations.⁸ An important point made out in these writings is that right to equality is destined to herald a jurisprudence of transformation in racial relations and that relative invisibility of people of colour and women shall be cured by the extension of civil rights movement of the 1960s.⁹ However, there are also research articles by authors like Robert Post and D.L. Coleman, in which the term multiculturalism is used in a larger context of heterogeneity in community’s customs, religious beliefs and cultural group’s estimation of pornography.¹⁰ The idea of equal rights of all cultural groups is employed by the American courts in cases relating to blasphemy, hate speeches on religions, cultural defences is favour of lesser punishments and language rights in education.¹¹

5. Robert C. Post, *supra* n. 2 at 302-3.

6. Harold J. Laski, *STUDIES IN THE PROBLEM OF SOVEREIGNTY* (1917) at 275; also see Robert Post, *supra* n. 2 at 302.

7. R. Havighurst, *ANTHROPOLOGY AND CULTURAL PLURALISM: THREE CASE STUDIES, AUSTRALIA, NEW ZEALAND AND USA* (1974) cited by Robert Post *supra* n. 2 at 302.

8. See *supra* n. 1; Also see John D. Bheuker and Lorman A. Ratner, *MULTICULTURALISM IN THE UNITED STATES* (1985).

9. Charles Lawrence, *supra* n. 1.

10. Robert Post, *supra* n. 2; D. L. Coleman, *supra* n. 1; Also see Joseph Grinstein, *Jihad and the Constitution: The First Amendment Implications of Combating Religiously Motivated Terrorism*, 105 *YALE LAW JOURNAL*, 1996 at 1347; William N. Eskridge, *A Jurisprudence of Coming Out: Religion, Homosexuality, and Collisions of Liberty and Equality in American Public Law*, 106 *YALE LAW JOURNAL*, 1997 at 2411. *Yniguez v. Arizona for Official English*, 42 F 3d 1217 (9th cir 1994), 69 F 3d 920 (9th cir 1995).

11. *Beauharnais v. Illinois*, 343 US 250 (1952); *Cantwell v. Connecticut*, 310 US 296 (1940); *People v. Aphaylath*, 499 NYS 2d 998 (1986); *People v. Kimura* (Supra Ct. L.A. County Nov. 21, 1985). Also see D.L. Coleman, *supra* n. 1; *Meyers v. Nebraska*, 262 US 390 (1923); *Pierce v. Society of Sisters*, 268 US 510 (1925).

II. CONSTITUTIONAL MULTICULTURALISM—CONCEPTUALISATION

The concept of multiculturalism has a wider canvas and explicit basis in Canadian constitutional law. It is a unique genius of Canadian constitutional jurisprudence that protection of individual rights is integrated with tradition of cultural pluralism. According to Joseph Magnet, "Canada's fundamental commitment to cultural pluralism is entrenched deep into its constitutional structure by the creation of special autonomous status for aboriginal communities; self governing institutions for denominational education; distinct protection in the machinery of government for linguistic minorities; and protection of the linguistic integrity of certain minority language electoral districts".¹² Reinforcing this tradition, section 27 of the Canadian Charter of Rights and Freedoms 1982 provides, "The Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians". The broad sweep of the text is applied to wide variety of situations by judiciary, and the direction of development is towards realisation of equal liberty and opportunity for all cultural communities.

In *R v. Big M. Drug Mart*,¹³ while invalidating a federal statute which imposed Sunday as a day of rest for avowedly religious reasons, Dickson C.J. maintained that the statute was not consistent with "the preservation and enhancement of the multicultural heritage of Canadians". According to the learned judge, the diversity of belief and non-belief, the diverse socio-cultural background of Canadians made it constitutionally incompetent for the Parliament to provide legislative preference for any one religion at the expense of another religious community.¹⁴ Similar approach was adopted in *R v. Edwards Books*¹⁵ where the statutory exemption accorded to Saturday observers from Sunday closure law as making invidious discrimination amidst cultural minorities.

Minority education rights are also construed in the light of multicultural values. The Ontario Court of Appeals in *Re Education Act on Ontario* held that "minority language children must receive their instruction in facilities in which the educational environment will be that of the linguistic minority. Only then can the facilities reasonably be said to reflect the

12. Joseph E. Magnet, *CONSTITUTIONAL LAW OF CANADA: CASES, NOTES AND MATERIALS*, 4th ed., Vol. 2 (Cowansville: Editions Yvons Blais Inc., 1989) at 38. Also see Jerome B. Paradis, *Language Rights in Multicultural States: A Comparative Study*, 47 *CANADIAN BAR REVIEW*, 1970 at 651.

13. (1985) 1 SCR 295 at 337-8.

14. *Ibid* at 351.

15. (1986) 2 SCR 713.

minority culture and appertain to the majority".¹⁶ Section 93 of the Constitution Act 1867, which protects the rights and privileges of denominational (or separate) schools which were prevalent in 1867, is regarded as special right of minorities, and state's funding to them has been upheld in *Ontario Separate School Funding*¹⁷ case by rejecting the argument based on right to equality. The court was looking to the affirmative action policy involved in minority protection underlying section 93.

International legal norms also have emphasized the duties of States to ensure co-existence of culture. The Universal Declaration of Human Rights (UNDHR) 1948, International Covenant on Economic Social and Cultural Rights (ICESCR) 1966 and International Covenant on Civil and Political Rights (ICCPR) 1966 have required the States to guarantee human rights to all persons without distinction of any kind such as race, colour, sex, religion and national origin. According to Article 27 of ICCPR, "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own religion, or to use their own language". Article 27 of UNDHR and Article 15(1) of ICESCR require the States to ensure that everyone has the right to freely participate in the cultural life of the community. The UN Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities 1992 aims to constant promotion an realisation of rights of these minorities as an integral part of the development of society as a whole and within a democratic framework based on the rule of law. Despite the 'individualist' phrasing of the right, the communitarian and institutional focus in the cultural right towards the goal of preserving 'their own' cultural identity can be significantly noticed.¹⁸ Since the international conventions have been considered as important guidelines in constitutional interpretation in recent times,¹⁹ the thrust of these conventions towards the value of multiculturalism can be regarded as having far reaching impact.

The concept of multiculturalism, as understood in the West, is well-known and recognised in the Indian polity from the very inception of the Constitution and even earlier. In fact, in 1950 multiculturalism as a constitutional policy was not popularly practised in America and Canada. Indian Constitution makers pioneered the idea of the multiculturalism as a constitutional policy. A well planned scheme for multiculturalism is laid

16. (1984) 47 OR (2nd) 1 CA at 39.

17. *Re Bill 30* (Ontario Separate School Funding), (1987) 1 SCR 1148.

18. Pardeck Thornberry, *INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES* (Oxford: Clarendon Press, 1991) at 188-189.

19. *Vishakha v. State of Rajasthan*, (1997) 6 SCC 241.

down by them in the Constitution. It mainly consists in (i) equal entitlement of all sections of society having distinct language, script or culture of their own to conserve the same (Art. 29(1)), (ii) right of linguistic and religious minority to establish and administer educational institution of their choice (Art. 30(1)), (iii) non-discrimination on grounds of race, religion, caste, sex and place of birth (Arts. 15(1) (2) , 16(1) (2), 29(2)), (iv) equal religious freedom of all persons (Art. 25 (1)), (v) autonomy of religious denominations in the matters of religion (Art. 26), (vi) non-imposition of Hindi upon non-Hindi speaking people and opportunity for regional official languages in the States and (vii) protection and development of tribal people by securing their customary laws, land holdings and institutions of self government (Art. 244 and 5th and 6th Schedule) and (viii) fundamental duty of citizens towards cultural harmony (by Constitution (Forty Second Amendment) Act 1976 it is provided under Art. 51A that it shall be the duty of every citizen of India, (e) to promote harmony and spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, and (f) to value and preserve the rich heritage of our composite culture), (ix) ideal of fraternity and unity and integrity of the Nation through a Socialist, Secular, Democratic Republic (Preamble).

From the above constitutional scheme it can be inferred that protection of cultural identity, equality in religious and other freedoms, equality in language rights, non-discrimination and tribal development along with commitment to just social order through state and individual actions form the major theme of constitutional multiculturalism in India. As viewed by M.N. Venkatachalaiah J. (as he then was), "The purpose of law in plural societies is not the progressive assimilation of the minorities in the majoritarian milieu. This would not solve the problem; but vainly would seek to dissolve it... in the words of Lord Scarman, "... the purpose of the law must be not to extinguish the groups which make the society but to devise political, social and legal means of preventing them from falling apart and so destroying the plural society of which they are members".²⁰

The non-assimilationist policy emphasized by Justice M.N. Venkatachalaiah is truly reflecting the Indian constitutional scheme referred to above. A different shade of opinion is traceable in the observation of S.R. Das C.J. *In re The Kerala Education Bill*.²¹ The learned judge observed, "Throughout the ages endless inundations of men of diverse creeds, cultures and races - Aryans and non-Aryans, Dravidians

20. M.N. Venkatachalaiah J., *Law in Plural Society* cited in *M. Ismail Faruqui v. Union of India*, AIR 1995 SC 605 at 630-1.

21. AIR 1958 SC 956 at 986.

and Chinese, Scythians, Huns, Pathans and Mughals - have come to this ancient land from distant regions. India has welcomed them all. They have met and gathered, given and taken and got mingled, merged and lost in one body". Referring to Rabindranath Tagore's poem to the effect that none shall be turned away from the shore of the vast sea of humanity, i.e. India and also to the stanza in National Anthem which hails the throne of the Nation being adorned by the presence of Hindus, Buddhists, Sikhs, Jains, Parsees, Mussalmans, and Christians, and woven in a garland of love that brings the hearts of all people into the harmony of one life. Das C.J. concludes that "the genius of India has been able to find unity in diversity by assimilating the best of all creeds and cultures".²²

It is submitted, while Indian culture has welcomed different cultures, creeds and races, the factor of assimilation is not a reality either in policy or practice. Even the poetic sentiments the learned judge relies upon, presuppose existence of plurality of religions and languages. While overemphasis on national unity has resulted in flourish of rhetoric, his reference to 'unity in diversity', juxtaposed with 'assimilation' and 'merged and lost in one body' reflects some confusion. 'Unity in diversity' suggests continued diversity within the bond of unity. Perhaps the learned judge confuses assimilation for cultural syncretism or cultural give and take. Further in another part of this advisory opinion Das C.J. observes, "The minorities evidently desire that education should be imparted to the children of community in an atmosphere congenial to the growth of their culture".²³ It is submitted, this presupposes coexistence of diverse cultures but not a phenomenon of 'merged and lost in one body'. Moreover, when we look to subsequent constitutional development a clear picture emerges.

The right to equality in religious freedom and the idea of harmonious coexistence of religions has been greatly emphasized in *S.R. Bommai* and *M. Ismail Faruqui*. P.B. Sawant J. in *S.R. Bommai* observed, "religious tolerance and equal treatment of all religious groups and protection of their life and property and of the places of their worship are an essential part of secularism enshrined in our Constitution. We have accepted the said goal not only because it is our historical legacy and a need of our national unity and integrity but also as a creed of universal brotherhood and humanism. It is our cardinal faith".²⁴ In *Ismail Faruqui* J.S. Verma J. referred to Bahai literature with approval to the following effect, "Fear, suspicion and hatred are the fuel which feed the flame of communal disharmony and conflict.

22. *Ibid.*

23. *Id.* at 984.

24. *S.R. Bommai v. Union of India*, AIR 1994 SC 1917 at 2003.

Though the Indian masses would prefer harmony between various communities, it cannot be established through the accommodation of 'separate but equal', nor through the submergence of minority culture into majority culture - whatever that may be ... The diversity created by God has infinite value, while distinctions imposed by man have no substance".²⁵ Upendra Baxi views that constitutional perspective of secularism, as developed by judiciary, provides parameters to determine the true worth of alternate discourses on secularism which are assiduously sought to be privileged by practices of power.²⁶ In juristic writings a central role for right to equality in religious freedoms has been emphasised for assuring secularism.²⁷

Right to equality and protective discrimination are the major tenets of constitutional policy on ethnic diversity and special situation of tribals. K. Ramaswamy J. in *Samata* observes, "it is seen and bears recapitulation that the purpose of the Fifth and Sixth Schedules to the Constitution is to prevent exploitation of truthful, inarticulate and innocent tribals and to empower them socially, educationally, economically and politically to bring them into the mainstream of national life. The founding fathers of the Constitution were conscious of and cognizant to the problem of exploitation of the Tribals. They were anxious to preserve the tribal culture and their holdings. At the same time, they intended to provide and create opportunities and facilities, by affirmative action, in the light of the Directive Principles in Part IV, in particular, Articles 38, 39, 46 and cognate provisions to prevent exploitation of the tribals by ensuring positively that the land is a valuable endowment and a source of economic empowerment, social status and dignity of persons. The Constitution intends that the land always should remain with the tribals".²⁸

From the above analysis of judicial perceptions it is clear that security of cultural identity through egalitarian principle is, and 'melting pot' is not, the constitutional policy in India. Fundamental Duty under Article 51A (e)

25. AIR 1995 SC 605 at 644.

26. Upendra Baxi, *The Struggle for the Redefinition of Secularism in India: Some Preliminary Reflections* in Rudolf C. Heredia and Edward Mathias ed., *SECULARISM AND FEDERATION* (New Delhi: Indian Social Institute, 1995) at 54 to 63. Alternate discourses of Ashish Nandy, *The Policies of Secularism and the Recovery of Religious Tolerance* in Veena Das, ed., *MIRRORS OF VIOLENCE* (Delhi: Oxford University Press, 1990) and T. N. Madan, *Secularism in its Place*, 46 *JOURNAL OF ASIAN STUDIES*, 1987 at 747-9 are referred.

27. G.S. Sharma, *Rule of Law, Legal Theory and Secularism* in G.S. Sharma, ed., *SECULARISM: ITS IMPLICATION FOR LAW AND LIFE*. (Bombay: N.M. Tripathi, ILLI. 1966) 195 at 200.

28. *Samata v. State of Andhra Pradesh*, (1997) 2 SCJ 539 at 587. Also see M. Hidayatullah, *THE FIFTH AND SIXTH SCHEDULES TO THE CONSTITUTION OF THE INDIA* (Gauhati: Ashok Publishing House, 1979) at 68, 91.

and (f) reinforces this idea. Under Article 51A (e) the spirit of harmony and brotherhood are to 'transcend' religious, linguistic and regional or sectional diversities. According to E.S. Venkataramaiah J., "It does not necessarily involve the elimination of various types of diversities. Diversities will exist; but they should be 'transcended'. Without eliminating their existence - an elimination which would not be possible - citizens can still develop a mental outlook that will enable them to go beyond those diversities; to rise above narrow cultural differences and 'to strive towards excellence in all spheres of collective activity'.²⁹

Under Article 51A(f) intellectual process of appreciating the heritage of composite culture and physical activity of preserving the same are presupposed. According to Rasheeduddin Khan, "A thing is called composite, when it is made up of various and disparate parts or elements, but existing as an organic aggregation of distinct parts. Philosophically, 'composite culture' would mean that peculiar brand of culture that represents the rejection of uni-cultural regimentation or mono-cultural domination and positively reaffirms the value of pluralism and syncretism, as the valid, stable and desirable basis for cultural affluence in a mixed society and plural polity like India".³⁰ It is compositeness that lends greater vitality and larger acceptability for a system of values in group life.

From the above discussion it can be gathered that instead of assimilationist policy, the principle of equal opportunity of all cultural communities for meaningful survival, institutional autonomy and reasonable exercise of their rights forms the kernel of constitutional multiculturalism. Right against discrimination and socio-economic marginalisation on cultural grounds, rights against arbitrary and hegemonistic superimpositions or deprivations and right to positive support from the state to overcome the social handicaps of minority character are different components of this concept. In order that the equality between the members of the majority and minority must be effective and genuine, need-based special rights of the minorities are secured by constitutional multiculturalism. Minority language educational right with certain amount of institutional

29. E.S. Venkataramaiah, *CITIZENSHIP - RIGHTS AND DUTIES* (Bangalore: B.V. Naga Publishers, 1988) at 60. For the proposition that composite culture is inevitable in a living and growing society see Krishna Kripalani, *Composite Culture and its Relevance* in Radhey Mohan, ed., *COMPOSITE CULTURE AND INDIAN SOCIETY* (New Delhi: Zakir Husain Foundation, 1980) 25 at 27.

30. Rasheeduddin Khan, *The Problematique: The Heritage of Composite Culture as an Input in the Process of Building a New National Identity* in Rasheeduddin Khan, ed., *COMPOSITE CULTURE OF INDIA AND NATIONAL INTEGRATION* (New Delhi: IAS and Allied Publishers, 1987) 24 at 39.

autonomy is a prominent right in this regard.³¹ Separate territorial base for tribal people with right of self-government and security of their cultural tradition is another policy that reflects this approach.³²

III. JURISPRUDENTIAL SIGNIFICANCE OF CONSTITUTIONAL MULTICULTURALISM

As constitutional multiculturalism is concerned with fairness of relations in large spectrum, of group activities in society, its place and impact in legal regime of a pluricultural society is significant.

Firstly, the rich values of constitutional multiculturalism have potentiality to inspire and compel the legislative, judicial and administrative processes to institutionalise and internalise the attitudes for tolerance and cooperation. Legislations which criminalise hate speeches or actions that target religious, racial or linguistic communities;³³ which aim to protect places of worship,³⁴ public order and morality regulate religious endowments and wakfs and bring social reforms like temple entry;³⁵ and which provide for funding of tribal development plans reflect the principle of multiculturalism at the level of subordinate policy choices. Higher judiciary has extensively relied on theoretical underpinnings of the concept in cases relating to religious and linguistic conflicts or partisan state policies. As in Canada where multiculturalism is an explicit rule of constitutional interpretation, in India also because of value based interpretation of Constitution through basic structure doctrine or purposive interpretation of Part III or by reliance on Fundamental Duties, the concept's usefulness as a parameter in constitutional interpretation is increasingly realized. *S.R. Bommai*,³⁶ *Ismail Faruqui*,³⁷ *Pradeep Jain*³⁸ and *Samata*³⁹ are some of the cases where it assisted constitutional interpretation for a comfortable result. Central and state administrations have the responsibilities of ensuring compliance with Constitution and laws⁴⁰ in the activities of state and people and this provides a practical life to the concept. Social justice programme for tribal development, establishing and running of linguistic

31. Art. 30(1).

32. Arts. 244, 244A and Schedules 5th and 6th .

33. Sections 153A and 153B of the INDIAN PENAL CODE, 1860.

34. RELIGIOUS INSTITUTIONS (PREVENTION OF MISUSE) ACT, 1988 and PLACES OF WORSHIP (PROTECTION) ACT, 1991.

35. For example, A.P.CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS ENDOWMENT ACT, 1966; ORISSA HINDU RELIGIOUS ENDOWMENT ACT, 1951; WAKF ACT, etc.

36. AIR 1994 SC 1917.

37. AIR 1995 SC 605.

38. *Pradeep Jain v. Union of India*, AIR 1984 SC 1470.

39. (1997) 2 SCJ 539.

40. Arts. 256 and 257 of the CONSTITUTION OF INDIA.

minority schools and moulding fair policies about entitlements in public employment and education reflect the policy of constitutional multiculturalism.

Secondly, an effective scheme and practice of constitutional multiculturalism essentially means taking the human rights seriously since protection of cultural rights synchronise with or result in better respect for human rights. Attitude of tolerance or motivation for coexistence of diverse religions, languages and ethnicities amidst people and power holders eschew group violence and build up an atmosphere conducive for enjoyment of human rights. Societal peace and happiness emerging from constitutional multiculturalism render human rights meaningful. As a corollary, integration of human rights into this concept helps in excluding cultural faultlines.

Thirdly, since constitutional multiculturalism is not averse to social justice, cultural progress keeps phase with just social order, and confers benefits to the socially disadvantaged sections like women, untouchables and tribal people. Culture is not stagnant state of affairs in a community. But its adaptability to desirable changes comes from a genuine concern for social justice. Movement of cultural communities towards perfection goes hand in hand with social justice. Refining of archaic personal laws for attaining gender justice,⁴¹ bringing tribal development in order to protect the tribals from socio-economic exploitations⁴² and rescuing the people from inhuman blind beliefs like *sati*⁴³ or *narbali*⁴⁴ are some of the measures that integrate well into the concept of constitutional multiculturalism and make it a progressive instrument. Its potentiality of accommodating social justice norms has great social significance.

Fourthly, since its motto is unity in diversity it makes immense contribution to national integration. On the one hand the urge of cultural communities for retention of this distinct identities is sought to be satisfied,

41. S. S. Nigam, *Uniform Civil Code and Secularism* in G.S. Sharma, ed., *SECULARISM: ITS IMPLICATIONS FOR LAW AND LIFE IN INDIA* (N.M. Tripathi: Bombay, 1966) at 153; D.K. Srivastava, *Personal Laws and Religious Freedom*, 18 *JOURNAL OF INDIAN LAW INSTITUTE* at 584; Duncan J. Derret, *RELIGION, LAW AND THE STATE IN INDIA* (1968) at 117; A.M. Bhattacharjee, *HINDU LAW AND THE CONSTITUTION* (Calcutta: Eastern Law House, 1994), at 2, 8-11; P. Ishwara Bhat, *Directive Principles of State Policy and Social Change with reference to Uniform Civil Code*, 25 *BANARAS LAW JOURNAL*, 1989, 75 at 78-79; Also see *Madhu Kishwar v. State of Bihar*, AIR 1996 SC 1864. Also see, *Mohammed Khan v. Shah Bano Begum*, AIR 1985 SC 10; *Sarla Mudgal v. Union of India*, AIR 1995 SC 948.

42. See *Samata v. State of A.P.* (1997) 2 SCJ.

43. COMMISSION OF SATI (PREVENTION) ACT, 1987.

44. *Paras Ram v. State of Punjab*, AIR 1980 SC 918-919.

and on the other a comprehensive scheme for national integration is constitutionally ordained. Territorial organisation of States on linguistic lines,⁴⁵ autonomy of minority educational institutions and religious denominations and Vth and VIth schedule schemes of self-government for tribal people emphasise the principle of institutional autonomy and self-determination within the framework of national unity. The potentiality of strong centre to neutralise and suppress fissiparous tendencies has come to limelight on several occasions.⁴⁶

Fifthly, constitutional multiculturalism thrives upon balancing between group autonomy and individual right. Control over maladministration by religious denominations, minority educational institutions and tribal councils not only protects individual rights but also renders the communitarian right effective. However, since the special claim for institutional autonomy is based on the need for cultural survival, limiting its scope to factors of such need has been tried in countries like Canada and the US. Its similarity with affirmative action policy makes the factor of necessity a justifying parameter in encircling its scope. For example in Canada section 23 of the Canadian Charter Rights and Freedoms 1982 guarantees minority language educational rights only at primary and secondary levels of education. The post-*Xavier* development of allowing unlimited scope to establish and administer educational institutions at whatever levels⁴⁷ needs to be re-examined from this perspective.

Finally, the Indian concept of multiculturalism relies on individual and collective responsibility to promote harmony and the spirit of common brotherhood transcending religious, linguistic and regional or sectional diversities and to preserve rich heritage of composite culture. This requires cultivation of the spirit of responsible citizenship. According to Bhikhu Parekh, "If a plural society is to hold together, it clearly needs a shared self understanding, a conception of what it is and stands for, a national identity".⁴⁸ National identity implies supremacy of national goals as reflected in Constitution which provides community's minimum basis of

45. Paul Brass, *THE POLITICS OF INDIA SINCE INDEPENDENCE* (London: Cambridge Univ. Press, 1995) at 169-175; also see Robert W. Stern, *CHANGING INDIA*, (London: Cambridge Univ. Press, 1993, 1998) at 104-108.

46. Instances of bringing normalcy in Punjab in late 1980s, in Jammu and Kashmir in early 1990s, in Uttar Pradesh and other places after demolition of disputed structure in Ayodhya in 1992 (see *S.R. Bommai v. Union of India*, AIR 1994 SC 1917) by exercise of power under Art. 356 can be cited to substantiate the above proposition.

47. *A.P. Christian Medical Education Association v. State of A.P.*, AIR 1986 SC 1490; *Nitte Education Trust v. State of Karnataka*, AIR 1993 Kant. 167; *TMA Pai Foundation v. State of Karnataka*, AIR 1994 SC 13.

48. Bhikhu Parekh, *Managing Multicultural Societies*, 35(3) UNIVERSITY NEWS, August 1997.

unity and thrives on popular awareness created by mass education. As viewed by Archibald Cox, "Tolerance and will to cooperate flow from a larger belief in the worthwhileness of the common enterprise—despite its faults, despite our selfishness, and despite our dim perception of the goal... Whether enough of us still have enough belief in the worthwhileness of our common fate for the spirit of tolerance and cooperation to prevail, and whether we share sufficient common ideals with sufficient confidence, along with the extent of belief in the rule of law, will determine the survival of constitutionalism".⁴⁹ Since multiculturalism is an approach, a state of mind and a societal discipline, to be positively nurtured by human beings and communities, meeting its demands through performance of social duties and building up of mutual confidence amidst diverse groups becomes essential. Instead of getting symmetry through the sum-total of the collective intolerances of the different communities, an union of their respective tolerances⁵⁰ becomes an appropriate policy of multiculturalism.

IV. CONCLUSION

Constitutional multiculturalism is a prominent constitutional value interconnected with basic values like democracy, human rights, social justice and national integration. It links the live veins of pluricultural society with state and its value system. By upholding equal opportunity of all cultural communities for their dignified existence, by promoting a balance between individual/group interest and social justice and by moulding a fair majority-minority relation, constitutional multiculturalism renders a great service to the cause of social and cultural harmony which is a prerequisite for national progress and happiness. Since its contributions are significant and its approach is progressive but not pedantic, promoting constitutional multiculturalism in practice by effective guarantee of human rights and by sincere performance of human responsibilities deserves utmost priority.

49. Archibald Cox, *THE COURT AND THE CONSTITUTION* (New Delhi: Asian Books Pvt. Ltd., 1987) at 379.

50. Amartya Sen, *Secularism and its Discontents* in Kaushik Basu and Sanjay Subrahmanyam, ed., *UNRAVELLING THE NATION* (New Delhi: Penguin Books, 1996) 11 at 63.