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Secularism in Indian Constitution: Dimensions of Dilemmas

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The coming of the partition emphasised the great importance of secularism. Notwithstanding the partition, a large Muslim minority, constituting a tenth of the population of India, continued to be citizens of India. Secularism became the mantra of the Indian nation, a nation exhausted by partition and sectarian riots and above all the assassination of Gandhi, which did not want any more divisive talk. In the circumstances, a secular constitution of independent India, under which all religions could enjoy equal freedom and all citizens equal rights, and which could well together into one nation the different religious communities became inevitable. The Constitution of India did not erect any 'wall of separation' between religion and the State. While prohibiting religion-based discrimination between the citizens, it did not prevent the state from participating in the people's religious affairs. It enabled the State to generally "regulate or restrict secular activity associated with religion"¹. As of today, the use and misuse of the word secularism/religion continues with its many abusive forms and styles. Although the paper aims to study the Indian phenomenon of secularism, the same situation is more or less prevailing in other societies having multi-religious and socio-cultural framework. The study of Indian elements on the issue will not only help solve the country's secular perspective, but also prove path-breaking for future works to be done by scholars in context of other countries, India alike.

Keywords

Secularism, Indian Constitution, Religion, Freedom and Society.

Introduction

The word 'secular' is not written in the Constitution, but it does not mean that the founding fathers of the Constitution had any doubt about the nature of the Indian state being secular. The framers of constitution properly debated the issue of secularism and individual's religious rights with other members and after due considerations they decided to make India a secular state. While the Indian constitution has

¹ Yechury S., Fundamentally Flawed, *The Hindustan Times*, 2003, 25 September.

been based on secularism or Dharma Nirapekshita, the society is stepped in religion. Religious feelings govern the mode of thinking and the Indians consider religious festivals and rituals as part of our daily life. In comparison to other countries, secularism has a very different meaning in India. As Jawaharlal wrote in his autobiography 'no word perhaps in any language is more likely to be interpreted in different ways by different people as the word religion. That being the case, secularism which is a concept evolved in relation to religion can also not have the same connotation for all². Even during the course of the discussion in the Constituent Assembly on the fundamental rights relating to religion, the idea of secularism was extensively pressed into service by the members as the most handy tool to substantiate various viewpoints, often diametrically opposed. The members of the Constituent Assembly were in no doubt that the phrase 'secular state' and the terms secular and secularism should help us in understanding that the principle is meant the constitutional concept of equality and freedom for all religions, infused every provision of the fundamental rights with this spirit and therefore very wisely avoided institutionalising it in words interminably capable of connoting varying and conflicting meanings.

Several members of Constituent Assembly including K.T. Shah, H.V. Kamath, Tajamul Hussain, Lakshmi Kanta Maitra and Loknath Mishra presented their views/modifications in the fruitful discussion on secularism and religious rights of Indian citizens. In course of the discussion K.T. Shah proposed a new Article 18–A to be inserted under the heading 'rights relating to religion' which would emphasise, 'The State in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union. He also added, 'All I wish to say is that with the actual profession of faith or belief, the state should have no concern³. India being the secular state with having nothing to do with religion, Tajamul Hussain wanted that caste names, signs and dress be done away with. 'We should not being a secular state, be recognised by our dress'.

² **Jawaharlal N.**, An Autobiography, Bombay, Allied Publishers, 1962, p. 378.

³ Constituent Assembly Debates, Vol. VII, pp. 815-816 and 835.

While H.V. Kamath warned the Assembly not to adopt any religion as it would split the country, he made it clear that by this he does not mean to say that a State should be anti-religious or irreligious. According to him, a secular state is neither a Godless state nor irreligious nor an anti-religious state. He even advocated imparting spiritual training in educational institutions. In the debate discussing the right to propagate religion, Lakshmi Kanta Maitra put stress on the fact that there should be no discrimination whatsoever on the ground of religion – meaning in essence that no particular religion in the State will receive any State patronage meanwhile accepting the fact that even in a secular state there is necessity for religion. However, there was a school of opinion in favour of India being made a Hindu state.

In the Constituent Assembly, Loknath Mishra represented Hindu point of view and opposed the right to propagate religion stating, 'We have declared the State to be a secular State. Does it not mean that we have nothing to do with any religion?.. Why do you make it a secular state? The reason may be that religion is not necessary, but as India has many religions, Hinduism, Christianity, Islam and Sikhism, we cannot decide which one to accept. Therefore, let us have no religions. No. That cannot be. If you accept religion you must accept Hinduism as it is practised by an overwhelming majority of the people of India. He continued on saying, 'gradually it seems to me that our secular state is a slippery phrase, a device to by-pass the ancient culture of the land'. He said he failed to understand the 'exact meaning of secularism'. So he wanted that the Constitution should say nothing about the right to religion, 'or at least drop the word propagate' from the right⁴. Particularly, the Hindu members in the Assembly totally disagreed with the view that the propagation of religion should be considered a legitimate aspect of religious freedom. But the overwhelming majority of members did not agree with the view. Explaining the word propagate, K.M. Munshi remarked, "Even if the word were not there, he assured under the Freedom of Speech which the Constitution guarantees it will be open to any religious community to persuade other people to join their faith".

⁴ Constituent Assembly Debates, Vol. I, p. 90.

Constitutional Foundations

The individual right of freedom of religion as given in the Indian Constitution is of far greater importance, particularly for the religious minorities and for their smooth development. Apart from this, most of the constitutions of the world that provide freedom of religion, such as Switzerland, former USSR, the Peoples Republic of China and Japan do not explicitly guarantee right to propagate religion as a justifiable fundamental right. The word 'propagate' does not find a place in any other constitution where it deals with religious freedom. Despite vehemently opposition to the inclusion of this term by the members as they thought that it might be perilous to guarantee it and might freely be used for the purpose of wholesale conversion. However, it did not find favour of the majority and one member pointed out, "After all propagation is merely freedom of expression. I would like to point out that the word 'convert' is not there. Those who drafted this constitution have taken care to see that no unlimited right of conversion has been given. People have freedom of conscience, and if any man is converted voluntarily owing to freedom of conscience then well and good. No restriction can be placed against it. Further, it is perhaps in consonance with the provisions of United Nations Declaration of Human Rights, which state, "Everyone has the right to freedom of thought, conscience and religion: this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance"⁵. Thus, without doubt, the scope of the freedom of religion in India is considerably wide and broad.

However, as a result of debates and discussions the term 'secularism' was first defined by the Constituent Assembly on April 3, 1948, "Whereas it is essential for the proper functioning of democracy and the growth of national unity and solidarity that communalism should be eliminated from the Indian life, this assembly is of the view that no communal organisation, which by its constitution or by the exercise of

⁵ **Rajarajan R.**, *Secularism in Indian Politics: Theory and Practice*, *The Indian Journal of Political Science*, 2007, **LXVIII**, 2, April-June (Meerut), p. 405.

discretionary power vested in any of officers and organs, admits to, or excludes from, its membership persons on grounds of religion, race and caste or any of them, should be permitted to engage in any activities other than those essential for the bona fide religious, cultural, social and educational needs of the community and that all steps, legislative and administrative, necessary to prevent such activities should be taken⁶. On the basis of the Constituent Assembly's resolution, the provisions of Indian constitution made clear the nature of secularism in India which broadly means four things:

1. the rejection of a theocratic or semi-theocratic state,
2. the proclamation that religion is of private or group concern,
3. equality of all citizens irrespective of his caste or creed,
4. the right of state interference in the religious practices of various communities in the interest of their peaceful co-existence and cultural development.⁷

In addition, the freedom of religion guaranteed under the Indian constitution is not confined to its citizens but extends to 'all persons including 'aliens''. This point was underlined by the Supreme Court in *Ratilal Panchand vs. State of Bombay* as it is very important because substantial number of foreign Christian missionaries in India were engaged at that time in propagating their faith among the adherents of other religions.

January 26, 1950, marked a great event in the long and chequered history as on that day, the present Constitution of India came into force. A constitution is a set of laws and rules setting up the machinery of the government of a State. It defines and determines the relations between different institutions and areas of government; the executive, the legislative and the judiciary, the central, the regional and the local governments. The Indian constitution is a blend of idealism and realism. In hammering it out, the framers traversed all the processes of 'democratic manufactory' and ranged through the whole gamut of democratic factors. There have been careful thought, close analysis, argument and counter-argument. As a result, the Constitution emerged as

⁶ Constituent Assembly Debates, Vol. VIII, p. 316.

⁷ **Gani H.A.**, *Muslim Political Issues and National Integration*, New Delhi, Sterling, 1978, p. 178.

a basis for all the people of India to work in cooperation and collaboration in a mighty endeavour to build a new, free India. Pandit Nehru contended that a Constitution was not only a legal document but also a social and political document and, as such, it must reflect not only the aspirations and wishes of the people, but also serve as an effective instrument for carrying out a socio-economic revolution⁸. The objective of Socialism and Secularism, which they had tried to implement in the past, and would be more and more implemented in the future would have to be more accurately and correctly reflected in it. In particular, the Constituent Assembly was satisfied with the other provisions of right, and in its bid to infuse complete confidence in the religious minorities, it adopted a separate group of articles dealing solely with the right to freedom of religion.

Provisions of Religious Freedom

The Constitution of India provides the freedom of religion in Articles 25 to 30 but in first four articles (25, 26, 27, 28) the rights are conceived in most generous terms to the complete satisfaction of religious minorities. They were in fact the result of an agreement with the minorities, almost unanimously arrived at in the Minorities Committee constituted by the Constituent Assembly. Accordingly part 1 of Article 25 secures to all freedom of conscience, and the right to

1. profess religion;
2. practice religion;
3. propagate religion.

The Constitution declares that every person has a fundamental right not only to hold whatever religious belief commend themselves to his judgment, but also to express his belief in such overt acts as are prescribed by his religion and propagate its tenets among others. The scope of this article is very wide and meaningful. It also states, 'The state or the Government cannot aid one religion, or give preference to one religion against another. It means that in India no particular religion will receive state patronage. But Article 25 (2) provides broad sweeping over

⁸ **Markandan K.C.**, *The Preamble-Key to the Minds of the Makers of Indian Constitution*. New Delhi, National Publishing House, 1984,

the interference to the state in religious matters. It imposes drastic limitations on the rights guaranteed under Article 25 (1) and reflects the peculiar needs of Indian society. The framers of constitution made Article 25 (2) a part of Article 25 (1) by placing three restrictions to the freedom of religion, namely, public order, morality and health. The Supreme Court of India in the case of *Commissioner of Hindu Religious Endowment vs. L.T. Swamiar* held, 'Article 25 guarantees to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others. The expression 'practice of religion' denotes that the constitution not only protects the freedom of religious opinion but also acts done in pursuance of a religion'⁹. In other words the article protects the acts done in pursuance of religious belief as part of religion.

Likewise Article 26 is, in fact, a corollary to Article 25 and guarantees the freedom to manage religious affairs. Under this every religious denomination is given the right

1. to establish and maintain institutions for religious and charitable purposes;
2. to manage its affairs in matters of religion;
3. to own and acquire movable and immovable property, and
4. to administer such property in accordance with law.

In this context, the term 'religious denomination' has not been defined in the Constitution but the Supreme Court of India has accepted the definition as given in Oxford Dictionary, that defines it as 'a collection of individuals classed together under the same name a religious sect of body having a common faith and organisation and designated by a distinctive name'. The Supreme Court in number of cases held that Arya Samaj, Anandmarga, Vaishanave, the followers of Madhawacharya and other religious teachers, though not separate religions yet these are separate religious denomination and enjoys the protection under Article 26 of the Constitution. But the right of a religious denomination to

⁹ **Pylee M. V.**, *India's Constitution*. New Delhi, Asia Publishing House, 1947, p. 127.

manage its own affairs in matters of religion is subject to any law protected by Article 25 (2) (b) throwing open a Hindu Public temple to all classes and sections of Hindus. The object of this provision is to remove a potent cause of disunion and inequality among the various castes of the Hindu. It is indeed a corollary to the abolition of untouchability.

Undoubtedly, Articles 25 and 26 provide every person with vast rights pertaining to religious freedom. However they are not absolute and are subject to certain limitations. The text of these articles is concerned with the provisions of the constitution and is subject to public order, morality and health. In addition, there are two more exceptions regarding Article 25. First this freedom is subject to the other provisions of Part III of the Constitution, and secondly, under clause 2 (3), nothing in this Article shall affect the operation of any existing law or prevent the state from making any law

1. regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
2. providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Judiciary in India has also on various occasions upheld the view that freedom of religion is not an absolute one. In the case of *Masud Alam vs. Commission of Police*, it was decided that banning of electrical loudspeakers calling for prayer may be valid. No doubt every religion has a right to have propaganda. But the propaganda made through loudspeakers in a crowded and noisy locality to the detriment of public moral, health or order, is prohibited by Article 25. A loudspeaker may take one to hell instead of Heaven by the very volume of its sound¹⁰. Similarly, Chapter xv, Section 295 to 298 of the Indian Penal Code (IPC) deal with the offences relating to religions, that is, injuring or defiling place of worship with intent to insult the religion of any class, disturbing religious assembly trespassing on burial places, etc. Even though these

¹⁰ Indian Constitution, Article 18

actions might be sanctioned by the offender's own religion, these are offences under the law.

Article 27 of the Indian Constitution provides an additional protection to religious activity by exempting funds appropriated towards the promotion or maintenance of any particular religion from the payment of taxes, while Article 28 lawfully permits to propagate religion by means of religious instructions in educational institutions. Further it also provided that 1) no religious instruction shall be provided in any educational institution wholly maintained out of State funds; 2) nothing in clause 1 shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such a situation; 3) no person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institutions or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto. Article 29 and 30 guarantee cultural and educational rights to 1) every linguistic, scriptorial or cultural section of the citizens of India; 2) every citizen of any religion, race, caste or language; 3) every religious or linguistic minority, and 4) every religious or linguistic minority educational institution¹¹. The object behind Article 29 and 30 is the recognition and preservation of different types of people, with diverse languages and beliefs, which constitute the essence of secularism in India. This aspect is based on the idea that the individual, not the group is the basic unit. The undivided is confronted by the state which imposes duties and responsibilities upon him; in return the state guarantees rights and grants privileges to the individual. The sum of this individual- state relationship constitutes the meaning of citizenship. There are numbers of provisions dealing with citizen's relations with state in social spheres. The provisions based on non – discrimination in political functions have also been dealt with under the Constitution.

¹¹ **Bharatiya V. P.**, Religion - State Relationship and Constitutional Rights in India. New Delhi, Deep and Deep Publishers, 1987, p. 360

Dynamism and Dilemmas

The whole edifice of secularism in India took a large step. By the 42nd Constitutional Amendment Act (1976), the Preamble was amended from words 'sovereign democratic Republic' to the words 'Sovereign, Socialist, Secular, Democratic Republic'. For the first time the word 'secularism' was introduced in the Constitution. Speaking on the motion for consideration of the Bill in the Lok Sabha on 25 October 1976, H.R. Gokhale, the Minister of Law, Justice and Company Affairs, justified the inclusion of the words 'Socialism and Secularism' by citing the Congress Resolution passed in 1931 at Karachi in which Pandit Nehru remarked after getting political freedom that their further objective was to bring about a socio-economic revolution in the country, "The objective which we had always in view, namely socialism and secularism, which we had tried to implement, will be more and more implemented and will be more accurately and correctly reflected in a basic part of our Constitution, namely, the Preamble". Sardar Swaran Singh, justifying the addition of the concept in the Preamble observed, stated ".....But secular now is a word which I think has become part of our Indian languages. People of India in their different languages use the word secular because it has assumed a definite meaning and the meaning is that there will be equality before the eye of the law in our Constitution with regard to the people professing different religions"¹². The Lok Sabha, after discussing the Bill for seven days, passed it on November 2, 1976. Two days later, on November 4, 1976, the Rajya Sabha took up the 42nd Amendment as passed by the Lok Sabha, after discussing it for six days, passed it on November 11, 1976. By and large members from both Houses welcomed the addition of the word 'secularism' in the Preamble. The declaration by the 42nd Amendment, inserting the word 'secular' in the Preamble, amounts to this effect: "We the people of India, in the Constituent Assembly, on 26th November, 1949, constitute India into a Socialist

¹² **Markandan K.C.**, *The Preamble-Key to the Minds of the Makers of Indian Constitution*, New Delhi, National Publishing House, 1984, p. 63.

Secular State as we declare so on 18th December, 1976". It was explained that insertion of the term meant equality, non-discrimination and equal respect for all religions.

In Indian polity, having rejected theocracy or state church and adopted equality of all religions as the state policy in the post-Independence constitutional era, the term secular had no relevance for the purposes of the interpretation of the Constitution and laws. Actually, while the word 'secularism' is rather vague and was introduced by the 42nd Amendment, Articles 25 to 30 of the constitution relating to the freedom of religion and freedom to manage religious affairs are more specific. The ideals of secular state have clearly been embodied under the Indian constitution and the provisions are being implemented in substantial measure. But the circumstances after independence have posed a challenge before secularism of India for a number of times. India, being still a traditional society, contains not a single, but many traditions owing their origin in part to the different religions that exist in country. While India carries with it many traditions it has managed to retain the secular character of its polity.

However, the overall environment around do not certify the theme of secularism and when we examine the working of various non-governmental institutions, the various political parties, especially national ones, which are supposed to have thrown their membership open to all communities, we find that the spirit of secularism is being flouted day after day. The Indians are not completely secular in their approach and attitudes. The universalisation of secular principles should enable secularism not to degenerate into an institutionalised policy of appeasement or domination of religious groups based on the needs of the day. A consensual framework that is based on mutual respect and common principles, not separate beliefs protected by law, needs to develop. The evolution of and adherence to such predetermined but definable principles of state and individual value based behaviour is essential if secularism is to become a universalist social and community ideology and not a purely political instrument of societal regulation within the contemporary Indian scenario.

Conclusion

The political culture of India, like other developing countries, is in the formative stage and continues to evolve. It is an admixture of historical, geographical, socio-economic structures, the contemporary and ancient social structures, old and new political ideologies and more importantly the practice and tradition of political apathy and non-violence. In Indian political culture, commitment to religious values remained strong. The political and socio-economic changes produced a response along caste lines. The Constitution outlawed caste, but the political institutions continued dividing the country into many castes and sub-castes. As a result, the Indian political system has become the hub of irrational politicians who manipulate the state machinery to advance their personal power and economic gain by disseminating the seeds of social conflict. The secessionist movements, caste assertions, Hindu nationalism and majority-minority schism on cultural identities has been entrenched often inspired by political parties and leaders for electoral gain. The politics of Hindus-Muslims-Dalits vote bank and more importantly the blame-game become the part and parcel of the Indian political culture. Political system in India is facing plenty of problems such as corruption, extensive centralisation, political criminalisation, declining secularism, rise of national chauvinism based on religion, and growing gap between the included and excluded. Indian political culture has failed to prevent communal violence, ethnic conflicts and political insurgency. Secularisation does not mean that religious institutions will cease to exist. It only means that they will cease to encompass or regulate all the other institutions of society.