

RE-READING THE SECULAR CONSTRUCT OF INDIA

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ABSTRACT

The nation- state identity of India has brought about radical changes. With the introduction of the Constitution of India, the newly formed state assigned a modified version of the American Bill of Rights as their Fundamental Rights in Part III of the Constitution. Such rights were a prelude to the moral policy aimed at maintaining peace. Amidst a multitude of such moral policies, secularism was a key ideology. The concept of secularism has been prevalent in the nation-state building process of India and it was given the legal status post-independence. However, legal sanctions, promoting religious tolerance have thus far been unable to restrain certain extremist communal forces of the country, glaring evidence of which can be found in abundance in the various communal riots and clashes, plaguing the nation today.

The objective of this Paper is to look into the reasons for failure of the judicial framework and to highlight the social and political restraints due to which the credibility of the “secular nature” of the Constitution is questioned. It also analyses whether the concept of secularism, as experienced in the West, can be synthesised with the Indian context, attempting at a contextual analysis of the difference between the theories of the Constitution and the ground realities of the Indian society. Its contents are primarily, analytical and empirical in nature while observing judgments, legislations, commission reports, parliamentary debates; and secondly, like articles, books and reports of independent investigating bodies with regard to the functioning of India as a secular country for the past sixty years. Moreover, it seeks to determine the different factors which play a pertinent role in marginalizing the minority religious communities while trying to make qualitative analysis of the Indian legal system, and bringing out some inherent inconsistencies and dichotomies into focus in them, in their dealing with the idea of secularism. The question of highlighting the emergence of an identity crisis within religious realms, exacerbated by the oft-repeated State trend of following a “rationalist avoidance” policy has led the Authors to bring out this contention through a review of our legislative, judicial and executive machineries.

Keywords: Constitution, Secularism, religion, basic structure, democracy

INTRODUCTION

India won its independence in 1947, and enacted the Constitution in 1950. The basic structure of the Constitution, however, did not contain the principle of Secularism, even though it strived to be a successful democracy and a welfare state.

Socialism found its way through the structure of the Constitution but the framers did not include Secularism into its ambit. This paper attempts to seek questions as to the cause and effect behind the exile of the principles of Secularism. The term ‘secular’ with its corresponding Latin word *saecularis*. The word is worldly rather than spiritual; it does not relate to or is bound by monastic restrictions. The state does not correspond itself to a particular religion. Even otherwise, whatever maybe the number of religions prevalent in the country, the State does not recognise any person with any religion¹. It is an idea which pleases to announce the arrival of a neutral perception into the minds of the State. It is a position where the State has no reasons whatsoever to classify its citizens by the religion they practice.

POLITICS AND RELIGION

Secularism and its implications on a State are to be observed critically from the point of view of the broad gamut of politics and the role of religion in it. When the State can function in its spheres of relevance without the interference of religious values or virtues, as the case maybe, secularism can be said to be prevailing. It means that secularism derives its *raison d’etre* from a State unfettered by theology². What this means is that in a secular State, both religion and politics function independently, and besides each other. While religion bases its validity or explanations from God and some other higher power, the State itself derives its

¹ S.N. Dhyani, *Secularism Socio-legal Issues*, Rawat Publications, Jaipur and New Delhi, 1996. p 21.

² *Id.* At 22.

validity and justification from human values and reasoning³. It then becomes easy for one to discern the difference between religion and politics.

The exclusive identities of the State and religion in a secular State are then very distinct and clear. The theory of secularism claims that the basis of its existence is scientific knowledge of things, political neutrality, human conscience and morality. While its counter-part, religion is based on anti-reason, averse to modernisation and change. So we see that the two exist in separate spheres and are juxtaposed in a secular State. While reasoning and scientific knowledge, which may be said to be a product of the *renaissance* has changed the way society views religion, we are witnesses to the mutually broadening rift amongst the Church and the State.

The ideological difference between religion and secularism are stark in the modern society especially, though the barriers were no less even in the time of Christ, who famously observed “render unto Caesar the things that are Caesar’s, and unto God the things that are God’s”⁴. This remark moved the very foundation of the Church and gave rise to the idea of a secular democracy, as was first seen in the west. This was however, not the end of it. From this form of secular democracy also came theories like rule of law, freedom and conscience, autonomy of the individual and lastly liberal democracy which further resulted in material and science running free. This was an unprecedented period as the power of religion over individuals and society was suddenly missing and the people embraced science and independent thinking and the secular State. It is these very secular ideas and theories that became the foundation for India at the inception of its republic.⁵

The idea of secularism was not very common; instead what was prevalent was the idea of ‘nationalism’, which basically divided the different groups, be it the Muslim League, or the Hindu Mahasabha which propagated different theories and ethos. In 1950, post adoption of the Constitution, V.K. Krishna Menon suggested to Nehru that the word ‘*nationalist*’ be replaced by the word ‘*secular*’. This implied that India was a secular State where religion was separate and isolated from the State⁶.

At this time two different ideologies took centre stage. The first was Gandhi’s idea, where he was of the opinion that religion and politics are inseparable. His idea of religion was not restricted by narrow sectarian creeds or cults nor was his God imprisoned by clergy men who claimed to be buffers between man and God.⁷ The other prominent figure was Nehru, who was not a supporter of the path that Gandhi took. Nehru’s secularism was something akin to contemporary Socialist-Marxism. Nehru was starkly opposed to religion, caste, creed, communalism, etc., and firmly advocated separation of religion from political, social, educational and economic affairs⁸. The reasons behind the differing views between the two men is clear, the upbringing and social conditions surely played a role. However, more important for us to note was the prominence the two men had at the time. And how the two theories developed and stood juxtaposed at the dawn of independence of our country and secularism was seen as the more dominant theory and was even adopted into the Preamble afterwards.

Nehru’s fight against religious interference in State function, education and economy was mounting as he took every opportunity to warn his countrymen against the dangers of mixing politics and religion. He observed “Organised religion allying itself to theology... encourages a temper which is the opposite to that of science. It produces narrowness and intolerance, credulity, superstition, emotionalism and irrationalism. It tends to close the mind of man and is opposed to the growth of secular society”⁹.

This view was a complete rejection of all cultural and spiritual elements of religion and the imposition of this ideology, as such, was widely imposed during his administration, but the consequences led to a continuing political battle which ensues and echoes in various parts of India till date. Rejection of any culture which originates from religion is a very strong position which takes away one’s cultural rights, and strong enforcement of such a regime to a mass of people might often not solve the true purpose, which is religious tolerance¹⁰. This is what happened in Nehru’s time, and also post-Nehru administrations, where Right-wing forces started utilizing the rejection of culture as a political rhetoric against Nehru and his party. This has also led to a section of people, who have suffered during the Nehru’s secular administration, to believe in the opposite of secularism¹¹. Subsequently, with the advent of occupation of positions of powers-that-be by followers of the aforementioned Right-wing ideology, the inclination towards a cultural revivalism was observed, highlighted in the judgments of the Best Bakery case and the Babri Masjid- Ram Janmabhoomi case.

³ *Id.*

⁴ *Id.*

⁵ *Id.* At pg. 23.

⁶ Kamath, M.V., “*The Myth of Secularism*”, Indian Express Magazine, July 10, 1983, p.2.

⁷ S.N. Dhyani, *Secularism Socio-legal Issues*, Rawat Publications, Jaipur and New Delhi, 1996. p 33.

⁸ *Id.* at p.34.

⁹ Ajay Kumar Singh, *Nehru and the Philosophy of Secularism*, Third Concept, p.23 at 24 November, 1989.

¹⁰ T N Madan, *Secularism in its place*, The Journal of Asian Studies, vol. 46, No. 4 (Nov., 1987) p.751.

¹¹ Refer to the Bombay and Sikh Riots. In the Sikh riots the Hindu fundamentalists massacred Sikhs which came out of vengeance for the killing of Indira Gandhi.

BEST BAKERY CASE

The Best Bakery case (also called the Tulsi Bakery case) involved the burning down of the Best Bakery on March 1, 2002, in Vadodara, Gujarat. The incident, which resulted in the deaths of 14 (including 12 Muslims), has come to symbolize the carnage, and the alleged complicity of the State Government in the communal riots.¹² The bakery was burned down in broad daylight, admittedly because it housed several Muslims, by numerous self-proclaimed religious zealots. It was an event of utter destruction devoid of mercy, emotion as well as empathy towards the victims¹³.

Amnesty International reports that in many cases of the Gujarat violence, the Police recorded complaints in a defective manner, and failed to collect witnesses' statements as well as corroborative evidence and did not investigate into the responsibilities of eminent suspects. The Best Bakery case was seen by human rights organizations in India as a test case given where, what Amnesty calls, "strong evidence" against the accused, existed, but the victims gained little justice¹⁴.

On 23rd March 2003, all 21 accused were acquitted by the Fast Track Court citing lack of empirical evidence as the main reason, along with the fact that 37 of the 73 witnesses, including the 19 year old Zahira Sheikh, the primary eye-witness turning hostile during cross-examination.

CONSTITUTION AND SECULARISM

Secularism is embedded into the basic structure of the Constitution. The term "secularism" was not in the Preamble when the Constitution was enacted, however, after the 42nd amendment the legislators added this term to qualify the Constitution as a secular Constitution with the aim of protecting the secular rights and freedoms of the citizens of India. The idea of secularism under the Constitution means that the State shall not involve itself into the matter of religion which is kept private to the practicing individual. At the same time, the State protects your Right to follow and profess any religion of your choice. The State gives equal protection to each and every religion and does not have a religion of its own. It lets the citizens chose and decide for themselves, and at the same time protect the decision of the people with the intention of letting them practice the religion of their choice.

Article 25 of the Constitution guarantees the Right to profess religion according one's belief anywhere in the country. According to this Fundamental Right, any person can follow the religion of his/her choice and also form association as well as groups with respect to such religion. This is considered to be the most precious and important fundamental right as religion is a matter which is intricately woven into the fabric of Indian society and cannot be challenged. In the case of *St. Xaviers College v. State of Gujarat*,¹⁵ the Supreme Court held the following:

"There is no mysticism in the secular character of the State. Secularism neither Anti-God nor pro-God, it treats alike the devout, the antagonistic and the atheist. It eliminates God from the matters of the State and ensures that no one shall be discriminated against on the ground of religion."

In *S.R Bommai v. Union of India*¹⁶, the Supreme Court held that "secularism is a basic structure of the Constitution. The State treats equally all religions and religious denominations. In this case it was held that "secularism" has always been one of the major principles of the Constitution ever since the Document was enacted, however, the formality arrived once the 42nd amendment was enacted and the Preamble was given a formal shape with respect to the idea of secularism. Even though the idea of secularism is embedded into the philosophy of the Constitution, the question persists that this philosophy has been derived from the forefathers of the Indian freedom movement, with emphasis that there has not been any evolution with regard to the idea of secularism and the country still has been living in the "pre-modern" denomination of the idea of secularism. Sometimes we see how judicial interpretation is skewed with respect to understanding the real story behind the idea of secularism.

"In India a Secular State was never considered as an irreligious or atheistic State. It only means that in matters of religion, it is neutral"¹⁷. The above definition of secularism is one which attracts many defects with respect to the understanding of the idea of secularism. It sits on a level where the practitioners and implementers of this understated thought focussed and relied on mere connotation of the entire understanding of secularism. According to the definition, the State is neutral to religion, however, in the same sentence the emphasis is laid on "not being an irreligious state", whereas the focus should be directed towards allowing the people to live without being identified and classified on the basis of the religion one follows.

The point of reference is laid on letting people follow their religion without having an intervention from the State. As envisaged in its truest sense, the idea of secularism has to be looked and implemented upon the practice of the State to not classify, patronize, identify, use religion as a vote bank for its furtherance, discrimination on the basis of religion, violence, reservations; with respect to the religion people follow. It is of extreme importance to allow people to follow the religion of their choice, as the

¹² <http://in.rediff.com/news/2006/feb/24best.htm>

¹³ <http://www.sabrang.com/cjp/best/factfile.htm>

¹⁴ http://news.bbc.co.uk/2/hi/south_asia/3679878.stm

¹⁵ AIR 1974 SC 1389 at 1414

¹⁶ (1994) 3 SCC 1

¹⁷ Dr.J.N. Pandey, *Constitutional Law of India*, Central Law Agency (ed. 38th, 2002), p. 278.

point is to have a truly heterogeneous society without the intervention of the State, as the need of the hour is to prevent any misuse of a vulnerable idea such as religion, which in turn needs protection.

All individuals should have the freedom to formalize, gather, opine and adjudicate on, follow, identify and align themselves with any choice of religion. The State lets the people choose independently, the choice being considered uninfluenced, under any means, by the State, or the Priests, Padres, Maulvis, etc., representing their religion, or for that matter any religious head or self-professed zealots. Simultaneously, atheists are also entitled to their Right of non-profession of any faith or calling. This has been clearly enshrined in the body of the text under Article 25.

SIKH RIOTS

The practice of the State to classify and use religion as a tool to implement its policies has led to major disasters in the history of the country. Riots have killed more than a million people in the past sixty years of freedom. Religious politics has played a huge role in constructing riots and other major events which have shaped the image of the country. "From the point of view of the majority, "secularism" is a vacuous word, a phantom concept, for such people do not know whether it is desirable to privatize religion, and if it is, how this may be done, unless they be Protestant Christians but not if they are Buddhists, Hindus, Muslims, or Sikhs".¹⁸

The 1984 Sikh riots were a major blot on the Indian secular structure. It not only tarnished the image of the so-called secular nature of the country but also reflected upon the practising morality of the people in the country with regard to secularism. It all started during the state of emergency. Sikhs were one of the major players during the anti-emergency protest, and out of the 140,000 people arrested, 40,000 were Sikhs. After the emergency was lifted, Sikhs formed a strong alliance in Punjab with the help of some Hindus in the aim of freeing Punjab from the shackles of communal vulnerability by idoling a free state of "Khalistan". Bindranwale was at the helm of this movement and he grew in stature among the Sikhs for his unnerving attitude towards the government led by Indira Gandhi.¹⁹

As a consequence of the friction between the pro-Khalistan agitators and the Centre, tensions reached an alarming level. In June 1984, the Army entered the Golden Temple, the sacred religious institution to the Sikhs, to allegedly arrest and encounter the "terrorist" Bindranwale, who had taken refuge there. This incident caused an unparalleled uproar amongst the Sikhs. It is in light of this that the then Prime Minister, Mrs. Indira Gandhi, was shot dead by two of her (Sikh) bodyguards, which acted as the catalyst towards anti-Sikh riots in the country. Thousands of Sikhs were massacred by extremists, allegedly led by some persons belonging to the Congress party. The country was shocked in horror as hundreds of Sikhs were massacred by pro-Congress persons, as well as their supporters, leading to the first ever riots on such a large national level post-independence.

ANTI-MUSLIM VIOLENCE

This Paper shall be covering two aspects of anti-Muslim riots, which are the Bombay riots of 1992 and the Godhra riots of 2002 respectively. Before we get to the Bombay riots, it is pertinent to understand the reason behind the riots. There was a mass movement brought up by the BJP, VHP and the Bajrang Dal to destroy the Babri Masjid as they believed that it was the birthplace of Lord Ram and therefore, it was important to have a temple constructed on the site of the Masjid. The Masjid was destroyed, which led to a huge uproar among the widespread Muslims in the country.

"In the aftermath of the destruction of the Babri Mosque in Ayodhya by Hindu nationalists on 6 December 1992, rioting took place between Hindus and Muslims in the city of Bombay. 500 Muslims died in the resulting violence. Four people died in a fire in the Asalpha timber mart at Ghatkopar, five were killed in the burning of Bainganwadi; shacks along the harbour line track between Sewri and Cotton Green stations were gutted; and a couple was pulled out of a rickshaw in Asalpha village and burnt to death".²⁰

The above cited paragraph depicts the state of the riots which took place as a knee-jerk reaction of the demolition of the Babri Masjid. The Gujarat riots were extremely volatile which happened as a result of the burning of a train which was carrying Kar Sevaks to the city of Godhra.

According to the death toll given to the Parliament in a Report on 11 May 2005 by the State Government, 790 Muslims and 254 Hindus were killed, and another 2,548 injured. 223 people are missing²¹. The Report placed the number of riot widows at 919 and 606 children were declared orphaned²². According to Home Advocacy Group, a non-governmental organization, the death tolls were up to 2000²³. According to the Congressional Research Service, up to 2000 people, mostly Muslim was killed in the

¹⁸ T N Madan, *Secularism in its place*, The Journal of Asian Studies, vol. 46, No. 4 (Nov., 1987) p.750.

¹⁹ J.S. Grewal, *The Sikhs of the Punjab*, (Cambridge, Cambridge University Press, 1990) 214; Inder Malhotra, *Indira Gandhi: A Personal and Political Biography*, (London/Toronto, Hodder and Stoughton, 1989) 178

²⁰ <http://www.guardian.co.uk/world/2003/aug/18/india.uk>

²¹ <http://www.tribuneindia.com/2003/20030826/main6.htm>

²² http://www.digitalnpq.org/archive/2002_fall/jehangir.html

²³ http://www.nytimes.com/2002/03/04/opinion/04iht-edray_ed3_.html

violence²⁴. The actual figures were not revealed by the then BJP led Government at the Centre to save the image of Narendra Modi as an able leader who worked for the welfare of all the citizens of the country. Muslims were the victims of such riots as their houses were plundered and their mode of employment were destroyed. It was a blood bath as the hapless Muslims were devoid of any help either from the State machinery or the Centre.

CONCLUSION

This Paper projects how the issue of secularism is being tackled in India. There has been wide use and abuse of this issue. Furthermore, there lies a lot of inconsistency over the issue of secularism as it is not been truly explored in India. The vast ranging difference of communities, which is intertwined with regional dynamics, brings more complexity in addressing the issue of secularism. But since Constitution there has been only pan-Indian attempts made which shows that the State machineries have failed to understand the regional pulse of the issue. This is also the reason for failure of many schemes of secularisation. Although there has been such exploration in the academic field, such views have not percolated in politics. Another phenomenon that can be inferred from the paper is that this issue is abused by fundamentalist forces time and again in post-Independence politics. Furthermore the forces that hamper the goal of secularism has not been clearly identified, also there has not been much work on the intersectionality of secularism with other issues like caste.

The framers of our Constitution envisaged a country where religious tolerance would have been top priority with respect to the administration of the State. However, as shown in the paper the reality speaks a different story. Communal violence has broken the back of the Constitutional principles which were embodied by the framers with a view to secularise the country. Religious tolerance has not developed as much as we would have liked it to, and the root cause of the problem has been the way secularism has been defined and theorised by the political figures as well as the framers of the Constitution.

²⁴ Dugger, Celia W., *Hindu Rioters Kill 60 Muslims in India*, New York Times. New York, N.Y.:1 March 2002.