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THE HINDUTVA JUDGMENTS : A REJOINDER

Vikramjit Banerjee*

Sumeet Malik**

*'If you move around with pictures of Chairman Mao,
You won't get anywhere, anyhow'*

Revolution (Lenon/McCartney)

Arvind Narain and Matthew John in their article titled 'The Hindutva Judgments : A Comment' have made out a case as to why the concept of Hindutva as enunciated in the *Hindutva Judgements*,¹ militates against 'secularism' and therefore the *S.R. Bommai case*² and as a result is *per in curium*. On the pretext of making such a legal critique, they have gone on to make sweeping criticism of Hindutva and the Hindu Religion. Overall an interesting article, but absolutely wrong. In fact all the major presumptions made by the article, do not stand to the test of fact or reasoning.³ For the convenience of the readers, we shall split the article into two parts: (a) the legal part and (b) the non-legal part.

(A) THE LEGAL REASONING

It must be stated at the outset, that if there is any case, on 'Secularism' which is in danger of being called *per in curium*, it is the *S.R. Bommai case*. *S.R. Bommai* in its eagerness to justify the Congress Government's dismissal of the B.J.P. State Governments stated that secularism is a positive concept which the Government has to use, the failure to use which, would cast an obligation on the judiciary to force

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1 *Dr. Ramesh Yashwanti Prabhoo v. Prabhakar K. Kunte*, (1996) 1 SCC 130; *Manohar Joshi v. Nitin Bhau Rao Patil*, (1996) 1 SCC 169; *Ramchandra K. Kapse v. Haribansh R. Singh*, (1996) 1 SCC 206.

2 *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

3 "A speech with a secular stance alleging discrimination against any particular religion and promising removal of the imbalance cannot be treated as an appeal on the ground of religion. In other words, religion is not a dirty word, nor is mere reference to it during election campaigns taboo." - S. Sorabjee, *Appeal to Religion: Supreme Court's view*, The Indian Express, 18th Dec. 1995. "Should the election law prohibit advocacy of political utopia?" - U. Baxi, *Hindutva Verdict, Focus on context*, The Indian Express, 8th Mar., 1996. "For once in independent India the Supreme Court has tried to define the concept of Hindutva, as distinct from a religion. The dogma of 'religion' is alien to our culture", J.B. Bhatti, *Rejoinder to V.M. Tarkunde : Hindutva and Supreme Court*, *Hindustan Times*, 10th March, 1996. In none of the speeches objected to was the word Hinduism used. It was conceded that every time the word used was 'Hindutva', but for a want of an exact English equivalent a wrong English word was made to stand for it." - R. Jethmalani, *The Hindutva Judgements : Boosting true nationalism*, The Indian Express, 2nd-3rd Feb., 1996.

the Government to implement it. They went so far as to say that there is a 'wall of separation between Church and State in India as in the U.S. This pronouncement goes squarely against the thirteen Judge bench in *Kesavananda Bharti*.⁴ The Court in *Kesavananda Bharti* talked of secularism but not of active secularism, à la *S.R. Bommai* but passive secularism, that is toleration à la '*Sarva Dharma Sambhava*'. The Court clearly laid down that the U.S. principle is alien to Indian culture, and is not part of the Indian Constitutional frame work. The *Bommai* case also directly conflicts with the *St. Xaviers Ahmedabad case*,⁵ where Matthew J. stated that "there are provisions in the Constitution which make us hesitate to call it secular" and went on to define the Indian concept of secularism as tolerance.

The Court, in fact, had gone back on the positive secularism bit immediately after the *S.R. Bommai* case. Thus in the *Ram- Janmbhoomi Judgement*,⁶ the Court clearly stated that secularism in India is not the concept of a 'wall of separation' but of '*Sarva Dharma Sabhava*' and it relied extensively on religious literature to come to such a conclusion.⁷ The Court's view on secularism has always been that of tolerance,⁸ a true enunciation of the correct position can be gathered from Ahmadi J.'s dissenting judgement in *S.R. Bommai* itself.

The Hindutva Judgements are a logical conclusion of that line of argument. It has been the view of the Court, throughout its history, that secularism exists because the Hindu majority wants tolerance in this country. Even Bharucha J., in his radical dissenting opinion in the *Ram Janmbhoomi* case, had to accept that in the end.⁹ To say, that secularism in India exists due to the Hindu ethos, and the same Hindu ethos (Hindutva means being Hindu) is anti secular, would seem a wee bit contradictory.

The argument which has been raised in the article, as to the historicisation of the concept, is interesting though nothing new, and has some fundamental flaws. Ideology cannot be historicised and barred. Marxism of the variety of Stalin, Lenin, Pol Pot, Mao and our communist parties are all Marxism. That does not mean Marxism should be banned because Pol Pot and Stalin practised extermination of people in the name of Marxism. On a practical level, by the same logic, Marxism should be banned because naxalites have been using terrorism and violence. What

4 *Kesavananda Bharti v. State of Kerala*, (1973) 4 SCC 225.

5 *St. Xavier's College v. State of Gujarat*, (1974) 1 SCC 717.

6 *Ismael Faruqui v. Union of India*, (1994) 6 SCC 360.

7 *Ibid.* at para. 31.

8 *Kultar Singh v. Mukhtiar Singh*, (1964) 7 SCR 790; *Shastu Yagnapurushondji v. Muldas Bhadavas Vaishya*, (1966) 3 SCR 242; *CIT, Madras v. R. Sridharan*, (1976) SCR 478; *Sardar Taheruddin Syedna Saheb v. State of Bombay*, AIR 1962 SC 853; *Kesavananda Bharti v. State of Kerala*, (1973) 4 SCC 225; *St. Xavier's College v. State of Gujarat*, (1974) 1 SCC 717; *Ismael Faruqui v. Union of India*, (1994) 6 SCC 360; *Valsamma Paul (Mrs.) v. Cochin University*, (1996) 3 SCC 545; *A.S. Narayana Deekshitulu v. State of A.P.*, (1996) 9 SCC 548.

9 *Supra*, n. 6, para. 156.

must be understood is that the same ideology holds different meanings for different people. The Marxists of Deng are different from the Marxists of Mao, as chalk is from cheese, similarly the Hindutva of Gowalkar, is substantially different from that of Atal Behari Vajpayee.

And for banning ideologies, if we start doing so, where do we end? Stalin and Hitler have shown that censorship and curtailment of the freedom of expression are the first steps to dictatorship. "Those who give up essential liberty to purchase temporary safety deserve neither liberty nor safety".¹⁰

(B) THE NON LEGAL REASONING

The argument is on two levels (a) that John & Narain have again missed the point by a mile as to their understanding of the concept of Hindutva (b) John & Narain have made comments which militates against certain basic premises of their own article. The first one first. This needs great stressing. HINDUTVA IS NOT ABOUT RELIGION BUT ABOUT NATIONALISM. You can be a Christian Hindu, Sikh Hindu, Jain Hindu, and even a Muslim Hindu. Hindu is a terminology for the nationality of the people who inhabit this land. India is a geographical entity and a Western construct- true national identity is the Hindu identity. It is conceded that since religion and sense of nationality are extremely intermingled in India, it can at times become difficult to find out where one ends and where the other begins. The alternative is using Bharat (we are quibbling about semantics now), but even Bharat has religious connotations.¹¹ 'Bharatiya' has been used again and again in the *Bhagwad Gita* to describe Arjuna.

The question can be raised is whether Indian nationalism is Brahminical Nationalism. It may not be so, but it is definitely Hindu Nationalism. Caste has nothing to do with the word Hindu. If caste has anything to do with religion, then 'Sanatana Dharma' or 'The Ancient Way of Life' deserves condemnation not Hinduism.

This is the reason for the second argument on the non legal aspect. To equate Hinduism i.e. Sanatana Dharma with casteism and Brahminism is to disregard the importance of Shaivism, Vaishnavism, the Bhakti Movements, Shaktyas, local cults as well as modern day religious movements like Arya Samaj, Brahmo Samaj and the movement of Acharya Narendra Deva led by lower castes. Sanatana Dharma is not Brahminism and you do not need the Upanishads, Gita and the Rg Veda to arrive at the conclusion though there are plenty of indications in these to indicate so. Perversions always creep into systems over long periods and the need is to clean the

¹⁰ Benjamin Franklin, The Federalist Papers.

¹¹ Bharatiya are the descendants of King Bharata a *Puranic* figure and the ancestor of Arjuna (son of Indra), Yuddhishtira (son of Yama) etc. Even Bharatvarsha or the land of the Bharatas means the land of Bharata's tribesmen; a religio-historic background.

perversions and not to do away with the system. If Emergency powers within the Constitution are misused, the answer is to ensure that such are not misused, and not in calling the Constitution dictatorial.

CONCLUSION - IN THE END

yo yo yâm yâm tanum bhaktah
sraddhaya rcitum icchati
tasya tasya atam shraddham
tam eva vidadhamy aham

(Whatever form any devotee with faith wishes to worship, I make that faith steady)*

....Chapter VII. 21
- *The Bhagwad Gita*

and that's 'Hinduism' for you ...

* The translation is from S. Radhakrishnan, *Bhagwad Gita* 158 (1993).