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Constitution and Secularism - A Rejoinder

Prof. V. Vijaya Kumar*

The author takes up the points mentioned by Vikramjit Banerjee and bases his rejoinder on secularism as understood in a more contextual sense.

Aside from the definitions of secularism given in the dictionary and other books, secularism can be considered as a concept that evolved over time because of technological, industrial and scientific developments conditioned by moral and rational considerations and the rights of the individual as well as of the group he belongs to. The context in which the concept of secularism is used in the Indian Constitution is certainly different from similar developments elsewhere. At the commencement of the Constitution, the term 'secular' or 'secularism' or 'secular state' or the like was not at all used. Probably, the disastrous experiences during partition of India on religious grounds contributed to this stand at that particular point of time. Although India had, and continues to have, more than two-third of the population from the Hindu community, it had not declared itself as a Hindu state, unlike Nepal. This is the first evidence of the secular attitude of the State and the people in it. The rights of different religious groups have been guaranteed under the Constitution to see that the minorities do not suffer under the dominance of the majority community. All religions have flourished in India from the ancient times (*Ecam sat, Viprah Bahudha Vordanti* was the saying - Truth is one, but the students of the Vedas call them by different names). Respecting others' beliefs and faiths was the order. Religious tolerance has been the way of life for the Hindus although they had to suffer humiliation at the hands of the rulers belonging to other religions at particular times in their history. Thus religion has been always interconnected with the social as well as the political developments in India.

With the coming into force of the Constitution of India, which becomes the referral point now, the right to religion was guaranteed and protected from the very beginning. The Preamble to the Constitution speaks about the liberty of thought, expression, belief, faith and worship and at the same time the promotion of fraternity among the citizens. A separate and distinct right to religion was also provided under Articles 25-28. This right is not an absolute right as the State could still interfere to regulate this right under specified circumstances. Any discrimination on the basis of religion in public places or the like is prohibited under the same constitution. These provisions guaranteeing the individual the freedom of religion are more than sufficient to prove the secular character of the Indian Constitution. However, the Constitution (Forty-second Amendment) Act, 1976 introduced the specific term 'secular' into the Preamble. Thus, what was implicit under the Constitution was simply made explicit by the amendment by way of abundant caution. A brief look into the past would only strengthen this argument.

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The framers of the Constitution were very clear in their minds when they erected the right to religion to be a fundamental right. Mr. M. Ananthasayanam Ayyangar, during the Constituent Assembly Debates said, "we are pledged to make the State a secular one. I do not, by the word 'secular' mean that we do not believe in any religion and that we have nothing to do with it in our day to day life. It only means that the State cannot aid one religion or give preference to one religion against another."¹ Dr. S. Radhakrishnan once said, "when India is said to be secular, it does not mean that we reject the reality of the unseen spirit or the relevance of religion to life, or that we exalt religion.... The view of religious impartiality, of comprehension and forbearance; has a prophetic role to play within the national and international life."²

It is, of course, necessary to understand the concept of Secularism in the way it was experienced during the first two decades after independence and partition. The foundation for this concept of secularism was well laid down by the first Prime Minister, Jawaharlal Nehru. According to him, there are four main aspects of secularism:

- a) the first and the most essential feature of secularism was the granting of equal status to all religions in India. More specifically secularism to him meant 'equal respect for all faiths and equal opportunities for those profess any faith';
- b) that the State should follow a policy of neutrality in religious matters. In this regard Nehru made his view clear by stating that, "I am convinced that the future government of free India must be secular, in the sense that Government will not associate itself directly with any religious faith." Much earlier to this, Nehru had drafted the Karachi Congress Resolution in 1931 which stated that, "the State shall observe neutrality in regard to all religions." This shows the consistency in his thought and approach;
- c) Secularism also meant a certain mental attitude on the part of various communities. That is, all the religions are supposed not to interfere either with each other or with the basic conceptions of the state; and
- d) Secularisation of all areas of social life. In other words, his ideal of secularism envisaged a political structure in which the individual was not subject to any social inequalities imposed by religious sanctions.³

Keeping this background in mind, it can conveniently be said that the concept of secularism in India is not an anti-religious stand taken by the state. In fact, it is the other way round. Religious tolerance by state as well as the citizens becomes the hallmark of secularism. Thus it is a sort of compromise between state and religion, a balance which would act within the spirit and

1 C.A.D. vol. VII (New Delhi: Lok Sabha Secretariat) 881-2.

2 *Journal of Constitutional and Parliamentary Studies*, XXV. 1-4 (1991): 98.

3 *Indian Journal of Political Science*, XLVIII. 2 (April -June 1987) : 217-219.

framework of the Constitution. Hence, to make a water-tight compartment between religion and the state or the political developments is inconceivable. Whenever the balance tilts one way or the other, the judiciary, as a constitutional authority, tries to bring back the lost balance. But in practice, this tolerance by the religious communities have failed them at times resulting in total disrespect to all constitutional authorities. In spite of all these developments, the observations made by Chester Bowles of Nehru proves the existence of secularism beyond doubt. According to him one of the greatest achievements of Nehru is "the creation of a secular state in which the 45 million Muslims who chose not to go to Pakistan may live peacefully and worship as they please."⁴

If any one criticises that the Constitution of India is not secular in character as it ensures religious rights to all communities, it simply speaks volumes of the misgivings or misconceptions. The real meaning and scope of secularism could be properly understood through the following two concepts: (a) that the state would not recognise any particular religion over the rest; and (b) that the State would not go against all the religions, a stand taken by an 'atheist' state. This would also illustrate as to how the concept of State and religion can co-exist without entering into the domain of each other. Thus secularism definitely speaks of this unique balance between religion and State and not by going against each other. Moreover, the fundamental rights given to all religions are not absolute as the state could still regulate this right to maintain public order, morality and health of all persons in the state. Clause (2) to Article 25 also says that the State can regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice. When some of the religious groups go out of the way to propagate their religious faith and effect forcible conversions into their fold, it was definitely felt to be an anti-secular attitude and the Supreme Court categorically ruled by saying that there is no fundamental right to forcible conversions.⁵ The existence of Article 44 which imposes an obligation on the state to secure for the citizens a Uniform Civil Code throughout the territory of India speaks volumes of the secular character of the Constitution. That the state had not initiated any positive measures for the realisation of Article 44 of the constitution does not make the Constitution anti-secular.

In fact, after independence and partition, a number of existing, as well as other laws made, have necessary provisions to see that the secular character of the Indian Constitution is maintained. It is a pity that these legislations have not been implemented properly by the government which in fact delayed any positive move to realise the goal of Article 44 of the Constitution. For example, various political parties have been permitted to be launched on religious basis against the existing statutes, legislations have been either proposed or opposed on religious lines. These developments have effectively challenged the secular character of the Indian constitution. It is therefore, the duty of every right-thinking citizen to see that the secular character of the Constitution is

4 *Id.*, at 222.

5 *Stainslans v. State of Madhya Pradesh*, AIR 1977 SC 908.

reinforced at any cost. Otherwise, there will be no place for democracy and human rights in this large chunk of humanity that is India.

One interesting question arises with regard to the right given to all religious groups to propagate their religion. This in fact strengthens the religious right granted under the constitution. This right does not go against secularism for the simple reason that this right is given to all followers of all religions and is only another guarantee of free speech on religious beliefs. If this right is given to one and denied to others, it would definitely go against the concept of secularism. As it is given to all religions, it should be looked at positively as a natural extension of religious right. However, in the exercise of this right to profess, there have been certain tendencies to go out of the way to compel individuals to convert to their religion, taking advantage of their economic or social backwardness or poor standards of life. Whenever such practices are brought to the notice of the courts, the courts have not hesitated to strike down such practices as unconstitutional.⁶ Thus the right to profess religion and the concept of secularism can be reconciled with each other. Instead of negating each other, both go to strengthen each other.

Reference to Article 25 (2) must be made to understand the proper meaning of the provision. Hindu society, from time immemorial, has had different castes that have been subjected to some disadvantages or the other. People belonging to some of the castes are not permitted to enter the temples for worship. Such a practice by and large is not present in other religions. When the Constitution guarantees the right to equality and also allows religion to have its say, the freedom of religion is likely to violate the rights of citizens belonging to certain disadvantaged groups among the Hindus unless the individual's freedom is given a dominant role to play. If Article 25 (2) is read with Article 25 (1), it is much easier to understand the implications in a positive way. The state under Article 25 (1) has the right to restrict the scope of the right to religion in the interest of public order, morality or health. Thus, Article 25 (2) (b) is constitutionally valid as the framers of the Constitution wanted the equal rights of citizens belonging to the disadvantaged groups among the Hindus to be protected, and they provided that the Hindu religious institutions of a public character be thrown open to all *classes and sections* of Hindus.

The other important right given to all religions is the right to establish and administer educational institutions of their choice. Although this right is given only to religious minorities, it can also be construed that any religious denomination can become a religious minority depending upon the circumstances. Thus it would be capable of being extended even to the Hindus, when they are in minority in any part of the territory. This right is provided to any section of the citizens only to preserve their language or culture and as such is not in any way going against the concept of secularism. Assuming that this right is based on religious grounds, it is important to note here that this right can also be controlled and regulated by the state. Hence this right to establish and

administer educational institutions should not be construed as absolute or as antiseccular in nature.

The next important provision of the Constitution which deals with religion is Article 290A, wherein certain sums of money have to be charged on, and paid out of the Consolidated Fund of the States of Tamilnadu and Kerala every year for the maintenance of Hindu temples and shrines. The first thing to be noted here is that Article 290A was not part of the original text of the Constitution. It was one among the consequences of the reorganisation of States in 1956. Earlier, there existed practices in the erstwhile State of Travancore - Cochin wherein the ruler had established the practice of allocating money for the maintenance of shrines there and the revenues from the temples getting into the treasury of the ruler. As there is income from the temples in this region, expenditure is also provided out of the consolidated funds of the two states. The States have the Hindu Religions Endowment Boards as well as Wakf Boards headed by ministers belonging to that religion in the management of their religious affairs. As such, giving religious colour to such practices to criticise the concept of secularism is simply far fetched.

When people criticise the secular character of the Indian Constitution, reference is made to Article 60, under which the President of India takes the oath of office. Article 60 reads: "I..... AB., do swear in the name of God/ Solemnly affirm....." This form of oath does not, in any way, suggest the religious character of the Constitution. On the contrary, Article 60 does not specify the god of any particular religion. It only makes use of a generic term and allows the individual a freedom of choice of expression and as such, is purely secular in character. Apart from this, a person elected as the President, if he does not believe in God, is given the choice of "solemnly affirming." No better proof is required to prove the secular character of the Indian Constitution other than Article 60.

The recent development in India, particularly the communal riots during the last decade, seem to threaten the very basis of unity and integrity of India. If we still believe in the concept of 'unity in diversity', confidently we can say that 'secularism' should be the key word for the years to come to make India socially and politically a forward looking nation. To conclude, it is pertinent to note the observation made by Mahatma Gandhiji following the Hindu-Muslim riots in 1948 when he said:

Without living truth God is nowhere. In the name of God, we have indulged in lies, massacred the people without caring whether they are innocent or guilty, men or women, children and infants. We have indulged in abduction, forcible conversions and we have done these shamelessly. I am not aware if any has done this in the name of truth.⁷

⁷ 'Harijan', dated January 35, 1948, *Indian Journal of Political Science*, Vol. LII, No., 4, October - December, 1991, 440. (rel. on).