EVOLUTION OF INDIAN SECULARISM

Varoma Vijayan
Assistant Professor of Law, CSI Institute of Legal Studies, Cheruvarkonam, Trivandrum

Both in academic and popular usage the term “Secular” has been rendered a catch-all, residual phrase that is the converse of religious. Semantically, the term arose from the specific European context of post Renaissance politics and derived from the attempt to wrest the State and (its property) from the control of the Church. Hence, the worldly and the other-worldly; the sacred and the secular emerged as mutually exclusive bounded domains. In the West, secularism was closely related to the theory of progress which it was hoped would take societies from a stage of primitive religion onward to a destination of reason. Thus, it implied an emphasis on science, rationality and technology.  

1. THE FOUNDING FATHERS OF INDIAN SECULARISM

India has had no secular tradition. During Asoka’s rule there was perhaps some semblance of tolerance towards faith which was different from Buddhism, the State religion. The only ruler of significance who practiced religious tolerance later was Akbar. But in neither case, was the State secular. After the fall of the Mughal Empire, India was ruled by hundreds of rulers either Hindu or Muslim and they all had their own state religion which was the religion of the ruler. When the British established themselves as the rulers of India the situation did not change. The British had their own official religion and there was even an Ecclesiastical Department directly under the control of the Governor-General.

The concept of secularism was imported by Nehruji from Europe. Several hundred years ago, the Church ruled the roost and the pope dictated the fates of the kingdoms in Europe.

Although the term ‘secularism’ was not included anywhere in the Constitution as it was originally passed in 1949, the framers of the Constitution had in their mind as to what they meant by secularism, Dr. B.R. Ambedkar, Chairman of the Drafting Committee, while

---

209 Shail Mayaram, Secularism in India: Some Reflections in Dr. Iqbal Narain, Secularism in India, (1st ed. 1995), Classic Publishing House, at p. 5
participating in the debate in Parliament on the Hindu Code Bill in 1951, explained the secular concept as follows:

“It (Secular State) does not mean that we shall not take into consideration the religious sentiments of the people. All that a Secular State means is that this Parliament shall not be competent to impose any particular religion upon the rest of the people. This is the only limitation that the Constitution recognises.” In the Constituent Assembly itself several members had expressed similar ideas in more elaborate terms.211

Secularism in India has strayed from the stipulated path. Nehru did not define secularism properly and politicians took advantage of his failure to elucidate the concept. Instead of shedding religious partisanship, the pseudo-secularists fomented it in order to capture vote banks212.

M.N. Roy was highly critical of the character of Indian state. For him, it was far from being secular as it was associated with Hindu religion. At least persons like Jawaharlal Nehru and Radhakrishnan did not visit temples and other religious places. But now the Prime Ministers and Presidents do so in full glare of media publicity. Rajiv Gandhi during his election campaign of 1989 visited Deoraha Baba who blessed him by putting his foot on his head.

Nehru undoubtedly was the architect of the concept of secularism as far as India is concerned. Mahatma Gandhi also stood for secularism in his own way. But his concept of secularism was radically different from that of Nehru. Gandhi undoubtedly and unswervingly stood for equal respect for all religions213.

Dr. Rajendra Prasad was once asked if religious faith or spirituality could have any place in a secular state. He had replied ‘secularism means that all citizens of the country are free to follow and propagate their faith. We respect all religions and we want them to grow without any let or hindrance.’214

211M. V. PYLEE, OUR CONSTITUTION, GOVERNMENT AND POLITICS, (2000), Universal Law Books, Delhi, at p. 52
213ASGHAR ALI ENGINEER, PRACTICE OF SECULARISM IN INDIA IN DR. IQBALNARAIN, SECULARISM IN INDIA, (1st ed. 1995), Classic Publishing House, at p. 89
In a secular state all religions are, in one limited respect, subordinate to as well as separate from the state. As voluntary associations of individual citizens, religious groups are under the general laws of the state and responsible for the proper discharge of civil responsibilities (payment of taxes, maintenance of public order, etc.). In this respect religions are viewed by the state in as much the same way as it views other voluntary associations based on common social, cultural, or economic interests.²¹⁵

2. THE CONSTITUTIONAL PROVISIONS

The Constitution of India defines secularism as not discriminating against any individual or community on the basis of religion²¹⁶. The secular values of our Republic are writ large in the Indian Constitution, although there are a few dubious features here and there. Now, secularism is on the cross, political rhetoric notwithstanding. Freedom of religion and conscience are a constitutional guarantee but this peaceful co-existence of faith plus agnostic and atheistic convictions may be and often are subverted by aggressive godism, religious fundamentalism, sabre-rattling, sacerdotal battles and pantheons with blood-shot eyes.

The words “socialist, secular” were inserted by the Constitution (Forty Second Amendment Act), 1976 on the recommendations of the Swaran Singh Committee. In practice, the word “Secular” had come to mean impartiality by the Government in matters of faith and religion in contrast to a theocratic State²¹⁷.

The makers of the Indian constitution conceived of India as a secular state, although as a result of the considerable ambivalence of the Constitution makers, the document promulgated in 1950 nowhere mentioned the term “secular”.²¹⁸ In the context of massive communal violence and the partition of India along religious lines, the intent was to bound religion to the “private” domain. Hence, the State was not to be identified with any particular religion. But, the Indian Constitution declared India to be a secular Republic only following the Forty Second Amendment to the Preamble in 1976. The Preamble, as is well known, is a statement of “goals” rather than of provisions that are justiciable. Other provisions relevant to the proposed

²¹⁸Satish Chandra, The Indian National Movement and Concept of Secularism, in BidyutChakraborty, Secularism and Indian Polity, New Delhi: Segment
relationship between religion and politics are Article 25-28 of Part III that guarantee Fundamental Rights. Article 25 guarantee freedom of conscience and the right to profess, practice and propagate religion freely, subject to public order and morality; Article 26 gives freedom to manage religious affairs; and Article 28 declares that no religious institution shall be wholly maintained by state funds. The right to freedom of religion enshrined in various provisions of the Constitution is subject to public order, morality and health.\textsuperscript{219} Other provisions relevant to the concept of secularism are Article 44 of the Directive Principles of State Policy which suggests India eventually moves towards a uniform civil code, and Article 29(2) that sets up the Aligarh Muslim and Banaras Hindu Universities.

There is no need to define the word “secular” in view of the various constitutional provisions which make it amply clear that India is a secular country. Every citizen, whatever his or her religion may be, is entitled to the same fundamental rights and is subject to the same fundamental duties and obligations. This view finds support in the observations of A.M. Ahmadi, J. in \textit{S.R. Bommai v. Union of India}\textsuperscript{220}, where he states as:

“The term ‘secular’ has advisedly not been defined presumably because it is very elastic term not capable of a precise definition and perhaps best left undefined. By this amendment what was implicit was made explicit.”\textsuperscript{221}

Articles 14, 15, 16 and 25 of the Constitution propound \textit{Sarva Dharma Sambhava}. According to Article 14, specific provision is made that all citizens would have equal rights and the State would not deny them any protection as provided under the law. According to Article 15, the State would not discriminate against any citizen on the basis of religion. Article 16, makes provision for equality in matters of employment for any post under the State or controlled by it. Article 25 provides equal rights to all citizens to follow or propagate any religious faith and the freedom of conscience. In fact, the Preamble of the Constitution speaks of providing equal opportunities and status. It also says that this equality has to be ensured for all citizens.

The Indian Constitution dealt with the issue of religion by endorsing the principle of non-establishment of religion but without advocating the separation of religion from politics. Put

\textsuperscript{220}S.R. Bommai v. Union of India, 1994 3 SCC 1
\textsuperscript{221}SUBHASH C. JAIN, THE CONSTITUTION OF INDIA: SELECT ISSUES AND PERCEPTIONS, (2000), Taxmann Publications, at p. 18
simply, it said ‘no’ to established state religion and ‘no’ to the policy of ‘separation’. This meant that the state was to have no religion of its own, but religion was not also viewed as a personal or private matter: it was placed squarely in the public domain and the state was expected to be involved in a variety of ways with religion. While non-establishment assured different religious communities, particularly the minorities, that the state would not endorse any religion as its own, non-separation gave a special status to religion and religious communities in the public domain.

Although the idea of secularism may have been borrowed in the Indian Constitution from the West, it has adopted its own unique brand of secularism based on its particular history and exigencies which are far removed in many ways from secularism as it is defined and followed in European countries, the United States of America and Australia.

a) Equality

Several fundamental rights guarantee freedom of worship and religion as well as outlaw discrimination on the ground of religion, thus, by implication prohibit the establishment of a theocratic state. The state does not identify itself in favour of any particular religion. The state is enjoined to treat all religions and religious sects equally. No one is disabled to hold any office on the ground of religion. There is only one electoral roll on which are borne the names of all qualified voters.

M.C. Chagla, an eminent jurist in his autobiography ‘Roses in December’ has defined secularism as follows:

“As a legal concept, secularism means equality before the law and no distinction between one man and another as far as the application of laws is concerned. It also means equality of opportunity and a refusal to classify citizens into first class citizens and second class citizens.”

Commenting on Chagla’s definition, C. Subrahmaniam, eminent political leader and statesman, observed that secularism is much more than that. It is an attitude of mind and a quality of the heart. It is a matter of temperament, of outlook, even of feelings. You do not think of a man as

---

224 M.P. Jain, Indian Constitutional Law, (5th ed. 2003), Wadhwa & Co. Nagpur at p. 21
a Hindu, Muslim or a Christian but merely as a human being. You make friends with him as a human being.

The essential basis of the Indian Constitution is that all citizens are equal, and that the religion of a citizen is irrelevant in the matter of his enjoyment of Fundamental Rights. The Constitution ensures equal freedom for all religions and provides that the religion of the citizen has nothing to do in socio-economic matters. “Though the Indian Constitution is secular and does not interfere with religious freedom, it does not allow religion to impinge adversely on the secular rights of citizens or the power of the state to regulate socio-economic relations.”

The Indian Constitution endeavours to build up the philosophy of secularism on freedom, equality and tolerance in the field of religion. And it is clear that the Constitution does not create a wall of separation between the State and religion. The essence of secularism is that the State is non-partisan in its relation to citizens, no matter to whatever religion they belong.

The principle of religious liberty to all was the operative norm by which India pursued the goal of religious non-discrimination. Instead of following the path of separation, it framed a secular polity by acknowledging the existence of different religious communities and asserting that they would each be treated as being distinct, or separate, and equal. The Constitution quite unambiguously identified Hindus, Muslims, and Christians as distinct religious communities, each with a separate culture, religious practices, and personal laws. At the time of framing the Constitution, Sikhs and Parsis were also included as minorities. Treating the recognised religious communities as equals meant that they would enjoy more or less the same degree of religious liberty. While religious practices and activities of religious communities were subject to some restrictions, it was said that the religious liberty of each of these communities would be equally protected. Each would enjoy the same rights with regard to religion.

The constitutional proscription of practices of untouchability is, indeed, a massive secular normative assault on Hindu religious traditions. Even so a hermeneutics of social reform and nationalist movement is possible which constructs the Constitution as mandating equality of

---

226I.L.I., Secularism: Its Implications for Law and Life in India, 4-5(1966); Also, V.P. Luthera, Concept of the secular state in India (1964); J.M. Shelat, Secularism, Principles and Application, (1972); Srivastava, Religious freedom in India(1982).
227M.V.Pylee, Our Constitution, Government and Politics, (2000), Universal Law Books, Delhi, at p. 46
intervention by the state in all Indian religious traditions. The state, on this view, has however in effect said: ‘…the majority must adhere to secularism but…the minority has the right to live by some other norms’; it is this “discourse of standards” which violates the norm of equality of intervention in reforming all religious traditions in so far as they violate human dignity, fraternity, liberty, and gender parity of individual persons situated within a religious/ cultural tradition. In this sense, as Arun Shourie puts it: “Secularism is also a jealous God, as jealous as Jehovah of the Old Testament, as jealous as the Allah of Quran.”

The distinguishing features of a secular democracy as contemplated by the Constitution of India are that:

- The state will not identify itself with or be controlled by any religion
- While the state guarantees to everyone the right to profess whatever religion one chooses to follow which includes also the right to be an agnostic or an atheist, it will not accord any preferential treatment to any of them
- No discrimination will be shown by the State against any person on account of his religion or faith; and
- The right of every citizen, subject to any general condition to enter any office under the state will be equal to that of his fellow-citizen.

Political equality, which entitles any Indian citizens to seek the highest office under the State is the heart and soul of secularism, as envisaged by the Constitution. It secures the conditions of creating a fraternity of the Indian people which assures both the dignity of the individual and the unity of the nation.

b) Freedom of Religion

Freedom of religion means that the individual is free to consider and to discuss with others the relative claims of differing religions, and to come to a decision without interference from the state. He is free reject the mall. If he decides to embrace one religion, he has freedom to follow

---

230 Vasudha Dhagamwar, Women, Children and the Constitution: Hostages to Religion, Outcaste by Law in Religion and Law in Independent India, (1993), Delhi, Manohar at p. 118; See also; Veena Das, Cultural Rights and the Definition of Community in the Rights of Subordinated Peoples (1994), Delhi, Oxford University Press, at p. 117-158
231 G.S. Sharma, Secularism: Its Implications for Law and Life in India, (1966); M.C. Setalvad, Secularism (Patel Memorial Lectures), (1967); Suresh Chandra v. Union of India, AIR 1975 Del 1681
its teachings, participate in its worship and other activities, propagate its doctrines, and hold office in its organisations. If the individual later decides to renounce his religion or to embrace another, he is at liberty to do so.  

The term ‘secular state’, it should be noted, does not appear in the Constitution itself. The late Professor K.T. Shah, a member of the Constituent Assembly, attempted on two occasions to secure the inclusion of the word ‘secular’ in the fundamental law, but without success. His second attempt took the form of a proposed new article that read in part; ‘The state in India being secular shall have no concern with any religion, creed or profession of faith.’ Shah argued that in view of the tragic results of communalism in India, it would be well to emphasise the secularity of the state in the most explicit terms. His amendment did not receive the support of the Law Minister, however, and was rejected by the Assembly. The inclusion of such an article in the Constitution, however laudable the intention behind it, would certainly have produced a conflict with Article 25 which, permits extensive state intervention in matters connected with religion in the interest of social reform.

The right to freedom of speech and expression and the right to form associations and unions are also rights, which guarantee religious speech and expression and the right to form religious associations and unions. But, the Constituent Assembly was not satisfied with such provisions alone. In its bid to infuse complete confidence in the religious minorities, it went a step further and adopted a separate group of Articles dealing solely with the right to freedom of religion. The freedoms, provided in Articles 25, 26, 27 and 28 are conceived in most generous terms to the complete satisfaction of religious minorities. These provisions embodied in detail, one of the objectives of the Constitution as declared in the Preamble: …to secure to all its citizens….liberty of faith, belief and worship.

The Indian Constitution provides for the religious liberty of both the individual and associations of individuals united by common beliefs, practices and disciplines. Articles 25 and 26 guarantee the right to practice and propagate not only matters of faith or belief but also all those

---

233Constituent Assembly Debates, Vol. 7, p. 815
235M.V. PYLEE, OUR CONSTITUTION, GOVERNMENT AND POLITICS, (2000), Universal Law Books, Delhi, at p. 44
rituals and observances which are regarded as integral parts of a religion by the followers of a doctrine.\textsuperscript{236}

It was argued on the floor of the Assembly by some members that the religious freedom guaranteed under the Constitution was antithetical to the concept of a secular state which the Constitution aimed to establish\textsuperscript{237}.

The concept of secularism as embodied in the Constitution of India cannot be viewed in the sense in which it is viewed in the West but in the context of the provisions in the Constitution: The Constitution guarantees freedom of conscience, freedom to profess, practise and propagate religion and also freedom to establish religious institutions and manage or administer their affairs. It prohibits discrimination on grounds of religion and guarantees legal and social equality to all by providing for equality before law and equal protection of laws, prohibiting discrimination with regard to places of public importance and providing for equal opportunity in matters of public employment. The Constitution also guarantees religious minorities the right to establish and administer educational institutions of their choice and to conserve their script, language and culture\textsuperscript{238}.

Attention is frequently drawn to its similarity to the following provision of the 1937 Constitution of Eire: ‘Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.’\textsuperscript{239} There were, however, other sources nearer at hand. The language of the Indian Constitution is very similar to that of the resolution on fundamental rights adopted at the Karachi Congress in 1931: ‘Every citizen shall enjoy freedom of conscience and the right freely to profess and practice his religion subject to public order and morality.’\textsuperscript{240}

The freedom of religion guaranteed by the Indian Constitution is not confined to citizens but extends to ‘all persons’, including aliens. This point, underlined by the Supreme Court in \textit{Ratilal Panchand v. State of Bombay},\textsuperscript{241} is of special interest because of the substantial number of foreign Christian missionaries in India, some of whom are exclusively engaged in

\begin{itemize}
\item \textsuperscript{236}DURGA DAS BASU, SHORTER CONSTITUTION OF INDIA, (11th ed. 1994), Prentice Hall of India Pvt.Ltd., New Delhi at p. 233
\item \textsuperscript{237}‘Constituent Assembly Debates’, (C.A.D), Vol. VII, p. 822
\item \textsuperscript{238}M.V. PYLEE, OUR CONSTITUTION, GOVERNMENT AND POLITICS, (2000), Universal Law Books, Delhi, at p. 53
\item \textsuperscript{239}Article 44(2)
\item \textsuperscript{240}D.E. SMITH, INDIA AS A SECULAR STATE IN RAJEV BHARGAVA, SECULARISM AND ITS CRITICS, (6th ed. 2006), Oxford University Press at p. 194
\item \textsuperscript{241}Ratilal Panchand v. State of Bombay, (1954) SCR 1055
\end{itemize}
propagating their faith among the adherents of other religions.\textsuperscript{242} The court held that Art. 25 guarantees that every person in India shall have the freedom of conscience and shall have the right to profess, practice and propagate religion, subject to restrictions imposed by the State on the following grounds:

- Public order, morality and health
- Other provisions of the Constitution
- Regulation of non-religious activity associated with religious practice
- Social welfare and reform
- Throwing open of Hindu religious institutions of a public character to all classes of Hindus.

Since the freedom belongs to every person, the freedom of one cannot encroach upon a similar freedom belonging to other persons. Hence, punishing forcible or fraudulent conversion would not be violative of this article.\textsuperscript{243}

c) **Fundamental Duty**

All the same, there must be a recall of the historic role of state adjudicatory power, in its relative autonomy from the polity, by stressing nine enunciations of secular ideal and principle. The judiciary has declared categorically that ‘secularism’ entails that:

i. The state by itself, shall not espouse or establish or practice any religion

ii. Public revenues will not be used to promote any religion

iii. The state shall have the power to regulate any “economic, financial or other secular activity” associated with religious practice \{Article 25(2)(a) of the Constitution\}

iv. The state shall have the power through the law to provide for ‘special welfare and reform or the throwing open of Hindu religious institutions of public character to all classes and sections of Hindus’ \{Article 25(2)(b) of the Constitution\}

v. The practice of untouchability (in so far as it may be justified by Hindu religion) is constitutionally outlawed by Article 17

vi. Every individual person will have, in that order, an equal right to freedom of conscience and religion

\textsuperscript{242}1954 Supreme Court Appeals, p. 546

\textsuperscript{243}Stainislaus v. State, 1975 M.P. 163 (166)
vii. These rights are however subject to the power of the state through law to impose restrictions on the ground of “public order, morality and health”

viii. These rights are furthermore subject to other fundamental rights in Part III

ix. The courts, especially the Supreme Court, shall have the final ‘say’ on adjudging state action as valid or otherwise under these principles

In *Kesavananda Bharati* case\(^244\), the full court inscribed ‘secularism’ as an essential feature of the basic structure of the Constitution; in 1975, Justice Khanna in *Indira Nehru Gandhi v. Raj Narain*\(^245\) reinforced this holding, and the 1994 *Bommai*\(^246\) decision has consummated this trend. Both these momentous decisions signify that even Parliament may not modify, by constitutional amendment, these nine features.

The nine features of secularism had marshalled behind them a quarter century of national constitutional consensus. To these nine features has been now added, since 1976, a fundamental duty of all citizens (under Article 51-A (f) to “preserve the rich heritage of our composite culture.” This duty is addressed to all citizens (including leaders of political parties, and all holders of state power) and it is declared their fundamental obligation. Neither political practices, nor practices of power (including judicial power) will be legitimate if these contradict this duty\(^247\).

### 3. DIFFICULTIES WITH INDIAN SECULAR POLITY

When independence came to India, with the partition of the country, we had the option to become either a Hindu state, in response to Pakistan declaring itself as the Islamic state, or remain a secular state, as envisaged by the national movement. India did not become formally a Hindu state. But neither did it become an authentic Secular State. Due to the pulls and pressures of communal politics, and confusion in the ranks of the secularists, the shape that the Indian state as acquired in practice, but not formally, is of the Hindu version of a pseudo-secular state\(^248\).

---

\(^{244}\) *Keshavananda Bharati v. State of Kerala*, (1973) 4 SCC 225  
\(^{245}\) *Indira Nehru Gandhi v. Raj Narain*, AIR 1976 SC 1260  
\(^{246}\) *S.R.Bommai v. Union of India*, (1994) 3 SCC 1  
\(^{247}\) *UpendraBaxi, The Constitutional Discourse on Secularism*, in *UpendraBaxi, Alice Jacob and Tarlok Singh, Reconstructing the Republic* (1999), HarAnand Publications, New Delhi, at p. 217  
In the peculiar situation of India, secularism as an instrument of social change and political transformation has at least three operational dimensions:

- As a process of non-communal political integration (as between religion-based segments such as Hindus, Muslims, Christians, Sikhs, etc.)
- As a process of inter-community social integration (as between the varna-cum-jati segments of the Hindus and the social strata among the Muslims, Christians etc.) and
- As the dominant political idiom, method, and objective of general socio-political change in order to transform a religion-dominated ethos into an ethos of enlightened humanism.

Secularism as a term used freely in public discourse in India, implies a concept and a process that seeks to change a traditional society into modern polity, by emphasising certain values and norms of civic life and political culture. It has both a negative and a positive connotation.

In its negative connotation, secularism implies, for instance, a process which is opposed to manifestations like:

- Domination of religion in politics;
- Building a mono-religious state structure (like for instance Islamic Republic, Buddhist state, Hindutva, etc.)
- The idea of a theocratic or quasi-theocratic state controlled and directed by a religious community;
- Discrimination between religious segments in society, state and government for the purposes of civic life, and in political system and in making the constitution, laws, rules and procedures, etc.
- Counterposing religious identities to the unified national identity; and
- Fragmentation of the citizens into exclusive electoral constituency, based on ascriptive grounds of sects, tribes, caste, religious community, etc.

The Nehruvian paradigm underlined secularism in its attempt to purge politics of sectarian life but in practice, there have been major departures from the “secular spirit”. Vanaik\(^\text{249}\) argues for the need to reopen debate on the nature of nationalism, the Indian National Congress and the secularity of the Indian state, since the polarity between communalism and nationalism does

\(^{249}\text{Vanaik Achin, The Painful Transition: Bourgeois Democracy in India, (1990), London: Verso}\)
not obtain any longer. The congress party maintains an alliance with Muslim League in Kerala and a more informal one with the Jamiat Ulama-i Hind that have assisted the process of control over Muslim vote banks. Virtually all political parties, including the communists, have had political and electoral alliances with communal parties. Religion has been used as a major electoral plank by the Akalis, the Bharatiya Janata Party and also by Muslim parties such as the Jamaat-i-Islami.

In the present day India, there is a notable upsurge of religious fundamentalism, whether it is of the Hindu or Muslim or Sikh brand. All of them are becoming increasingly powerful. They appear to be capable of inspiring an increasing number of people among whom many are highly educated. So long as this phenomenon exists, secularism of the Nehruvian model will lose its significance and value in the affairs of the State, endangering the foundations on which the State in India rests.250

---