SECULARISM: A TOOL FOR UNITING OR DIVIDING

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Introduction

"Religion is not in doctrines, in dogmas, nor in intellectual argumentation; it is being and becoming, it is realization." Hinduism is therefore, not a definite dogmatic creed, but a vast, complex, subtly unified mass of spiritual thought and realization. India is a pluralistic society and a country of religions. It is inhabited by people of many religions. The framers of constitution thus desired to introduce the concept of 'secularism', meaning thereby state neutrality in matters of religion. They also wanted to confer religious freedom on various religious groups. So it was of prime concern to introduce the term 'secular' to achieve religious solidarity and peace because religion has been a very volatile subject in India both before and after independence. The Constitution therefore seeks to ensure state neutrality in this area.

Etymologically, the word 'secular' comes from the Latin word *saeculum*, which first meant 'age' or a 'great span of time' or the 'spirit of the age'. Later it acquired another meaning, of belonging to 'this world'. There existed two worlds, the secular and the religious- eternal, temporal and spiritual, each with distinctive practices and institutions. This was the birth within Christian discourse of the notion of relative separation or disengagement. However, it was the spiritual order that ultimately remained decisive.⁵

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Gautam Sen, The Mind of Swami Vivekananda § 53.6 (19th ed. 2008).

² Radhakrishnan, *The Hindu View of Life* § 21.1 (19th ed. 1954).

³ Prof. M.P. Jain, *Indian Constitutional Law* § 1315.1 (6th ed. Re. 2012).

⁴ Ibid.

⁵ Achin Vanaik, Communalism Contested § 65.1 (1997).

With the passage of time, the concept of secular later developed into the concept of secularization.

The term 'secularization' emerged after the Peace of Westphalia in 1648 and is a process originally referred to as the transfer of ecclesiastical lands to civic control. By the nineteenth century and in the still powerful flush of Enlightenment values, G.L. Holyoake of Britain coined the term 'secularism' to define an ideology and movement (and individual) social morality, hitherto determined by the transcending principles of religion, were now to be determined by reason, and anchored to the good of man or woman in this life.⁶ He started the movement of propagating the term and its ideology in 1846, and laid down its principles in his two books, Principles of Secularism and The Origin and Nature of Secularism.7 Agnostic or indifferent to religion, this version of 'secularism' acquired a more atheistic slant through Holyoake's disciple, Charles Bradlaugh. But 'secularism' as a rationalist movement. indifferent or atheistic, soon stalled. It ignored rather than confronted religion or religious discourse.8

Thus the whole idea of Secularism is not to accept the recognition of a specific legal regime for each community because the emergence of the very concept owes its inception to the noble idea of inclusiveness and a process of creating a society where the principles of individual faith were subordinate to the peaceful existence of a layman, where government or state served to be the guardian of the individual by fostering their pluralistic beliefs.

Historical Background: Social Transformation through 'Secularism'

Tracing the history which asserts that the concept Secularism emerged as a reaction to communalism, the idea of western countries but the ground reality was that it even existed in our ancient literatures and was prophesized by our great rulers since the time

⁶ Ibid.

S.L. Verma, Towards theory of positive Secularism § 43.2 (1st ed. 1986).

⁸ See supra note 5.

immemorial. An attitude of objectivity, Humanism, coexistence and toleration permeated the secular spirit of ancient Indian thoughts. A distinctive openness is exhibited in *Rigveda* which stated: "Truth is one, and the learned may describe it variously." It considers all human beings as parts of universal soul and preaches individual equality as a forerunner of religious equality. As stated in *Atharvaveda*, "This earth, which accommodates people of different persuasions and language, as in a peaceful home, may it benefit all of us." Ashoka in his twelfth edict proclaimed:

"He who does reverence to his own sect while disparaging the sects of others, wholly from attachment to his own, with intent to enhance the glory of his own sect, in reality, by such conduct, inflicts the severest injury on his own sect. Concord, therefore, is meritorious, to wit, hearkening and hearkening willingly to the law of piety as accepted by other people." ¹⁰

The Satavahanas, Kushanas and the Gupta rulers paid equal patronage to all the religions. Under the Vardhana rulers different schools of religion and philosophy flourished side by side. The Shiva cult propounded in the south posed no problem of social disharmony because of well-laid ethos of religious tolerance. Liberal patronage to all religions without discrimination was the policy of Chalukyas, Rashtrakutas, Hoysalas and Cholas.¹¹

Thus it was a step forwarded to establish the idea of Secularism which has now emerged as a significant method of maintaining peace, harmony and accord in the society.

⁹ Prithvi Sukta in Atharvaveda "Janam vibharti bahutham vivaachasam maanaa dharmanam prithavee yathokasam".

S.Radhakrisnan, Indian Religions § 18 (Orient Paperbacks, 1979, New Delhi 1992).

P. Ishwara Bhat, Law and Social Transformation in India § 234.1 (1st ed. 2009, Re. 2012).

Constitutional Background

The word 'secularism' and its concept were defined by the Hon'ble Supreme Court in the case of *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdas Mehra*¹²:

"The concept of secularism was defined in the realms of philosophy and in utilitarian terms. The courts set the role of the State to be neutral or impartial in extending its benefit to the citizens of all casts and creeds and cast a duty on the State to ensure through its laws that disabilities are not imposed based on persons practicing or professing any particular religion."

This was the precedent that earmarked the intervention of judiciary in taking active participation over the matters relating to religion that pertain to Secularism.

'Secularism' in India: Uniting the Nation

The value premises:

The Preamble to the Constitution and Article 25-28. The Core Concept of Secularism as an independent paradigm.

Witnessing the fireballs from communities presiding prior to and after independence i.e. during the period of partition, in which millions of people shook their hands with the almighty, demanded the insertion of the word 'secular' into the Indian Constitution, and finally the term was introduced into the preamble by 42nd Amendment Act of 1976.

Even the masterminds behind our national movement were of the view that the term should be brought into existence so that our goal of providing every person the right to profess, practice and propagate religion be achieved. It was at that time Pandit Nehru declared:

"The government of a country like India, with many religions that have secured great and devoted

¹² A.I.R. (1976) 2 S.C.C. 17.

following for generations, can never function satisfactorily in the modern age except on a secular basis." ¹³

Thus the attraction of secularism for the country lay in the fact that it was the only prudent option for construction a nation out of fragmented, polarized identities that had emerged and consolidated themselves during the colonial and the anti-colonial phase. In India. where two new nations had emerged out of a bloodspattered history, the need was to forget that people who had shared the same historical consciousness, the same language and the same folklore for centuries has eventually split over religion. This demanded to integrate these divided people on new ideologies, on new perspectives and on new issues. This could happen only through secularism that gave due recognition to religious identities, and yet attempted to transcend them as far as the public sphere was concerned. The state couldn't refuse to recognize the religious identities of its people. What it could do was to stipulate that all religions were, in principle, equal.14

Accordingly, the concept of secularism emerged in India with three fold objectives, which were:

- Firstly, that the state would not attach itself to any one religion, which would thereby establish itself as the state religion;
- Secondly, all citizens were granted the freedom of religious belief;
- Thirdly, the state would ensure equality among religious group by ensuring that one group is not favoured at the expense of another.¹⁵

Believing on three fold objective as specified, the amount of relief that could not be estimated was such that the insertion of the term bought something that it changed the entire philosophy which existed earlier. secularism and democracy: these were the two gods of

¹³ D.E. Smith, Nehru and Democracy: The Political Thought of an Asian Democrat § 154 (1958).

¹⁴ Neera Chandhoke, Beyond Secularism: The Rights of Religious Minorities § 50.3 (1999).

¹⁵ *Ibid.*, p. 49.

the newly independent countries of the 'third world'. Whenever and wherever religion was invoked in the post-colonial world, it was a component of, not as a substitute for national identity. Despite the fact that the movement for Pakistan had been fought in the name of Islam, Jinnah ruled out the idea that a theocratic state would be established in the country. Inaugurating the Constituent Assembly of Pakistan on the eve of the formation of the country, on 11 August 1947, Jinnah promised equality to all citizens of Pakistan. ¹⁶

Now I think we should keep that in front of us as our ideal, and you will find, that in course of time Hindus will cease to be Hindus and Muslims will cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the state.¹⁷

In virtually every country of Asia and Africa, voices that invoked religion for political purposes were dismissed as primordial. They had no place in a modern, secular state.¹⁸ Thus it was the sole tool for uniting the groups which existed in the country so that everything goes smoothly.

The concept of secularism in India is briefly explained and enshrined under Constitution of India, the mother of all laws. The reference of which is drawn from Articles 25 to 28 of the Indian Constitution. The basic idea of introducing the concept was to confer rights not only to those who are the citizens of the country but also to all persons in India. These constitutional donations are not only restricted to individuals but also extends its purview to religious group i.e., religious groups are also covered under the umbrella of Freedom of Religion and Conscience. Articles 25 to 28 provides protection to all religions and religious practices and assures that there is no interference by the state in religious affairs i.e. state doesn't support or discriminate any religion and does not has any religion of its own as observed by the Hon'ble

¹⁶ *Ibid.*, p.,54.

¹⁷ Rafiq Zakaria, The Widening Divide: An Insight Into Hindu-Muslim Relations § 48 (1995).

¹⁸ See supra note 10.

Supreme Court in the case of S.R. Bommai v. Union of India¹⁹ where Sawant, J.: observed,

"Religious tolerance and equal treatment of all religious groups and protection of their life and property and of the places of their worship are an essential part of Secularism enshrined in the constitution."

According to B.P. Jeevan Reddy, J.:

"While the citizens of this country are free to profess, practise, and propagate such religion, faith or belief as they choose, so far as the state is concerned, i.e., from the point of view of the state, the religion, faith, or belief, of a person is immaterial. To it, all are equal and all are entitled to be treated equally."

Thus providing equal opportunity to all was the rule. Beyond this, to secure all citizens of their rights, needful steps were taken as even anti-secular forces were not allowed to participate as they would divide antecedents of different religious faith and will then create tyranny among them which will then be followed by riots and anti-secular movements. Therefore, the constitution framers levied religious matter confined to individuals and gave power to the state to look into the matters pertaining to religions.

The concept of secularism is more or less a face of equality principle. Thus for understanding the idea of *Secularism* the reference has to be made to Articles 14, 15, 16 and 29-30 as these foster the concept of secularism which has been observed by the Hon'ble Courts in India. In the case of *M. Ismail Faruqui v. Union of India*²⁰ while delivering the majority opinion, Verma, J., observed:

"It is clear from the constitutional scheme that it guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasizing that there is no religion of the state

¹⁹ AIR 1994 S.C. 1918 : (1994) 3 S.C.C. 1.

²⁰ AIR 1995 S.C. 604, at 630 : (1994) 6 S.C.C. 360.

itself. The Preamble of the Constitution read in particular with Articles 25 to 28 emphasizes this aspect and indicates that it is in this manner the concept of Secularism embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional validity of any legislation on the touch stone of the constitution. The concept of Secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution."

Thus the concept seemed to achieve its very object of uniting but has left itself to diversified range of confusions.

The Crossroads of Indian Secularism

Knowing the fact that the concept of Indian secularism is completely different from the western notion of Secularism brings us at a critical juncture presenting before us a few fundamental questions answers to which are important in determining the practical applicability of the concept of Indian secularism which often becomes a matter of debate and discussions because of its fundamental differences which exists between the Indian and the occidental notion of secularism.

Indian secularism is going through serious hurdles which can be aptly understood by the below mentioned quote:

When I use a word', Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to meanneither more nor less.'

'The question is', said Alice, 'whether you can make words means so many different things.'
'The question is', said Humpty Dumpty, 'which is to be master-that's all.'

-Lewis Carroll, Through the Looking Glass²¹

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²¹ T.N. Madan, Modern Myths, Locked Minds § 233 (1998).

India's unique secularism calls for religious neutrality rather than indifference. The relationship of religion with the state is a tricky matter for any modern secular democracy in which debates centres on the question of the appropriate limit for the external regulation of the religion. When religious freedom should end, and modern democratic principles should begin, are the concerns of layman's and the learned alike. Religion is a matter of personal faith or belief but it has social orientations which are diverse and varying. Every individual has a right or a privilege but one cannot enjoy his privilege by infringing upon the privileges available to others alike. The sphere of individual freedom is a subset of collective social behaviours wherein our actions have the consequent implications upon other individuals and society in many ways and at different levels. Knowing this, every individual has to conduct his religious behaviour in a way that the other fellow-person equally blessed like him doesn't feel offended. This brings us to claim that the issue of Secularism is a subject common to different disciplines of academics and hence, requires rigorous introspection and enquiries into various subjects which are affecting the ideology behind "Secularism Whether Being a Uniting or a Dividing tool".

The issue of secularism is a collective representation of various constituent factors that are affecting it either implicitly or explicitly, which are as follows:



- The Perception of Religion: Nexus Between Religion and Secularism;
- Population of the Country or the Masses: Role of Politics and Political Parties;
- Individual Identity and Secularism.

The Role of State Legislature

Legislature refers to a body of those individuals who contribute in making laws for the society. A law may be defined as a set of principles that are laid down for the purposes of ordering the life of people in the country passed by the legislative authority, derived from court decisions and established by local customs. They define Do's and Don'ts for the people of country but the question being, can only a enactment really make a country secular?²² The responsibility of legislature is to make laws that are thoroughly consistent and to create a set of laws that are not in conflict with each other. Legislature being a part of elected democracy is a group of elected representatives that eventually take birth from party system. Politics rather than being a tool of empowering the nation has been reduced to a way of securing immunity and privileges which is now affecting the quality of law making process as the government has not been able to clarify its position or approach related to religion. The failure can be justified by the below mentioned e.g. India's commitment towards Secularism is inconsistent with the operational set of personal laws governing different religions and nurturing different individual identities therein. The lack of political will towards Directive Principles of State Policy's Article 44 Uniform Civil Code (UCC) adds to the state of indecision and create confusion

Executive

The body of individuals who have the responsibility to govern and administer the country. Its sees that the laws made are implemented properly, but it has been going through serious dilemmas. The bureaucracy is greatly superseded by politicians; issues like corruption, *red tapism*, lack of sensitivity and understanding the contemporary issues and their complex implications have been a part of the same problem every now and then, which eventually are creating anonymity among the departments itself.

²² Shri V.M.V. Naval Kishore, National Foundation for Communal Harmony, *Secularism and the Law*, available at http://nfch.nic.in/WORD_FILE/*SECULARISM*.pdf (last visited February 6, 2013).

The instance of government officers acting on the order of politicians without thinking about what is right or wrong and which is the result of immense pressure is a best example which overcasts the breakdown of government personnel's. The anonymity between the ruling party and the right-wing parties and their collective failure in the *Babri-Masjid* case which could have been settled by diplomatic negotiations and a serious failure of the government where the opposition party seemed to ridicule the ruling party like nothing else connotes the very fact of serious breakdown in the administrative setup and their reluctance to act has created a spot in the history of India's institutional setup and has questioned the intent of the system whether being the one that unites or divides.

The incident where the intervention of the state and its favouritism policy was out-casted affected the very meaning of the term secular.

The rebuilding of the Somnath Temple by the Saurashtra Government wherein it sanctioned funds for installation ceremony and the President of India being present on the occasion were able to gave official colour to the whole project but it was an incident of the institution associating itself with a particular religion bringing fear in the minds of minorities and the Prime Minister having deep personal reservation on the issue though the commitment being that the state's would not have the options of religious preferences²³, are few examples illustrating about the problems as faced by the executive departments.

The Judicial Pro-activeness

"While in United State of America, we go for strict churchstate separation; in India it has involved the active interpretation of religious doctrines wherein judiciary acquired the authority to evaluate essential and non essential ingredients of a religion, and this power of

²³ S. Gopal in G. Parthasarthy and S. Gopal, Jawaharlal Nehru and India's Quest for a Secular Identity, Occasional Papers on History and Society, Nehru Memorial Museum and Library, First Series, No XLII pp. 16-17 (1987).

interpreting has brought with it the power to rationalize it."

In 1960's the courts devised 'The Essential Practices' doctrine in which the essentialness or usefulness of a religious practice or action was scrutinized. This doctrine paved a path to Indian judiciary for resolving the tension between different religious freedoms and the paramount: modernistic liberal constitutional values of practising. propagating and preaching religion. This helped our judiciary in simplifying the scenario by interpreting religious doctrines in conformity with the mentioned values. The Court room thereby became a sight for cleaning and reforming religion because 'superstitious beliefs' fell outside the constitutionally protected premises for religious freedom. Petitioners lost cases not because of their right to religious freedom had limits, but because they misunderstood their very own religion. This allowed courts to internally regulate religion, thereby avoiding the problems of conflict between the public purpose of the state and religious freedom which typically came with external regulation of religious principles.

Through interpretation of religious and texts and doctrines for themselves for the purpose of decision making and dispute settling, courts were able to solve the dual purpose of individual ambiguity and personal disillusionments and the clear and concise position of the state backed up by the authentic religious sources. Courts were able to deny any form of disagreement all together and were able to show that the secular public purposes of the state where the best expression of the free exercise of the particular religion in question by deciding only those matters that came to its notice through the institutional setup. The idea was to promote a composite nationalism which would integrate all Indians regardless of their religion. Religion was only to be an umbrella which would protect in and every living being from the state of inactivity and would empower them rather than creating divisions on the name of ideologies that were subordinate to the purpose they sought to achieve.

All said and done, any nation that has grown from strengths to strengths derives its power and potential

from the institution it fosters, culture it follows and the ideology and principle it imparts to its citizenry, but above all this abstract notion of system becomes reality only when the people who are the part of it have the intent and the will to do so. All the three institutions can't work without the help of the other two and together as they form the principle setup of our nation. But on this issue of Secularism, inference can be drawn that the system has fallen apart and has failed to perform their very own functions, reasons best known to them.

There are numerous instances of the same when we objectively peep into history.

The Perception of Religion: Nexus between Religion and Secularism

India as a country is deeply religious. The idea of India can't exist without religion. Religion is in fact a source of strength that strengthens the bond among individuals, ideologies and contributes to the cause of Indian Nationalism. Religion is nothing but being and becoming. The word religion means *Dharma*, the duty full notion of what is right and wrong. It is realization in action '*Dharyatri Dharma*' something that can be adorned which is the synonym of life itself i.e. religion is nothing but life lived on the principles of righteousness.

Religion and Secularism are contemporary and complementary to themselves as religion in India seems to stand for blind belief and reactions, dogma and bigotry, superstition and exploitation, and the preservation of vested interest.²⁴ But in the depth of it, it supplies, nurtures as well as satisfies a deeper inner craving of humanity.

But due to reasons unknown; the Constitution of India acknowledges the concept of minorities but it has not been defined precisely leaving a good deal to be inferred, which creates a soft stance over the issue of the religion and secularism. The division created in the name of majority and minority is nothing but political agenda and Secularism is an elastic concept which can contain all

²⁴ See supra note 21 p. 239.3.

such tensions and the disparities among religions and its followers. The issue of secularism can only be seen through the composite lens of religion and the individual perception of religion in symphony with the social outlook i.e., we have to consider the role that religion plays in the collective Indian behaviour of different religions and the individual perceptions which are in conflict with each other. This situation has created lacunas which are being used by political giants to exploit and rule, which is an extension of the British Colonial Management principle of 'Divide And Rule', contemporaneously used for the 'Vote Bank Politics' and creating divides in the civil society.

Population of the Country or the Masses: Role of Politics and Political Parties

of population the country is divided communities, sects and hence, have numerous differences among themselves. People who are part of different communities advocate for the betterment of their communities. We have to realize and recognize the fact that communities work for empowering their members and the people both identify with and are identified by their community. Due to this variation, plurality and diversity, masses are distinctly divided into groups over different issues that affect their life; political parties exploit this condition by catering to their demands and voicing their concerns. This does bring transparency and empower the masses but the way by which political parties try to make use of this situation is very dangerous. The issues in their hand is of value and importance but it later turns into an agenda of gaining power which has nothing to do for the solution to the issue and is nevertheless, a fake promise of assuring protection to all. The issue of secularism in the light of minority-majority conundrum is exploited by the political fraternity in the same way mentioned above. The masses often submit to the immediate pleasures rather than accepting and practicing what is just and fair which can be illustrated by the case of *Shah Bano Begum* case²⁵:

Where the Supreme Court entitled Muslim woman for maintenance but was criticized by the

Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.

protestors claiming that the verdict of the supreme court has attacked on their religion and has denied the right from their own personal laws, seeing the situation political move, Rajiv Gandhi's Government directed the parliament to enact a law over turning the judgment of the Supreme Court which was not for the benefit of the masses but for the impression that it would affect the future gaining of votes from the minorities. The role of Rajiv Gandhi Government was seen as an appeasement towards Muslim minority and it can be inferred that they merely tried to use the sentiments existing amongst the communities.

Thus seeing the situation un-tackled, political parties have tried to take the benefit of this, leading to immense destruction of sentiments of others and further creating mess and debilitating the value of a concept of secularism.

Individual Identity and Secularism

As discussed above about communities, it is equally important to understand the nature of every individual that it is a part of Indian Polity but is opinionated personally. Individual identity and ideology play a significant role in determining the feasibility of law imposed by the state. India being essentially a religious country with diverse ideas and principalities, Secularism for an individual is nothing but a system of values that make him tolerant, sensitive towards others. A concept as novel as Secularism can only be a success when a diversity of individuals reach a common plane of understanding which can further the values of our constitutional principles. Religious sentiments are not only a part of religious groups but are also the part of individual faiths and beliefs and hence require respect which could than create amity, accord, harmony and viceversa.

Therefore it is very tough to exactly determine what should be omitted or added, but law and the position of state which includes all three institutions, religion being at the centre of thought and action, the presence of diversity, variations and a blend of religiously liberal as

well as religiously orthodox individuals and communities create diasporas of multiculturalism which is primary to the existence of India's Secularism. The role of various sects and society claiming to be different from each other give a connective colour to the problem of Secularism. The role of religious parties is secondary to the existence as they only represent the voice of the population, but understanding the depth of democracy and the problem of electoral process as well as the multi party system, a serious issue like Secularism often becomes a politicized matter losing its aesthetic value. The Indian history of discourse, colloquia and argumentative traditions of opinion adds to the versions of variations in secularism and creates a mirage in which creates an illusion of 'to be or not to be'

Suggestions

Ideas like secularism can't be held as a dividing tool but it is a collection of abstract, philosophical and lofty principles of statehood because of the purpose for which it has been introduced in the Constitution. Constitutions are made for creation of a collective identity but not for a divided polity which has now taken a different view whereby we have given minority's status to those who even can't be part of it. Therefore it can be said that it is an issue that creates division only when understood and prophesized differently practiced as well as erroneously. But we should consider it as a normative and positive concept which is contemporarily being used otherwise and in the light of above mentioned arguments the researchers have came up to the conclusion that. being a democratic country, secularism is a dialect of religion and reasoning but due to its dogmatization and it being forcefully molded and narrowed consistently, the core meaning of the concept loses its importance and purpose due to the factors mentioned above, which are in practice only to nullify the effect of self emancipation, process of secularization and is a threat to democracy itself. Therefore following considerations should be appreciated so as to strengthen the very fabric of Secularism:

• Implementation of Uniform Civil Code;

- Tackling fundamentalism by strengthening secularism;
- Controlling power-hungry politicians;
- Introducing the concept of civil religion explicitly;
- Strengthening the values of democracy;
- Collective understanding the concept of pluralism;
- Striving for inter-communal harmony and fostering universal brotherhood.

Thus, the researchers have highlighted the overall arguments so as to give attention to each and every aspects of 'secularism' which is now understood as an efficient tool for either Uniting or Dividing. But the researchers favour 'secularism' being a tool for uniting the nation.

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