

ELECTORAL POLITICS AND SECULARISM: LEGAL FACET

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INTRODUCTION

A layman perception of secularism will encompass a view of religious coexistence. However, such a narrow thought doesn't suffice the true spirit of the same. As quoted by Shashi Tharoor, the Member of Parliament, Lok Sabha from Thiruvananthapuram, Kerala, "***Western dictionaries define secularism as absence of religion but Indian secularism does not mean that irreligiousness. It means profusion of religions.***" Mere coexistence is insufficient to indicate if equality persists between the existing religions.¹ Thus, secularism might fail to serve the very purpose for which it was introduced into the Indian society: equal protection to all religions.

India might have officially declared itself a secular country in the year 1976 when the words *secular* and *socialist* were added to the Preamble through the 42nd amendment, but a very careful analysis of the Constitution of India will very well indicate that secularism had always been an innate part of the political ambition of the Drafting Committee. Article 15 under Chapter III of the Constitution of India dictates that no individual will be discriminated by the state on the ground of religions. Other fundamental rights which supplement the efforts in preserving the status of a *secular state* include articles 16, 17, 25, 26, 27 and 28. In Chapter IV, articles 44 and 46 highlight the state's endeavour to further ensure equality among religions through a mechanism of Uniform Civil Code and through promotion of the economic and

¹ Historian Romila Thapar Breaks Down What Secularism Is And Is Not In The Indian Context, YOUTH KI AWAAZ (2018), <https://www.youthkiawaaz.com/2015/10/secularism-in-india-romila-thapar/> (last visited May 31, 2018).

political interests of the weaker sections of the society, especially the Scheduled Castes and Scheduled Tribes. The question thus we are faced with at this stage is, *why was it omitted in the original text?* In this regard, the Constitutional Debates throw some light. It has been explained by Dr. B.R. Ambedkar that there was no need to include something separately which was already inherently present in the original manuscript. On the inclusion of the term *socialism*, he reasoned how such an act of deciding the type of the people's economy in the Constitution was very much contradictory to the basic principles of democracy, where people get to exercise their freedom of choice. ²

According to Donald Eugene Smith's *India as a Secular State*, secularism finds its origin in the western roots and hence, *it is not an Asian conception*. The author traces it back to the relationship between the Church and the State in the middle Ages and goes on to comment about the Reformation and the Secularism in Modern Europe and America. However, certain essential characteristics of a *secular state* were always found to be intrinsic to the Asian setup. Individual freedom of religion was fundamental in the Hindu and the Muslim countries but the notion of the government not granting any kind of financial support for the promotion of religion was very much alien to such a society. In fact, religion and the state were *interdependent* to each other. While the ruler was expected to set up temples and other places of worship and enforce religious instructions, the priests and other religious functionaries were required to aid support in running the machinery of the government. ³

It is also however critical to take into consideration that India's introduction to the idea of secularism which is the product of Western philosophy and enlightenment, can in no way be credited to the Colonial Rule. The Colonial State in fact, was very much *anti-secular* in nature. Its infamous *Divide and Rule* policy was responsible for making use of one religion to exploit another. The partition of Bengal in the year 1905 and the introduction of separate electorate for Muslims sowed the seeds of communalism and brought forth the idea that the political, economic and social interests of both the communities were fundamentally different. It is thus very evident that the Colonial Rule was responsible for creating impediments in India's path

² Krishnadas Rajagopal, DEBATES SHOW WHY PREAMBLE'S ORIGINAL TEXT LEFT OUT THE TWO WORDS THE HINDU (2016), <http://www.thehindu.com/news/national/debates-show-why-preambles-original-text-left-out-the-two-words/article6831694.ece> (last visited May 31, 2018).

³ Donald Eugene Smith, *India as a secular state*

towards secularism. Religious disharmony was harmonious to prolong the alien rule, which was fully taken advantage of by the British.

The propagation of secularism into the Indian political scenario was the work of the Indian elite who were impressed by the principles of the modern Western thought and the English Industrial and the French Revolution. The ideas of Swami Vivekananda, Maulana Azad and several others also played a critical role in aiding its growth.⁴ The movement for secularism finally gained its impetus when communal violence led to the partition of India and Pakistan in 1947, which has been described as one of the largest mass migrations in modern history. It is believed that out of the fourteen million people who were forced to abandon their respective homes and move to the other side of the border, around two million were succumbed to the *bloody upheaval*. Mass killings were a common sight and mobs would often enter the bungalows and rape the women and kill the children. Even those who were somehow successful in evacuating their age old homes were not spared. Trains which were meant for refugees, carried corpses instead and became popularised as '*bloody trains*'.⁵ Thus, what was created at the end was a pitiful reality of hatred amongst those who once lived together but were now separated by a border.

"Hindustan belongs to all those who are born and bred here and who have no other country to look to. Therefore, it belongs to Parsis, Beni Israelis, to Indian Christians, Muslims and other non- Hindus as much as to Hindus. Free India will be no Hindu raj, it will be Indian raj based not on the majority of any religious sect or community, but on the representatives of the whole people without distinction of religion...", said Mahatma Gandhi. This clearly indicates the highly ambitious plan of our political leaders for secular India. But seventy years down the lane, it might seem that secularism is just a printed word. Instances like the demolishing of the Babri Masjid in 1992, the subsequent five day riots in Mumbai which killed around 1,788 people, the mass slaughter of the Hindus in Godhra in 2002, the ghastly attitude towards the Sikhs in Delhi following the demise of the then Prime Minister, Smt. Indira Gandhi in the year 1984, depict how secularism might actually be at peril in the contemporary Indian

⁴ Available at <https://www.mainstreamweekly.net/article432.html>

⁵ Available at https://www.washingtonpost.com/world/asia-pacific/70-years-later-survivors-recall-the-horrors-of-india-pakistan-partition/2017/08/14/3b8c58e4-7de9-11e7-9026-4a0a64977c92_story.html?utm_term=.6e7b51e9b53b

scenario. The appointment of Yogi Adityanath, the head priest of the Gorakhnath Math as the Chief Minister of Uttar Pradesh further sparks dubiety regarding the future of secularism in India. The recent Kathua rape case also brings forth a whole new dimension to the prevalent situation of communalism in India.

ELECTORAL POLITICS

“Free and fair elections” is an essential fundamental principle ensuring the successful governance of a democracy. Clause 3 of article 21 of the Universal Declaration of Human Rights states that “*The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*” Granting the right to elect their leaders to the governed is insufficient by itself; what is imperative is that the same be supplemented through a smooth and fair conduct of the elections. Without free and fair elections, the will of all the people may not be properly presented. Thus, any obstruction in the same poses an impediment to the smooth functioning of a democracy.

Communalism is one such impediment. The voices of religious mawkishness find their echo in the political manifestos and lead to a murrain of convictions aimed at stimulating people to show hostility towards invasion of alien beliefs into their personal space of communal stronghold. The political parties have time and again displayed their communal strategy to procure votes from a particular religious group while obliterating the fundamental principles of secularism. Mamata Banerjee led Trinamool congress offering free trips to Haj pilgrimage in Mecca, Saudi Arabia to the muslim populace can easily be perceived as a manoeuvre to gain votes. The rapid jump from merely 2 seats in the 1984 elections to 84 seats in the 1989 election by Bharatiya Janata Party was also a clear consequence of the campaign launched by them for the construction of Ram Temple in the Babri Masjid site.⁶

⁶Available at <http://www.thehindu.com/news/national/babri-masjid-ram-janmabhoomi-dispute-timeline/article10127319.ece>

One of the infamous instances which can't go unmentioned is the whole issue of the Hindutva judgement. In a case (*Manohar Joshi v Nitin Bhaurao Patil & Anr*)⁷ where the candidate in question made a proclamation regarding working towards establishing a Hindu state in Maharashtra and providing job opportunities to the people belonging to the said religion, the Supreme Court in 2017 held that his election was void under section 100(1)(b) of the Representation of People Act, 1951. This section provides that an election will be declared void if "***any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent***". Section 100(1)(b) should be read in consonance with section 123 (3A) of the same act, which provides that "***The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate***" will be deemed to be a corrupt practice for the purposes of this Act. The election petition stated that the alliance had also released video cassettes and audio cassettes. ***The said video cassettes and audio cassettes disclose promises, appeals, exhortations and inducements to the voters to vote for the said alliance and their candidates. Not only the other religions are ridiculed but the followers thereof are termed as "traitors" and "betrayers". Under the guise of protecting Hindu religion/Hindutva the said cassettes attack other religions and whip up low herd instincts and animosities.***⁸ Political parties are authorized to run the executive machinery of a state and serve the welfare of all its citizens, hence such preferential behavior by them is highly jeopardizes the fundamental principles employed in the formation of a state such as secularism and constitutionalism.

The dispute which has been a subject of inciting political rhetoric in the lead up to almost all elections in the state is the Babri-Masjid dispute, which redefined the politics of social identity - with religion displacing caste as the primary metric. Suhas Palshikar, political commentator and former head of the department of political science at Pune's Savitribai Phule University, said Indian society has moved more in the direction of majoritarianism due to the Ram Janmabhoomi agitation and the destruction of the Babri mosque and has further helped in the

⁷Manupatra search

⁸Available at <https://indiankanoon.org/doc/1215497/>

expansion of BJP and RSS.⁹Senior leaders of the Congress party, which was in power in the centre under Prime Minister P.V. Narasimha Rao in 1992, believe the issue continues to influence Indian politics and was key to the rise of BJP. Ayodhya dispute was the moment that enabled BJP to etch out ‘cultural nationalism’, ‘good governance’ (Ram Rajya) as two key elements of national agenda.

With the commemoration of the 25th year anniversary of the Babri Masjid demolition on December 5, 2017, we recall one of the most draconian ways in which electoral politics has shattered the indispensable concept of secularism in India. In 1949, Hindu Mahasabha called Akhil Bharatiya Ramayana Mahasabha (ABRM) started a mass agitation for the ownership of the disputed site. In 1949, Sant Digvijay Nath of Gorakhnath Math joined the ABRM and coordinated a 9-day recitation of RamcharitManas, at the end of which the Hindu activists broke into the mosque and placed idols of Rama and Sita inside. People were led to believe that the idols had 'miraculously' appeared inside the mosque. Jawaharlal Nehru ordered for the removal of the idols. However, the local official K. K. K. Nair, known for his Hindu nationalist connections, didn't carry out the said orders, claiming that it would lead to communal riots. Therefore the idols remained inside and priests were allowed entry to perform daily worship. The mosque became a de facto temple. Civil suits were filed by ABRM and Sunni Waqf Board claiming their ownership of the land and edifice on it. The authorities locked the premises after declaring it as a disputed land according to law. This incessant state of affairs made a major advancement in the year 1992 when BJP and the Vishwa Hindu Parivar initiated a nation-wide movement for reclaiming this particular site for the Hindus and for construction of a temple to the infant Rama (ramlalla). The movement led by L.K. Advani called for a ‘rath yatra’ (pilgrimage procession) to Ayodha to assert their demand further. The ‘Kar Sevaks’ or Sangh Parivar activists led the demolition of the Babri masjid in the disputed site. Prominent politicians such as L.K. Advani, Uma Bharti, Joshi were charged with criminal conspiracy by a special CBI Court for their conduct during the mishaps in Ayodha in 1992. As reported by the Times of India, Kalyan Singh said, ***“As chief minister of UP, I had ordered police not to fire at Ram bhakts who had assembled at Ayodhya in 1992 during the Ram temple movement, which led to demolition of the Babri mosque. I take full responsibility”***.

⁹Available at <https://www.livemint.com/Politics/DMH9dZ2cO44c0g9hZ7zGwO/How-Babri-Masjid-demolition-redefined-politics-of-social-ide.html>

¹⁰Therefore, although there are some politicians accepting liability for the mayhem caused in Ayodha, there are still others who believe their actions were legitimate. "***This country belongs to the cow, Ganga, Ram and the tricolour. I will defend them if they are insulted, Why should I regret it? I was involved in the Ayodhya incident. I remain unrepentant***", Bharti was quoted as saying by Hindustan times. () Such statements by the ministers whom the citizens of India elect as their representatives to run the government jeopardize the spirit of secularism and lead to antagonism among various religious factions. The same year witnessed the horrifying religious riots in Mumbai which led to the death of around 900 people. It has been cited to be directly caused due to the communal tension caused by the demolition of the Babri Masjid. ¹¹ Presently, with the undisputed victory of BJP in Uttar Pradesh and Yogi Adityanath, a Hindutva hardliner coming to power, the former communal tension due to Babri Masjid issue is resurfacing. The dispute is at the heart of the Hindu-Muslim communal rift in Uttar Pradesh. For more than half a century, the dispute has fuelled mass polarisation in the state and has prompted the country's worst spate of religious violence since the Partition.

It is noteworthy to mention one of the most recent controversies that triggered suspicions regarding the political intention of our leaders with respect to secularism in India. When on January 26, 2015, the Ministry of Information and Broadcasting issued an advertisement with the picture of the Preamble as adopted in the year 1950 to commemorate the 65th Republic Day, little did they know that this would stir a wave of debates throughout the nation. The non-inclusion of the words *secular* and *socialist* was questioned on the ground of *malicious considerations*. One of the first few responses came from the Union Telecom Minister, Ravi Shankar, who while defending the Ministry's act said, "***We do not need these words to be a secular country; even without them we are a secular country.***" However, when a Member of the Parliament of the Shiv Sena stated, "***We welcome the exclusion of the words from the Republic Day advertisement. Though it might not have been done inadvertently, it is like honouring the feelings of the people of India. If these words were deleted by mistake this time, they should be deleted from the Constitution permanently***", concerns regarding the

¹⁰Available at <https://www.firstpost.com/india/babri-masjid-demolition-case-what-do-criminal-conspiracy-charges-imply-for-lk-advani-uma-bharti-mm-joshi-3497745.html>

¹¹Available at <http://indianexpress.com/photos/picture-gallery-others/bombay-riots-1992-the-scars-remain-victims-still-plead-for-justice-babri-masjid-demolition-4972254/>

uncertain doom of secularism spread throughout the public like a wildfire.¹² This was very well reflected during the Delhi Legislative Assembly elections when in contradiction to the predicted BJP's win, AamAadmi Party won a massive number of 67 seats out of 70 seats. Analysis of the results unveiled the failure of BJP to secure the trust of the minorities in the capital, who had voted against the party in huge numbers.

LOVE JIHAD AND OTHER CASES

“I need the freedom to meet the person I love”, said Hadiya who married a Muslim man against the wishes of her parents and whose marriage was annulled by the Kerala High Court on the pretext of her being *“gullible”* and being *“ordinary girl of moderate intellectual capacity”*; the High Court ruled out that the said person was incapable of taking decisions relating to her marriage. This is the infamous Love Jihad case.

It all started when much to her parents' dismay, Akhila Ashokan (former name) decided to convert to Islam and changed her name to Aasiya. Thereafter, she changed her name yet again to Hadiya and got herself registered to waytonikah.com, where she met Shafin Jahan, a Muslim man working in a pharmacy in Oman. However, before both of them could marry, K.M. Ashokan, Hadiya's father, knocked the doors of the Court claiming that she wasn't in an appropriate state of mind to take such a decision and that she had been indoctrinated by radical groups. With the Kerala High Court passing the controversial judgement, the story of Hadiya was brought forth to the national forum and the public was motivated in *saving a girl who didn't want to be saved*. With appalling claims of linkage with the IS, the story spread rapidly and assumed a distorted form with people having their own opinions and prejudices. However, in an effort to eliminate the grave injustice committed earlier, the Supreme Court upheld the validity of the marriage in question and while allowing NIA to probe into the cases of forced conversions, it explicitly imposed a restriction on prying into Hadiya's marriage.¹³

While the implementation of this judgement has restored faith in the secular wheel of the nation and has stopped the utter violation of an individual's freedom to marry the person of his/ her

¹²Available at <https://www.thequint.com/news/politics/secularism-row-preamble-constitution-socialism>

¹³Available at <https://www.newyorker.com/culture/2017-in-review/the-year-of-love-jihad-in-india>

choice, openly run Hindu propagandist websites like hinduexistence.org claim to make India a Hindu nation by urging people to join a so called *Hindu Freedom Movement*. The site contains endless articles of how the Hindu community is victimised in our nation. There are also instances such as the *Dadri lynching case* which clearly highlights how grave the differences between the two communities have become. In the given case, a Muslim man was brutally beaten up and killed by the villagers over suspicions of having consumed beef. Another case which attracted considerable communal attention few months back is the *Kathua Rape Case*. In addition to the victim's lawyer, Deepika Singh Rajawat receiving death threats, the mobs on the streets have divided themselves into two major groups. While the Muslim protestors demanded justice for the eight year old girl, Hindu protestors claimed that the inquiry was biased and carried banners which read, "*Hang the real guilty*".¹⁴ According to the police, the real intention for the heinous crime was to drive the Muslim nomad community out of the region. Thus, the struggle for secularism has a long way to go before it can culminate into something which the Indian freedom fighters had aspired India to be.

CONCLUSION

Hence this paper elaborates on the emerging transgressions on the fundamental and legal principle of secularism which was one of the founding pillars of our nation. Secularism in India shouldn't only be about the equal and respectful treatment of all religious groups rather it should be about how to forge positive and proactive solidarity between religious groups in their everyday social and cultural life. But, social evils such as communalism is being fostered by political parties as part of their election strategies to procure larger vote share. Such attempts by election candidates to promote enmity between different classes of citizens is a blatant violation of section 123 (3A) of the Representation of People's Act, which has been augmented previously. Many instances which has led to defiance from the fundamental principles of secularism has been detailed out, which unveils the root cause of social evils such as rape culture, communalism, corrupt and illegal practices by candidates during elections and so on.

¹⁴ Available at <https://tribune.com.pk/story/1692269/3-child-rape-case-heightens-indias-hindu-muslim-divide/>