



SECULARISM: SOCIO-LEGAL ISSUES (1996). By S.N. Dhyani. Rawat Publications, Jaipur. Pp 235.

PEOPLE IN India hold a very strong allegiance to their religion and get easily excited over, and sensitive to, religious issues. Britishers, in fact, exploited this religious sensitivity to capture and retain their political hold a couple of centuries. Political managers in the independent India, probably inheriting the British legacy and realising the potentials of religion to nurture their political ambitions, have been 'using' religion to protect their vested interests. Therefore India, an abode of multi-religious and multi-cultural social segments and ethos, witnessed frequent and virulent forms of hatred, disruption and violence in the name of religion.

The Founding Fathers of the Constitution of India rightly realised that in a multi-religious society, without secularism, there can not be a real democracy; liberty of thought, expression and belief; and equality of status and opportunity to all citizens. Preamble to the Constitution, inter alia, proclaims India a 'secular' state and assures to all its citizens liberty of thought, expression, belief, faith and worship; and equality of status and of opportunity.

The Constitution, subject to public order, morality and health, also guarantees to every person the freedom of conscience and free profession, practice, propagation of religion¹ and to every religious denomination the right to establish and maintain its religious institution, to manage religious affairs and to own and acquire movable as well as immovable property². Article 44, a Directive Principle of State Policy³, also pleads for a Uniform Civil Code to make the Republic of India a composite secular nation.

The book under review⁴, which is an outcome of the author's impulsive desire 'to undertake a study of Indian secularism from a socio-legal perspective' triggered by the Shah Bano case and the post Ram Janmabhoomi - Babri Masjid events, endeavours to 'focus' on 'secularism' in India and socio-politico-legal issues involved therefrom, and associated therewith.

It, accordingly, delves into fundamentals of secularism as evolved by ancient seers and spiritual researchers and its modern variants. It also scans through deliberations of the Constituent Assembly and a few (selective) leading judicial pronouncements of the Supreme Court of India to carve out socio-legal issues of secularism. It, therefore, deliberates upon Uniform Civil Code; Islamic jurisprudence, and constitutional rights of minorities, especially of the Muslims, in India with a view to identifying different contours of secularism.

1. See art. 25.

2. See art. 26.

3. Art. 44. "Uniform civil code for the citizens- The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

4. S. N. Dhyani, *Secularism: Socio-Legal Issues* (1996).



The author perceives that secularism in India has been greatly misunderstood, misinterpreted and distorted by secularists, communalists and other religious zealots to pursue their vested interests. The secularists, he feels, use secularism to sustain and contain their vote-bank on the basis of religion, caste or creed. The communalists (like the Muslim League, the Muslim Personal Law Board and other Muslim political leaders) use secularism as camouflage for justifying their communal, sectarian and orthodox stance against social change and social reforms under the alibi of *Shariah*. And the Hindu communalism, according to him, is nothing but a reaction against Muslim communalism.⁵ Muslims' quest for separate identity on the basis of *Shariah*, he asserts, is a negation of secularism.⁶

The author, in the second chapter of the book captioned 'Secularism: Indian Conspectus', in the backdrop of a cursory sketch of 'secularism' perceived in the West and in theocratic Islamic social order, unravels 'secularism' reflected in Dharma and peeps into secular perceptions and values of Mahatma Gandhi and of Nehru to demonstrate that Preamble to, and provisions of, the Constitution of India strive for a secular democratic state.

Secular reflections in the Islamic jurisprudence and *Shariat* and *Shariat* courts do constitute the subject matter of the third and the fourth chapter respectively.

The author, in the third chapter sketches the evolution of the *Quran* and the *Hadith* and discusses the doctrines of *ijtihad* and *taqlid* as well as different sources of Muslim law to gain some insights in secularism *vis-a-vis* Islamic jurisprudence in vogue. He also highlights a few controversial and problematic aspects of secularism and opines that 'the secular interests do not fit in Islamic faith and culture'. Like the 'pigeon-hole theory', he maintains, 'Islamic jurisprudence has not moved an iota beyond its medieval religion, theocratic or fanatic and stationary dogmas and precepts and incapable to meet requirements of modern times and adapt to pervasive outside influences.' He argues that unless Islamic jurisprudence develops and changes beyond and outside its medieval Arab ethos, there is little hope of Muslims blending or integrating with other non-Muslim communities and their cultures.⁷ The Indian scenario, the author laments, is not different from the global one. Plausibly, because of the bugbear of 'Islam in danger' or 'personal law in danger', India has witnessed hardly any (even marginal) changes in the Muslim religious dogmas, beliefs or practices.

The fourth chapter, as mentioned earlier, deals with the *Shariat* and *Shariat* courts. It explores the underlying assumptions of the *Shariah* and outlines the functioning of the *Shariat* Courts in British India. The chapter, however, in the absence of any contextual or analytical explanation of the *Shariat* and the *Shariat* Courts, in the opinion of the present reviewer, hardly contributes significantly in one's understanding of either 'secularism' or its 'socio-legal' dimensions.

'Minority Rights and Constitutional Guarantees' are discussed in the fifth chapter. It, as evident from its caption, projects the constitutional scheme assuring educational and cultural rights to minorities in India. The author in this chapter stresses that the Constitution of India, by such an assurance to minorities, evinces

5. *Id.* at 13-14.

6. *Id.* at 16.

7. *Id.* at 65.



India's constitutional commitment to secularism, social justice and the rule of law. He, however, laments that the Muslim community in India, which constitutes the largest religious minority in India, 'thinks' that it has 'little to learn or benefit from secular ideology or values of the Indian constitution as compared to values derived from (its) religious faith'.⁸ Commenting on the prevalent non-secular ideology in the Islamic jurisprudence and recalling the insensitiveness of the Muslims in India to constitutional secular paradigm, the author, in a similar tone, observes: 'Under the pretext of secular state Muslims have been dictating the government on special safeguards like separate personal law, separate representation in services, separate minority commission, separate language, separate *Shariat* courts, etc. The basic reality is that Muslim religion, theology, moral code and history are devoid of secular values and traditions and seldom Muslim ethos extol ethnic or religious tolerance and coexistence with nonbelievers (*kafirs*).'⁹

Against the sectarian and ethnic attitudes of the Muslims in India, the author in the last three chapters of his book under review, delves, in the light of the politics of personal laws and the constitutional freedom of religion in India, into the feasibility of Uniform Civil Code.

The sixth chapter entitled 'Uniform Civil Code and Politics of Personal Laws', in the light of discussions in the Constituent Assembly and of secular (or otherwise) ethics depicted in the Hinduism, Islam and Christianity, examines the propriety of the constitutional obligation of the State to 'endeavour to secure for the citizens a uniform civil code throughout the territory of India'.¹⁰ A reader of this chapter, however, unpleasantly encounters with numerous extensive extracts (with mere cursory comments of the author) from the Constituent Assembly Debates. Most of these quotations could have been easily avoided by relying upon the viewpoints/arguments mentioned/advanced therein to unravel the core principles/controversies of/associated with, Uniform Civil Code. A penetrating contextual (as well as social) analysis of these arguments by the author would have certainly enriched contents of the chapter.

The subsequent chapter is devoted to the *Sarla Mudgal* case¹¹, which, stressing the compulsive need for a Uniform Civil Code, pleads, rather issues a judicial direction to the Government, for a Uniform Civil Code. The Apex Court also shows its concern to the executive apathy to a Uniform Civil Code. It rightly remarks: '[T]he successive governments till date had been wholly remiss in their duty of implementing the constitutional mandate under Article 44 of the Constitution.' Discarding the two-nation theory, it directs the Government to have a fresh look into Article 44 and to take appropriate steps in the direction of a Uniform Civil Code. It also tenders a bit of advise to the Muslim community in India 'not to remain a separate entity on the basis of religion.'¹²

The author, recalling a few illustrative reactions to the *Sarla Mudgal* judgement of people belonging to different political parties in India, who obviously, did not

8. *Id.* at 93.

9. *Id.* at 95.

10. Constitution of India, art. 44.

11. *Sarla Mudgal v. Union of India*, A.I.R. 1995 S.C. 1531.

12. *Id.* at 1539.



appreciate the judicial dictum and labelled it as 'judicial trespass', appreciates the Sarla Mudgal verdict.

The chapter on secularism and freedom of religion, which not only sketches the constitutional scheme of religious and cultural freedoms in India but also discusses a few leading judicial pronouncements and the Presidential Reference on demolition of the Babri Masjid, demonstrates the judicial balancing of secularism and freedom of religion in India.

The book under review, undoubtedly, offers a few pertinent glimpses of secularism in India. However, its major part is narrative. Unfortunately, author of the book, at most of the places, disappoints his readers by not offering either a penetrating analysis of the relevant constitutional provisions and judicial pronouncements to highlight socio-legal issues involved from, and associated with, secularism or any viable alternatives or paradigms to make 'secularism', in reality, a way of life in India.

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