

was put on the statute-book, and thereby the principle was established that personal law is a secular institution and has to be based on rational and secular considerations. This position is consistent with the real, ancient pristine view of Hindu law. *Dharma*, according to the old concept, is a purely secular institution. *Dharma* is that which sustains the society and by which people at large are held together:

धारणाधर्ममित्याहु OR द्वियते अनेन प्रजाः इति धर्मः

The Hindu code now speaks the same language, and the Hindu community has now accepted the position that matters of law included in the Hindu code are secular matters with which religion is not concerned.

The movement of secularism began in Western Europe in the nineteenth century. Initially, it started with the idea of breaking away from religion. It was essentially anti-religious, or if one may so describe, as anti-God. M.N. Roy, who was a great secularist, took pride in saying that the essence of secularism is not to give every citizen an option to choose which religion he wants to follow, but an option to escape the bondage of religion altogether. He thought, and many Marxists continue to think, that religion is a dope and the progress of human society can only be made when the human mind is released from its addiction to this dope.

The Indian secularism does not subscribe to this view. It no doubt believes that a citizen's religion has no part to play in the discussion and decisions of socio-economic problems. Law, according to this concept, is essentially a secular institution. Even so, Indian secularism recognizes the fact that religion cannot always, or need not necessarily, be banished from human life. A spirit of enquiry which desires to solve the riddle of the universe, or which wants to find out what really happens when human life comes to an end, and is concerned with the ultimate end of the human race, is a part of spiritual hunger which assails all sensitive human minds. It is a craving for the unknown, and in dealing with this problem of the unknown, logic or reason may not be of much assistance:

अचिन्त्याः खलु ये भावानस्तांस्तर्केण चिन्तयेत् ।

But the enquiry which the human mind wants to carry on in relation to problems of this philosophic kind, is a matter between a citizen and his god, is a matter between a citizen and his conscience; its existence need not be disputed by secularism, but its relevance in the discussion or decision of secular problems is stoutly challenged.

I am inclined to think that secularism would be a purely passive force if it was content to base itself on the negative aspect of being anti-religion, anti-God, or anti-spiritual quest. Even as a secular institution, secularism bases itself on certain ethical considerations. That is why we

often refer to secular morality and social conscience. Modern liberal faith which is the inspiring force for secularism believes that every citizen owes a duty to society. The conviction that every citizen owes a duty to society supplies what may be described as the ethical element of secularism.

After the Constitution was passed, we have heard frequently enough about the fundamental rights of citizens. But concentration on the fundamental rights of the citizens to the exclusion of the thought about fundamental obligations of citizens would give an inadequate and incomplete picture of secularism as envisaged by the Indian Constitution. Secularism undoubtedly helps and aspires to enable every citizen to enjoy fully the blessing of life, liberty, and happiness; but in the pursuit of this ideal, those who believe in secularism must be inspired by a sense of ethical purpose in dealing with their fellow citizens.

In considering socio-economic problems, secularism stoutly refuses to introduce any consideration as to which is religious or irreligious, *pap* or *punya* (sin or virtue). The whole discussion about these problems proceeds on considerations of utility, what is socially good or useful, and what is socially bad or harmful; and these considerations of utility and the largest good of the largest number, inevitably bring in considerations of ethics which cannot be divorced completely from secularism. This may be called the ethos of secularism. It generates a feeling of dedication and a spirit of social service. Thus, secularism is not based only on considerations of the rights of citizens; it derives sustenance from the knowledge of the citizens' obligations to the society at large.

It is true that the Indian Constitution does not use the word "secularism" in any of its provisions; but its material provisions are inspired by the concept of secularism. When it promised all the citizens of India that the aim of the Constitution is to establish socio-economic justice, it placed before the country as a whole, the ideal of a welfare state. And the concept of welfare is purely secular and not based on any considerations of religion. The essential basis of the Indian Constitution is that all citizens are equal, and this basic equality (guaranteed by article 14) obviously proclaims that the religion of a citizen is entirely irrelevant in the matter of his fundamental rights. The state does not owe loyalty to any particular religion as such; it is not irreligious or anti-religion; it gives equal freedom for all religions and holds that the religion of the citizen has nothing to do in the matter of socio-economic problems. That is the essential characteristic of secularism which is writ large in all the provisions of the Indian Constitution.

Though, the Constitution guarantees freedom to all religions, it recognizes that in certain aspects, and under certain conditions, religious

practices may impinge upon socio-economic problems and the Constitution has made it clear that wherever socio-economic problems or relations are involved, the state will have a right to interfere in the interests of public good. Let me illustrate my point by taking two provisions of the Constitution. Under article 15, the Constitution has prohibited discrimination on grounds of religion, race, caste, sex, or place of birth; but the Constitution-makers were conscious that the problem of socially and economically backward communities needed special attention. Article 17 categorically abolished untouchability and provided that the enforcement of any disability arising out of untouchability shall be an offence. Now, untouchability, from a conservative, traditional point of view, was a part of the religious practice prevailing amongst the Hindus; but the Constitution-makers realized that the observance of untouchability impinged upon secular, social rights of all citizens and contravened the basic concept of social equality; and so, article 17 made a specific provision in that behalf.

Similarly, when attempts were made by the Indian legislatures to provide special safeguards for the advancement of the socially and educationally backward classes, it was discovered that these provisions conflicted with the prohibition prescribed by article 15 (1). The Constitution was then amended and clause (4) was added to article 15 expressly authorizing the states to make suitable provisions for the advancement of the said castes and tribes. Now, this provision again emphasizes the fact that though the Constitution gives full liberty to the practice of all religions prevailing in India, it will not allow the so-called observance of religion to affect the social and secular rights of its citizens.

There is yet another instance which is relevant on this point. Articles 25 and 26 of the Constitution provide for the right to freedom of religion. Article 25 gives freedom of conscience and free profession, practice and propagation of religion, whereas article 26 guarantees freedom to manage religious affairs. Now, it is well settled that the freedom to manage religious affairs does not include absolute freedom to manage properties belonging to religious institutions. Questions in regard to management of properties which have no direct relation with religion or its practice, fall within the regulatory power of the state. It will thus be seen that 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.

One characteristic feature of Indian secularism is its determination to adopt a rational and scientific approach in the discussion and solution of socio-economic problems. Blind adherence to, or reliance on, any sacred text is completely foreign to Indian secularism; whether the text

is that of Marx or of Manu makes no difference. The tendency of the human mind to lean on textual authority in support of or against a proposition is so powerful that it needs consistent and deliberate effort on the part of intellectuals to promote independent and basic thinking in dealing with problems unhampered by the weight of authority or the printed word. Lawyers know that in courts of law, precedents in the form of decided cases sometimes have such an overwhelming influence on judicial approach that judges show a disinclination to analyze and consider the basic points involved in any controversy. The value of precedents cannot be denied; but the precedents sometimes tend to hold the judicial mind in bondage, and that shows an approach which is not strictly rational and as such, is inconsistent with the philosophy of secularism.

Secularism has a very vital impact on the structure of castes which distinguish the Hindu community. Castes are regarded by orthodox Hindus as a religious institution, and this notion has to be completely eradicated if secularism is going to have its full impact on the social structure of the Hindus. Originally, in Vedic times, castes conceivably began on the basis of occupations. But, later, they grew and multiplied as a result of ritualistic considerations. These castes and sub-castes inevitably create a social hierarchy of superior and inferior and as such, are entirely inconsistent with social equality which is one of the basic concepts of secularism. The problem of castes is a standing challenge to the advocates of secularism in India. The progressive intellectuals in the country must educate the public mind on the vice implicit in the sense of superiority and inferiority which these castes generate, and must satisfy the public conscience that castes and democracy cannot go together. It is in that sense that Hindu code has played a major role in revolutionizing the outlook of the Hindu community in relation to the secular character of personal law.

I remember that when the Hindu Code Bill was being debated in Parliament, the conservative Hindus raised a plausible plea that if a civil code was intended to be evolved, it should be made applicable to all the communities in India. The main object in raising this plea was not so much to make the code applicable to the Muslim community as to retard, and if possible, to defeat the Hindu code itself. The advocates of the Hindu code wanted to take the first step in the right direction. They realized that to bring the Muslim community within the purview of the civil code was impractical at that time having regard to the fact that the public opinion in the Muslim community had not been adequately educated in that behalf. The approach adopted by the reformers in confining the code to the Hindu community as a first step brings out another feature of secularism, and that is that secularism in establishing its philosophy in the social life of the country, adopts a pragmatic approach.

Secularism does not believe in any absolute. It realizes that in dealing with socio-economic problems, competing and conflicting principles have to

be reconciled; and so, consistently with the Hindu philosophy, secularism tries to evolve principles of harmonious synthesis. This theory of establishing harmonious synthesis is always described in Sanskrit as *samanvaya*. The philosophy of *samanvaya* proceeds on the assumption that there may be an element of social truth in different competing concepts. That is what secularism means when it refuses to believe in any dogma as being absolutely right. As a matter of fact, progressive intellectuals realize that the more you know about socio-economic problems, the less dogmatic you tend to be; and this approach inevitably creates a feeling of humility in the minds of progressive intellectuals who want to propagate secularism. A sense of fallibility of human reason, a feeling that truth is not the monopoly of any particular view, and a determination not to yield blind allegiance to any dogma or faith, are the prominent characteristics of the secular approach which progressive intellectuals must adopt.

The consideration of the problem of secularism has a particular significance in the context of today in India. Pakistan's naked aggression against Kashmir has created an emergency in our country and in this hour of emergency, we have had to face a grim ordeal of war. But, in a sense, our hour of trial has proved to be our hour of glory. It has now been established beyond any doubt that all communities in India stood up like one man in facing the challenge posed by the Pakistani act of aggression. We have all been thrilled and proud to know that on the battlefield, Muslims, Parsis, Christians, and Hindus have fought with unflinching loyalty to the cause of the country. This loyalty is substantially due to the fact that all the citizens in the country know that whatever be their religion, they are equal in the eye of the law and secularism of the country looks upon all of them as Indians first, Indians next, and Indians last.

I believe that in this emergency, it is the duty of all progressive intellectuals to propagate and popularize this principle of secularism and explain to the people at large all its facets and its aspects. We ought to make it clear to the public at large that the Indian democracy, which is a secular democracy, is determined to introduce socio-economic justice in this country with the help of law. Law, in its turn, derives its inspiration from secularism; it helps to herald the arrival of a welfare state and hopes to achieve socio-economic justice by means of progressive and dynamic legislation.

It is in this context that functional jurisprudence has to play a decisive role. Law is an instrument of socio-economic change, and in the classical words of Roscoe Pound, it is a branch of "social engineering." The centre of gravity of law is not so much the legislatures or the courts, but it is the unsatisfied, but legitimate, desires and ambitions of the millions of its citizens. In satisfying these desires and ambitions,

law takes a lead and proceeds to find out solutions to the problem of poverty, ignorance, and unemployment, purely on secular lines. Hunger knows no community or religion, and the problem of poverty or ignorance or disease is universal and not confined to communities or religions. That is how law has to be secular, and that is how with the aid of law, the Indian democracy hopes to achieve its dream.

We must, however, remember that though law is a powerful weapon in the hands of democracy, by itself it will not achieve its objective. It must receive the full cooperation of the public conscience, and the public conscience has to be awakened by the progressive intellectuals of the country. In appealing to the public conscience, secularism will not rely wholly and entirely on materialistic considerations; no doubt, it will attempt to bring to its citizens socio-economic justice, but in preaching the doctrine of secularism and supporting the ideal of socio-economic justice, a sense of ethos must inspire all progressive intellectuals. The doctrine of secularism and its ideal of socio-economic justice must become a part of the life and philosophy of every citizen, and that can be achieved only if the progressive intellectuals take a lead in that matter.

Let us not forget that the *jawans* (soldiers) who fight on the battle front; the *kisans* (farmers) who work in the agricultural fields, and the *kamgars* (labourers) who toil in factories belong to socially and economically weaker sections of the community. They will feel inspired to join in the fight against the Pakistani aggression if they are satisfied that their fight is not only for the physical integrity of Kashmir, or even of the Union of India; they must feel confident that their fight is for a better way of life—for the establishment of socio-economic justice; in other words, for the triumph of secularism. It is because of this urgent need that the discussion of the problem posed before this seminar assumes particular significance for India. I hope the discussions in the seminar will be objective and comprehensive and will afford ample guidance to the progressive intellectuals of this country in the task which awaits them today.