

Minorities and their Integration

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AS TO THE PRINCIPLES concerning the relations of man and man—whether of laws or morality or merely social conventions their object should be human welfare with reference to time and circumstances, and they can only be revealed to us by secular and scientific reason, based on trial, experiment and observation. We have no alternative but to live in constantly changing world, where

“New occasions bring new duties
Time makes ancient good uncouth”.

I cannot help adding that all the great religions of the modern world were founded in the millenium 600 B.C. to 700 A.D. when secularism and democracy were equally impossible. Naturally the law prescribed by them are quite out of date. Though commonsense has to a limited extent made some reforms possible, still it is a great and obvious error to base our laws and our morality not on our present-day needs and experiences but on spiritual texts, the authors of which could have had no idea of our present problems. Every age—and every section of mankind in every age—must make laws and frame principles of morality conducive to its welfare.¹

The views expressed in the above passage lay down the principle of integration of minorities. Every one of us has to realise that religions, to a great extent, have become out of date in the modern society so far as they prescribe the norms governing the relation of man and man. If this realisation becomes a part of social and political life and all our actions and laws are based on this realisation, the problem of integration of minorities will be easily solved.

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1. Professor Mohammed Habeeb of Aligarh Muslim University in his message to the Foundation Conference of the Indian Secular Society held in Bombay in 1968.

The Constitution and the Ministries

The Indian Constitution has kept the ideal of securing to all the citizens, justice—social, economic and political—and promoting among all Indians, fraternity assuring the dignity of individual and the unity of the nation. This is to be achieved by democratic means. The democratic values of life are assured by providing fundamental rights. The directive principles of state policy aim at securing the social and economic justice. Thus, the Constitution has provided for the realisation of the twin aims: democracy and social and economic justice. These aims are to be achieved in a heterogeneous society. There are followers of all religions in India. These followers may be grouped into two:— (1) The Hindus, the Buddhists, the Jains and the Sikhs. (2) The Muslims and the Christians. The prophets of the religions mentioned in the first group were born in India and particularly all sacred places of these religions are situated in India, while the prophets of the religions mentioned in the second group were born outside India and many sacred places of these religions are situated outside India. Hence, it is but natural for the followers of these religions to look to those places for their spiritual welfare. Realising this heterogeneous nature of Indian society, the founding fathers of the Constitution have made specific provisions in the Constitution for minorities.

India has accepted the principle of the "rule of law". The Constitution being the fundamental law of the land, it is necessary that all laws passed by the legislature or other appropriate bodies must be consistent with the Constitution. The Constitution itself has made specific provisions with respect to linguistic and religious minorities. Some of these provisions find a place in the chapter on fundamental rights. Hence, any discussion of the problem of integration of minorities must necessarily be based on the provisions made in the Constitution. The provisions of the Constitution relating to minorities may be considered under two heads. (1) There are some articles of the Constitution which guarantee equality and equal treatment to all. These articles naturally create a right in favour of minorities. Article 15 of the Constitution prohibits any discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Articles 25 to 28 guarantee the right to freedom of religion. Clause (1) of article 25 lays down, "subject to public order, morality and health and to other provisions in this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion". Article 26

provides for further rights. It lays down

"subject to public order, morality and health, every religious denomination or any section thereof shall have the right:-

- (a) to establish and maintain institutions for religious and charitable purposes,
- (b) to manage its own affairs in matter of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law."

Article 29 protects cultural and educational rights of minorities. Linguistic minorities have been assured the protection of their distinct language, script or culture. Educational institutions maintained by the state or receiving aid out of state funds are prohibited from refusing admission on grounds only of religion, race, caste, language or any of them. Article 30 refers to the right of minorities to establish and administer educational institutions of their own choice. Clause (1) of the article provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

In addition to these provisions, there are a few provisions in the Constitution relating to the Scheduled Castes, Scheduled Tribes and backward classes who may be considered as minorities for specific purposes. Clauses (23) and (24) of article 366 define the words 'Scheduled Castes and Scheduled Tribes'. The promotion of educational and economic interests of these classes of persons is specifically referred to in article 46 which provides that the state shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Clause 4 of article 15 authorises the state to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

The problem of integration of minorities is to be discussed in the light of these specific provisions of the Constitution, the laws made by appropriate authorities, the judicial pronouncements on these and the experience of working of the Constitution and the laws during the last 21 years. It is trite to observe that the founding fathers of the Constitution made special provisions in the Constitution relating to minorities with a view to removing from their mind any fear complex. This they thought

to be essential in the background of the partition of India. It is now time to see whether the special provisions have helped the minorities to become a part of the main stream of the national life or the provisions have created a sense of aloofness in them, a sense which the minorities value and wish to protect.

Religious Freedom and Integration

The freedom of religion guaranteed by the Constitution might affect the working of democracy. For, democratic process is influenced by religion in at least three ways. Firstly, religion may inculcate distinct norms regarding social changes. These norms may not be consistent with modern times. Secondly, it may exercise *judgmental* function regarding the transactions of the state. Thirdly, it may seek consolidation of voters either in favour or against political schemes deemed essential to the nation's moral welfare. In all such cases there is a danger of the religious minority not working for the main national goals.

The guarantee of the religious freedom given by the Constitution has, it is submitted, strengthened the sense of aloofness in the minds of the followers of religions. This is the main stumbling block in the process of integration. Article 25 guarantees in addition to freedom of conscience the right to freely profess, practice and propagate religion. This right is a very wide right. It is not proposed to examine in this paper the extent of the right to propagate religion. For, that would lead one into the jungle of the various doctrines of different religions and to certain passages in the scriptures of these religions—passages which would support the contention that the particular religion alone is the true religion. It is true that the Supreme Court of India in a number of cases tried to narrow down the meaning of the term religion. Gajendragadkar, J (as he then was) laid down (for the Court) in *Durgah Committee, Ajmer v. Syed Husain Ali*, that

In order that practices in question should be treated as a part of religion, they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with religious forms and may make a claim for being treated as religious practice within the meaning of Article 26. Simi-

larly practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself.

It is submitted that the correct approach to the freedom of religion would have been to guarantee the freedom of conscience and nothing more. The guarantee of the 'right to profess, practise and propagate religion' has created problems in the life of the nation, making integration of minorities difficult.

Minorities and Educational Institutions

Article 30 of the Constitution confers on the minorities two rights:- (1) the right to establish educational institutions of their choice; and (2) the right to administer them. These two rights have also further strengthened the sense of separateness in the minds of minorities. The Supreme Court of India has interpreted this article in a number of cases and tried its best to see that the construction it has put on it will be consistent with the broad ideals accepted in the Constitution. Hence it is laid down in *In re the Kerala Education Bill*³ case that "the Constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the state to insist that in order to grant aid that state may prescribe reasonable regulations to ensure the excellence of the institution to be aided."

The Court also laid down that the right conferred by article 30(1) is subject to clause (2) of article 29, which provides that no citizen shall be denied admission into any educational institution on grounds only of religion, race, caste, language or any of them. Thus the real import of article 29(2) and article 30(1) seems to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it.

The arguments advanced in the *Aligarh Muslim University Amendment Act*⁴ case indicate that the provisions of the Constitution help in strengthening the sense of aloofness. It was urged on behalf of the appellant that the Aligarh Muslim University having been established by Muslims it can be administered by Muslims only; and hence, the Amendment Act which allowed non-Muslims to be members of the University administrative bodies

3. A.I.R. 1958 S.C. 956.

4. *S. Aziz Basha v. Union of India*, A.I.R. 1968 S.C. 662.

was unconstitutional. The Court laid down that: (1) The religious minorities will have the right to administer educational institutions of their choice, provided they have established them, but not otherwise. The words 'established' and 'administer' must be read conjunctly. (2) The word 'establish' means bring into existence. As the Aligarh Muslim University was not 'established' by Muslims, the argument of the appellant did not succeed and the Court held that the Act was constitutional. A more interesting case came to the Supreme Court later. It was a case from the State of Kerala.⁵ In this case the Kerala University Act, 1969 was challenged as violating the fundamental right under article 30. The Act created a governing body for each private college. The governing body was to consist of 11 members who were to include a person nominated by the University, a person nominated by the state government and a person elected by permanent teachers from among themselves. This governing body was charged with the duty of administering the respective private colleges. The Supreme Court pointed out that these relevant sections took away the right of the minorities to administer the colleges and hence were unconstitutional. Looking to the words of article 30, the Supreme Court had no alternative but to come to the conclusion it has arrived at. However, it is submitted that the effect of the judgment is to allow the minority communities to preserve the sense of aloofness, apart from weakening the authority of the University vis-a-vis the private colleges. Probably the founding fathers of our Constitution did not visualise such a situation. In the United States of America, there have been these problems of religious freedom and the Supreme Court of the United States has on a number of occasions laid down the extent of the freedom of religion. But the following passage from the dissent of Justice Frankfurter in *West Virginia State Board of Education v. Barnette*⁶ deserves to be quoted at length for it should guide us in solving the problems of religious minorities and integration in this country.

And so Jefferson and those who followed him wrote guarantees of religious freedom into our constitutions. Religious minorities as well as religious majorities were to be equal in the eyes of the political state. But Jefferson and the others also knew that minorities may disrupt society. It never

5. *State of Kerala v. Very Rev. Mother Provincial*, A.I.R. 1970 S.C. 2079.

6. (1943) 319 US 624 at 653, 654 and 662.

would have occurred to them to write into the Constitution the subordination of the general civil authority of the state to sectarian scruples.

The constitutional protection of religious freedom terminated disabilities, it did not create new privileges. It gave religious equality, not civil immunity. Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma. Religious loyalties may be exercised without hindrance from the state, not the state may not exercise that which except by leave of religious loyalties is within the domain of temporal power. Otherwise each individual could set up his own censor against obedience to laws conscientiously deemed for the public good by those whose business it is to make laws.... The essence of the religious freedom guaranteed by our Constitution is therefore this: no religion shall either receive the state support or incur its hostility. Religion is outside the sphere of political government. This does not mean that all matters on which religious organisations or beliefs may pounce are outside the sphere of government. Were this so, instead of the separation of church and state, there would be the subordination of the state on any matter deemed within the sovereignty of the religious conscience.... That which to the majority may seem essential for the welfare of the state may offend the conscience of a minority. But, so long as no inroads are made upon the actual exercise of religion by the minority to deny the political power of the majority to enact laws concerned with civil matters, simply because they may offend the conscience of a minority, really means that the consciences of a minority are more sacred and more enshrined in the Constitution than the conscience of a majority."

The Scheduled Castes

The Constitution has conferred certain rights on the members of the Scheduled Castes. One of such rights is the reservation of seats in the legislatures. This right is now extended upto 1980, though originally the reservation was to be for a period of 10 years only, i.e., upto 1960. The idea was that integration of the Scheduled Castes with the main Indian community will be achieved during this period. But during the last twenty years the sense of aloofness of the Scheduled Castes has strengthened, so much so that only a few months back a resolution was passed by the Republican Party of India that there should be separate

electorates for the Scheduled Castes. Thus, instead of achieving integration, the sense of aloofness has been strengthened.

The above discussion indicates that the present position of law in the country tends to strengthen the sense of aloofness in the minds of the minorities. This makes integration of minorities a difficult task. Enactment of a uniform civil code would have helped at least to a certain extent the process of integration. But, though the directive principles of state policy are fundamental in the governance of the country, no step has been taken during the last twenty-one years for enacting a law in compliance with the requirements of article 44. Codification of some branches of Hindu law cannot be considered as a step in this direction. For, the process for codification of Hindu law had commenced long before the Constituent Assembly was convened. Thus, the factors which should help integration are absent in the sphere of law. In the sphere of politics, the constant references to minorities and appeal to them at the time of election that their rights are safe only in the hands of a particular political party, also come in the way of integration. The political history of the last twenty-one years amply proves the correctness of this statement.

What then is the solution to this problem? Firstly, it is suggested that the provisions of the Constitution that support and strengthen the separatist tendencies in the minds of minorities should be suitably amended. If this view is accepted, it would mean that amendments may have to be made to articles 25, 30 and some others. Such amendments would not be possible in view of the majority judgment of the Supreme Court in the *Golaknath*⁷ case which lays down that Parliament has no power to curtail or abridge fundamental rights conferred by Part III of the Constitution. Amendments of articles 25 and 30 for the purpose mentioned above would result in the curtailment of the fundamental rights. Apart from this legal hurdle, it will not also be desirable to undertake such amendments in the present position of the Indian community. But it is hoped that in future—near or distant—it would be possible to adopt such amendments. Secondly, Indians must adopt an attitude of modernity in every walk of life. In this context we may refer to the following view of Jadunath Sarkar

If India is ever to be the home of a nation able to keep peace

7. A.I.R. 1967 S.C. 1643.

within and guard the frontiers, develop the economic resources of the country and promote art and science, then both Hinduism and Islam must die and be born again. Each of these creeds must pass through a rigorous vigil and penance, each must be purified and rejuvenated under the sway of reason and science.

What Sarkar has said about Hinduism and Islam will have to be made applicable to some other religions also. If integration of the minorities is to be a reality and not merely an ideal, then religion must disappear from public life. It must be confined only to the relations of the individual with the Creator. Other spheres of life must be influenced by reason and relationalism. In this age of scientific achievements, science must not be used only for making more amenities available to us. It must be the basis of modern society and the philosophy of life.