

Law, Secularism and Indian Minorities

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WITH THE COMFORTABLE majority obtained by Indira Gandhi in the recent elections, there is every hope that the strengthening of the secular state and the spirit of secularism will be permitted and encouraged to take deeper roots in this country. It is clear that the minorities in different parts of the country voted in favour of the Prime Minister because secularism was an important issue in her election manifesto. This is bound to happen in a pluralistic society like India's and the technological revolution that is slowly changing the face of the country is steadily bringing pressure on the people to make progress in this direction.

What is far more likely however to hasten the entire country towards this goal, has been the tragedy of Bangla Desh and the failure of Pakistan to live up to its basic assumption of the Islamic religion being the cementing force that was holding the two wings together. Language, race, colour and a community's traditions can often sunder the tenuous bonds of a common faith, particularly under the far-reaching influence of nationalistic and secularizing tendencies from which no nation today can remain inviolable.

Secular State

But what does secularism precisely imply? Many people in India give different meanings to the term. From his reading of history, Balraj Madhok, the Jan Sangh leader, interprets the secular state to mean the following:

A state which acted independently of the church and which removed restrictions against non-conformists and gave them equal treatment in the matter of civil rights, franchise and patronage came to be called a secular state as distinct from a theocratic state. Such a state was not supposed to denigrate religion or decry its role in the life of an individual

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or society. Nor was such a state expected to cease to have a state religion.....freedom of belief and equality (was permitted) to all those to whom it was denied in the name of conformism in theocratic states.¹

In support of this definition, Madhok gives examples of the manner in which secularism is practised in different countries. For instance, secularism in Britain does not "permit any discrimination between its citizens on the basis of their religion. But it continues to have an established church and the British head of the state, king or queen as the case may be, has still to belong to it. All official functions are inaugurated with Anglican prayers."² Madhok notices the same practice in the United States of America where many public functions are inaugurated with prayers said by Protestant ministers. Even where the majority are non-Muslims, as in Malaysia, the state is claimed to be an Islamic but secular state. Still non-Muslims suffer from certain disabilities since marriages between Muslims and non-Muslims cannot take place unless the non-Muslim partner becomes a Muslim.³

Unfortunately Madhok's concept of the secular state is far too superficial and narrow. It excludes the much broader and complex meaning attached to the phrase in the past and in recent years. He has failed to perceive how deep rooted and absolute has been the effect on political behaviour and action strictly based on the cardinal doctrine of separation of church and state in the United States of America.

In a specific study of the same subject, V. P. Luthera holds that the concept of the secular state implies exclusively and consists essentially of the separation between church and state. This has been the typical way of conceiving secularism in the past. Possibly, it can be justified at the political and legal level. Luthera finds, however, that if secularism is understood in this sense, then we can never establish a secular state in India. He maintains that judged by this standard, "the enunciation and interpretation of the articles relating to religion in the Constitution of India clearly shows that the Constitution does not establish a secular state. It does not embody the spirit of the concept which consists of ensuring the freedom of the church in its external reli-

1. Balraj Madhok, *Indianization*, 92 (1970).

2. *Ibid.*

3. *Id.* at 83.

gious affairs from regulation and control by the state."⁴

As a matter of fact, he finds that Hinduism has never been an organized religion like, for instance, Christianity and, therefore, there is no organized church in India to which the vast majority of the people belong. For this reason, to talk of a separation of church and state in India becomes meaningless. Luthera also finds that since independence, the state in India has actively interfered in areas which he thinks are the preserves of the religious authorities. A classic instance is the temple entry legislation, by which *harijans* are permitted to enter the temples from which they were formerly debarred. The justification for this legislation was based on the fundamental right in the Constitution against discrimination on grounds, *inter alia* of religion. The Indian Constitution is quite definite and unambiguous on this point. The Constitution also contains a provision in clause 2 of article 25, where it is clearly maintained that the state can embark upon legislation providing for social welfare and reform and that it can throw open the Hindu religious institutions of a public character to all classes and sections of Hindus.

Secularism

Luthera is careful in his book to mark the distinction between the 'secular state' and 'secularism'. With the rapid progress of secularism in recent years, even the rigid concept of the secular state as outlined above is losing its position of importance with the growing indifference to religious values and institutions. In a comprehensive paper on "Secularism and Social Control" prepared for a seminar organized under the auspices of the Indian Law Institute in November, 1965, A.R. Blackshield attempted to develop all the subtle nuances, contained in the term 'secularism'. He writes:

Secularism is a complex cluster of socio-ideological aspirations, thoughtways and attitudes which at first sight seem to amount to much the same thing. In the present volume this approach is given sociological accreditation in the extremely cogent essay of Prof. Y. B. Damle. That writer insists that the 'structural characteristics' of secularism include rationality and emphasis on cognition; the scientific spirit; individuation and individualism; universalism and freedom

4. V. P. Luthera, *The Concept of the Secular State and India*, 146, (1964).

lamic world in one case and to the socialist world in the other), and perhaps because they both exclude Hindu culture as being necessary for Indian citizenship. Interestingly enough these sections of the book evoke memories of the attack on the Communists and the Jews in *Mein Kampf*.⁷

Romila Thapar goes on to point out that:

A great deal is made of the need to secularize the Muslim community (and this can be justified), but nothing is said about the need to secularize the Hindu community or any other for that matter in India. The abolition of polygamy and *purdah* will alone not secularize the country. It is true that Muslim personal law has not been modernized but this alone is not enough. There cannot be two separate civil codes, each of which tend to modernize their respective laws. There is need for a uniform, new, civil code relating to family and property which reflects a modern, secular legal system, irrespective of antecedents.⁸

Her final conclusion is, therefore, that "to try to convert all Indians to Hindu Aryanism would be self-defeating since image from the past can provide the model for Indianness—it has to be discovered through the process of modernization."

Role of Law

But this will not be achieved in the near future. There is still a long time span between what we plan to achieve and what can be achieved. In the meantime, it is very urgent that the law should protect the minorities as far as necessary with the purpose of guaranteeing their fundamental rights as contained in the Indian Constitution and to provide them with equal opportunities for economic and social progress. It is, therefore, imperative that the privileges for the Scheduled Castes and Tribes should be maintained and widely diffused. But obviously, a serious change is required in the sense that it is no longer communities that should be taken into consideration, but rather classes of citizens who still remain at or below the poverty line in this country, computed round about Rs. 500 per capita per annum.

7. Romila Thapar, 'Indianization', *Social Action*, 61 (January-March, 1971)

8. *Id.* at 62.

growth of the secularisation of society and the desacralisation of many areas of human living, law is becoming pre-eminent among the forces of social control. This is however, still a legal aspiration rather than a fact. Law is now regarded on the one hand as a body of norms which as far as possible should cover every case that falls within its sphere of competence. It is quite obvious, on the other hand, that there are few lawyers who will imagine that the law can achieve such a vast and comprehensive objective. But it must be conceded that with the growth of secularism, religion will no longer exercise "the control of controls." This important function will now fall to law. It is, therefore, extremely important that the law should realize its grave responsibilities in being the final arbiter in the matter of social controls. Religion, however, cannot be excluded since its influence is all-pervasive in society, and while there may not be any church in Hinduism, all the same, the whole of society in this country acts as a kind of institutional framework within which the Hindu religion flourishes, or at least is preserved.

It should be realized that together with the growth of secularism, most of the religious groups in India are passing through an unprecedented intellectual and emotional ferment. It is not only the Hindu majority but also the Indian Muslims, Christians, etc. who are being drawn in different directions by the twin forces of traditionalism and modernization. Within the Christian community, the role of the church in society is being seriously readjusted to suit the changing times. The fact that religious belief plays a much smaller part in the life of modern man in western countries is causing religious leaders to chalk out new paths for religious influence in civic life. For instance, recent Vatican documents have quite clearly recognized the autonomy of the secular sciences, freedom of conscience, and the autonomy of the state in the temporal sphere. The concept of a separation between the religious authority and the state authority is, therefore, accepted. Secularism has had its impact as much on religious organisations as on the whole of society and, therefore, in discussing the relationship between minorities based on religion and law in a pluralistic society, these changes must be kept in mind.

Minorities

In our country, minorities have traditionally been divided by religious affiliation. Thus we have Muslims, Sikhs, Christians, Jains, Parsis and the like. Of course, most of these minorities are facing serious problems in their efforts at adjustment to the poli-

cies of the majority community. Some of the difficulties facing the Christian minority, which is the third largest minority in India, are singled out here for further analysis.

It has to be noticed in the first place that the Christian minority in India is a heterogeneous group. It would include the Syrian Christians who have been living in Kerala for the last 2000 years, the comparatively recent converts in Goa, Bombay and other parts of India during the last 400 years, and finally the most recent adherents in the North, especially among tribal people, who have been late-comers to enter the Christian fold. Nearly 60 per cent of the community is concentrated in South India, and in Kerala the Christians form nearly a third of the total population. The minority problems for Christians, therefore, prevail much more in the North than in the South where they are well-established. In the North, the local Christians are often regarded as being a foreign group alienated from the people and the land and a continuing threat to the prevailing religious groups around them. Among them, there are the tribal Christians who suffer discrimination by reason of their racial origins and their backwardness.

On the other hand, the Christian community at the national level is well known for its educational and social welfare institutions. During the British regime, the more westernized Christians enjoyed certain privileges. The struggle for independence attracted quite a few, but the community has been passing through a difficult period of readjustment during the last twenty years.

We often speak of minorities by will or choice and minorities by compulsion. A minority by will or choice wishes to retain its identity and fearlessly clings to its traditions that it considers to be part of its peculiar culture. Such a minority is very difficult to assimilate and unless it is granted a certain amount of autonomy, it always forms a nucleus of great dissatisfaction within the nation and a cause of constant trouble. On the other hand, there do exist in this country minorities by compulsion, who would like to be assimilated into the culture of the majority, but are prevented from doing so by the opposition from within the ranks of the majority who reject any attempt at such assimilation. A classic case in India is that of caste system, and Srinivas⁶ describes several instances of how individuals in a lower caste attempt to elevate themselves into a higher caste through a process very akin to a process of assimilation.

6. M. N. Srinivas, *Caste in Modern India and other Essays*, (1962).

What about the Christian minority? One can hardly say that the Christians are a minority by will. It appears that the Christian minority is a minority in the Indian Republic mainly by compulsion in the sense that most Christians look upon themselves essentially as Indians and as citizens of India, but are classed as a minority by reason of their religious affiliation. They really possess a readiness for assimilating the culture that is common to this country and to a large extent since independence, this process of acculturation has gone on apace so that today in many localities one can scarcely distinguish a Christian from other Indians. The real opposition to this process of assimilation comes from those communal groups like the Rashtriya Swayam-sevak Sangh or the Jan Sangh, who live in hopes of re-establishing a typically Vedic Hindu national community.

Indianization

For instance, according to Madhok, 'Indianization' practically coincides with Hinduization of all Indians. He believes that 'Indianization' is nothing but a strong sense of nationalism in all Indians, although India as a nation is only a very recent phenomenon. But for Madhok, India has been a nation since Vedic times. Today he perceives the presence of a large number of divisive forces in this country, which threaten its unity. There is, for instance, the diversity of language, by reason of which the country has been divided into linguistic states. Each of these states seeks to encourage a culture of its own. Tamil Nadu, for instance, has been clamouring for autonomy of a kind that would balkanize the country.

At the same time, while caste is losing its predominant position in the country, it is still strong, and Madhok believes that the politicians are the ones who foster caste divisions for their own personal interests. But where he is mistaken is to imagine that the reservation of special privileges like seats in the legislatures, jobs in government departments and scholarships for education for the Scheduled Castes and Scheduled Tribes has resulted in the formation of powerful vested interests which refuse to give up these advantages. The situation is so bad, according to him, that even the higher castes seek to become lower ones to enjoy such economic benefits.

On the other hand, it is clear at least in the case of the Christian minority that there is much discrimination against the Christians, particularly by the loss of the monetary advantages that the government has provided for the uplift of the Scheduled Cast-

es and Tribes. For many petty officials, a change of religion would imply also a breakaway from the original community and on the spurious reason that Christians no longer belong to the backward classes, many poor Christian children are deprived of scholarships in the local schools. This was never the intention of the Constitution, nor of the law, that was established to provide the poorer groups of society with opportunities for bettering themselves.

Such discrimination does not take place equally in all the states. In some states, like Gujarat for instance, this kind of discrimination is practically non-existent. But in several other states, it is certainly very prevalent and works to the detriment of these minorities. It is, therefore, incumbent that in these matters, the law should be implemented fully, so that discrimination of this kind will be avoided and the assistance should be given not on grounds of caste or religion, but on grounds of economic disability. On the other hand, the recent law that was passed in Orissa to prevent conversions, brought about through fear or bribery, clearly violates the spirit of the Constitution (which permits propagation of one's religion), since in the implementation of the law, both the convert and the person responsible for his conversion suffer great harassment at the hands of the police and the courts.

But the group in India which badly need Indianization, according to Madhok, are the Communists and the Muslims: the Communists because of their loyalties to Russia and China and the Muslims because of their feeling of oneness with other Muslim states in the world. This latter reason would not have been a serious difficulty, were it not for the fact that on our border, we have the state of Pakistan. But the core of the problem with people who think like Madhok is the problem of how to Indianize the minorities. All his suggestions appear to lead to one definite conclusion that he identifies Indianization with Hindu Aryan culture. As Romila Thapar maintains:

Implicit in Madhok's concept of Indianization is the idea that Hindu Aryan culture is the norm to which all communities in India must approximate. The choice of this particular brand of Hindu culture, even within the framework of Hinduism is questionable, since it does not by any means represent the totality of Hindu culture. Also implicit in Madhok's concept is that the two groups which require Indianizing are the Muslims and the Communists since they are both described as having extra-territorial loyalty (to the Is-

lamic world in one case and to the socialist world in the other), and perhaps because they both exclude Hindu culture as being necessary for Indian citizenship. Interestingly enough these sections of the book evoke memories of the attack on the Communists and the Jews in *Mein Kampf*.⁷

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Nearly a third of the Indian population lies below this line and these people are the ones that need urgent uplift. It is the law that must set the norms and apply the means to rectify this deeply unjust situation.

I would also like to draw the attention at the conclusion of this paper to clauses that were drawn up by a small committee before the conclusion of a seminar on "Minorities in Nation Building" that was held in March 1970 at the India International Centre, New Delhi. The committee was of the view that the following clauses should be inserted into the relevant Acts; and that they are meant to prevent communal disturbances and protect the fundamental rights of minorities:

Indian Penal Code—Section 153(A)

Whoever:

- (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes, or attempts to promote, on grounds of *place of birth*, religion, race, language, caste or community or any other ground whatsoever feelings of enmity or hatred between different religious, racial or language groups or castes or communities, or
- (aa) impugns or questions or attempts to negate or deny the right of any such group or caste or community as is referred to in clause (a) above, to possess, exercise or enjoy the rights of Indian citizenship, or
- (aaa) advocates use of violence against any such group, caste or community as is referred to in clause (a) above, or
- (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial or language groups or castes or communities and which disturbs or is likely to disturb the public tranquillity, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Representation of the People Act, 1951—Section 123(A)

The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of place of birth, religion, race, caste, community, or language, or impugns or questions the right of any such classes of citizens to possess, exercise or enjoy the rights of Indian citizenship or

advocates the use of violence against any such class of citizens, by a candidate or his agent or any other persons 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.

Section 125

Promoting enmity between classes in connection with election. Any person who in connection with an election under this Act promotes or attempts to promote on grounds of place of birth, religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India, or impugns or questions the right of any such class of citizens to possess, exercise or enjoy the rights of Indian citizenship or advocates genocide against any such class of citizens, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Danial Latifi has also made the suggestion that:

Section 9 of the Citizenship Act (making loss of citizenship subject to executive determination) must be repealed; that India should ask the United Nations under article 55(c), 59 and 68 of the Charter to appoint a permanent international vigilance commission to watch the status and condition of minorities in Pakistan. As a token of our own bona fides, India should offer to submit to similar inspection the status and conditions of minorities in India. The Commission should consist of representatives of friendly countries acceptable to both India and Pakistan; and that Section 144 of the Code of Criminal Procedure should be amended to empower the central government throughout India permanently to prohibit within 50 metres of notified places of religious worship processions or gatherings of antagonistic religious denominations or persons."

As important is the implementation of the laws already in existence. While the privileges extended to the Scheduled Castes and Tribes should be maintained, it is rank injustice on the part of the government to deny the same facilities to the economically backward groups among the Muslim, the Christian, and other minorities. It is evident that the basis for the justification of such

temporary advantages should be the economic and social factors. Affiliation to a religious denomination should be a secondary and minor consideration.

In a secular state, the law must give equal protection to all citizens and guarantee the fundamental rights of every citizen, whatever his religious beliefs. Guidance in the matter of seeking the universal good should be sought from the norm of the integral development of man and the complete humanization of society. Within the scope of these objectives, there is every possibility of finding universal agreement and the unanimous consent essential for the law-giver to frame and implement his laws especially in a pluralistic society.