

Article-wise Provisions in Religion related Issues

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Abstract

Commenting on the clause of Article 25 which, while giving maximum freedom of religion to individuals, empowers the state to regulate secular activities which may be connected with religion and to introduce reforms within Hinduism, C.H. Alexandrowitz called it "A revolution in the traditional conception of religion in India because it enabled the state to carry out an extensive programme of disentanglement of religious and secular activities, and the rejection of the "wall of separation" doctrine to enable the state to carry out welfare and reform measures in fact expresses the concern with genuine secularization. Often in Political parlance, secularism in India has been described as Sarva Dharma Sambhav or equal regard for all religions; this has been translated as the theory of equidistance from religion. This theory was propounded by Radhakrishnan commenting on the Hindi rendering of secularism as Dharma-nirpekshata.

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Introduction

Mrs. Gandhi thought it was inaccurate and it meant in India equal support for all religions. However according to P.C. Chatterjee the equidistance theory is not to be found in the constitution. Some people cite Article 15 and 16 which guarantee equal protection of the law for all citizens and indicator of equal treatment theory. However, these articles state precisely that it is individuals who are to be treated as equal; there is no reference to neither religion nor its teachings. Secondly, no definition of religion is propounded in article 25 of the constitution. Thirdly, in the absence of such a definition no precise idea can be given of the phrase "distance from religion". It becomes even more difficult to talk of "equal distance" from state which all religions are supposed to enjoy. For the latter two reasons the equidistance theory can give no guidance to secularists on how they should deal with problem which arise, the theory is sterile. The Article only empowers the state to initiate reforms in Hinduism and to throw open Hindu temples to Harijans. Indeed pursuant to this article untouchability has been legally abolished (Vide Article 17) However, it means that other communities can indulge in or continue with their traditional practices which are contrary to human dignity or otherwise reprehensible. So, it is evident that the state is religious; it is softer to Islam, Christianity and Zoroastrianism than it is to Hindus. The Sangh Parivar holds the implication of this article an instance of appeasement to minorities, a token of pseudo-secularism: How can the Hindus tolerate that whereas its religion is full of evils and inequities the religious of the minorities are perfect, requiring no 'reform'?

Again, the fact that whereas Sikhs can carry Kirpans under article 25(1) but others cannot do without license shows that the constitution discriminates in favour of followers of one particular religion. However, K. M. Munshi thought that article 25 gave a sufficient power to regulate semi or quasi-religious activities and introduce reforms even for minority communities; As he said, "If a religious practice followed so far covers a secular activity, or falls within the field of social

reform or social welfare, it would be open to parliament to make laws about it without infringing the fundamental right of the minority". The state has hitherto tried to exercise its power of regulation to prevent violation of morality and rules of health in the name of religion like the Devdasi system or Sati in-humanity or refusal to take small pox vaccination. If, on an epidemic of plague, shines are put under total control or, for reasons of good order, religious procession and prayers are severely restricted, Caesar prevails over God. Management of religious places can also be checked, in the name of public order, to prevent criminals and crimes, arms and unlawful assemblies. Mis-appropriation of religious funds, mis-management of shrines and other evils are within the state's power to curb. Article 26, which guarantees corporate freedom of religion to religious denomination refers only "matters of religion", thus the state can regulate secular activities of religious institutions. This has led too many legal quibbling with regard to the demarcating religious from secular activities etc. Article 27, which prohibits levying of any tax for the promotion of a particular religion, is contradicted by Article 290 (A), which provides for a definite sum of money to be paid to 'Devasiwam' funds of the states of Kerala and Madras (presently, Tamil Nadu) from the treasuries of these state.

D.E Smith argues that Article 27 prohibits taxation for the promotion of any particular religion. Non-discriminatory taxes for the promotion of all religions would be, on this interpretation, quite constitutional. Whatever the intention of the article, the state since independence has been precisely doing that: trying to support all religions under the garb of ingenious interpretation of Sarva Dharma Sambhav, even though the Hindi rendering of the constitution describes it as Panth-Nirpekshata. Indeed to make matter worse confounded an attempt was made in 1993 to introduce an amendment in Article 28(A) defining secularism as 'equal respect' for all religious". However, under pressure, Narashimha Rao government withdrew the Bill. The expression "show respect for" doesn't convey any precise meanings. As P.C Chatterjee puts it what is the cash value, as William James might have

asked, of the phrase, show respect for something like religion. Contradictory way by accepting or even by rejecting any particular teaching of religion. There is another problem. How is equal respect to be computed? Do we have to take the size of the religious community into account or is it irrelevant? For e.g. in deference to Hindu lobby cow slaughter was banned (Vide article 48) but this ban was given a secular character, namely the organization of agriculture and animal husbandry on modern scientific lines. Nehru had to threaten resignation in order to have this ban a secular basis. He also opposes Dr. Rajendra Prasad, who wanted a general ban. It may be argued that the ban on cow slaughter is no more Brahmanical than Article 47, which includes a directive about prohibition on the consumption of intoxicants. But how should we show equal respect to the Islamic prohibition of Pork? To add another complication, what is to be done to respect the Jain sentiment against taking life in any forms, including insect life. The question is, is it possible for the state to meet the aspirations of each religions community equally? Leaving aside the question of what the phrase 'all religions' denote (are tribal faiths and villages cults included?) It should be obvious that for the state to have equal respect for all religions can only mean that governments will get more deeply entangled in communal disputes, subsidizing the observance of religious devotions, repairing places of worship and so on. This would do irreparable damage to the states effectiveness as a secular institution. Indeed, whereas the religion in the United States means Christianity, plurality of faiths in India warrants that the shape in India pull away from the religious concerns of the people even more strictly than in America. Justice Hobset Suresh says that such an approach will ultimately result in one religion, perhaps, the majority religion being more equal than others. Secularism should not mean Sarvadharm Sambhava or that the state will manage all religions equally, but that the state shall not interfere in matters of religion (Panth-Nirpeksha is described in the preamble to the constitution) If any practice of religion affects the interests of public order, health or morality, the state can interfere. Otherwise every citizen has right to freedom of conscience and religion. That there shall be no politics in religion, just as there shall be no religions in politics. Justice K. Ramaswamy in the same judgment appears to be on a stronger footing on the interpretation of secularism. He is of the view that secularism has both negative and positive contents. The negative part is that it leaves a person free to profess, practice and propagate religion. The positive part is that the state has not only to be neutral in matters of religion but opt out for rationality with a view to making the nation and the individual prosperous and happy. Justice Sawant, speaking for himself and for Mr. Justice Kuldip Singh, mentions in some detail Mr. M.C. Sitalwad's exposition of secularism, in particular its materialistic nature, and then goes on to say that whatever the attitudes towards religion, religious sects and religious denominations religion cannot be mixed up with the secular activity of this state.

Earlier, in the 1970's the Supreme Court of the Ahmadabad St. Xavier's College Vs. State of Gujarat had clearly expressed the secular character of the state thus: Secularism is neither anti-God, nor Pro-God; it treats alike the devout, the agnostic and the atheist. It eliminates God from the matters of the state and ensures that no one shall be discriminated against on the ground of religion. The constitution at the same been expressly guarantees freedom of conscience and the right freely to

profess, practice and propagate religion. The constitution makers were conscious of the deep attachment the vast masses of our country had towards religion, and religion had on their minds and the in their country and significant role it played in their lives. To allay all apprehension of interference by the legislature and the executive in matters of religion, the rights mentioned in Article 25 to 30 were made a part of the fundamental right and religious freedom contained in those Articles was guaranteed by the constitution. Historian A.R. Desai says, the government has defined secularism in a very pernicious and cunning manner. Secularism does not mean that religion is a private affair of the individual in a society where the morality is based on norms derived from the interests of this world solely on the criteria of considerations of human beings as the supreme value; secularism is equated to a positive respect for all religions, faiths and active involvement of the state in stimulating a climate, promoting rationality founded on sacred and super-natural sanctions." But the question is : how the state committed to equal respect for all religions should act if different religions and sects within religion's prescribe diverse, contradictory, discriminatory and unequal and opposite prescriptions of beliefs and practices and generate conflicting institutional forms and social rituals, founded in injustice and discrimination against other groups and citizens? Moreover, how the value systems and practices of atheists, agnostics materialists are to respect when religion and ritualistic practices which offend their sensibilities are allowed to be publicly performed in the name of respect for all religions. A.R. Desai further says that if various preaching and practices, various legal norms and social institutional and cultural values and public practices of the state and the ruling classes are carefully scrutinized, they clearly indicate that social and ruling class have systematically, both through enactments and social practices and propaganda, violated the principle of the equality of citizens based on the morality of the equal worth of human being. For instance, a large array of personal laws exist for different communities based on religious dogmas which are fundamentally discriminatory and humiliating to vast sections of citizens including even the believers in the faiths. The state itself has evolved Sadhu Samaj and organized Bhajan Mandals. It has allowed airing and viewing of religious functions, epic serials, even though these violate article 28 because it prohibits religious instruction by an educational institution wholly founded by state. The electronic media may be looked upon as countrywide educational institution fully under the control of government. It has also stimulated, participated in and, by spending enormous amounts of money, accelerated the spread of religious values, practices, rituals, festivals, sacrifices 'havans' 'Kathas' and musical recitals and other artistic and cultural activities which spread a religious climate.

"The state and the ruling class have actively encouraged the religious superstitions, discriminatory, iniquitous, hostility generating and contradictory cultural norms and practices by permitting, patronizing, idolizing and generating a specific messianic God man aura around proliferating salesman of religious spiritual values, who are elaborating costly contradictory and confusing practices and institutions. The state and the ruling class are also helping to build a new holy aura around the heads of various traditional religious establishments in the form of Math, Devasthanas and sects belonging to various categories".

The state is continuously involved in activities, inviting criticism that it is promoting one or other religion, maintaining law and order, providing sanitary arrangements, controlling communal riots etc. Indian courts have made a distinction between helping persons belonging a particular religion on the one hand, and promoting that religion on the other. Religion is so prevailing in Indian life that, if the state were to adopt a strictly “hands-off” approach, it would fail in its primary duty of protection of life and liberty of its citizens, let alone carry out welfare measures. The Courts have also confirmed that if the states help to individuals or communities is given in pursuance of its duties as a welfare state, it does not undermine the secular character, even when the aid is provided only to a particular religious community. They have also upheld the building of places of worships which have been damaged in communal riots. Strangely enough, state’s duties in semi-religious and secular activities of religion and its reformist role are subject to criticism from both angles. On the one hand, there are copy-book secularists who insist that state has no business to associate itself with religion in any way. Smith says that the Devasthan departments under a commission existing in many states engaged in such work as-renovating the temples, improving the religious environment of various temples, arranging various religious festivals and religious discourses, publishing religious book and even arranging for the training of priests in Agamas. Surely, when the state undertakes reconstruction of places of worships, it offends the spirit of secularism.

Let us now examine some of the court cases to see how the courts view this involvement of the state in quasi-religious affairs of religious institutions including the power of the state to introduce measures of social welfare and reform. Thus the no-establishment’ neither clause nor the ‘free exercise clause promotes any social evil or social injustice associated with religion by requiring religion to be left alone. In the Madras High Court it was argued on behalf of the petitioner that the Madras Religious and Charitable Endowments Act 1951, which authorized secular supervision, administration of endowed property, breach the wall of separation between state and Church. It was contended that the law on the subject under the Indian Constitution was the same as under American Constitution. The Madras High Court could have disposed of this argument by drawing attention to Article 26 (d) which authorizes governmental supervision in the administration of religious endowments. The court held that the principle of wall of separation as enshrined in the United States constitution has not been incorporated in to in India constitution only in Article 27 and 28 (1) which respectively prohibit levy of taxes to promote any particular religion or religious denomination, and imparting of religious instruction in educational institutions maintained out of state funds. The court rightly held that the impugned law did not establish Hindu religion. In another case (Ankara Versus govt. of Andhra-Pradesh). The director of town planting prepared a plan to acquire private property in order to provide more amenities to the pilgrims visiting the Sri Venkateswar temple at Tirupati and to eliminate insanitary conditions so as to prevent epidemics. The owners of the property challenged it and argued that as the purpose of the proposed acquisition was extension of the part of the temple, it cut at the very concept of a secular state. The court held that the proposed acquisition was to prevent epidemics and

maintain orderliness. The state cannot refuse to perform its ordinary duty merely because crowds have gathered there for the purpose of offering worship in a temple. The court however avoided the embarrassing question: How to distinguish the interests of the shrine and of the pilgrims. The verdict, in effect, left scope for the government to patronize or promote any religion of its choice. For construct or extend a place of worship of any community is to promote religion of that community. The temple is endowed with enormous funds and did not need any financial assistance from the state and yet the court had held that not only mere acquisition of land for the temple but also contribution of the part of compensation by the government as in tune with Indian secularism. It is generally contended that Indian notion of secularism intends to promote of patronize almost all religious without any discrimination. This is certainly incongruous with the constitution makers’ intent. Pt. Lakshmi Kant Maitra had said in Constituent Assembly “the state is not going to establish, patronize, or endow any religion”.

The presumption of the counsel and the court in this case that only levy of a compulsory religious tax by the state would attract article 27 reduces the Article to a teasing illusion. If interpreted thus, Article 27 would permit maintenance or promotion of religion either through utilization of general resources of the state or levy of fees, which is different from tax. Now this is really preposterous and would be off tangent with secular ideals. The Supreme Court needs to interpret Article 27 so as to prevent any state aid to religion. The dichotomy between theory and practice of secularism also flows from the absence of appropriate definition or delineation of religion in the court. The Indian Supreme Court has said that predication of religion on the Supreme being would deny protection of Article 25 to Buddhism and Jainism Following the United States court the Bombay High Court had accepted the interpretation, but the Supreme Court of India struck down this narrow definition of religion; Again, rejecting the American Supreme Courts interpretation of belief-practice dichotomy that former is absolute latter subject to limitations the Indian Supreme Court agreeing with the Australian High Court has said that religious practices were also entitled to protection. It pointed out that Article 25 also guarantee free practice of religion. Freedom of religion must promote not only freedom of belief but also freedom of expression. It would promote and strengthen secularism. The Indian Supreme Court has classified religious practices into essential and non-essential practices to deny constitutional protection to the latter. This has evoked mixed reaction: some hold it reasonable, others do not. In Lakshmindra case, which dealt with the validity of the Madras Hindu Religious and Charitable Endowments Act, the court rejected the argument of the Attorney General that secular activities associated with religion were amenable to state regulations they were not essential part of religion and held that ceremonies and rituals entailing expenditure like food offerings to the idol, oblation to the sacred fire and the recitation of sacred texts, might be treated as part of Hinduism if its tenets prescribed them. So, we can say that Indian Constitution have sufficient provisions to keep diversity safe.

Reerences

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