

INDIA INEVITABLY A SOCIALIST AND SECULAR NATION.

Shantanu pachahara*

Socialist and secular nature of the Indian Constitution is the backbone of our country as for a nation like India which had been a colony of British for more than 200 years should definitely take care of its citizen from cradle to grave and should ensure that fraternity should also prevail among different religious cultures. The framers of the constitution believed in a socialist pattern of society and also supported secularism. With the addition of the words socialist and secular the implied meaning has become expressed.

Introduction

India is the land of vibrant colours, diverse socio-economic cultures and religions. Looking from a bird's eye view in to the history of India, inferences can be made of unity in diversity. Initiating from Indus valley civilization the earliest civilizations that flourished in India where men and women were given equal opportunities in various fields i.e. political, economic, education etc.; Vedic period, who were majorly Aryans and used to worship the five elements of nature, further in time they also introduced the caste system in India that is Brahmins, Kshatriya, Vaishyas and Shudras. Initially they were based on occupation but later became hereditary. In sixth century BC, also called the period of religious unrest there was a tremendous growth of Buddhism and Jainism which introduced a new religious culture in India under the Magadha and Mauryan Empire. The advent of Islamic rule introduced another new religion "Islam" in India. In 1498, it was Vasco-da Gama, a Portuguese sailor who first discovered a sea route to India and arrived at Calicut on 27th may 1498 followed by the Dutch in 1595 and lastly the English in 1608, introducing Christianity in India. India is a nation where different cultures and religions co-exists since time immemorial and has evolved in each other's presence.

India was considered a wealthy nation in respect of natural resources, indigenous knowledge and economic status before the foreign discovered India and started trading, which gradually led to the rule of British in India. British exploited India's natural resources and human resources which culminated in poverty and low economic status. The subjugation of India for two hundred years as a colony of British started with a group of capitalist and thus the Indian thinkers considered socialist pattern of society more suitable to eradicate poverty and social inequality. The political influential personnel especially Mr. Jawaharlal Nehru was of the opinion of socialist state as he believed in egalitarianism. The vulnerable state in respect of infrastructural development, lack of investors and agrarian economy of the nation also pointed towards the indispensable need of socialist pattern of society.

Indian freedom struggle started in 19th century and by that time India already started to face the problem of poverty and illiteracy. It was in the year 1946 after all the freedom struggle the task of framing the Constitution of India was given to the constituent Assembly and Dr Rajendra Prasad was elected as the President of the Constituent Assembly. In the year 1949 on 26th of November the Constitution was adopted stating India in its preamble as a 'Sovereign Democratic Republic' with socialist and secular agenda but in the year 1976 by the 42nd amendment the words "Socialist" and "Secular" were added to the Preamble and what was implicit was made explicit.

India A Socialist And Secular State

The word socialism has been defined by Oxford Dictionary as a political and economic theory of social organization which advocates that the means of production and distribution, and exchange should be owned or regulated by the State as a whole¹.

*Student, K.L.E Law College Bangalore.

The philosophy underlying our Constitution, we must look back into the historic Objectives Resolution of Pandit Nehru which was adopted by the Constituent Assembly on January 22, 1947², in which he stated that the realization of so many objectives would certainly mean an expansion of the function of the State. The goal envisaged by the Constitution, therefore, is that of a ‘Welfare State’³ and the establishment of a ‘socialist state’. At the Avadi session in 1955, Congress explained this objective as establishing a ‘socialistic pattern of society’ by a resolution. He moreover stated that “In order to realise the object of Congress. . . and to further the objectives stated in the Preamble and Directive Principles of State Policy of the Constitution of India, planning should take place with a view to the establishment of a *socialistic* pattern of society, where the principle means of production are under social ownership or control, production is progressively speeded up and there is equitable distribution of the national wealth.”

It is thus the word socialist in the preamble to the constitution holds a different meaning, the term “socialist” has been bought in the constitution to establish an egalitarian social order through rule of law as its basic structure⁴ and the distribution of the material resources of the community in such a way as to subserve the common good⁵.

It was held in *Minerva mills Ltd v. U.O.I.*⁶, socialism is to crystallise a socialist state securing to its people socio-economic justice by the interplay of the fundamental rights and the directive principles.

¹ Hornby AS, Oxford Advanced Learners Dictionary, Oxford University Press, (8th ed.)

² (1947) C.A.D. 304 (moved by Pandit Jawaharlal Nehru on December 13, 1946)

³ Cf. *Crown Aluminum Works v. Workmen*, (1958) S.C.R. 651

⁴ *Air India Statutory Corpn. V. United Labour Union* (1997) 9 SCC 377

⁵ *State of Karnataka v. Ranganatha Reddy* (1997) 4 SCC 471

⁶ *Minerva mills Ltd v. U.O.I* (1980) 2 SCC 591

In the landmark judgement *D.S. Nakara v. U.O.I.*⁷, SC held that democratic socialism achieves socio-economic revolution to end poverty, ignorance, disease and inequality of opportunity. “The basic framework of socialism is to provide a decent standard of life to the working people and specially provide security from cradle to grave.” The principal aim of a socialist state, the Supreme Court held, was to eliminate inequality in income and status and standard of life.⁸The preamble read with Article 14⁹, 15¹⁰, 16¹¹, 38¹², 39(d)¹³, 42¹⁴, 43¹⁵, 46¹⁶ and 48A¹⁷ clearly signifies the socialist nature of the Indian constitution.

In *Sanjeev Coke Manufacturing Co. v Bharat Coking Coal Ltd*¹⁸ reiterates the same goal while upholding the constitutionality of the Coking Coal Mines (Nationalisation) Act 1972. The court observed in this case that there is no warrant for interpreting the expression “material resources of the community” in a narrow fashion only to mean resources belonging to the State. It means all things which are capable of producing wealth for the community. The expression involves no dichotomy. The words must be understood in the context of the

⁷ *D.S. Nakara v. U.O.I.* (1983) 1 SCC 305

⁸ *G.B. Pant University of Agr. & technology v. State of U.P.*, AIR 2000 SC 2695; *Samatha v. State of A.P.*, AIR 1997 SC 3297.

⁹ Article 14 states Equality before law.

¹⁰ Article 15 states Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

¹¹ Article 16 states Equality of opportunity in matters of public employment.

¹² Article 38 states State to secure social order for the promotion of welfare of the people.

¹³ Article 39(d) states that there is equal pay for equal work for men and women

¹⁴ Article 42 states provisions for just and humane conditions of work and maternity relief.

¹⁵ Article 43 states about the living wage etc. for workers

¹⁶ Article 46 states promotion of educational and economic interest of schedule castes, schedule tribes and other weaker sections

¹⁷ Article 48A states protection and improvement of environment and safeguarding of forests and Wild life.

¹⁸ *Sanjeev Coke Manufacturing Co. v Bharat Coking Coal Ltd* (1983) 1 SCC 147.

constitutional goal of establishing a sovereign, socialist, secular, democratic republic.

It is pertinent to note that in *Atam Prakash v. State of Haryana*¹⁹, it was understood that the inclusion of the word socialist is a beacon to guide and inspire all that is established in the articles of the constitution that is to establish a throbbing socialist welfare society.

It is to be noted that there are a plethora of cases where the word socialism has been interpreted and what they all hold in common is to provide equal justice & opportunity for everyone.²⁰

Socialism, public collective ownership or control of the basic means of production, distribution and exchange, with the avowed aim of operating for use rather than for profit, and of assuring to each member of society an equitable share of goods, services, and welfare benefits: as a system of social and economic organization planned, attempted or achieved through various methods.²¹

Socialism is more than just a word; it is a principal with the aim of achieving a common objective of not just empathizing with the poor and underprivileged but also sharing the goods of life with them equally. It is in the protection of these underprivileged that the word socialist should be held in the Constitution of India.

¹⁹ *Atam Prakash v. State of Haryana* (1986) 2 SCC 249.

²⁰ *G.B. Pant University of Agriculture of Technology v. U.P.*, (2000) 7 SCC 109; *Secretary, H.S.E.B. v. Suresh*, (1999) 3 SCC 601; *Sanjeev Coke Mfs Co. v. Bharat Coal Ltd.*, (1983) 1 SCC 147; *Ashoka Kumar v. U.O.I.*, (2008) 6 SCC 1.

²¹ Webster's comprehensive Dictionary, Encyclopaedic Edition, Trident Press International, 2003 ed. Pg 1191

The words “socialist” and “secular” are also ambiguous words which do not have a definite meaning. These words are an anachronism in the Constitution of India and were explicitly avoided by the founding fathers of the constitution. Although the Government had no intension or motive for invalidating the 42nd Amendment Act, nevertheless the Government has all the authority to do the same. The argument against an unlimited amending power was based on the fear that if such power were conceded, other fundamental rights, or valuable features of the constitution, would be in peril. This argument was met by saying in the words of the Privy Council, that the fear of abuse of power was not an argument against its existence.²²

The preamble to the constitution is the lone star and guides those who find themselves in a grey area while dealing with its provisions and if the preamble itself will have such ambiguous terms that means something else literally but has transpired through judicial interpretation in catena of cases, making it difficult for the general public to comprehend the intent of the preamble which is made for ‘we the people of India’, claiming what we are, will erode it of its own purpose of being for the people and by the people of India.

They are simply repetition of the ideals already present in other parts of the constitution as the preamble secures to all the citizens of India –
Justice- social, economic, and political

²² Bank of Toronto v. Lambe (1887) 12 App. Cas. 575, 586; All,-Gen. for Ontario v. All.-Ggggen. For Canada (1912) A.C. 571, 582

The expression “economic justice” means justice from the standpoint of economic force. In short it means equal pay for equal work, that every person should get his just dues for his labour, irrespective of his caste, sex, or social status.

Moving to the word secular, the general meaning of the word “*secularism*” is the doctrine that rejects or is not concerned with religion. The word secularism was entered to guard against any possibility of misunderstanding or misapprehension and to have a very clear description of the State and if it would not have been inserted then it would do injustice & inequality to the citizens of the country which boasts itself to be microcosm of the world and is sanctuary to all major religions of the world. This concept of secularism is to give assurance to the minority that their rights are protected.

In the case of *M. Ismail Faruqui v. U.O.I.*²³ the concept of secularism is explained, as it is clear from the constitutional scheme that it guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasizing that there is no religion of the State itself.

At another instance in *St. Xavier College v. State of Gujarat*²⁴, it was held that secularism is which eliminates God from the matters of the state and ensures that no one shall be discriminated against on the ground of religion.

²³ *M. Ismail Faruqui v. U.O.I.* 1994 (6) SCC 360

²⁴ *St. Xavier College v. State of Gujarat* 1974 (1) SCC 717

Secular state means non-religious and not irreligious state²⁵, and in the realm of philosophy, is a system of utilitarian ethics, seeking to maximize human happiness or welfare quite independently of what may be either religious or the occult²⁶. It is difficult to define a secular state. But the main characteristics of a secular state as pointed out by M.C. Setalvad are ‘ the basic ideas would seem to be freedom of religion for the individual, the exclusive by the state of all considerations based on religion in dealing with the citizens, and the non-recognition by the state of any particular religion of the state’.²⁷ If we examine the relevant provisions of the Constitution in the light of this criterion we may respectfully conclude with Setalvad that the Indian State possesses important characteristics of a secular state²⁸. The state and religion exist side by side. The different religions are like various daughters of the mother state who is rigidly impartial and free from discrimination. Secondly the different religions also co-exist inter se, hand in hand under the congenial canopy of the constitution.

Moreover, one of the key objectives of our constitution is to create a secular state. The concept of secularism runs through the entire fabric of our constitution. With a view to eschew communalism and orthodoxy of certain powerful factions in the country the constitution seeks to maintain complete religious neutrality and refuses to recognise superiority of race and colour, and seeks to achieve toleration and social justice by doing away with untouchability and hegemony of powerful religious groups²⁹.

²⁵ Perunchithirana v. State of Tamil Nadu AIR 1986 Mad. 83,86 (A-15)

²⁶ Ziyuddin Burhanuddin Bukhari v. Brijmohan Ramdas Mehra AIR 1975 SC 1788: (1976) 2 SCC 17

²⁷ M.C. Setalvad, My Life, 556

²⁸ Ibid 557.

²⁹ Basu Durga Das, Shorter Constitution of India, 14th Ed., Lexis Nexis Butterworths Wadhwa (Nagpur 2012) Vol. 1 & 2

The founding fathers of the constitution were aware of the evils of the theocratic and communal polity which dominate many of the modern states in the world and so introduced the concept of secularism in the constitution. ‘Secularism’, though not defined in the constitution, ordinarily means a way of life which does not recognise superiority of race, creed or colour. In the words of Dr. Ambedkar, “it does not mean that we shall not take into consideration the religious sentiments of the people. All that a secular state means is that parliament shall not be competent to impose any particular religion upon the rest of the people”. That is the only limitation the constitution recognises³⁰

It is further observed that, Pluralism is the keynote of Indian culture and religious tolerance is the bedrock of Indian secularism. It is based on the belief that all religions are equally good and efficacious pathways to perfection of God realisation. It stands for complex interpretative process in which there is a transcendence of religion and yet there is a unification of multiple religions. It provides a sense of security to the followers of all religions and ensures full civil liberties, constitutional rights and equal opportunities.³¹

The word secularism used in the preamble of the constitution is reflected in the provision contained in Article 25-30 and part IVA added to the constitution containing Article-51-A prescribing fundamental duties of the citizens. It has to be understood on the basis of more than 50 years of experience of the working of the constitution. The complete neutrality towards religion and apathy of all kinds of religious teachings in institutions of the State have not helped in

³⁰ Parliamentary Debates, 1951, vol. III, part II.

³¹ Valsamma Paul v Cochin University AIR 1996 SC 1011; 1996 AIR SCW 492; 1996 Lab IC 919;(1996)3 SCC 545.

removing mutual misunderstanding and intolerance inter se between sections of people of different religions, faiths and beliefs. Secularism therefore is susceptible to a positive meaning that is developing understanding and respect towards different religions. The essence of secularism is non-discrimination of people by the state on the basis of religious differences. Secularism can be practiced by adopting a complete neutral approach towards religions or by appositive approach by making one section of religious people to understand and respect religion and faith of another section of people. Based on such mutual understanding and respect for each other's religious faith, mutual distrust and intolerance can gradually be eliminated.³² Therefore the word secularism has colossal role to play in shaping the face of the Indian Polity without submerging religion into it.

It is argued that secularism was not thought fit to be made a part of the preamble in 1949.³³ However, It cannot be ignored that secularism now is explicit and in a definite form. The meaning, context, scope and parameters of this basic feature of the constitution have been lead down in an authoritative manner by the Supreme Court in a number of decisions of which Bommai is truly the leading one. In this landmark judgement S.R. Bommai v. U.O.I.³⁴ the word secularism was defined as the freedom of religion which is guaranteed by the constitution only permits the free pursuit of spiritual life as distinct from secular life. Secularism, thus, prohibits any encroachment of religion in to political activities and prohibits any citizen from mixing religion into a political activity such as election.

³² Aruna Roy v. Union of India, (2002) 7 SCC 368; Bakshi's The Law Lexicon , Ashoka Law House 2nd K end 2008

³³ J.M Shelat, Secularism: Principles and Application 82.

³⁴ S.R. Bommai v. U.O.I. (1994) 3 SCC 1.

The States will treat all religion and religious groups equally and with equal respect without in any manner interfering with their individual rights of religion, faith and worship³⁵ and the preamble read with articles 14³⁶, 15³⁷, 25³⁸, 26³⁹, 27⁴⁰, 28⁴¹, clearly elucidates the secular character of the Indian constitution

It is tendered that secular is defined as that, which is of or pertaining to this world or the present life; temporal; worldly: contrasted with religious or spiritual; not concerned with religion; not sacred.⁴² Not spiritual, relating to affairs of the present world (in seculo)⁴³ Worldly, as distinguished from spiritual⁴⁴ also opposed to spiritual or holy; things of the world⁴⁵. In another sense secularism denotes a system of social ethics propounded by Holyoake of a Great Britain. The essence of this ethics is that it is based solely on considerations of practical morality. It is an ethical movement negating religion. It is a theory of life which ignores future life. Thus secularism and religion are not hostile but are mutually exclusive⁴⁶.

³⁵ Bal Patil v. Union of India, (2005) 6 SCC 690: AIR 2005 SC 3172.

³⁶ Article 14 states Equality before law.

³⁷ Article 15 states Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

³⁸ Article 25 states Freedom of conscience and free profession, practice and propagation of religion.

³⁹ Article 26 states Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right.

⁴⁰ Article 27 states Freedom as to payment of taxes for promotion of any particular religion.

⁴¹ Article 28 states Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

⁴² Webster's Comprehensive Dictionary, Encyclopaedic Edition, Trident Press International, (2003 Ed.). Pg 1138

⁴³ Wharton's Law Lexicon, Universal Law Publishing Co. (15TH Ed.) Pg-1568

⁴⁴ Black's Law Dictionary, Bryan A. Garner 9th Ed.

⁴⁵ Aiyar P. Ramanatha, The Law Lexicon (3th ed., 2012); Allen v. Deming, 40 Am. Dec. 179

⁴⁶ Encyclopaedia of Religion and Ethics (1920) Vol. 11. (Page 41)

Hence whatever we may owe to the other constitutions, the place occupied by religion *vis a vis* the state in the Indian constitution, is essentially a product of the pristine Indian culture whose sine qua non is compromise, co-ordinative and co-existence. The constitution has created India into a sovereign Democratic Republic. It nowhere states that India is a secular state. By Art.25 it reserves to the states the power to regulate or restricts a secular activity which may be associated with religious practice. The term state is defined in Art.12 to include the government and all local and other authorities. The terms secular or religion are not defined in the constitution. Secular means anything distinct from or not connected with religion, temporal.⁴⁷

It is to be observed that India is an Ancient nation with spiritual sanctity in every aspects of people's life. There are more than 40 official holidays in name of religious festivals, both in government as well as private offices, schools etc., Bhagwat Geeta, Quran, Bible and other scriptures are copiously quoted in judgments in the courts, personal laws are based on the religious text books of the people like Hindu Marriage Act, 1955, Wakf Act, etc....thus to declare that India as a nation is secular and is worldly but not spiritual is misrepresenting it in all the ways, it is like unloading the crown of sanctity and philosophies that it had carried with itself surpassing the ages. Moreover our Constitution protects the right of a religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes and manage its own affairs in the matters of religion as well as to acquire movable and immovable property and administer such property according to law⁴⁸. In India the state looks upon religion with benevolent neutrality. In other words the state follows a policy

⁴⁷ Encyclopaedia Britannica (1950) Vol. 20

⁴⁸ Commr., HRE Madras v Lakshmindra Teertha Swamiar AIR 1954 SC 282 ; 1954 SCR 1005

of non-alignment in respect of all religions. That is why Dr. Radhakrishnan says that “The religious impartiality” of the Indian state is not to be confused with secularism or atheism.

There are systems across the globe whose constitutions were designed on secular lines, but they receded into medievalism and became representatives of this or that religious formation. This itself is one of the glowing achievements of Indian democracy when her neighbours, such as Pakistan, Bangladesh, Sri Lanka (Ceylon) and Burma, uphold particular religions as State religions.⁴⁹

It is pertinent to consider the view of Dr. Durga Das Basu, the leading commenter of the Constitution who while commenting on this newly inserted word says that “juristically, the word ‘secularism’ is quite vague. Instead of clarifying the meaning of the provisions contained in Arts 25-28, the insertion of the word ‘secular’ has made the position more confusing. Little improvement will be effected by inserting this non-technical word in the preamble”⁵⁰

Lastly, the Indian constitution has been amended so many times till now and when the 42nd amendment took place in the year 1976, the situation was very sensitive, as emergency was being proclaimed by Indira Gandhi but after that there were other governments who came in power but no question of amending the preamble never came up as the preamble after the 42nd amendment reflects the constitution perfectly.

⁴⁹ Islam is the State religion of Pakistan under the Constitution of 1972. This position had been maintained by the Provisional Constitution Order, 1981, issued by General Zia-ul-Haq, who assumed power in 1977 as the Chief Martial Law Administrator. In Bangladesh, Lieut. General Ershad, the President and Chief Martial Law Administrator declared that Islam would be the State religion [Statesman, 30-12-1982].

⁵⁰ Basu D.D., Commentary on the Constitution of India, 8th ed., Vol. 1 (Art. 1 to 14); Vol 2 (Art. 14 to 19) and Vol. 3 (Art. 20 to 51A).

Conclusion

The words 'Secular' and 'Socialist' are superfluous and controversial but when read with part III and IV of the Constitution displays a noble and grand vision and also spells out expressly the high ideas of socialism and secularism which are already embedded in our constitution under part III and IV of the constitution and it is an order in which, man would be restored to his natural rights and enjoy equal opportunity and his life will no longer be regulated by artificial barriers, customs and conventions and that these words are the breath of the nation and it is our desired goal and that is why, it must be preserved and well protected at any cost.