

NOTIONS OF INDIAN SECULARISM: WHERE DO WE LIE?

Pranshu Gupta¹

INTRODUCTION

Secularism has always been a contentious topic of debate, with no clear conception of it being provided for in the Indian Constitution. Thus, to gain a holistic understanding of its relevance in the domain of Constitutional law it becomes essential to go through the Constituent Assembly debates with respect to the discussions and deliberations on the issue of secularism and religious minority rights. The question that emerged was what should be the nature of secularism to be established in a country like India. As per scholars, the [two major categories](#) of secularism are the “no-concern” and “equal-respect” theories of secularism. Under the ‘no-concern’ theory, there needs to be a strict separation between the state and religion, wherein religion must be limited to the private sphere and the state should have nothing to do with it. The state has to establish a direct link between itself and the citizens weakening all other loyalties and commitments such as religion, replacing it with ‘nationalism’. This required narrowing the practice of religion to private religious worship. On the other hand, the ‘equal respect’ theory entailed that people ought to be granted religious liberty along with the state respecting all the religions alike. Under this conception of secularism, the right to religion was defined as the right to practice religion rather than the narrow right to religious worship, as religion was for most Indians their identity which they found a ‘way of life’. Thus, the conception of secularism as enshrined in the Constitution under Article 25 inclined more towards this approach. This conception of secularism paved the way to yet another dispute with respect to the rights of religious and linguistic minorities to establish educational institutions of their own. There were disagreements as if the cultural and educational rights are extended to religious minorities, this would not keep with the secular character of the state and would pave the way to communalism and would threaten national unity. However, the right was finally granted after much deliberation under Article 29 and 30 of the Constitution. Apart from the above, the most debated issue in the Constituent Assembly with respect to the secular nature of the Constitution is the provision of political safeguards to minorities, including religious minorities in terms of affirmative action and separate electorates. After much deliberations and discussions, bills and reports being moved and subsequently rejected in the assembly, it was finally decided that religious minorities will not be granted separate electorates and affirmative action under the Constitution due to fears of communalism and separatism, which will be discussed elaborately in the next section. This article shall deal with two questions, the first one being whether the categorization of secularism into “no-concern” and “equal respect” relevant in post-Independence India, and will it be helpful in understanding the current debates on secularism? Secondly, whether a secular state based on the concept of “equal respect” should besides defining religion broadly, provide political safeguards to religious minorities as well? Would this prevent the nation from becoming a ‘Hindu rashtra’ or this added provision could worsen the situation for democracy in India? It becomes pertinent to respond to these inter-

¹ NALSAR, HYDERABAD

linked questions taking into account Constituent Assembly debates and current debates associated with religion and minority rights.

ANALYSIS

With respect to the contention on provision of political safeguards to religious minorities such as affirmative action and separate electorates, there is a need to look back at the [debates](#) that went on in the Constituent Assembly on this issue and what led the framers to drop this idea from the Constitution. In the early discussions, it was felt that there is a need to provide political, economic, educational, cultural safeguards to minorities at the centre as well as provinces. For this purpose, not only the scheduled castes and tribes, but the religious minorities were also being proposed to benefit from separate electorates and reservation in ministries, legislative bodies, civil, judicial and military services, educational and employment sectors. It was felt that the administration of India would be in the hands of the Hindus and the majority would dominate the interests of the minorities. Thus, equal citizenship through provision of political safeguards was a *sine qua non*. However, after extensive discussions and deliberations, it was decided by the members of the Constituent Assembly that political safeguards would not be provided to religious minorities. It was submitted by the [Advisory Committee](#) that introduction of separate electorates would lead to an aggravation of communal differences resulting in the rise of tendencies of separatism or partition. This was in the backdrop of partition, where the causes of it were [attributed to](#) the Hindu-Muslim divide created by the British Empire and aggravating it through introducing separate electorates in 1909 for Muslims and further creating division through separate electorates in 1935 for Sikhs and Christians. On July, 1947 discussions took place in the Sub-Committee with the Muslim League with respect to political safeguards. The demand for reservation in government services and ministries and the question of separate electorates were given up. Under the instructions of Maulana Azad the non-Muslim League members decided not to push for reservations. Also, separate electorates led to the rise of Muslim League especially in influential Muslim-majority provinces of Punjab and Bengal. The makers of the Constitution rather [felt the need](#) to provide political safeguards to scheduled castes and tribes than to Muslims. However, Constitution makers came up with an alternate safeguard to protect the interests of the religious and linguistic minorities in terms of Article 29 and 30 of the Indian Constitution, wherein linguistic and religious minorities shall have the right to preserve their culture and language; and establish and administer educational institutions of their own and would be entitled to state aid as any other educational body. This right was granted owing to two major justifications-

Counter- Majoritarian Justification- At a time when there was a huge exodus of Muslims from India to Pakistan, it was crystal clear that the majority could now subsume or dominate the interests of the vulnerable minority community.

Historical Justification- As no provision for separate electorates and affirmative action under Article 15 and 16 of the Constitution were provided for the religious minorities, it became essential to protect their interests in some other way.

Thus, it was a practical compromise that was made at that time as seeking Muslim reservation in all three spheres would also mean gateway to partition and communalism.

However, with respect to the current scenario of Muslims in India, the [Sachar Committee report](#) published in 2006 has proved that the condition of Muslim community in India is deplorable in social, economic and educational sectors. In terms of education, the literacy rate of Muslims is deplorably low, i.e., 59.1% as compared to the national average of 65.1%. Also, the attendance rates, school dropout rates, matriculation rates etc. are abysmally poor. In terms of employment in high levels of bureaucracy (such as IAS), police service, armed forces and other governmental positions, Muslims constitute a miniscule percentage of the total intake. Salaried Muslim workers have a lower participation both in public and private sector, with their salaries being relatively low. Also, there is a higher rate of unemployment in Muslim graduates as compared to other socio-religious groups. Thus, it is evidently clear that there emerged a need in the post-Independence era to provide educational and employment related safeguards to the Muslim minority. A [number of states](#) have included Muslims under the Other Backward Classes (OBC) category to claim reservation. Though it has not been welcomed readily by some states and the issue still remains controversial, with the fear that the Hindu right wing may see it as another example of appeasement and further mobilise opinion against the minority community. They may find it an example of the State's deviation from the principles of secularism. However, with regard to the current situation of Muslims in the country, this is a much needed step to put the downtrodden sections of the society on an equal footing to ensure substantive equality, not just formal. In January, 2019, a few months before the Lok Sabha elections, a [bill](#) was tabled in the Parliament to introduce 10% reservations for economically backward communities in the general category, which based upon the statistics, is going to benefit the Muslim community by a great margin. Also, going by its strictest sense, the Muslim religion as a whole has not been granted reservation in these states, some communities under the religion who are socially and educationally disadvantaged have now been granted its benefits under the OBC category, which has no religious basis. Drawing a comparison, it is discernible that even OBC communities were not provided any safeguards in the original text of the Constitution. However, when such need was realised, Mandal Commission came into play and [recommended](#) certain safeguards. Looking back, the notions of secularism of the drafters of the Constitution were coupled with the genuine apprehensions of communalism and further partition, if political safeguards are provided to religious minorities. The circumstances of that time forced them to opt for a position of compromise wherein political safeguards were traded-off for cultural and education rights under Article 29 and 30 to religious minorities, taking into account the notions of plurality Indian society was endowed with. This is also coupled with the fact that they failed to realise that the elite Muslim communities have already fled to Pakistan, leaving the poor and vulnerable ones behind. Thus, the bona-fide intentions with which the conceptions of secularism the original Constitution was based upon have to be interpreted in such a manner that it meets the true spirit of democracy.

Coming over to the notions of secularism of the current government with respect to the debate on minority institutions such as Jamia Millia Islamia (JMI) and Aligarh Muslim University (AMU), it is clearly deviating from the notions of secularism and acting in a rather biased manner. The current government is changing the prevailing official policy on minority status of JMI and AMU. The earlier UPA government went into an appeal against the decision in Naresh Agarwal (2005) of the Allahabad High Court which denied minority status to AMU. On the other hand, the current government has not only withdrawn the appeal but also filed an affidavit declaring AMU as a non-minority institution. It has also gone [against](#) the UPA government's stand in the Delhi High Court where the National Council for

Minority Educational Institutions (NCMEI) recognised JMI as a minority institution. Other instances where the anti-secular character of the current government can be seen is the recent introduction of CAA-NRC which *prima facie* indicates a differential treatment to one particular religious community (i.e., the Muslims), change of Islamic names of various cities and sites to Hindu centric names, condonation of various ministers for making communal remarks, violence against Muslims etc.

CONCLUSION

In light of the above discussion, it is crystal clear that there can be no single conception of secularism which can be attributed to the nature of our Constitution. The conception in the minds of the framers of the Constitution was dependent upon the circumstances prevailing at that point of time which was justified in its context. However, as time passes by, the State needs to evolve itself and correct the injustices which either develop over time, or were innocuously neglected when the law was drafted. Therefore, the present day State needs to come up with the ideal notion of secularism, which political theorist Rajeev Bhargava has termed '[principled distance](#)' approach, wherein the state should neither be completely indifferent towards religion, nor it should control all the aspects of it; it ought to keep an arm's length, no matter what. The state should make active steps towards exterminating inter or even intra religious domination from the society. The State should allow a particular religious group to practice their religion with a certain degree of autonomy. But when the practice or belief of the group comes in conflict with the secular constitutional rights which favour personal liberty or ideas of equality, then the state should be able to intervene. Therefore, in matters of putting every member of the society on an equal footing the state should enact laws, doesn't matter which community they may belong to. Also, they should abstain from taking away rights granted under the Constitution which till date are necessary for the establishment of true democracy.