

Freedom of Religion and the Secular State

■ Dr. M.N. Buch

The official religion of the United Kingdom is Christianity as represented by the Church of England, of which the monarch is the head. Despite that in its laws, in the administration of justice and in the manner in which the country is governed the United Kingdom can be deemed to be a secular State. Article VI of the US Constitution categorically states that no religious test shall ever be required as a qualification to any office or a public trust under the United States. This despite the fact that, by and large, America considers itself to be a Christian country. The secular character of the United States is further reinforced by Amendment I of the Constitution whereby the Congress may not make any law respecting an establishment of a religion or prohibiting the free exercise thereof. In other words, State and Church are totally separated in that country.

The Constitution of India in its Preamble declares India to be a Sovereign Socialist Secular Democratic Republic whose citizens have Liberty of thought, expression, belief, faith and worship. Article 25 gives every citizen freedom of conscience and free profession, practice and propagation of religion. At the same time Article 14 mandates equality before law and Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Whereas Article 26 gives every religious denomination the right to establish, maintain and manage institutions for religious and charitable purposes, Article 29 protects the rights of minorities, each such community being defined as having a distinct language, script or culture of its own. Article 30 confers on religious and linguistic minorities the right to establish and administer their own educational institutions. Our Constitution goes beyond that of the United States in that it recognises that there are minorities which might, under certain circumstances, require the special protection of the State. The historical reason for this is that at the time of partition more Muslims opted to remain in India than go to Pakistan and, because the atmosphere was tense because partition had taken place on account of the religious separatism of the protagonists of Pakistan, we needed to give a special helping hand to the Muslims to reassure them that India was very much their country and would extend to them the full protection of law. That is the reason why Articles 29 and 30 are included in the Constitution.

The separation of Church and State as a hallmark of secularism dates back in Britain to the mid 12th Century A.D. when Henry II Plantagenet ruled Britain. He decided to separate the church, which took orders from the Pope and governed its own affairs through its own set of laws, from the State, which governed through temporal laws. Accordingly he enunciated the Constitutions of Clarendon of which Sir Winston Churchill in his book, A History of English Speaking Peoples. Volume 1, Book 2, Chapter 2 writes “By the Constitutions of Clarendon he (Henry II Plantagenet) sought to fix the relationship of Church and State and to force the Church in its temporal character to submit itself to the life and law of the nation”. In a secular state, therefore, a single set of laws shall govern the country in which as per the provisions of Article 14 of the Constitution everyone is equal before law. Neither age, nor sex, nor race, nor caste, nor domicile, nor religious belief will be a factor in considering the case of a person who seeks adjudication, nor deprive a citizen of equal access to and benefit from any legal or administrative plans and programmes of the State. It is in this context that we need to examine how the special provisions for the minorities in the chapter on Fundamental Rights fit into the guiding principles of the Constitution. There needs to be a debate on the provisions of the Constitution which create these special rights for certain groups of people, thus recognising that perhaps some concessions are justified to people who form a religious or linguistic minority.

Let us begin with Article 25 which is reproduced in extenso

Article 25. Freedom of conscience and free profession, practice and propagation of religion—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation 1— The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II – In Sub-clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and reference to Hindu religious institutions shall be construed accordingly.”

The Article is unexceptionable in clause 1 and clause 2(a). However, clause 2(b) permits the State to legislate for providing social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes or sections of Hindus. Explanation 2 states that reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jains or Buddhist religion and reference to Hindu religious institutions shall be construed accordingly. This sub-clause perhaps has no place in the Constitution of a secular nation because it virtually declares that only Hindu religious institutions call for reform, whereas institutions belonging to the Islamic, Christian, Jewish, etc., faith are so perfect or so inviolate that they call for no reform and in any case Parliament is not empowered to legislate for such reform. It would have been better if Parliament were constitutionally empowered to legislate for reform of institutions belonging to any religion or denomination.

Article 30 gives the right to minorities to establish and administer educational institutions. This places such institutions above the normal operation of law in that whereas under Article 28 educational institutions wholly maintained by State funds are prohibited to impart any religious instructions whatsoever, in a minority run institution the management can decide on who will be admitted to pursue a course of studies, it can deny admission to a student at will, it can compulsorily impart religious education and it can generally go against the spirit of the Constitution in which secularism, equality of opportunity and prohibition of discrimination on any account are the norm. Let us take the example of the Aligarh Muslim University, whose Vice Chancellor has ordered that women students of the university studying in the Women’s College will not be allowed to use the facilities of the Maulana Azad Library, which is the central library of the university. Article 15 very clearly prohibits any discrimination on grounds of sex. Nothing in Article 30 overrules this provision of the Constitution. Article 51A (e) confers on every citizen the Fundamental Duty to renounce practices derogatory to the dignity of women. Depriving access to the university library to a student on account of sex is, therefore, in violation of Article 15 and 51 A (e). The Vice Chancellor has pleaded that the presence of girls in the library will attract boys, accommodation in the library is limited and this will put undue pressure on the available space. That a person who is a Vice Chancellor and a retired Lieutenant General of the Indian Army can even put forward this argument in a secular State is shocking beyond words.

This brings us to the status of the Aligarh Muslim University, which was recognised as a minority institution under Article 30 by Arjun Singh as Minister for Human Resource Development. This was subsequently repeated in the case of the Jamia Millia Islamia. Both universities, incidentally, are central universities, fully paid for by the Central Government and equal in status to other central universities. What is more, under Entry 63 of List 1 of the 7th Schedule the Benares Hindu University, the Aligarh Muslim University, Delhi University and any other institution declared from time to time by law of Parliament to be an institution of national importance shall be such an institution. A central university which is also an institution of national importance cannot also be a minority institution. The two are a contradiction in terms. For example the Shankaracharya Peeth at Sringeri, Dar-ul-Uloom Deoband and the Akal Takht at Amritsar are all institutions belonging to a particular religion or denomination. They can never be declared to be institutions of national importance. Even historically Aligarh Muslim University owes its origin to Sir Sayyed Ahmed who set up the Aligarh Anglo Vernacular School and College. This institution was opposed tooth and nail by orthodox

Muslims, but Sir Sayyed Ahmed firmid believed in education as the driving force for the development and growth of any community and, therefore, he went ahead with his programme. This eventually became the Aligarh Muslim University, Muslim in name but secular in fact. The Departments of Science, Law, Medicine and History, etc., of Aligarh Muslim University have gained renown for their teaching methodology and for their academic excellence. Benares Hindu University is Hindu in name but totally secular in character. The BHU Institute of Technology has been converted into an IIT and even today in chemical engineering is considered the best in India. Like Aligarh Muslim University, Benares Hindu University also attained heights of academic excellence, not because it was Hindu but because it was aggressively and secularly academic. Aligarh Muslim University is the loser because it has tried to restrict itself to an Islamic mould ever since it was recognised as a minority institution.

Pakistan's weakness is that it has reversed the Constitutions of Clarendon and tried to bring religion and politics on the same platform. Religion is an article of individual faith and is animate, whereas a theocratic State or an Islamic Jumhuriya is a contradiction in terms because the State is inanimate and inanimate objects cannot have a religion. Therefore, the interpretation of a theocratic State inevitably becomes one in which either the country consists of people who are entirely of one faith, or people of the faith by which the State calls itself are considered superior and entitled to positive discrimination in their favour at the cost of all other citizens. It is only in a secular State that all people can be equal. Is Aligarh Muslim University trying to promote inequality for some and preferential treatment for others? This is totally prohibited in the secular republic which is India. The other side of the coin is Hindutva, or aggressive pushing of an agenda in which cultural hegemony is sought to be established to the benefit of the majority community. The Chairman of the Indian Council of Historical Research, Dr. Rao, has argued that Hindu is only a geographical term applied to people living to the east of the Indus or Sindhu River. One can live with this, but how can a cultural identity or a religious identity emerge out of a terminology the origins of which are geographical? In other words, is not Hindutva another way of putting it that ultimately it is the Hindu faith which is paramount in India and that everyone is subsumed in at least the cultural concept of Hindutva? This, too, flies in the face of the clear cut provisions of the Constitution which mandate that this country is a secular State. To the extent that RSS or the VHP promote the concept of Hindutva, which is a thinly disguised attempt to promote a religion under the cloak of a cultural identity, they also fly in the face of the provisions of the Constitution which make India a secular republic.

India is the largest Hindu country in the world, the largest Sikh country in the world, the second largest Islamic country in the world and it has more than two and a half crore Christians, who form a sizeable minority. Buddhists, Jains, Sikhs, Parsees all live in harmony in this country. Any effort to disturb the secular equilibrium of the country immediately affects peace and harmony and this can never be permitted. Therefore, it is the responsibility of government and the people to ensure that the secular balance of the country is maintained, that Aligarh Muslim University is saved from its own idiocy and the Hindutva agenda is kept firmly in check.
