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With this thought, we hereby present to you

LEX BONA FIDE: LAW JOURNAL

THE SOCIALIS SECULAR DEBATE

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INTRODUCTION

Advocates Balram Singh, Karunesh Kumar Shukla and an individual Pravesh Kumar have moved the Supreme Court with their PIL seeking the removal of the words ‘socialist’ and ‘secular’ from the Indian constitution, deeming them “antithetical to the constitutional tenets as well as the historical and cultural theme of India”.

THE ARGUMENT

As quoted by The Wire, “The move was “per se illegal for violating the concept of freedom of speech and expression enumerated in Article 19(1) (a) of the Constitution and the right to freedom of religion guaranteed under Article 25 of the Constitution,” it said.”

They further strengthen their stand by claiming that the amendment wasn’t in tune with the historical and cultural theme of “the great republic of Bharat, the oldest civilization of the world, having a clear concept of ‘Dharma’ different from the concept of religion,” they contest that the ‘communist’ theory of the state doesn’t apply the Indian conditions and fails to accommodate the religious and socio-economic landscape of the country.

The petition also challenges the inclusion of the term secular and socialist in section 29A (5) of the Representation of People (RP) Act “that makes it compulsory for the political parties, applying for registration before Election Commission of India,” to make specific provision in its memorandum or rules and regulations that the association or body shall bear true faith and allegiance to the Constitution of India as by law established and to the principles of ‘Socialism’ and ‘Secularism’ and democracy and would uphold the sovereignty and integrity of India.” They argue that the above-mentioned terms apply to the nature of a republic and should not be applied to private citizens, social organizations and political parties.

The petition raised a lot of eyebrows among the academia of the nation, but this petition shouldn’t be completely written off as baseless or conservative. A careful reading of the historical background is necessary before arriving at any conclusion.

CONSTITUENT ASSEMBLY, November 1948

Professor KT Shah on 15 November 1948 had demanded the inclusion of the word Secular in the Preamble.

“Sir, I beg to move, that in clause (1) of Article 1, after the words ‘shall be a’ the words ‘Secular, Federalist, Socialist’ be included. The amended article or clause shall read as follows: ‘India shall be a Secular, Federalist, Socialist, Union of States’,”.

The debate and deliberation following the motion, led to India adopting a secular nature but the word itself was dropped from the Preamble. In the ensuing discourse, while the members agreed on the nature of the Indian state adhering to secular principles, the word ‘secular’ was dropped from the preamble. A critical analysis of the ensuing debates

us as to why the term which Nehru considered a crucial mark of modernity wasn’t included.

Secularism, in its purest form, was not apt for the Indian conditions. It considered religion to be a part of a citizen’s personal affair hence; there should not be any state interference in the same.

LoknathMisra on 6 December 1948, had mentioned in a debate

“Do we believe that religion can be divorced from life, or is it our belief that amid many religions we cannot decide which one to accept? If religion is beyond the ken of our State, let us clearly say so and delete all reference to rights relating to religion,”

Nehru and Ambedkar were well aware of this and even after being ardent supporters of a secular state, weren’t keen on its inclusion. As secularism called for the separation of state from the religion, the government will have no jurisdiction whatsoever to meddle in the affairs of any religion, no matter how backward or oppressing the practices might be. Ambedkar argued that it was futile to include the term secular as the *entire Constitution embodied the concept of a secular state, which meant non-discrimination on grounds of religion and equal rights and status to all citizens.*

Hence, to facilitate social change and to ensure the ideals of democracy are upheld, secularism was engraved in the constitution by the insertion of **Articles 25** (Freedom of conscience and free profession, practice and propagation of religion), **Article 26** (Freedom to manage religious affairs Subject to public order, morality and health), **Article 27**(Freedom as to payment of taxes for promotion of any particular religion).

As far as the term ‘socialist’ is considered, its best argument has been provided by Dr BR Ambedkar. He considers its inclusion against “the very grain of democracy”, as the constitution should not decide what kind of society the citizens

“It is perfectly possible today, for the majority of people to hold that the socialist organization of society is better than the capitalist organization of society. But it would be perfectly possible for thinking people to devise some other form of social organization which might be better than

the socialist organization of today or tomorrow. I do not see therefore why the Constitution should tie down the people to live in a particular form and not leave it to the people themselves to decide it for themselves,”

Hence, in the final draft of the Indian constitution, these two words were left out.

42nd AMENDMENT

Post the declaration of emergency, PM Indira Gandhi, introduced several amendments, which strengthened the position of the parliament over the other organs of the government, a phase which was later on described as the darkest hour of Indian democracy. Among the changes, the 42nd amendment introduced the words secular and socialist were in the Indian Constitution. Over the years, few explanations have been offered to justify the addition of the words that it was done *to reassure the nation that minorities would be safe and the moneyed class would not dominate the economy*

Constitutional expert SubhashKashyap said:

“The word ‘socialist’ was added to send a message politically that she stood for the poor. The word ‘secular’ was meant for the minorities in the context of the birth control programmes of the emergency period. It was not as if the Constitution was not secular or socialist before the words were added. India has been secular before the 42nd Amendment and continues to be secular after it.” “It was merely playing politics,”

1973’s landmark Kesavananda Bharti case laid down the concept of the Basic Structure of the Indian constitution. The doctrine, in other words, already contained within it the principles of secularism and socialism. But Indira Gandhi in an attempt to establish parliamentary supremacy over the judiciary found it necessary to amend the Constitution to make those two ideas part of the preamble. Another explanation offered was that the government during the emergency period had undermined civil and political liberties and this was her attempt to showcase her allegiance to the aforementioned ideals.

ANALYSIS

The case filed in the Supreme Court regarding the removal of the words ‘secular’ and ‘socialist’, seems to carry considerable weight. Looking back onto facts, we can ascertain that the constitution-makers had their apprehensions about the words and inclusion of them in 1976 can be read as appeasement policy by the Indira government. But while analyzing the historical facts, it is also essential to take into account contemporary situations. Addition of the two words is not the ‘death of democracy’ as put by a few academics. If read with proper caution and understanding and making provisions exclusively for the Indian landscape, these two words could have provided further meaning to Indian democracy.

Considering the word ‘socialist’, it in its true essence has not been implemented in India and mixed economy has served the purpose quite well. As far as my personal opinions are concerned, inclusion or removal of this particular word doesn’t change much in society. Rather being socialist or not, should be a person, organizations, or a political party’s own choice and not be made compulsory by the constitution. This at the same does not relieve people of their social responsibilities.

Coming to ‘secular’, Nehru had expressed discontent over the misuse of the word during the constituent assembly debates. As we established earlier, secularism, as practised in the west, is not suitable for the Indian scenario. An Indian form of secularism which invites some extent of state intervention in religious affairs seems much more relevant. In a nation as diverse as India, the word ‘secular’ cannot be read in a single dimension and carries with it certain other connotations which need to be taken into account while deciding for the same. As far as my personal opinion is concerned, the keeping of the word in the preamble in its Indian form wouldn’t cause any damage, but a removal in such polarized and volatile situation can lead to further rifts and fear being spread in the society.

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