

Is India a Secular State?

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You hear these claims constantly: "India is a secular state", "All religions are equal before Indian law", "Mahatma Gandhi believed in secularism", "First PM Jawaharlal Nehru made secularism into law", "The Constitution espouses secularism." It is also implied in another evergreen phrase: "The secular state in India is threatened by the rise of Hindu nationalism." This is being said or written by the immense majority of the authors on the subject of India & Religion, both academics and journalists.

Yet, like the immense majority of Copernicus' contemporaries who believed in geocentrism, they are wrong. They display a factual ignorance about the state of secularism in India, both in law and in fact. A survey of the relevant political incidents would substantiate this too, but for now it would take us way too far; so we will only mention a few cases by way of example to what the cited texts can lead. For now, we will limit ourselves to a study of the most basic text: the relevant articles of the Constitution. This will already establish beyond any doubt that in its very fundamentals, India is not a secular state.

This is a taboo subject on which practically no academic papers are published. Some awareness of them was already present in Iyer 2021, and as this written version goes to the press, the news comes in that finally a book thematizing it has appeared, detailing the discriminations involved: Ranganathan 2023. But the present paper has not been able to draw on earlier publications.

The preamble to the Constitution

On many occasions when either the Constitution or the principle of Secularism comes into focus, Indian newspapers remind us that India was declared a

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"Sovereign Socialist Secular Democratic Republic", datelined 26 November 1949. In reality, it had been declared a "Sovereign Democratic Republic" on that date, and the words "Socialist Secular" were only inserted into the preamble of the Constitution on 3 January 1977 by the 42nd Amendment. This took place under Indira Gandhi's Emergency dictatorship and without parliamentary debate. These words are procedurally the least democratic part of the Constitution.

Those critical of the present Constitution often claim that Dr. Bhimrao Ramji Ambedkar, chairman of the Constitution Committee, had rejected the term "secular". We have not been able to ascertain that in the source documents. At most we would say that similar grounds apply as for his effective rejection of the insertion of the twin word "socialism".

As Gauri Fatangare writes (2020): "Dr. B.R. Ambedkar had clearly stated the reasons why the words should not be included in the Preamble. According to him, the word 'socialist' is against the very grain of democracy, to decide in the Constitution what kind of society the people of India should live in. He also said that there was no need to include the word 'secular' as the entire Constitution embodied the concept of secular state, which meant non-discrimination on grounds of religion and equal rights and status to all citizens."

Though himself convinced that Socialism was the way forward and India needed it, he said in the Constitution Committee: "But it would be perfectly possible for thinking people to devise some other form of social organisation which might be better than the socialist organisation of today or of 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." (quoted in Fatangare 2020)

He thought a decision about the ideological guideline adopted by the state should be the privilege of future

generations whenever such a choice comes up. So, he reasoned, let's not burden their freedom of choice with a confinement of the Indian polity to a "socialist" ideological course.

Without much arguing, he also took a dismissive stance on including the term secularism. Yet this deference to the choice of future generations is not the reason here, on the contrary. The whole structure of the Constitution is so immersed in secularism, Ambedkar said, that there is no need to articulate it explicitly,-- nor are future generations invited to make their own choice about it, at least as long as they abide by this Constitution and therefore willy-nilly observe the secularism effectively infused into it by the Constituent Assembly.

Another argument given *post factum* against the inclusion of the word "secularism" is that it is poorly defined: "Indian eminent jurist HM Seervai criticizes the act of adding these words to the Preamble as these words were ambiguous and should not have been inserted in the Preamble without reason." (Fatangare 2020, ref. to Seervai 1977)

For a clear definition of "secularism", we might turn to its continent of origin, Europe. But precisely that origin encumbers the word with historical connotations that conflict with India's experience:

"Unlike in the West, in India secularism was never born out of the conflict between the church or the temple and the State. It was rooted in India's own past history and culture. The whole Indian Constitution is based on the concept of secularism. India has adopted secularism of a unique and different nature. So, there was no need of inclusion of the word Secular in the Preamble. It's merely inviting the controversial debate and confusion. For all these reasons, Indian Constitution expert, DD Basu said that the insertion of these words was unwise, because, juristically, they are vague and confusing." (Fatangare 2020, ref. to Basu: 3)

In the case of a different meaning, it would be linguistically hygienic to use a different term. More in keeping with India's history would, for example, be the term "pluralism". It didn't take the experience of persecutions and religious wars to finally come up with (first the Peace of Westphalia to achieve a modicum of peace between Catholics and Protestants, and then) "secularism" as the remedy. Pluralism was a natural state of affairs: the Buddha, Basava and other religious reformers died peacefully in their beds at a high age, never threatened for their possible wrongthink. So rather than "secularism", the word "pluralism" would be a better approximation.

But this rerooting in native tradition was never tried. The Constitution adopted in 1949 was entirely of Western origin. To a large extent, it was an adaptation of the

British Government of India Act, and even otherwise, it is shot through with Western concepts (such as, according to Ambedkar, "liberty, equality, fraternity", the motto of the French Revolution) and local adaptations of Western precedents. Leading law scholar Rama Jois starts his hefty *Legal and Constitutional History of India* with hundreds of pages of ancient law from the *Dharma Śāstras*, yet neither he nor anyone else could show any presence of this indigenous legal tradition in the Constitution. Hindu Personal Law still contains a highly modernized version of these laws, but the Constitution does not.

Whether the word deserved to be included or not, most people who read the text of the Constitution naïvely think that either way, its over-all secular character is beyond doubt: "Similarly, the religious rights given to all citizens of India under Articles 25, 26, 27 and 28 surely implies the idea of secular state." (Fatangare 2020)

Note that even a law scholar assumes, like predecessor Ambedkar, along with most politicians, academic observers and journalists, that India legally satisfies the definition of a secular state. But the closer analysis that now follows will show that this reassuring reading is highly doubtful.

Article 15

As we just saw, both the fathers of the Constitution and recent jurists take for granted that the entire structure and approach is secular; and that there was no reason for repeating its secular character as that would be obvious enough. And yet, already in Art.15 of India's very long Constitution, we bump into a passage that makes this questionable.

Articles 12-35 of the Constitution determine "Fundamental Rights". They are enforceable: if you think they are not being implemented, you can take your grievance to Court. Article 15 of the Constitution stipulates the following:

"(15)(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

This seems to be the very expression of the secularist principle. We have no quarrel with it. Only, we will notice further on that this principle is hollowed out or plainly contradicted by other Constitutional stipulations. Moreover, the article itself already infringes on the secularism it has just espoused:

"(15)(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 [freedom of expression and association -- KE] shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the

Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.”

Here the discrimination against the Hindu section of the Indian population starts. Art.15 itself contains a reference to Art.30, which exempts minority schools from a number of requirements imposed on non-minority (now the administrative term in vogue for “Hindu”) schools. It is said here quite explicitly that certain rules count for all educational institutions, except for minority institutions.

Moreover, this affirms that the State is allowed to intervene in Hindu society’s internal customary law. Though caste distinctions generally persist after conversion out of Hinduism, the spokesmen for Christianity and Islam in the 1930s and 1940s declared that caste didn’t apply to their religious community, not just in their conversion propaganda but also in their official negotiations on legislation with the British c.q. Indian authorities. Today they do sometimes profit from caste-based reservations (those for non-religious categories, chiefly the Economically Weaker Sections and the Scheduled Tribes), but in principle “caste” presupposes “Hindu”; certainly in Art.15(5).

We see this from the Constitution on down to State and Municipal and even educational authorities: all kinds of reforms are imposed without consulting the Hindu community affected. By contrast, Muslims have their own inviolable Personal Law including elements that came up for reform in Hinduism long ago, e.g. child marriage and polygamy.

Art.25: conversion

“(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, practise and propagate religion. (...)”

“Propagate” was added against some Hindu and Parsi protest and with much Missionaries’ lobbying. (Goel 1989: ch.16) The immediate purpose was to safeguard the right to christianize that the Church missionaries had been sure of in the late colonial period. At the time when the Constitution was written, nearby China went through the final stage of the Civil War. Wherever territory was lost by the Nationalists (of whom few know just how Christian-dominated they were, with President Jiang Jieshi/Chiang Kai-shek being a convert), the entry of the Communists was marked by the demolition of the missionary apparatus, with exile for the missionaries still the best outcome. This was not likely to happen with the same thoroughness in India, but not impossible either.

Certainly a mere law prohibiting missionary activity was thinkable.

But there is a deeper Christian and un-Hindu bias in this article. It presupposes the Christian definition of religion as being a matter of individual conviction. Hindus and Parsis don’t have a tradition of propagating their religion or trying to convert anyone to it (though among the doctrinally-oriented, there sometimes was rivalry to convert the opponent to one’s own intra-Hindu sect/*sampradāya* through victory in debate). Some individual conversions to Hinduism do exist, mainly in cases of mixed marriages, where the convert immediately becomes a member of an existing Hindu family and community without affecting the religious landscape. Those cases are usually not controversial, another category is.

During the early 20th century, the *Ārya Samāj* sect of Hinduism practised conversion of entire communities from Islam to Hinduism. This process was called *Śuddhi*, “purification”. The Muslim community reacted with violence, killing some converts but especially Hindu leaders who presided over such conversions, most notably Swami Shraddhananda (co-founder of the *Hindū Mahāsabhā*, a political lobby-group and later a political party) in 1926; along with people who ideologically prepared the ground by writing criticisms of Islam, most notably Pandit Lekhram in 1897 and Mahashay Rajpal in 1927. By the 1930s, those conversions became rarer because of the price being paid, and when secularism came into vogue after Independence, even the *Ārya Samāj* itself didn’t pursue them anymore.

Note that within the landscape of Hindu sects, the *Ārya Samāj* stands out by showing a decisive influence from Protestant Christianity (Monotheist, Aniconic or even Iconoclastic, and Book-centred with demonization of “heretic” Books). This fosters the suspicion that the concern for converting can likewise be seen as an imitation of Christian practice.

In recent decades this *Śuddhi* has been revived as *Ghar Wāpasī*, “home-coming”, mainly by the Vishva Hindu Parishad (VHP). Some activists win the confidence of a community of Christians or Muslims, mostly recent converts from Hinduism who don’t seem too sure about their conversion. When they judge the time ripe, they conduct a mass ceremony in which the villagers re-embrace Hinduism. After the BJP’s election victory of 2014, secularists created a scandal atmosphere about BJP politicians allegedly supporting these conversion efforts, though they had never made any fuss about Christians openly pursuing conversions (so the party leadership, rather than defending Hindu equality regarding the right to convert, distanced itself from them).

But with or without the BJP, *Ghar Wāpasī*, while

marginal, has become a fact of life and amounts to a Hindu implementation of the “right to convert” sanctioned by the Constitution in Art.25 as a concession to a Christian demand. All the same, it remains far less central to Hinduism than “the Great Commission” (Jesus’ own instruction to his apostles to go and convert all humanity, reported in the Gospel according to Matthew 28:16-20) is to Christianity.

Parsis (Indian Mazdeans) don’t even accept converts. Today an imminent scenario of demographic disappearance is forcing Parsi priests to accept the Parsification of outsider marriage partners, but at the time when the Constitution was formulated, the rule was still enforced with strictness: mixed marriages result in the conversion of the Parsi partner to the outsider spouse’s religion. Outside India, especially among the large Persian community of Los Angeles or among the Kurds when ca. 2016 they expressed their disgust with the Caliphate army of ISIS, conversions to Mazdeism (at least among native Iranians) are an accepted practice. But in India, the difference between Hindus and Parsis on the one hand, and Muslims and Christians on the other, though smaller than at the time of the Constituent Assembly, remains a reality that an even-handed Constitution could have taken into account.

Article 25: Caste politics

“(25)(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law” [...or] “(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.”

Here the State again explicitly claims the right to interfere in Hindu life, not in that of the minorities as such. Under Mahatma Gandhi’s leadership of the Freedom Movement, temple entry for Dalits was often a flashpoint, a conflictual moment between upper and lower classes within Hinduism; but it was essentially voluntary. The Indian Republic has never equalled the United States in forcing social reform at gunpoint, but in less dramatic form it is essentially a similar situation. Contentwise, the social reform imposed by the State can generally be defended, but the reasonable and secular thing to do then is to extend the reform to all citizens regardless of community. Now the Indian Constitution affirms itself as unsecular.

Article 25: Definition of “Hindu”

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

This has been the case throughout the Anglosphere for decades. It is an application of the American type of secularism, where religious diversity is accepted and embraced by the State. Sikh turbans and Islamic face-veils have been integrated in police uniforms, as opposed to France, where representatives of State authority are forbidden from wearing any sign of their religious identity.

“Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.”

This follows the historical definition introduced by the first Muslim invaders who imported the word from Persia: a Hindu (until then only meaning “Indian”) is any Indian Pagan, any Indian who is not Muslim. Later it was refined into including “not Christian” when the existence of Indian Christians was realized, Christian “People of the Book” having a somewhat better status among Unbelievers than plain Pagans. This historical definition was essentially continued by the British, though in some respects they did carve out Sikhism as a separate religion.

The unhistorical and conspiratorial view of the secularists is that this inclusive definition of Hinduism is a Brahmin concoction: “assimilative communalism” in order to absorb non-Hindu sects into Hinduism. But it is simply a fact that Buddhists, Jains and Sikhs never had a distinctive law system outside Hindu law, as Dr. Ambedkar admitted. Yet when lobbying for their communal interests, the “Hindu minorities” (Jains, Buddhists, Sikhs, by now also Lingayats and others) are now increasingly upgraded to non-Hindu minorities.

Article 26: Freedom of religion

“Subject to public order, morality and health, every religious denomination or any section thereof shall have the right— (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (...)

“Freedom of conscience and free profession, practice and propagation of religion. (...) “Freedom to manage religious affairs.”

This is again the religion-friendly Anglo-Saxon version of “secularism”, ideally approaching the ancient Hindu idea of pluralism. It must be distinguished from the French religion-hostile definition of “secularism” (*laïcité*), which tries to protect society from religious interference; and which does play a role in other corners of the Constitution.

Article 27: Freedom from religion

“No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.”

Some religious purposes mingle with secular concerns like the promotion of tourism, the upkeep of heritage, and the safety of sites and pilgrims. The line between religion and heritage is often vague, in Europe (cathedrals are both places of worship and tourist destinations) as much as in India.

But at some point the line is clearly being crossed. For many years the state has lightened the airfare for the *Hajj* (pilgrimage to Mecca) by virtue of the Hajj Act of 1959, abolished in 2018. But this doesn't exist even in Islamic states and is against the sacrificial idea behind any pilgrimage. A devotee should feel some discomfort caused by the undertaking of a pilgrimage, from maintaining sexual abstinence to walking while kneeled, or at least from simply being on the way, separated from his usual occasions for sensual enjoyment and lucrative activity. For today's Muslims' forefathers, leaving Mumbai today to arrive in Mecca tomorrow was an unimaginable luxury; it is absurd to make this Hajj-light even lighter with taxpayers' money.

Apart from absurd, it is also unsecular, especially because to spend money on this, the State first has to levy taxes to collect this money, and these taxes are being paid by all citizens equally regardless of religious affiliation. Short, it forces non-Muslims to pay for the upkeep of Islam. Nonetheless, after the Hajj Act's abolition, this siphoning money from the general citizenry's to one community continues, but now the Minorities Ministry boasts that it is used for progressive purposes, like Muslim girls' education.

Article 28: Freedom from religion

“(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds. (...)”

“(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution (...)”

This is an element of the “French”, “irregular-Masonic” form of secularism: suspicious of and hostile to religion. An extreme development of this was the persecution of religion under Vladimir Lenin and Mao Zedong, a hard policy propagated by milder musings such as cosmonaut

Yuri Gagarin's inside view of heaven: “I looked and looked and looked but I didn't see God.” (To which Jackson 2023:94 comments: “Even the heavens become disenchanted through the secular epoch of modernity.”) But here the appropriateness of the term “secular” can be questioned, for persecution is obviously not a form of state neutrality. An intermediate form is what we see in China after Mao: toleration of religion but atheism as state ideology, mandatory for members of the ruling “vanguard party”. This can be compared to the old Muslim system of the *Dhimma*, “charter (of toleration)”, where the non-Muslims are tolerated as second-class citizens with limited access to power positions, but now with Atheism taking the place of Islam.

Scholars sympathetic to this guarded hostility towards religion redefine “secularism” as a system causing or supporting a decline of religion: “a separation between religion and state, a gradual decline of religious belief, and the adoption of religion as a matter of choice”. (Laliberté 2021:41) That certainly translates Jawaharlal Nehru's oft-expressed personal convictions fairly, but the Constitution is another matter. Except for the specific anti-Hindu bias discussed in this paper, secularism need not display a hostility to religion per se. Like in American secularism, it merely has to regulate a peaceful coexistence between the different religious denominations.

Article 29: Preserving one's identity

“(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.”

This satisfies the best version of the ancient Hindu idea of *non-violence* (as distinct from the extremist form rendered famous by Mahatma Gandhi): allowing all that exists to continue existing.

“(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.”

Now who could object to that? However...

Article 30: freedom of education

The bedrock of large-scale daily discrimination against Hinduism in the Constitution is Art.30.

“(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (...)”

“(2) The State shall not, in granting aid to educational institutions, discriminate against any educational

institution on the ground that it is under the management of a minority, whether based on religion or language.”

This says that we shouldn't discriminate against minorities, and that seems innocuous enough. (In fact, one wonders against which observed discrimination of minorities this assurance of non-discrimination is directed. For past centuries, what we know of is massive discriminations by the Christian and Muslim minorities where and when they were in power, against the Hindu majority.)

Against the Constituent Assembly's intention, this has become a crass discrimination against Hinduism. The text doesn't say that the non-minority (majority) is denied the rights guaranteed to the minorities, and it would be hard to imagine that the mostly Hindu Constitution-makers envisaged this discrimination. But it was gradually interpreted that way, with the tipping-point around 1970.

The Right to Education Act 2008 (introduced by a Congress-Communist majority in the Parliament) showed how far the deliberate choice for wilful discrimination against Hinduism has advanced. This law very visibly discriminates against Hindu schools. It forces them, but not minority schools, to take in 25% of non-paying pupils. As a consequence, hundreds of Hindu schools couldn't bear the financial burden anymore and have had to close down. Hardly a realization of the Act's stated objective: to make education more accessible.

On 20 April 1995, hard-line Muslim leader Syed Shahabuddin (whose petition to Rajiv Gandhi had demanded and triggered the ban on Salman Rushdie's book *The Satanic Verses*), proposed a Private Bill (Bill 1995/36) amending Art.30 of the Constitution replacing "minority" with "a section of Indian citizens". He justified this suppression of the "minority" concept by pointing out that every community can be a minority at some level, and can become or unbecome one, and it is absurd to change their civil rights because of this: "The majority community or any section thereof should also be allowed to establish or administer educational institutions of their choice."

Consequences

Those who pooh-pooh these findings might try to explain away the following consequences. A number of Hindu sects declare themselves non-Hindu to ward off this discrimination, hoping to get minority privileges and to protect themselves from the status of second-class citizens that befalls Hindus. This started with the Sri Aurobindo Society, still mostly for local and personal reasons. It proved easy to show that neither Sri Aurobindo nor his consort Mira Alfassa ever considered breaking away from Hinduism, so this was rejected in court.

More serious was the case of the Ramakrishna Mission, that was under pressure from the Communist-led Teachers' Union in Communist-ruled West-Bengal, which they thought they could only escape by taking on minority status. Here again it could be proven that founder Swami Vivekananda, author of the slogan: *Garvo se kaho ham Hindū hain*, "Say with pride: 'we are Hindu'", had never contemplated setting up a separate religion. (Argued by Swarup 1986) Again, the application for minority status was rejected in Court, definitively in 1995. (*Hinduism Today* 1995) But the first post-Communist State Government of West Bengal led by Mamata Banerjee assured the RK Mission that at least within the State it would be treated *de facto* as a minority.

Ever since, the Jains, all while falling in the Hindu category for Personal Law purposes, had their minority status confirmed by the Government (Congress) in January 2014. The *Vīrasaivas* or *Liṅgāyats* demanded minority status and had it acknowledged in their home state of Karnataka but rejected by the Central Government in 2018.

The Tribal community *Sarṣa* ("sacred grove") in Jharkhand in 2020 was recognized by the State's Legislative Assembly as a separate religion. A paradox is that this was strongly supported by the Christian Missionaries in order to nibble away at the numbers and status of Hinduism, but the *Sarṣa Dharma's* own reason to insist on a clear separate identity was precisely to better withstand the siege by those same Missionaries. Likewise *Donyi Polo* ("sun-moon") in Arunachal Pradesh and other tribal communities are courting local political and judicial authorities for a separate status, often motivated by the same concern for withstanding the well-funded and strategically savvy Missionary siege.

A second, non-legal reason, harder to quantify, is reputational: Hinduism is ever more disliked and of ever lower status. For the Tribals especially, it is more vogueish and entitling to a moral high ground to define themselves as "indigenous" and "tribal" (also implying "naturally ecologist") rather than associate yourself with Hinduism, a bogey to be hated with a perfectly good conscience. Hinduism's eagerly-quoted glorifications by Westerners in the 19th and 20th centuries have made way for high-pitched Hindu-bashing from academic pulpits, and this merely reflects (and is largely triggered by) an increasingly banalized disparagement of Hinduism in India itself. It is a sinking ship, so ever more rats want to leave it.

There is an analogous inequality regarding management of places of worship. It is far more diversified and juridically complex, depending on whether temples have a feudal history or not, were taken over under the British or after Independence, result from a legacy by

an individual or a community (which may even imply a stipulation that it is for the exclusive use by a caste, now illegal), was implied in a past corruption scandal (a handy justification for a take-over), or other circumstances. The authorities can't touch churches or mosques, but routinely nationalize or expropriate temples, or usurp their land. This is true for the BJP as much as for the other parties: whatever remains of pro-Hindu convictions in the party is no match for the attraction of loot.

This is a topic in its own right, here we merely draw attention to its similarity to the Constitutionally-determined discrimination in school management. It is, for all its complexities, indisputably a case of State-sanctioned discrimination against the Hindus.

Article 44: Uniform Civil Code

This article is part of the directive principles. These are a statement of intention but not enforceable through the Courts.

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

Not being a "fundamental right", merely a "directive principle", this article is without force. It is effectively a dead letter. No party will touch it, not even the present Hindu Nationalist government, in spite of old promises.

A Uniform Civil Code is not a Hindu but a secular demand. Premodern Hindu states didn't have it. They recognized legal differences at least between castes. Thus, a Brahmin could never get the death penalty, no matter what his crimes; but unlike other castes, he could get fined for mere public drunkenness, considering the danger that in a state of lowered self-control, he lampooned or dishonoured the very impactful treasure entrusted to him: the Vedic hymns.

By contrast, a defining trait of secular states is that all citizens regardless of religion are equal before the law. In the USA, a Church has a privileged status for fiscal purposes, but being a member of that Church brings no legal advantages or disadvantages. Yet, the effective "secularist" view in India is that the existence of separate law codes for Hindus (in the large sense), Muslims, Christians and Parsis are defensible and somehow secular. Those who oppose them (nominally the Hindu Nationalists) count as communalists out to deconstruct a privilege ("right") of the minorities.

Article 51: Fundamental duties

The fundamental duties together make up a single article of the Constitution, Article 51.

"A. It shall be the duty of every citizen of India—

"(a) to abide by the Constitution and respect its ideals

and institutions, the National Flag and the National Anthem; (...)"

The anthem was or is rejected by many Muslims because

1. Anthems are, strictly speaking, idolatrous per se, glorifying the State rather than God;
2. A far more common feeling among Muslims is that the formerly proposed anthem *Vande Mātaram* (aborted by Nehru) worships *Durgā*, or under her secular-sounding name, *Bhārat Mātā*. Even if really secular (like Marianne as a personification of the French Republic), she still personifies a mere State, a false god compared to Allah.
3. The present anthem *Jana Gana Mana* is crypto-idolatrous. While the first (and only official) stanza doesn't mention any deity and has often been misinterpreted as directed to human rulers like king George V, the ruler when the song was written, or first PM Jawaharlal Nehru, we have to wait till the third stanza to know who is really meant by the phrase *Jana gana mana adhināyak*, "commander of the people's minds": the "eternal charioteer", obviously *Kṛṣṇa*. But here no effective protest has emanated from the Muslim community, partly because they had already scored a success regarding *Vande Mātaram*, partly because the religious content of the term *Jana gana mana adhināyak* was not so clear.

"(c) to uphold and protect the sovereignty, unity and integrity of India; (...)"

Partition and Kashmiri separatism have given the Muslim community an odium of separatism. Episodes of Christian-supported separatism in the Northeast or of Missionary support to the erstwhile Dravidianist separatism in Tamil Nadu have given the Christians a similar odium, though much less emphatically.

"(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; (...)

"(f) to value and preserve the rich heritage of our composite culture;"

A key concept of Indian secularism is 'composite culture'. This term implies and is meant to imply that Muslim and Christian traditions are just as Indian as any Hindu heritage.

"(h) to develop the scientific temper, humanism and the spirit of inquiry and reform (...)"

This phrase was Nehru's subtle way of voicing his rejection of religion. Not that Christianity or Islam have anything to fear: this scientific enquiry is not directed against the metaphysical and arguably irrational dogmas

that define those belief systems. These are kept totally out of view, it counts as impolite or communalist if you even mention them. No, the full weight of this phrase's critical content is directed against Hinduism and the occasional deadwood of some doctrines or habits of its many sects.

However, if we take the concept of "scientific temper" seriously, we find, with the 18th/19th-century Enlightenment freethinkers, that Christianity and likewise Islam suffer from serious flaws in their credibility. Hinduism will have to shed some of its historical outgrowths, but Christianity and Islam are harmed in their essence. Christianity since the 18th century and Islam mostly since the turn of the millennium have been and are losing members who have explored their scriptural and historical foundations; who have exercised their "scientific temper".

Article 370: Special status of Jammu & Kashmir

Among the "Temporary, Transitional and Special Provisions", one has drawn attention for decades:

"(1) Notwithstanding anything in this Constitution, — ... (b) the power of Parliament to make laws for the said State [of Jammu and Kashmir] shall be limited to— (i) those matters (...) which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India (...)"

This means that Kashmir's Parliament has veto power against all national laws that concern it. Originally this was meant as a diplomatic consideration, but it was soon Muslim-communalized. In 1948, when the occupation of a part of the State by Pakistani invaders was officialized by Nehru's standstill order against the ongoing reconquest by Indian troops, it was not certain that in a referendum (which the UN proposed), the local Muslim majority would vote as Muslims and vote for accession to Pakistan. The popular local Muslim leader Sheikh Mohammed Abdullah had a personal enmity with Pakistani state leader MA Jinnah, and he calculated that his State would enjoy a far greater autonomy in democratic and decentralized India than in authoritarian Pakistan. The electorate would probably have followed him, which explains why Pakistan sabotaged the plebiscite for which it later, after the communalization of the issue, started clamouring.

At any rate, on 5 August 2019, Narendra Modi unexpectedly abolished the special Constitutional status of Kashmir. That this was not followed by a popular uprising, as the secularists were predicting, was only partly due to the accompanying security measures.

The BJP rulers seem to have correctly felt the pulse of Kashmiri public opinion. They certainly estimated the international mood correctly: unlike the media, hardly any Government cared to protest. After all, none of them would tolerate the relative autonomy of one of its provinces to imply that citizens of its other provinces have no access there. The abolition had merely been a normalization.

But note that the abolished Art.370, though interpreted by friend and foe as a form of "Muslim appeasement", actually doesn't mention the word "Muslim", nor any other religious term. This is partly on (Nehru's secularist) purpose, partly a logical consequence of the circumstances at the time: under Sheikh Abdullah, the Kashmiri Muslims were not necessarily separatist, while only just before, in 1947, the Hindu Maharaja, Hari Dogra, had toyed with the idea of independence and hesitated to accede to India. That India refused to part with Kashmir was not anti-Muslim but simply democratic; only after the Sheikh fell out with Nehru, and he with his following turned against India, did it become a Muslim issue. Formally the Article's maintenance or abolition doesn't affect the Muslims as such. Whether the ruler would have dared to abolish it if it had upheld "Muslim" rights or privileges is anyone's guess.

Conclusion

India is resolutely not a secular state. It legally makes a lot of difference there what religion you belong to.

India has reservations ('affirmative action') since 1935, ever-widening, originally only for the Depressed (now Scheduled) Classes, but now also for Other Backward Castes and other categories, in some states well over 50% of administrative jobs or study admissions. BR Ambedkar had reluctantly agreed to them for a transitional period of ten years, but no Government has ever dared to abolish them; each of them has instead given in to pressures from ever new groups to expand the reservation system. Though originally conceived as an instrument for reforming Hindu society, it is now often enjoyed by members of the religious minorities, through the non-religious categories of the Scheduled Tribes and of the Economically Weaker Sections. The Reservations system has become a transfer channel from the majority to the minorities.

The Constitution has the concept of "minority", which today is the key to privileges. A truly secular law system, unlike political science or demography, would recognize no majority or minorities, only citizens. Before the law, a truly secular state would have no Hindus nor Muslims, no Parsis nor Christians, only citizens.

(An early version of this paper was read in 2017 at the "Communicating Religion" conference of the European Association for the Study of Religion, in my hometown Leuven, Belgium. In a more advanced form, it figured among my lectures in the Indian Institute for Advanced Studies, Simla HP, India, autumn 2022.)

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