

# Politics of Secularism ; the Case of Congress and BJP : How To Resolve It<sup>1</sup>

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***Abstract***-India is officially a secular country and there are no special provisions favouring specific religions in its constitution and in its laws. Secularism in India means equal treatment of all religions by the state. Unlike the Western concept of secularism which envisions a separation of religion and state, the concept of secularism in India envisions acceptance of religious laws as binding on the state.

Both the Indian National Congress party and the Bharatiya Janata Party (BJP) have been accused of exploiting the people by indulging in vote bank politics. The article looks at how to resolve it. Congress needs to avoid minority pandering politics as much it is on BJP's divisive communal strategies. Critics point out that both of them are basically are two sides of the same coin- they both engage in vote bank politics, rather than fighting on substantive election platforms. Secularism is an operative public value as enshrined in the constitution. Scholars like Bhikhu Parekh argue that the operative public values as enshrined in the constitution should provide the basis for what is acceptable in a society.

**Key Words:** Secularism, Congress, BJP, Operative public value, constitution

India needs an inclusive "national secularism" agenda Both parties, the congress and BJP need to realize this. India is officially a secular country and there are no special provisions favouring specific religions in its constitution and in its laws. The government is separated, for the most part, from organised religion. Secularism basically is the principle of separation of government institutions, and the persons mandated to represent the State, from religious institutions and religious dignitaries. The separation of church and state is the distance in the relationship between organized religion and the nation state. Although the concept of separation has been adopted in a number of countries, there are varying degrees of separation depending on the applicable legal structures and prevalent views toward the proper role of religion in society.

India is officially a secular country and there are no special provisions favouring specific religions in its constitution and in its laws. Secularism in India means equal treatment of all religions by the state. Unlike the Western concept of secularism which envisions a separation of religion and state, the concept of secularism in India envisions acceptance of religious laws as binding on the state. Thus even though there are no special religion which state favors, the state is in the public sphere relevant. The people of India

have freedom of religion, and the state treats all individuals as equal citizens regardless of their religion. In matters of law in modern India, however, the applicable code of law is unequal, and India's personal laws - on matters such as marriage, divorce, inheritance, alimony - varies with an individual's religion. Muslim Indians have Sharia-based Muslim Personal Law, while Hindus, Christians, Sikhs and other non-Muslim Indians live under common law. The attempt to respect unequal, religious law has created a number of issues in India such as acceptability of child marriage, polygamy, unequal inheritance rights, extra-judicial unilateral divorce rights favorable to some males, and conflicting interpretations of religious books.

Secularism as practiced in India, with its marked differences with Western practice of secularism, is a controversial topic in India. A well-known accusation made against a number of politicians, however, is that they play vote bank politics, meaning give political support to issues for the sole purpose of gaining the votes of members of a particular community, including religious communities.

## **Congress: Secularism As Appeasement**

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politics. The Shah Bano case, a divorce lawsuit, generated much controversy when the Congress was accused of appeasing the Muslim orthodoxy by bringing in a parliamentary amendment to negate the Supreme Court's decision. After the Babri masjid issue both the parties have been accused of indulging in vote bank politics. Further 2002 Gujarat violence, there were allegations of political parties indulging in vote bank politics. Salman Rushdie's Satanic verses was banned in India under the pressure from some orthodox Muslims. Taslima Nasreen further was not granted visa as Congress responded to its Muslim vote bank.

Neither the Congress nor the BJP can claim to be truly secular, one in which the BJP is a proponent of a form of cultural nationalism that is bound to impose a tyranny of the majority while the Congress is the defender of all things secular and liberal. This is a false dichotomy, as the Congress version of secularism too is flawed and it too is often found wanting when it comes to the defence of liberal values. But the Congress record too does not bear close examination. It has a long and murky history of playing politics with religion. After all, the Khalistan movement was Indira Gandhi's very own Frankenstein's monster, created by her decision to play off Jarnail Singh Bhindranwale against the Akali Dal. And the anti-Sikh riots in Delhi following Indira Gandhi's assassination will forever remain a blot on their secular credentials. Likewise, Rajiv Gandhi displayed his own willingness to use religion for politics with the Shah Bano case.

It's true that horrific incidents of communal violence such as the 1984 anti-Sikh riots did take place under a Congress regime. However, unlike the 2002 anti-Muslim riots in BJP-ruled Gujarat, the Congress did apologise for failing to prevent the atrocities committed on the Sikh community. But no such apology has been forthcoming from the BJP on Gujarat. In terms of electoral politics, the Congress has regularly fielded Muslims and other minority candidates, something that the saffron party can't claim. The very fact that the Congress is accused of minority appeasement means it cannot be equated with the BJP's Hindu fundamentalist ideology. Meanwhile, guided by

Nehruvian principles, the Congress has by and large adhered to the Indian version of inclusive secularism, cultivating minority communities as potential vote banks.

### **BJP's Version Of Secularism: As Practising Divisiveness**

The latter continues to espouse Hindutva as its guiding philosophy. The RSS and the larger Sangh Parivar continue to serve as the BJP's ideological mentors, propagating the ideas of 'Akhand Bharat' and 'Ram Rajya'. Meanwhile, sections of the BJP still see the construction of a Ram mandir in Ayodhya as a project of national importance. The Congress, in contrast, cannot be faulted for promoting such exclusivist agendas. In the BJP's case, the assessment is not far off the mark. The Gujarat riots, the demolition of the Babri masjid, persistent attacks on Christians in Orissa are blemishes on its record that cannot be overlooked.

BJP needs to learn that in the coming general election, it needs to project itself as a secular party capable of taking not just the majority but also the minority together. As we are progressing as a world power, BJP needs to take care not just of the majority religious community but also minority together.

Congress needs to practice what it writes in its manifestos regarding the minorities, though one may say that it has a better record in representing minorities than the BJP. Congress need not appease Muslim for electoral purpose. The BJP needs to include more minorities in its party set up. Both the parties need to avoid playing communal politics. As India is moving towards globalization, both the parties need to realize that they cannot avoid taking majority and minority community together in a multicultural and democratic set up. The BJP needs to stop playing divisive politics and truly play like a party needs to be in a democratic and multicultural country like India.

### **Lessons For Both: Avoid The Practice Of Pandering Cultural Communities, Be It Minority Or Majority**

Congress needs to avoid minority pandering

politics as much it is on BJP's divisive communal strategies. Critics point out that both of them are basically are two sides of the same coin- they both engage in vote bank politics, rather than fighting on substantive election platforms.

So that leaves us saddled with the communal parties of India. Coalitions seems to be the Indian way of providing checks and balances in a political climate devoid of any vision for social and economic progress. However, that cannot really be a long term solution to the problem. We do need substantive political platforms and not just ones based on communal lines. For example, we need political parties debating the best way of achieving socio-economic justice for all( Affirmative action) or ways to improve the laggard and in some cases nonexistent public education system or whether the current public distribution system is the best way to ensure food security, or how do we ensure equal access to credit or to consistent electric supply or just simply to effective governance. These are the problems that are plaguing the Indian economy and society and holding the progress back or keeping it in the hands of few.

Indians need to realize from both liberals and Marxists that there is a need for religion not to have a say in public sphere. India needs to take a cue from Norway which has severed the connection between Norway and the Church of Norway, making Norway a secular state. Religion causes much harm to minorities within minorities , women and children.

### **Operative Public Values As Enshrined In The Constitution: The Solution To Pseudo Secularism**

Secularism is an operative public value as enshrined in the constitution. Scholars like Bhikhu Parekh argue that the operative public values as enshrined in the constitution should provide the basis for what is acceptable in a society. Now while the Indian constitution protects right to religion and culture, it equally in directive principle of state policy defends a uniform civil code. Bhargava in his article on secularism defends public character of religions in india.<sup>2</sup> But the fact is that this argument does

not realize that religion does much harm to women, minorities within minorities and liberal voices. Thus according to okin might not be in the best interest of girls and women of those religions, even if it benefits the men. Thus to okin those who make argument of rights of groups must take special care to look at inequalities within those groups. In law for example, feminists more frequently take on religion. According to some of the legal feminists, "religion perpetuates and reinforces women's subordination and religious freedom impedes reform"<sup>3</sup>. "Religion contributes to women's subordinate status, not only within religious communities hierarchies, but also in broader culture"<sup>4</sup>. "Religion encourages women to live with the status quo rather than destabilizing it by insisting on equality."<sup>5</sup> Indeed the secular feminist tends to view religion itself as irredeemably patriarchal, and powerful ally of women's oppression throughout the ages. "Secular feminist is not unhappy to muzzle it and does not see it as doing a whole lot of good in anyone's life"<sup>6</sup>.

"Many secular feminists are Marxists; and following Marx they are bound to take a negative view of religion and are unlikely even to give the free exercise of religion a high degree of respect."<sup>7</sup>

Here I would also like to point some Muslim feminists who proclaim the need for separation of religion and state. Moghadam somewhat answers this when she discusses her personal reasoning for secular feminism<sup>8</sup>. Her assertion is that as long a feminist movements are "focused on theological rather than socioeconomic and political questions, and so long as their point of reference is the Qur'an rather than universal standards, their impact will be limited at best."<sup>9</sup> According to her , unlike the American feminists, "Islamic feminists are seeking revolutionary change to political and social institutions by questioning the exclusive right of clerics to interpret the Islamic texts and on Islamic jurisprudence."<sup>10</sup> She even points out that it is particularly Islam which puts in danger feminist movements because it d Haideh Mohissi

as a Marxist feminist, is open about her dim view of religion, specially as a driving force for meaningful social change”<sup>11</sup>. As far as Islamic in Islamic feminism is concerned Mohissi view is that “Not only is a religion based in gender hierarchies incompatible with “gender equity and . . . women's rights”<sup>12</sup>, but it has no liberatory potential either”<sup>13</sup>. Hameed Shahidian is critical of attempts by Arab scholars such as Fatima Mernissi and Aziza Al-Hibri, and the Pakistan-born Rifat Hassan, attempts at reinterpretation of Islamic texts. According to him these attempts are futile given the strength of conservative, orthodox, traditional, and fundamentalist interpretations, laws, and institutions. He is especially critical of a growing trend in Middle East Women's Studies wherein authors justify Muslim women's veiling<sup>14</sup>, domesticity, moral behavior, and adherence to Islamic precepts as signs of individual choice and identity<sup>15</sup>. Thus as Nadje Al Ali in her work points out that “all women interviewed were united in their opposition to the establishment of an Islamic state, the implementation of the Shariah, the existing personal status law and an imposed dress code that is compulsory veiling. They also shared a sense that religion should not be conflated with politics”<sup>16</sup>. The majority of the activists concurred with the view that “the personal status law is a source of inequality and discrimination”<sup>17</sup>. “For many activists the aim to change the laws regulating marriage, divorce and child custody is the only aspect of their conceived goals that touches on women's private lives.”<sup>18</sup>”

Thus I disagree with Bhargava that religion is central to Indian Secularism<sup>19</sup>. This is because the debate between existence of religious personal laws in the public sphere and uniform civil code exists from the time of constituent assembly. KM Munshi argued that if personal laws of inheritance, succession etc were considered a part of religion, then equality to women which has been guaranteed in the fundamental rights could never be given. Mr Masani, Hansa Mehta and Amrit Kaur too expressed complete dissatisfaction with inclusion of UCC in DPSP. According to them one of the factors that kept India back from advancing to nationhood has

been existence of personal laws based on religion which keeps the nation divided into watertight compartments in many aspects of life. Nehru insisted in deference to the Sikhs and Muslims that the framing of a UCC be a goal set out in directive principle the implementation of whose provision was neither mandatory nor justifiable. The nationalist Muslims opposed even this. Nonetheless Article 44 of Directive Principle became a part of the constitution. The state thus shall endeavour to secure for the citizens a UCC throughout the territory of India. In contemporary India the compulsory civil code model has been suggested by several women groups in India who have been advocating for a common gender just code differentiating themselves, however clearly from the rightist agenda for a uniform civil code. Women groups like Saheli and Peoples union for democratic rights argue that plurality of laws work against the interest of women. And so the need would be for a compulsory civil code which would override personal laws. However cultural and other aspects of personal laws which do not offend against the provision of equality of constitution can be retained. Such a code can be brought into effect through separate acts of legislation, issue by issue, not necessarily in one sweep/go. This entire exercise is to be carried out in the context of understanding that the right of minorities to live in safety and dignity must be ensured by the state.

Further the special marriage act is the constitution's answer to hardships caused by the presence of separate personal law. This is infact the exit option which is provided by the Indian constitution itself.

The enactment of SMA 1954 had been one of the significant moves in post independent India not only to secularize but also to bring some kind of uniformity in family laws. “This act had been described as first step towards the attainment of the objective of UCC contemplated in article 44 of the constitution”<sup>20</sup>. “The act provided for a civil marriage of two Indians, without the necessity of renouncing their respective religion.”<sup>21</sup>”

Further several feminist groups have advocated for the need of reverse optionality. Personal laws depend on the accident of birth and do not give the dissenting individual to

opt out. The concrete aspects of the present proposal are three central planks to contribute to democratize space of individuals-

- 1) Development and implementation of certain comprehensive packages regarding rights of women to marriage, adoption, property against domestic violence, to work, equal remuneration etc<sup>22</sup>.
- 2) These laws would be the birthright of every citizen and also apply to all naturalized citizens.
- 3) All citizens would have the right to opt for the personal laws of their community at any point of their lives. This option would be revocable at any time including the time of dispute. In case of difference in the options between the parties to a dispute, the secular law would prevail.

The right to choose provides for the democratic space. In order to attract women to choose the personal laws, the communities would have to take gender considerations into account whilst framing/ interpreting personal laws. This will trigger of the process of change within the communities to keep persons within the bounds of religious communities. This would also help stemming the rise in fundamentalisation and can be seen as a way out of the present impasse. This proposal is not opposed or in violation of minority rights.

Also, many Muslim groups such as Muslims for Secular democracy believe that all existing personal laws, applicable to people of different religious communities, discriminate against women and therefore urgently need change. In case of Muslims, the theological defense of triple talaq (instant divorce) and polygamy are unacceptable to the group. It is also a fact that in many Muslim countries family laws have been revised in respect of minimum age of marriage, polygamy, divorce, maintenance. For example, in most Muslim majority countries, including

those that claim to be run on Islamic principles, instant divorce is prohibited. Similarly, polygamy is either prohibited or is permissible under specific circumstances and only after permission has been obtained from the courts and the existing wife. Thus, there can be no 'Islamic' justification for these practices to be permitted in India: they must be prohibited. (Our objection is not to the concept of talaq divorce, per se, but to the practice among some Muslim sects in India of instant divorce

- According to these scholars it is simply not true that what goes in the name of 'Muslim Personal Law' in India are God-given laws that are immutable and all Muslims are obliged to follow them:
- In India itself, the Muslim Personal Law does not apply in Jammu and Kashmir (the only Muslim majority state in the country) or in Goa.
- As elaborated above, many Muslim countries have prohibited the practice of instant talaq, and polygamy is either totally prohibited or permitted only under special circumstances.
- Millions of Muslims living in secular societies throughout the world enter into marital relations according to the laws of the country they live in. Yet, they don't cease to be Muslims

Further Secularism denotes the insistence on a clear separation between religion and politics, between matters of faith and affairs of the state; by secularism is meant clear rejection of the idea of a theocratic state in the modern world. They have raised voice against conservative and regressive clergy within the Muslim community and other religious communities. According to these activists the board since its inception has remained mute witness to injustices against women.

Thus according to this approach reform within any personal law and gender justice would require state initiative. According to Javed Anand any kind of reform would require urgently state or judicial intervention. State intervention has been visible through various progressive

judgements delivered by High Court and Supreme Court of India. Internal reform according to him did not seem to be a very plausible option. Muslim women and the whole community cannot wait endlessly to bring about changes within their personal laws. Unlike the Christian community which brought about reform as a result of internal consensus brought about within the community, the same is not visible in near future within the Muslim community and hence the need for state intervention<sup>23</sup>. According to Mr. Anand, reverse optionality proposed by several women groups also seemed to be not a very promising proposal. This is because the proposal would have to go through a ratification process by legislature at state and national level. Most probably it would require a majority of 2/3 rd in both the houses. And the proposal is unlikely to gain the majority required in the legislatures at national and state level<sup>24</sup>.

Given the fact that internal reform and reverse optionality Therefore according to him activism on the part of all community members would be the answer to status quoist and regressive position of AIMPLB. Liberal Muslim activism as well as state intervention would be able to bring about changes within Muslim Personal Law<sup>25</sup>.

Further many scholars within the Muslim community have insisted on the need for a common civil code for all citizens of the country. However it is to point out here that their conception of a common civil code is very different from the rightist notion of a UCC. Foremost among these have been scholars like Tahir Mahmood according to whom a common family code need not be an adaptation of the Hindu system, as some assume when passionately pleading for the adoption of a uniform law by the Indian Muslims but a synthesis of good in our diverse personal laws, an eclectic, not exotic, product, a picking and choosing from many systems so as to suit our ethos and to express the genius of our culture and at the same time be in accordance with the spirit of the times<sup>26</sup>. A common civil code according to Mahmood would be entirely different from Hindu personal law and will be partly based on

the cream extracted from all systems of personal law prevailing in the country. It is wrong that Islamic conception will have no place in it. According to him contractual concept of marriage, its solemnization without ceremonies, facility of its dissolution in special circumstances, and women's property rights-all of which will be incorporated in the common civil code-are the ideals for which Islamic jurisprudence stands<sup>27</sup>. According to M C Chagla expressed the desire that religion based personal laws had no place in a secular society like India and all personal laws of India including Islamic law should as early as possible be replaced by a secular and common law<sup>28</sup>. Similarly Hamid Dalwai demanded an immediate implementation of the directive of article 44<sup>29</sup>. The great Indian scholar of Islamic law Asaf A A Fyzee And Badruddin Tyabji had no objection in accepting a secular and common civil code applicable to all Indians. However all of them have been conscious of tremendous difficulties to be faced in the enactment and enforcement of such a code. They would therefore like enforcement of a UCC to be postponed for a fairly long period during which Muslims should be trained to accept change in traditional family law. Mr Anand and Muslim for Secular Democracy support any endeavor by the State to bring about a uniform civil code. Endeavor, in our view, can only mean encouragement of nationwide discussion and deliberation on the issue based on tentative draft(s) that could give citizens some idea of what a uniform civil code is going to look like<sup>30</sup>.

India thus as seen in constituent assembly debates or debates between communities upholds a genuine secularism and not one which divides communities. The Indian constitution defends both the right of the individual and right of the communities to their culture. There is a need to balance the interplay between individual rights and cultural rights. Secular countries in the west while defending the right of the minorities, lay emphasis on defending the individual rights. India too needs to realize that while right of communities should be granted to religious minorities but it not be on the behest of individual rights. a secularism which takes care of individual rights would be the answer to pseudo secularism

as practiced by both the national parties.

Religion thus unlike bhargava needs to be intrinsically anti religious, with religion being given space in private aspect of individuals and communities as most of the discourse of liberals and Marxist would point out..If India needs to give equal rights to each of its citizens, both the major parties need to practice this. It might be difficult for both BJP and Congress but the fact is that our constitution lays the ground for a secularism which respects both majority and minorities.For example political theorist Ayelet Shachar pointsout that neither the state nor the community needs to be given full authority. For example property rights, adoption etc need to be taken care by the state and marriage etc by the community. But the fact is to defend individual rights state can interfere in matters of the community.

Thus the need is for india in order to solve the problems of a secular but multicultural state ,the need for deliberative democracy to evolve.Parties like BJP and Congress , and intellectuals to deliberate upon the role of religion in state and communities.They need to pick strands from different theoretical perspective and debate thereupon. Anne Phillips says "The need is for us to consider equitable treatment of minority and majority culture alongside other considerations of equity,that is between men and women."<sup>31</sup>" She cautions "against elevating cultural membership to status of primary good as it potentially trumps all other considerations"<sup>32</sup>. Thus the respect for other cultures is always premised on first respecting the individual citizen - which is not abstract but a gendered, differentiated citizenship within which multiple differences and diverse perspective of previously excluded other might be recognized, affirmed and represented.

### Notes and References

1. This article is a view of a political researcher on secularism in india. It is not meant to be malicious against any political party.
2. Rajeev Bhargava, "Reimagining Secularism, Respect, Domination and

Principled Distance", Economic and Political Weekly, December 14,2013.

3. See Martha Nussabaum Women and Human Development'; Also see Mary Becker, 'The Politics of Women's Wrongs and the Bill of Rights : A Bicentennial Perspective', The University of Chicago Law review 59 1992, 453-517.
4. Martha Nussabaum ,'Women and Human Development' p 141
5. ibid
6. ibid
7. ibid
8. I am mentioning here along with liberal feminist some of the Islamic feminist because they too share similar concerns of individual rights , human rights and secularism with there liberal counter parts.
9. Valntine Moghadam,, 'Islamic Feminism and Its Discontents: Toward a Resolution of the Debate'. Signs: Journal of Women in Culture and Society, 27 (4), 1141-1165.at 1159.
10. ibid
11. Haideh Moghissi, Feminism and Islamic Fundamentalism: the Limits of Postmodern Analysis, London, Zed Books,1999, p 146
12. ibid
13. ibid pp 40-42; She criticizes postmodernists on several grounds. They ignore "the role of Islamic legal institutions and practices in maintaining ...the ...patriarchal order which circumscribes women's lives in Muslim societies;" they paint "an enviably rosy picture of women's lives in Islamic societies" that does not correspond to reality; "in the name of validating women's 'self-perceptions' and 'hearing women's own voices,' only the voices of particular groups of women are heard ...[and] broadcast as the

- unanimous expression of women in Islamic societies”; and, most importantly, they have abandoned “these secular democratic vision of feminism, sacrificing its hard-won achievements at the feet of an 'Islamic' vision of change” by attempting “to reshape and soften their ideas to fit the ideals of an elusive 'Muslim feminism’” instead of “exposing its limits.
14. Egyptian feminist openly wrote against the practice of female circumcision. Finally Egypt has banned the practice of circumcision.
  15. See: Hameed Shahidian, 'The Iranian Left and 'The Woman Question in the Revolution of 1978-79.' International Journal of Middle East Studies, vol. 26: 223-247, 1994; Also see Hameed Shahidian, 'Feminism in Iran: In Search of What?', Zanan, no. 40: 32-38, 1998
  16. See Nadjé Al Ali, *Secularism, Gender and the State in The Middle East The Egyptian Women's Movement*, UK, Cambridge University Press, 2000. pp154-155.
  17. Ibid ; In Egypt this also holds true for the debate around the Nationality or Citizenship Law, which is likewise considered to be discriminatory and therefore widely rejected in its current form. The law does not grant Egyptian women married to their children, while Egyptian men are granted this right. This is seen as the ultimate example of the confining of women to second class citizenship and like the personal status law, many activists argue, the nationality law is unconstitutional and in conflict with Convention on the elimination of all forms of discrimination against women (CEDAW)
  18. *ibid.*
  19. Bhargava, *ar.cit*, p 79.
  20. Flavia Agnes ,p 98
  21. *ibid.*
  22. Amrita Chacchi, ' Civil Codes and Personal Laws: Reversing the Option Working Group on Women's Rights' ,pp20-24., *Women Against Fundamentalism* ,<http://waf.gn.apc.org/>.
  23. Interview with Mr. Javed Anand of Muslim for Secular Democracy in a telephonic interview taken by me on 18th June 2007.
  24. Mr Javed Anand , telephonic interview, 18 June 2007
  25. On being asked about four new board formation, Mr. Anand replied the more they splinter, much better it would be for Muslim community. I also conclude that in turn it would add to democratization process within the Muslim community.
  26. Tahir Mahmood,(ed) *Islamic law in Modern India*,New Delhi, 1972.p.1
  27. Tahir Mahmood , 'Progressive Codification of Muslim Personal Law', in Tahir Mahmood(ed) ) *Islamic law in Modern India*,New Delhi, 1972.p.96.
  28. M.C. Chagla , 'Plea for a Uniform Civil Code', *Weekly Round Table*, 25 March, 1968. p.7.
  29. Hamid Dalwai, Vide, letter in the *Hindustan Times*, New Delhi, 1 November, 1970.
  30. Pointed out by Mr. Javed Anand during a telephonic interview.
  31. Anne Phillips , 'Why Worry About Multiculturalism', *Dissent*, 1997, pp57-63 at 63
  32. *Ibid.*

