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SUBJECT OF PAPER

SECULARISM AND THE CONSTRUCTION AND
RENOVATION OF RELIGIOUS PLACES IN INDIA:
ROLE OF STATE AND CIVIL SOCIETY IN A VIBRANT
DEMOCRACY

India as described in the oldest ancient religious text-What lies to the North of the oceans and to the South of the Himalayas ,that continent is called Bharat or India and the children i.e. citizens there in are known as Bharati or Indian

“ Uttaram yat Samudrasya Himalaya,Yasca
Dakshinam Varnam tat Bharatam Namah

Bharati yatra Samatati”

(Vision of India in the Vishnu Purana about the first to third century B.C.)

In this context it will be correct to say that since the dawn of Indian civilization we have inherited traditions which gave rise to scope for political well being in an environment which was multi-religious, multi-cultural and multi-lingual. This was possible because our major religions, Hinduism, Islam and Christianity were monotheistic. They establish the oneness of God. There is an ancient Sanskrit saying

“Ekam Satyam Vipraha Bahuda Vadanti”.It means all streams and different faiths merge and reach a common destination. More simply stated ,Truth is one and constant and different streams lead to the same common goal. Thus from the very beginning the idea of pluralism was ingrained in Indian society. Another way of expressing the Indian outlook is calling it Unity in Diversity.

Swami Vivekanand represented the Hindu faith before the World Parliament of Religions in Chicago on September 11,1893 almost 120 years ago (and exactly 108 years later to the same date,9/11 Holocaust in USA)-told the religious leaders assembled in Chicago in his first address:-

I am proud to belong to a religion which has taught the world both tolerance and universal acceptance. We believe not only in universal toleration, but we accept all religions as true. I am proud to belong to a nation which has sheltered the persecuted and the refugees of all religions and all nations of the earth. I am proud to tell you that we have gathered in our bosom the purest remnant of the Israelites, who came to Southern India and took refuge with us in the very year in which their holy temple was shattered to

pieces by Roman tyranny. I am proud to belong to the religion which has sheltered and is still fostering the remnant of the grand Zoroastrian nation. I will quote to you, brethren, a few lines from a hymn which I remember to have repeated from my earliest boyhood, which is every day repeated by millions of human beings: "As the different streams having their sources in different paths which men take through different tendencies, various though they appear, crooked or straight, all lead to Thee."

The earliest expression in Indian History of secular thought is found in the edicts of Ashoka. We in India are wedded to the idea of secularism since time immemorial.

The Vedas also give lofty expression to the idea of a inclusive society where all are equal in the eyes of the Almighty. Akbar the Great Mogul expounded religious dialogue and tolerance through his vision of Din Illahi In more recent times Raja Ram Mohan Roy is regarded as the founder of modern Indian society. Swami Vivekanand at the World Parliament of Religions in 1893 gave an eloquent expression about the tolerant nature of Indian philosophic thought.

Ashoka in his edicts made the following statements:-

All religions should reside every where ,for all of them desire self-control and purity of heart

The King does not consider glory and fame to be of great account unless they are achieved through having any subjects respect Dhama and practice Dharma, both now and in future.

Whoever praises his own religion, due to excessive devotion, and condemns others with the thought "Let me glorify my own religion," only harms his own religion. Therefore contact between religions is good .One should listen to and respect the doctrines professed by others

The Indian Constitution in its Preamble calls India as a Sovereign Secular Socialist Democratic Republic.

How is secularism defined in the most simple language. Firstly it means equal respect for all religions, and that people belonging to different faiths and sections of society are equal before the law. Secondly what is regarded as the heart of secularism that there should be no mixing of religion and politics.

Secularism is a modern concept and denotes the separation of Religion from Politics.

More recently some states like India have made it the foundation of state philosophy.

The Indian Constitution in its Preamble calls India as a Sovereign Secular Socialist Democratic Republic. One of the Fundamental Duties of Citizens prescribed by the Constitution is to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities..

It also enjoins citizens to develop the scientific temper ,humanism and the spirit of inquiry and reform. With such a grand foundation this paper proposes to spell out how India has evolved as Multi-Cultural Multi -Lingual, and Multi- Religious society. Also some UN Declarations have also facilitated in bringing about Harmony in the whole of South Asia..

The concept of secularism in India's Constitution is not of irreligion or anti religion. It only means that there is no State religion, there is equal respect for and protection of all religions, no one is to be discriminated against on grounds of religion and everyone is guaranteed full and equal freedom of religion. .Further the Constitution lays down that all persons are equally entitled to freedom of conscience and the right to freely profess , practice and propagate religion. The meaning of Secularism is broadened and is given further scope by guaranteeing cultural and linguistic freedom. There is another provision in the Constitution that says that all minorities, whether religious or

linguistic, shall have the right to establish and administer educational institutions of their choice.

The Supreme Court in the landmark and celebrated ruling S.R. Bommai case said

“Secularism is one of the basic features of the Constitution” and a state government which flouts it invites President`s rule A “basic feature” of the constitution is not even open to constitutional amendment, let alone ordinary legislation, as the courts have repeatedly ruled since 1973 in the Keshavan Bharati case.

The leaders who fought for Independence under the guidance of Mahatma Gandhi were opposed to communal politics. They stood for a secular India. During the debates in the Constituent Assembly, Prime Minister Nehru declared that secularism was an ideal to be achieved and that establishment of a secular State was an act of faith. He said:

By secular state, as I understand, the State is not going to make any discrimination whatsoever on the ground of

religion or community against any person professing any particular form of religious faith. This means in essence that no particular religion in the State will receive any State patronage whatsoever. The State is not going to establish, patronize or endow any particular religion to the exclusion of or in preference to others and that no citizen in the State will have any preferential treatment or will be discriminated against simply on the ground that he professed a particular form of religion. At the same time we must be very careful to see that in this land of ours we do not deny to anybody the right not only to profess or practice but also propagate any particular religion.

CONSTRUCTION AND RENOVATION OF RELIGIOUS PLACES

In this context it is important to note that in India many religious places of worship like temples, mosques church, religious platforms are erected and constructed in public places. Most of

these places are used during religious festivals. It often results in inconvenience to the general public. There is no specific all India legislation in this regard. Several state governments have enacted laws to regulate construction of religious places and buildings of a public character and control use of public places for religious purposes.

To meet the concern of mixing religion with politics the

Government of India enacted a stringent law- The Religious Institutions (Prevention of Misuse) Act of 1988 which makes an offence to use religious sites to harbour an accused or convicted ,or for any political purpose.

The law is of a penal nature and defines “religious institution” for its purpose as “an institution for the promotion of any religion or persuasion” including “any place or premises used as a place of public religious worship by whatever name or designation known”- Section 2(f)

This law is said to have been enacted with a view to curbing what was called insurgency in the Punjab during the 1980`s.A person guilty of an offence under this Act may be disqualified for the purposes of election under the Representation of the People Act 1951 Section 8.

Another important law enacted was The Places of Worship (Special Provisions) Act 1991 which prohibited forcible “Conversion” of any place of worship of any religious denomination into a place of worship of a different religious denomination and requires preservation of the religious character of all places of worship as they existed on 15th August 1947.Violation of these provisions is punishable under the Act.

This law was enacted in the wake of the Ayodhya, Babri Masjid/Ram-Janm Bhoomi Dispute and sought to prevent recurrence of such incidents elsewhere in India. A person guilty of an offence under this law can also be disqualified for six years for the purposes of election under Section 8 of The Representation of the Peoples Act 1951

One of the earliest legislation after Independence in 1947, is the The Rajasthan Religious buildings and Places Act of 1954 that defines a “building” means a shop, house shed, or other structure or enclosure whether roofed or not, of whatsoever material constructed and includes every part thereof, all walls, verandah ,platforms ,plinths, doors, steps and the like and a tent or other portable and merely temporary shelter

“Place” means any open space which is not a building

“Religious” when used with reference to a building or place which is used or intended to be used for the purpose of religious worship or instruction, or offering prayers ,or performing religious rites by persons of a belonging to any religion ,creed ,sect or class ,such as temple ,mosque, church ,or that such place is likewise used or intended to be used..

No person shall use any public place as a religious place without the permission of the District Magistrate as a temporary religious place

Similarly no person shall without first obtaining the written permission of the District Magistrate construct any public religious building or convert any private or public building or place into a religious building or destroy , damage or transfer any public religious building or place. Permission of the District Magistrate is

a must in all such cases. No appeal will lie in civil court. The District Magistrate is also empowered to direct removal of unauthorized construction. If it is found that the work was constructed in contravention of provisions of the Act, it will be possible to remove the construction and restore the building or place in question as nearly as may be to its original condition. Punishment of imprisonment under the law is sanctioned in such cases after trial in court.

The West Bengal Religious Buildings and places Act 1985 has been enforced “to prevent construction or use of public places or disputed lands for religious purposes”

The State of Punjab has enacted a similar law called Religious Premises and Land (Eviction and Recovery) Act 1997

Similarly the state of Madhya Pradesh enacted the Public Religious Buildings and Places Regulation Act 1984 which aims “to regulate the construction of public religious buildings and restrict the use of public places for religious purposes”

In Madhya Pradesh a very innovative program of removal of encroachments of a religious character was undertaken by the District Administration. The unique feature was that civil society leaders were taken into confidence by building an environment of a consensual approach to the problem.

Removal of encroachments of religious nature on public roads and lands without hurting religious sentiments of people is a very tough task. An anti encroachment drive was undertaken in the Jabalpur district in 2005, by Sanjay Collector & District Magistrate, Jabalpur. Under this initiative, several rounds of meetings of the peace committee were held to decide the

modalities of removal of religious structures. The members of the peace committee were taken into confidence and their cooperation solicited in the implementation of the orders of the High Court.

The District Magistrate also called on the religious gurus and opinion makers, both collectively and individually, and explained to them the cause and commitment. Though the different interest groups feared to show their commitment in the open, they were aware of the cause and were supportive of it. It was the nominee's ability that enlisted the participation of the communities.

Out of 566 illegal structures of religious nature, 311 of different religious faiths were demolished / relocated during September 2005 to June 2008, without hurting the religious sentiments of the people or disrupting communal harmony. This brought down the number of road accidents and facilitated the development works under the JNNURM and other similar schemes. Citizens and civil society are now taking active part in preventing fresh encroachments.

One of the earliest instances of reconstruction of a religious place was the reconstruction of Somnath temple in 1947. After integration of Junagadh in to the Union of India Sardar Patel the then Deputy Prime Minister of India came there and ordered the reconstruction. When Sardar Patel and other leaders approached Mahatma Gandhi with the proposal of reconstruction of the Somnath temple, the Mahatma blessed the proposal but added a

rider that the funds for the construction should be collected from the public and the temple should not be funded by the state. The ruins were pulled down in October 1950 and the mosque at the site was shifted few miles away. In May 1951, Rajendra Prasad, the first President of the Republic of India was invited to perform the inauguration of the newly built shrine. This incident created a serious difference of opinion between the Prime Minister Jawharlal Nehru who felt that President Rajendra Prasad was siding with Hindu revivalist feelings at the expense of alienating minorities and was not in keeping in line with the state philosophy of adhering to the principle of secular thinking. (Please see Annexure-1)

More recently in July 2012 a controversy has been revived in Delhi

The Delhi High Court on Friday stayed the construction of a mosque at the Jama Masjid metro station site where ruins of a structure believed to be of Mughal era were dug up. The court also ordered the North Delhi Municipal Corporation to hand over the site to the Archaeological Survey of

India (ASI) so that it could be ascertained if the ruins were indeed from the Mughal era and remains of the Akbarabadi Masjid as claimed by Matia Mahal MLA Shoaib Iqbal.

Led by Iqbal, local residents began constructing a mosque over the ruins, which surfaced during digging by locals, led by Iqbal,

who all along have been claiming the presence of a mosque at the station site.

A three-judge bench headed by acting chief justice AK Sikri passed the order after senior advocate Aman Lekhi, appearing for a group of lawyers, sought its intervention accusing Iqbal of illegally constructing a mosque on government land and creating communal tension. Showing to the judges a photo published in the newspaper Hindustan Times of policemen standing guard at the construction of the "unauthorised structure", Lekhi said, "Law enforcement authorities remained mute spectators when the legislator took law into his hands."

The court also asked the civic body to cordon off the area.

"There should not be further construction on the site. The NDMC shall cordon off the area by setting up barriers and the police are also hereby directed to render assistance to the agency," the court said.

Asking Chief Minister Shiela Dikshit to deal with the issue expeditiously, the court asked the Delhi government to hold a high-level meeting of senior officers from various departments, including ASI, NDMC and DUAC.

The court has posted the matter for July 25.

Subsequent events and court hearings have led the Delhi Court on 25/8/2012 to issue a direction to the Archaeological Survey of India(ASI) and the North Delhi Municipal Corporation to implement their "statutory mandate" and demolish the unauthorized construction at Subhas Park near Jama Masjid in the walled city of Delhi where the remains of Mughal period

Akbarbadi Masjid are believed to have been found during digging for a metro railway station last month. The Bench observed “We have no hesitation in saying that the endeavor to construct anything at site was misplaced as it was without any sanction or permission”. The Bench barred people from offering NAMAZ or PUJA at the site. The Bench asked the ASI to submit a status report in a sealed cover by October 11, the next date of hearing showing the progress

In another landmark case with reference to the Gujarat Riots of 2002, a petition had been filed in the Gujarat High Court by an NGO Islamic Relief Committee of Gujarat (IRCG) to ask the state to compensate 500 religious shrines damaged during the riots. The Gujarat High Court passed an affirmative order directing the Gujarat Government to pay the compensation for the said shrines. The state government appealed against the order of the Gujarat High Court in the Supreme Court. The Supreme Court refused to entertain the appeal of the State Government and asked the State Government to furnish details of the number of religious structures actually damaged and the financial cost of their reconstruction. In the end of July 2012 when the matter came up for again consideration before the Supreme Court, the Gujarat Government relented and stepped down after taking a constitutional high ground that compensation to religious structures damaged during the 2002 communal riots was opposed to the tenets of secular governance. Falling in line with the thinking of the Supreme Court the Gujarat Government on 30th July 2012 told the Supreme Court that it was contemplating framing a scheme for repair of such structures harmed during breakdown of law and order. On finding that the court was not ready to stay the exercise, it was suggested that a scheme be

framed for the entire country as per the 2009 judgement of the Supreme Court directing the Odhisa government for repair of the churches damaged during the Kandhmahal riots.

Mahatma Gandhi once said “I am a Hindu, Muslim and Christian” he once summed up his aims as follows “I shall work for an India in which the poorest shall feel that it is their country, in whose making they have an effective voice, an India in which there shall be no high class and low class of people, an India in which all communities shall live in perfect harmony---There can be no room in such an India for the curse of untouchability—Women will enjoy the same rights as men—This is the India of my dreams”

Though a devout Hindu ,Gandhi`s cultural and religious outlook was universalist and not narrow. “ Indian culture is neither Hindu, Islamic ,nor any other wholly .It is a fusion of all” He wanted Indians to have deep roots in their own culture but at the same time to acquire the best that other world cultures had to offer. His most magnificent conception of India is contained in the following words “I want the culture of all lands to be blown about my house as freely as possible. But I refuse to be blown off my feet by any.”

From the above narrative and few examples of renovation of religious places the most outstanding instance since inception of independence at the very highest level of leadership was when Pandit Jawahar Lal Nehru expressed reservations about the need to maintain absolute neutrality in his advice to the then President of India.

The experiment of demolishing and relocating religious structures in Jabalpur is indicative of the fact that given the right guidance and leadership , strong bureaucratic leadership can be secular,

progressive as well as educative. By aligning with civil society a visible metamorphoses in attitudes can be accomplished for redesigning secular urban habitations.

In the Liberhan Ayodhya Commission Of inquiry Report volume1-4,Part -2 it has concluded that because India is a cradle of many religions “there is a proliferation of temples and places connected with each religion all around us” The disputes between various groupings about the provenance of monuments, temples and other structures have survived even to the present day. These structures are capable of fomenting communal strife and disharmony in society. In the case of the July 2012 controversy regarding the Provenance of the Akbarbadi mosque in Delhi vested interest groups quickly rushed in to capitalize on the situation and claimed that the structure is a well known mosque built during Mughal period in the 17th century. Insisting on offering prayers at the newly unearthed sites further complicated issues and appeared to be an act of land grabbing rather than God worshipping. In this context it is very necessary that government authorities should maintain a constant vigil and not allow lumpen elements to destroy the sanctity of the structure. Here the civil society approach was to take the assistance of the Judiciary (Delhi High Court) and restore normalcy. More often than not the Judiciary has filled the void created by inaction on the part of government authorities.

In the case of the matter of repairing religious places destroyed during the Gujarat Riots of 2002,the judiciary has played a pioneering role by deciding in favour of those aggrieved by desecration of their religious places and providing relief in the matter. The Supreme Court has stood by the civil society claim to

restore their rights expeditiously. The judiciary has acted and filled the void and gap created by inaction on the part of the government .

The relevant portion of the judgement is placed below.

(In the High Court of Gujarat at Ahmedabad Special Civil Application No3023 of 2003)

“55. We, therefore, find that the decisions cited by Mr. Jani do not help his client in any way.

56. On consideration of the entire materials on record we, therefore, hold that for the inability or negligence on the part of the State Administration, the religious and other places of worships in this State having been destroyed during the riot of the year 2002 mentioned above, the policy adopted by the State Government, not to spend any money from public exchequer for the restoration of the religious places which were destructed during the said period, but restricting the compensation only to the places of residence and the business, is violative of the fundamental right guaranteed under Articles 14, 25 and 26 of the Constitution of India.

57. We further find that no explanation has been given by the State Government for not placing the annual and other reports given by the National Human Rights Commission on the incident before the State Legislative Assembly till today in spite of receiving the same in the early part of the year 2005 and such grave lapse on the part of the State Government amounts to clear violation of Section 20 of the Protection of Human Rights Act, 1993.

58. We, accordingly, pass

direction upon the State Government to give compensation in favour of the persons in charge of all the religious places including those of worship, which were damaged during the communal riot of the year 2002 for restoration to the original position, as those existed on the date of destruction.

59. We find that during the long pendency of this litigation, many of those places of worship have been repaired. Nevertheless, the persons in charge of those places would be entitled to get reimbursement of the amount spent for restoration of those places by production of evidence of expenditure incurred by them for the above purpose, as there is no waiver of fundamental right. We, however, make it clear that if at the time of repair, further additional construction has been made in excess of the one existed at the time of damage, for such additional construction, no amount should be payable by the State Government.”

It can be truly said that secularism and secular democracy are safe in India. The struggle and impact of an amalgam of civil society, democratic forces ,and judicial activism to protect secular concerns is very promising.

Perhaps the best intent of secular thought and religious freedom was so eloquently expressed by Pandit Jawaharlal Nehru in the following words. He once declared “,The one thing that should be obvious to all of us is that there is no group in India no party, no religious community, which can prosper if India does not prosper. If India goes down, we go down, all

of us—But it is well with India, if India lives as a vital, free country, then it is well for us, to whatever community or religion we belong”

Where the government fails to govern, the civil service is neither civil nor service, police more a oppressor than a guardian of law, Parliament is a costly talking shop, the judiciary remains the last hope for the people.

I can only remember the lofty,sublime elevating and immortal inspiring poem of Rabindranath Tagore and conclude in his words:

“Where the mind is without fear and the head is held high

Where knowledge is free

Where the world has not been broken up into fragments

By narrow domestic walls

Where words come out from the depth of truth

Where tireless striving stretches its arms towards perfection

Where the clear stream of reason has not lost its way

Into the dreary desert sand of dead habit

Where the mind is led forward by thee

Into ever-widening thought and action

Into that heaven of freedom, my Father, let my country awake”

ANNEXURE- 1

Quoted from –THE MANY VOICES OF HISTORY SOMNATHA

ROMILA THAPAR-first published in India by Penguin Books India-2004

This edition published by Verso-2005,Author- ROMILA THAPAR

In his letter to the chief Ministers dated 2 May 1951 Nehru states categorically

“You must have read about the coming ceremonies at Somnath temple. Many people have been attracted to this and some of my colleagues are even associated with it in their individual capacities. But it should be clearly understood that this function is not governmental and the Government of India as such has nothing to do with it. While it is easy to understand a certain measure of public support to this venture we have to remember that we must not do anything which comes in our way of our state being secular. That is the basis of our constitution and governments therefore should refrain from associating themselves with anything which tends to affect the secular character of our state. There, are unfortunately many communal tendencies at work in India today and we have to be on our guard against them. It is important that governments should keep the secular and non-communal ideal always before them” (Sarvepalli Gopal-Selected Works of Jawaharlal Nehru,xv1,1,p.59)

However ,there were others that disagreed. The President, Rajendra Prasad, wrote to Nehru to say that he had been invited to preside over the opening of the new temple and wished to do so, to which Nehru replied on 2 March:

“.....I confess that I do not like the idea of your associating yourself with the spectacular opening of the Somnath temple. This is not merely visiting a temple, which can certainly be done by you or anyone else, but rather participating in a significant function which unfortunately has a number of implications. Personally ,I thought that this was no time to stress on large scale building operations at Somnath. This could have been done gradually and more effectively later. However this has been done. I feel that it would be better if you did not preside over this function” (Ibid-p-270)

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