
UNIT 5 PLURALISM, EQUALITY AND FRATERNITY: THE CONSTITUTIONAL FOUNDATIONS*

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5.0 OBJECTIVES

1. To examine the concepts of Pluralism, Equality and Fraternity from a sociological and historical perspective;
2. To examine in a sociological perspective, why and how these principles were incorporated within the Constitution; and
3. To examine the civic society, Community and the Constitution.

5.1 INTRODUCTION

In the Jewish Museum in New York, there is a map which shows the historical persecution of the Jews across the globe, indicating the routes of their migrations, time and the place of such persecutions. This map identifies India as the only place in the world, where the Jews were not only not persecuted but also allowed to carry on their faith exactly as they pleased, with no interference from any source. The first and only time the Jews faced any threat was during the Mumbai terror attack and then also the entire Indian nation stood in their support. In England, it may be surprising to many that Good Friday is not an official holiday and in USA people greet each other by saying Happy Holidays rather than Merry Christmas. These examples express how the different regions of the world interpret the political meaning of secularism. Secularism as a concept was introduced into the Indian Constitution to take care of the goals of Pluralism, Equality and Fraternity that characterize Democracy and a Liberal Nation.

When India became independent in 1947, it was the goal of establishing a democratic nation, committed to the notion of social justice that was embodied in the concepts of equality and fraternity that would allow the peaceful co-existence of different communities, religions and ethnic groups. The goal was not to erase all differences and to create a monolithic and uniform society but to respect diversity and to have what is famously known as unity in diversity.

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The necessity for having some kind of a mechanism for dealing with plurality is what drove many nations to opt for secularism as a key component of their constitutions. This was especially necessary for large and diverse nations like India, United Kingdom and U SA. A newly formed nation like India was struggling to keep its different fragments together and deal with a hugely multicultural and multilingual ground reality. Even to identify a common national language was a problem and continues to be one.

Inclusiveness seemed the only way out and this path had been taken by countries like UK and USA by incorporating in their Constitution the concept of secularism with respect to religion. India also opted for a secular Constitution, one that would then take care of pluralism of faith and diversity of ways of life based on them. Although officially in the western countries, there is freedom for everyone to follow their faith, there are restrictions in the public sphere; especially if they contradict the dominant moral and value system of that country. For example, in France there has been a ban on women wearing head-scarves in public and there is also a general ban on people displaying too prominently other symbols of their religion.

Thus, in the UK and the USA and other parts of the world, there is a lot of control on how religion is to be kept away from the public space, like schools and government offices. Even Christmas in the USA is referred to as 'Holidays' so as not to offend the sensibilities of non-Christians. There is no teaching of any religion in schools and public places other than those of specific religious nature, do not carry any religious symbols. France for example has banned the wearing of any religious symbol on one's person. In India, the path has been taken towards inclusiveness of all faiths in a way that every religion is given its due, in the form of public holidays and celebration. There are also no curbs on the use of any overt religious symbols. This has been made possible also by the tradition of tolerance by which in India people have rarely been persecuted because of their beliefs or convictions. Therefore, it becomes clear that concepts such as secularism, pluralism and equality are understood not in absolute terms but in context. Let us take a brief look at the contextual understanding of these terms specifically the western and non-western understandings.

5.2 WHAT DOES IT MEAN TO BE 'SECULAR' AND 'PLURAL'?

The word secularism just like the word religion, has a western root. Most other cultures of the world do not have a concept such as religion that is set apart from other aspects of life. For example, the Sanskrit word 'Dharma', does not mean religion in the same way as a Christian would refer to his/her religion. It largely means a code of conduct or the way of life that is appropriate to a person, human or non-human. For example, while describing Japan, Eller (2007:264) writes that the Japanese have no word for religion and do not conceptualize religion as a creed, doctrine or 'organized religion'. The Japanese like the Hindus have innumerable deities and Hindu deities and symbols are prominently displayed in a Japanese temple along with images of Buddha. The followers of Shintoism believe that some beings have sacred powers and they may be anywhere and come from anywhere. In countries such as India, religion or rituals have a key role to play in the public sphere. Most rituals have a social and at times political and economic character like when business houses sponsor public religious events to gain publicity for themselves. In Indian political socializing for example the throwing of Iftaar (breaking of fast during Ramzan) parties is seen as a critical political event. In the

USA large Christmas trees or shop window displays may be sponsored by different corporate agencies but political figures avoid any religious associations. In India on the other hand, it is imperative for all political parties and political agents as well as most persons who are in the public eye, to send out greeting messages for all prominent festivals and occasions, irrespective of which religion they belong to. In a country like USA, while overt messages related to Christmas or other religious occasions are shunned; semi religious or semi-secular social events like Thanksgiving is celebrated as a big and prominent public event, including the President of the country playing a symbolic role. It is therefore evident that a concept like secularism would have cultural roots and meanings and is likely to mean different things to different people.

In the western mode of thinking secularism has largely been regarded as a point of view that is not religious in nature, meaning thereby that it depends more on rationality, pragmatism and what in the seventeenth century of Europe emerged as the Renaissance Philosophy. It was equated with what was recognized as the Scientific Epistemology, that is looking for answers in demonstrable causal and natural relationships as well as the methodology based on empiricism or factual knowledge that can be assessed by the senses. Nature rather than the supernatural began to dominate western intellectuals as there was a turn away from the stranglehold of the Church on society and polity. The source of the scientific methodology as understood by the western mind can be traced to the intellectual influence of Francis Bacon and Renee Decartes, and foregrounds the principles of empiricism, inductive reasoning, skepticism or a questioning attitude, experimentation and naturalism. The scientists believe that nature works on its own by its own principles and has its internal logic. Hence by empirical observation, experimentation and logical reasoning supported by factual (demonstrable or provable) data scholars can get to the real cause of phenomenon, that shows them to be not controlled by any supernatural agency but by the laws of nature.

However, the disjunction between natural or scientific explanations and religion was particularly severe for Christianity and the Judeo Christian religions as they had a well formed story of Genesis and also an explanation for creation and the place of humans in the natural world. There was direct confrontation between the Church and the scientists who opposed the Christian world view such as Copernicus and Galileo, so that when the scientific method appeared to be rational and logical to many persons, there was no alternative but to put it forward as something that was non-religious or secular in nature.

The Renaissance intellectuals were not overtly non-religious, and there were attempts to reconcile religion with science. Yet the hypothesis or tenets of science were largely seen as incompatible with religious doctrines. Conservative Christianity and the Catholic Church, remain till the present in a troubled relationship with science. The so-called Bible belt in the USA, even today has its advocates against the study of science in school.

Historically, the breaking away of Henry the Eighth from the Vatican and the setting up of the Church of England as a separate body stimulated the rise of a secular society in England and finally led to the possibility of formulation of a theory of evolution by a English scientist and also to its wide spread acceptance by the general public.

Eller (2007:262) mentions that the English language acquired a whole range of new words that could describe the new social attitudes and the transformations of the world view of the general public. Like other cultures, there was no special word for religion

as everything was believed to be God's creation. But with the separation of the sacred and the profane, 'religion' became a word, a concept. So did Christianity, for it acquired an identity away from being just a way of life or a given truth. Concepts arose to describe newly emerging points of view like skeptic, rationalist and atheist. Thus even in the west, as pointed out by Barzun (2000:24), "The point is that in earlier times people rarely thought of themselves as 'having' or 'belonging' to a religion". This was because most people were carrying on their way of life in relative isolation, comforted by the acceptance of their world view as an ontological truth. The possibility of different perspectives on religion only came when religion was understood not as a given truth but as a *perspective* to which an alternative was possible.

Again, not all religions have a clear cut doctrine that is negated by science. The pre-Christian era in Europe, led by Greek philosophers had seen flourishing non-religious philosophies. In fact as pointed out by Eller (2007:253) doubt and skepticism, were modes of thinking that go way back before the emergence of any doctrinal religion. Xenophanes reflected upon the nature of good and evil and many scholars like Aristotle questioned established religion and beliefs. In fact, the Philosophical schools were established to reflect and question and not go by blind obedience to the given. During the Hellenistic Period that can be located roughly between the time of Alexander (323 BCE) to the rise of Rome (31 BCE) there was the emergence of four new schools of thought to answer questions about human life and fulfill human needs to reassure themselves about life and creation. These were Cynicism, Stoicism, Epicureanism and Skepticism. Let us examine them one by one and see what they mean.

Cynicism involves an attitude towards life that rejects all social conventions and a cynic does not care how he lives, what he wears and they wish to be as natural as possible like animals. The word cynic comes from the Latin word for a dog. Stoicism derives its name from a porch (*stoa*) from which teachers delivered their teachings. In the common English contemporary usage of this term it means a capacity to bear hardship lightly or be resigned to one's condition even if it means to suffer silently. But in terms of the original philosophy of Socrates and others from which it derives, to be stoic meant to take life rationally and to live ethically. The stoics did not reject happiness and oppose it to virtue, rather they believed that to be happy was in itself a rational behavior and one could be happy as well as good. Epicureanism is a philosophy named after Epicurus which resembles an existential philosophy that does not give much importance to otherworldly concerns and concentrates on being happy in this world. According to them, death is the end and one need not be too concerned about what happens afterwards. At the same time one should be ethical and good and try to look for happiness while alive. It is also not too sure about the existence of God as God does not seem too concerned about evil. In common English usage it is sometimes used for a hedonistic lifestyle but that is not how the propagator of this philosophy meant it to be.

Skepticism is a school of thought that was founded by Pyrrho and Carneades. This school of Philosophy believes in taking a more casual attitude towards life. It believes that taking things too seriously is not advisable as one is never sure about the truth status of anything. By having too strong convictions, values and judgments, one loses any hope of being happy in this world, as none of these stands up to long term scrutiny and there is nothing one can be sure of. It is better to suspend judgment and live in the moment as it comes. It is usually associated with those having a questioning and critical state of mind. Not accepting anything at face values is often seen as a character of being a skeptic.

Thus in the western world there were many schools of thought that precluded blind faith and suspension of judgment as often associated with religion. Most of these were critical of the existence of evil and lack of justice in the world and questioned as to how a good and just God could allow such things to happen. People often lost their faith in the face of suffering and what they felt as injustice and evil.

But the ancient Greeks were not alone in indulging in such thought processes. Ways of life like Hinduism and Buddhism often fostered this kind of a questioning attitude and invited a critical mind set. Many non-western philosophies actively invited criticism and a doubting mind. But many of these questioning theories were part of recognized schools of thought and not simply taken as non-conformance or being against religion. Hinduism and Shintoism, non-doctrinal ways of life did not have a circumscribed notion of religion and one religion as opposed to another. There was a sense of the divine, which, as in the case of Hindu concept of Brahman, may be very diffuse. In several versions especially the Vedantic and Neo-Hinduism, as professed by Swami Vivekananda, there is no essential difference between various modes of thought, as all paths (religions) lead essentially to the same goal; Brahman being a state or a being with undefined qualities; infinite and ever present, a pure consciousness that is beyond description.

The numerous gods that Hindus worship are simply manifestations that enable worshippers to focus on whatever qualities they wish to see in their object of worship; therefore, no god or no form of worship is unacceptable. Different ones may simply mean that someone has a different way but true nevertheless.

Thus, while concept of exclusionary religions necessitates that a functionally plural society should define secular as 'no religion' at all; religions that are not exclusionary and cultures that do not perceive that religion is a bounded entity, are able to accommodate plurality by allowing all religions to flourish.

5.3 EQUALITY AND FRATERNITY

The framers of the Indian Constitution were men educated in the west and drawing their image of being civilized from the Renaissance ideas about universal humanism. This philosophy developed with science and art in around 16th Century CE and with the conviction that all humans are alike. There was a strong sense of compassion for all humans and even for other living creatures. Looking upon all humanity as equal it advocates for personal liberty, and participatory democracy and a universal faith in human dignity, human rights and social justice.

This humanism arose against the philosophy of social evolution and theories like that of Herbert Spencer that took a harsh view of those who were unable to make good in life and stand up to competition.

Humanism derives its tenets from a rational and scientific rather than a religious or theological source. This is not to say that religious organizations, sects and functionaries do not or cannot have a humanist perspective, in fact they often do in the modern world. But there are many kinds of discriminations and hierarchies practiced by religious institutions and ideologies that would be rejected by the humanists. For example, the framer of the Indian Constitution, Dr. B.R. Ambedkar, was a Dalit, who had faced caste based discriminations sanctioned by Hindu religion popularly practiced in India. According to scholars of the caste system such as Louis Dumont, the caste hierarchy

draws its primary legitimacy from religion and the concepts of purity and pollution directly derived from Hindu world view.

It was Ambedkar's vision, inspired by western humanism and sense of social justice that the Indian Constitution should be based on the principles of equality, fraternity and secularism in order to sustain a plural society with justice and harmony. Ambedkar was a product of both a discriminatory indigenous society and a liberal humanist education from America. He was steeped in the principles of democracy and dignity for all individuals as individuals and not as members of community and social groups. Thus the Indian constitution does not discriminate against any one on the basis of religion, faith, way of life or any cultural trait such as language, food and ritual practices. As far as possible, persons are at liberty to practice their ways of life, as long as it does not violate the laws of the land. By declaring all persons as equal before the law and by denying all forms of inequality, based on caste, gender and ethnicity; the Constitution does not support the popular views of Hinduism and perhaps some other religions. However, in principle, Hinduism in its most philosophical and textual version does not support any discrimination either.

The contestation between, universal humanism, equality and fraternity as enshrined in the Constitution of India and the religious values of the people of India, are not based on religion as much as they are based on social discriminations, passed off as religious discriminations. To debate this one needs to look into the variations within a religion, the relationship between civil society and the state and the part that religion plays in state organization, even if it is done covertly. One needs also to consider how plurality is actually interpreted in society and how the concepts of equality are recast into the existing moulds of discrimination and historical perceptions about personhood and identity.

The concept of an individual is in itself a construct of the scientific rationality generated in the West. The incorporation of the 'individual' as the basic unit in the Constitution is a derivative of this philosophy. It is because the individual has become a unit, there is possibility of equality and the equivalence of all humans irrespective of other social criteria like gender, caste, race and class. In customary law, people are not viewed as standalone individuals but as embedded in social relationships. In the pre-colonial state, a person coming to court would be viewed in terms of gender, caste, class and other social characters and dealt with accordingly.

At this point it is relevant to discuss, what is understood by Humanism, as it is an integral part of our Constitution. The American Humanist Association has a specific definition for humanism. It is "A rational philosophy informed by science, inspired by art, and motivated by compassion" (Eller 2007:267). It visualizes each individual as equal and reaffirms human dignity. One must remember how Mahatma Gandhi had always emphasized on human dignity. He devoted much of his life to restore dignity to the marginal and especially untouchable communities of India. In this way he was being more western in his attitude than a Hindu, where the caste position of a person is seen as a result of his/her Karma. The rationalization of human inequality within the philosophy of the Jati/Varna is quite contrary to structural Hinduism. But Hinduism not being a doctrinal religion, professes many different paths. The Bhakti Marg, denounces all inequalities and is more akin to humanism. Bhakti tells that all are equal before the supreme power and each person as an individual can reach God through pure devotion. The followers of the Bhakti cults therefore decried the priests and Brahmanical form of Hinduism. Similarly, the Tantric path, followed by the Saint Ramakrishna Paramhansa,

the guru of Swami Vivekananda also derecognize human inequality and reject the jati/Varna system. Swami Vivekananda was himself of the Kayastha jati considered to be of the Shudra Varna. Earlier a person of his jati could not have been initiated as a swami, but all such rules were broken by his guru Ramakrishna.

Therefore, it will not be correct to say that liberal and humanist ideas came only from the west. There were many philosophies and roots of such thinking in the indigenous cults, including the Sufi and other rebels from organized religion.

5.4 INTERSECTION OF RELIGION AND SOCIETY

It is also true that majority of upper caste and class Hindus and also Muslims and people such as Christians converted from upper castes still believe in caste hierarchy and inequality as a divinely ordained condition.

In this respect the civil codes do interfere with certain practices that were sanctioned by culture and also to a large extent by popular Hinduism although not by textual or philosophical Hinduism. For example, pious Hindus of higher castes were often committed to marry off their minor daughters as a religious sanction, but the Hindu Marriage Act put the age of consent at 18 years for girls. Another objection raised by many Hindus, even scholars, was the acceptance of monogamy as a part of the Hindu Marriage Act. Hindus widely practiced polygyny, that is the marrying of more than one wife, and even practiced polyandry, the marriage of one woman to several husbands. Both these practices find mention in classical Hindu texts. Hindu men were not confined by religion to marry only four wives, like the Muslims, but could actually marry any number as they chose to, or were able to. Yet the largely upper caste and Hindu political luminaries who influenced the making of the Constitution, advocated monogamy, to mark themselves and other Hindus as 'civilized', not by the norms of religion but by the norms of the western culture that had colonized the country. It is well known that the rise of the political elite that fought for the freedom of India, was composed of high status men, mostly educated in the West, in the country that colonized them. The British effort (introduced by Macauley) to produce brown skinned British subjects, misfired, as many became proud and individualistic persons, aware of their rights to freedom and equality, as a result of this very education. This political elite had as its prime objective, not only to gain freedom, but to prove to the colonizers that they were equal in civilization to them. This was to counter the colonizing rhetoric that colonization was meant to 'civilize' the so-called savage natives.

Steeped in western values, these leaders, had before them the western model of civilization. Even while they espoused Indianness, in dress and speech, they were westernized from within. Therefore, it was logical that they advocated for monogamy, a caste free society and equality; none of which values were directly derived from Hindu religion although Islam and Buddhism along with tribal religions, did have equality as a prominent value. Hinduism is not a doctrinal religion and has many interpretations. Gandhi, for example, a devout Hindu, was against caste discrimination and strongly condemned untouchability, yet, he was not against caste as such. Ramakrishna Paramhansa, the great Indian sage who had inspired many and was the teacher of Swami Vivekananda, did not believe in the caste system, not because he was influenced by the west, quite contrary, he had no exposure to western culture at all, but as a realization from within. Hinduism advocates many paths, a prominent among them being Bhakti, or the way of pure devotion. From many centuries the followers on this

path have decried the caste system and also advocated for universal humanity and equality. Therefore, although the leaders were definitely influenced by their western education, they could draw upon a long tradition of equality and universal humanism from within Hinduism itself.

However, for the sake of cultural and religious plurality, the Islamic laws such as the provision of having four wives, and also the possibility of giving divorce to one's wife by just pronouncing the word Talaq three times, were continued. It was much later that these laws were challenged not from outside, but from within (The Shah Bano case). Recently, the present right wing regime has discontinued and made illegal the practice of triple talaq. It has been widely criticized by Muslim men as an attack on their identity, but silently supported by many women.

The tribal communities were also allowed to continue with their customary laws for all social and civil purposes. Yet here also many women, especially from highly patriarchal communities such as the Nagas, express their dissatisfaction at being governed by their customary laws and not by the Indian civil law that gives equal inheritance to women.

Right wing nationalism has been pressing for a uniform civil code for entire India. However, here what becomes contentious is what this Civil Code is going to be like? On one hand the Constitution grants equal rights to all religions and also ways of life supported by such religions. At the same time there is the contending question of one country and one law. The Indian Constitution was drafted keeping in mind the unique diversity of the country and its multiple traditions and ways of life. The theme had been Unity in Diversity, something that is celebrated in our National anthem as well.

As of now the discourse is alive. There are proponents of both views. There are pros and cons of both views. Having a Uniform Civil Code certainly paves the way for the emergence of a unified national identity. But the problem arises when it comes to which laws to implement. Since India had proclaimed itself a nation where all religions are to be given equal status, it poses a problem as to which is to be given prominence. In reality most of the civil laws were moulded on the western model, such as monogamy, higher age at marriage, permission for divorce and so on.

Over the years many new elements have been introduced into the Constitution, sometimes in accordance with changing times, and more recently in recognition of the indigenous value systems. A major transformation was the introduction of a Third gender in enumerations and official forms. India was the last among the South Asian countries to do this, following Nepal, Pakistan, Bangladesh and Sri Lanka. This was a symbolic denouncement of western values by a region that had always recognized more than two genders. Other major transformations had been in the Hindu succession act, where daughters are now given full inheritance rights even in ancestral property. There were changes in rape laws, where instead of the woman having to prove that she has been raped, the onus is on the man to prove himself innocent.

The Constitution Amendment Act (CAA), introduced at the end of the year 2019, has however created all round protests and disclaimers. The main argument against it is that it takes into account a person's religion as a criterion for the grant of citizenship. Although it is overtly directed at immigrants and refugees, its covert agenda is seen as insidiously targeting all Muslims, especially the marginal ones. This issue is also taken the form of a contentious discourse. But what it brings to light is the introduction of a moral universe that refers to religion as a referent.

The most fundamental premise of secularism lies in its drawing legitimacy from a moral universe that is based on universal humanism rather than on religion. The present amendment to the Constitution directly brings in religion as a referent and hence goes against secular nature of the Constitution.

5.5 SUMMARY

In this unit, the concept secularism has been discussed in its historical and political context. While western in origin overtly, one can find roots of many humanist traditions in India, even though they may still be rooted in religious ethos. A secularism based on science and rationality where the moral universe is situated away from all religious discourse however seems to be a largely western world view originating from western philosophy. This is also because it was only after the European Renaissance that religion became external to the factual world. To most other regions of the world, what is described in religion is not a belief but an ontological reality. The separation of fact from belief can be attributed to the dominance of the Protestant Church and rise of Positivist philosophy. In a region like India, it is still problematic to follow this western originated body of ideas as there is no historical background to it. The struggle of the Indian Constitution to present itself as secular in this western sense illustrates this contradiction very well. The idea of a citizen as opposed to a person embedded in social relationships is difficult to conceptualize and hence the contradictions inherent in having a secular Indian Constitution. While it is grand in principle given the social realities of India, and it is largely community based rather than individualistic life style, the secular, standalone individual as the legal person is difficult to operationalize. As of now it is only women who are fighting to be recognized as individuals with “inalienable rights” (Hasan 2000:297).

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