

Aruna Roy vs Union of India & Ors – Case Analysis

Petitioner: Aruna Roy

Respondent: Union of India (UOI)

Judgement on: 12.09.2002

Citation: AIR 2002 SC 3176

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Secularism

Dictionary define secularism as pertaining to this world or to thing not spiritual not concerned with religion a system of belong which rejects all forms of religious faith and worship irreligious etc. [\[1\]](#)

An academic definition of the concept of secularism in the Indian context has been attempted by Donald Eugene smooth in the following words:

“The secular state is state which gives individual and corporate freedom of religion is not constitutionally connected to particular religion nor does it seek either to promote or interfere with religion. [\[2\]](#)

During constituent assembly debates Nehru declared that secularism was an ideal to be achieved and that establishment of a secular state was an act of faith. When objection was sought to be voiced from certain quarters, pandit Laxmikantha Maitra explained.

By secular state as I understand it is meant that the state is

not going to make any discrimination whatsoever on the ground of religion or community against any person progressing 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 endowed any particular religion to the exclusion of or in preference to other 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 will not be taken into consideration at all. This I consider to be the essence of a secular state 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 to not only to professor practice but also propagate any particular religion. [\[3\]](#)

In S.R.Bommmai v. union of Indian, the supreme court dwelt at length on the basic features of secularism in the constitution and justified the proclamations under article 356 imposing president's rule in the BJP ruled states in the aftermath of Babri Masjid demolition on the ground of threat to secularism which it held to be basic structure of the constitution and one that was that was there even before the word secular was inserted. [\[4\]](#)

Unlike unlike the west in India secularism must be viewed as positive concept of equal treatment of and respect for all religions. It was never born out of the conflict between the church and the state. It was perhaps rooted in India's own past history and culture a very likely response other pluralism or the desire of the founding father to be just and fair to all communities irrespective of their numbers. Very often in our common parlance the term secularism therefore is used merely as an opposite of communalism.

The meaning sought to be given to the term has been that of sarva dharma sambhavea ex- treating all religions alike or giving equal respect to all religions instead of dharma

nirpekh or panth nirpeksh ex state neutrality in matters of religion.

This was the natural and the only possible interpretation because the hard facts of the Indian situation made the western concept of secularism entirely inapplicable. Secularism in our context only mean that ours was a non-theoretic state that the state as such does not hence its own religion, that in its eyes all religions are equal and that it would make no distinction between citizens on ground of religion. This however does not mean that the state has no say whatever in matters in matters of religion. Laws cannot be made regulation the secular affairs go temples mosques and other places of worship of worship and maths. Even actuation by the state of place of worship – temple mosque or church cannot be said to be against secularism.[\[5\]](#)

Justice Gajendragakar defined secularism of the Indian constitution to man equality of rights to all citizens a citizen with their religion being entirely irrelevant in the matter. The state he said does not owe loyalty to any. Particular religion as such it is not irreligious or anti religious it gives equal freedom to all religious. Indian secularism sought to establish a rational synthesis between the legitimate function of religion and the legitimate and expanding functions of the state. M.C. Setalvad also believed that under a secular state all citizens are to be treated alike and not discriminated against on account of their religion. The state will treat all religions and religious groups equally and with equal respect without any in any manner interfering with their individual rights of religion faith and worship.[\[6\]](#)

The term secular has advisedly not been defined presumably because it is a very elastic term not capable of a precise definition and perhaps best left undefined =. Secularism in the constitution not anti god and it is sometimes believed to be a stay in a free society. Secularism represents faith born

out of the exercise of national facilities. It enables people to see the imperative requirement for human progress in all aspects and culture and social advancement and indeed for human survival itself. Religion and secularism and secularism operate at different fields religion is a matter of personal belief and mode of worship and prayer personal to the individual where secularism operates on the temporal aspect of the state activity in dealing with the people professing different religious faiths.[\[7\]](#)

Fact of the Case-

In this public interest litigation filed under article 32 of the constitution of India it has been mainly contended that the national curriculum framework for school education (hereinafter referred to as NCFSE) published by the National Council of Education Research and Training (hereinafter referred to as NCERT) is against the constitutional mandate anti-secular and without consultation with the Central Advisory Board of Education (hereinafter referred to as CABE) and therefore requires to be set aside. Admittedly CABE is in existence since 1935 and it is submitted that until now before framing the new NCFSE, CABE was always consulted.

Issues

- The respondents have not sought the approval of the central advisory board to the national curriculum framework for school education 2000 and without obtaining the approval of CABE, NCFSE cannot be implemented.
- NCFSE and the syllabus framed there under are unconstitutional as the same are violative of the rubric of secularism which is part of the basic structure of our constitution. Same and the syllabus are also

violative of the fundamental right to education
fundamental right to development fundamental right to
information (which have been read into the right to life
under article 21) and also article 27 and 28 of the
constitution of India.

Argument for respondent

The learned council for the respondent also submitted that the discussions/workshop was held at various levels before framing the national curriculum framework (NCF). No doubt this is a disputed contention which is not required to be decided

However as stated above the main function of CAGE as per the resolution is to review the progress of education from time to time and to appraise the extent and manner in which the education policy has been implemented by central and state governments and other agencies concerned and to give appropriate advice in the matter. It can be advised the governmental regarding coordinating between the central government and the state government for educational development in accordance with the education policy. Suo motu also it can be advice on any educational question therefore it cannot be said that non-consultation of CAGE by NCERT is against the established principle for any oblique motive. It is further stated that the union of India and NCERT in their counter-affidavit hence only taken the plea that there is no legal requirement to consult CAGE and that in any event CAGE has not been in existence after the alleged expiry of term in 1994. Nowhere have they controverted the fact that CAGE in fact did approve NCF, 1998 in the additional affidavit of NCERT which was produced on 1-8-2002 minutes of the 38th CAGE meeting in 1975 have been extracted. The relevant portion extracted itself clearly shows CAGE's vital role in the curriculum Framework.

Respondent talks of important religious institution as prohibited under art 28 what is sought to have value based education and for religion it is stated that student be given awareness of that essence of every religion is common only practice is different.

The respondent NCERT has filed affidavit stating therein the NCERT followed what the parliamentary Committee asked it to do. The S.B.Chawhan committee's report on value based education was tabled inpatient after its approval, since there was no opposition NCERT was asked to implement this report. Further, NCERT in fact consulted other institutions and other individual experts and sent the draft curriculum document to the education ministers of all the states and its governments who would have been members of CIBE had it been reconstituted.

Argument for petitioner

From the aforesaid two resolutions which are produced on record it is apparent that the functions of CIBE are limited. It nowhere mandates that before framing the national curriculum framework for school education the government shall consult can be and act as per its advice. However it is contended that since years before framing such national curriculum CIBE is always consulted and therefore non-consultation of CIBE by the government of NCERT is against the established principle oblique motive

In our point of view this submission cannot be accepted. Firstly it is reiterated that CIBE is a not -statutory body constituted by the resolutions of the government of India from time to time. So true is that it is functioning since 1935. However it being constituted by exercise of the executive function of the government it cannot be held that as CIBE is not consulted. The policy laid down by NCERT is violative of any statutory provision or rules.

It is further submitted that C A B E is in existence is in existence today as is evidenced but the fact that the Rajya Sabha website in its of bodies in which its nominees are present, mentions C A B E even till date and the issue regarding approval of C A B E had been raised by Member of Parliament and others in July 2001 prior to the finalization of NCFSE. Despite the same the governmental failed to reconstitute the body as the present petition I submitted before this court. The union of India having failed to comply with its duty to fill in the vacancies cannot now be permitted to take advantage of its duty to fill in the vacancies cannot now be permitted to take advantage of its own wrong and be heard to say that the approval of C A B E was not sought as it has not yet been reconstituted. It is further submitted that the programmed of action 1992 (POA) states that C A B E is the historic forum for forging a nation consensus on education policies. POA reviewed the national policy on education 1986 (NPE 1986) and made certain minor modifications therein the said programmed of action further states as under

The central advisory board of education (C A B E) has emerged as a very effective instrument of meaningful partnership between the states and center particularly at evolving a consensus on the major policy issues in the field of human resources development. C A B E would be expected to play a meaningful and important role in the implementation of NCFSE.

From the aforesaid entire paragraph the learned counsel for the petitioners vehemently objected only to the following part what is required today is not religious education but education about religions, their basics the values inherent therein and also comparative study of the philosophy of all religions. It is contended that giving education about religions would be violative of article 28 and also it would offend the basic structure of the constitution namely secularism.

The petitioner that for challenging the policy framed by NCERT

the petitioners has picked up some sentences out of the contest. This national curriculum is prepared on the basis of the report submitted to parliament on 22-1-1999 by the S.B.Chawan committee is based on earlier report submitted by various committees, namely the Radhakrishnana commission (1948-49), Kothari commission (1964-66), National policy on education 1986 Ramamurti committee 1990 central advisory board of education committee on policy 1992, which have highlighted the urgent need for making the educational system value based.

On article 28 of the constitution for contending that nation curriculum is against the mandate of said article. The entire emphasis of duty art 28 is against importing religious institution on performing religious world ship.

Judgment

The expression 'religious instructions' used in Article 28 (1) has a Restricted meaning. It conveys that teaching of customs, ways of worships, practices or rituals cannot be allowed in educational institutions wholly maintained out of States funds. But Article 28 (1) cannot be read as prohibiting study of different religions existing in India and outside India. If that prohibition is read with the words "religious instructions", study of philosophy which is necessarily based on study of religions would be impermissible. That would amount to denying children a right to understand their own religion and religions of others, with whom they are living in India and with whom they may like to live and interact. Study of religions, therefore, is not prohibited by the Constitution and the constitutional provisions should not be read so, otherwise the chances of spiritual growth of human-being, which is considered to be the highest goal of human existence, would be totally frustrated. Any interpretation of Article 28(1), which negates the fundamental right of a child or a person to get education of

different religions of the country and outside the country and of his own religion would be destructive of his fundamental right of receiving information, deriving knowledge and conducting his life on the basis of philosophy of his liking.

The debates in the Constituent Assembly when Article 28 of the Constitution was being considered are illuminating and helpful in understanding the expression 'religious instruction' used in the said Article. See the following part of the debates :-

Pandit Lakshmi Kanta Maitra : May I put the Hon'ble Member one question? There is, for instance, an educational institution wholly managed by the Government, like the Sanskrit College, Calcutta. There the Vedas are taught, Smritis are taught, the Gita is taught, the Upanishads are taught. Similarly in several parts of Bengal there are Sanskrit Institutions where instructions in these subjects are given. You provide in article 22(1) that no religious instruction can be given by an institution wholly maintained out of State funds. These are absolutely maintained by State funds. My point is, would it be interpreted that the teaching of Vedas, or Smritis, or Shastras or Upanishads comes within the meaning of a religious instruction? In that case all these institutions will have to be closed down.

The Hon'ble Dr. B. R. Ambedkar : Well, I do not know exactly the character of the institutions to which my Friend Mr. Maitra has made reference and it is, therefore, quite difficult for me. Pandit Lakshmi Kanta Maitra : Take for instance the teaching of Gita, Upanishads, the Vedas and things like that in Government Sanskrit Colleges and schools.

The Hon'ble Dr. B. R. Ambedkar : My own view is this, that religious instruction is to be distinguished from research or study. Those are quite different things. Religious instruction means this. For instance, so far as the Islam

religion is concerned, it means that you believe in one God, that you believe that Pagambar the Prophet is the last Prophet and so on, in other words, what we call "dogma". A dogma is quite different from study. Mr. Vice-President : May I interpose for one minute? As Inspector of Colleges for the Calcutta University, I used to inspect the Sanskrit College, where as Pandit Maitra is aware, students have to study not only the University course but books outside it in Sanskrit literature and in fact Sanskrit sacred books, but this was never regarded as religious instruction; it was regarded as a course in culture.

Pandit Lakshmi Kanta Maitra : My point is, this. It is not a question of research. It is a mere instruction in religion or religious branches of study. I ask whether lecturing on Gita and Upanishads would be considered as giving religious instruction? Expounding Upanishads is not a matter of research. Mr. Vice-President : It is a question of teaching students and I know at least one instance where there was a Muslim student in the Sanskrit College. Shri H.V. Kamath : On a point of clarification, does my friend Dr. Ambedkar contend that in schools run by a community exclusively for pupils of that community only, religious education should not be compulsory?

The Hon'ble Dr. B. R. Ambedkar: It is left to them. It is left to the community to make it compulsory or not. All that we do is to lay down that that community will not have the right to make it compulsory for children of communities which do not belong to the community which runs the school

Prof. Shibban Lal Saksena : The way in which you have explained the word "religious instruction" should find a place in the Constitution. The Hon'ble Dr. B. R. Ambedkar: I think

the courts will decide when the matter comes up before them.

The above relevant part of the constitutional debates and the concluding remark of Dr. B. R. Ambedkar give an indication of the minds of the framers of the Constitution. They had seen the distinction between "religious instruction" as mentioned in Clauses (1), (2) & (3) of Article 28 and "study of religions" or "religious education" as a philosophical study.

The word "secularism" used in the preamble of the Constitution is reflected in provisions contained in Articles 25 to 30 and Part IVA added to the Constitution containing Article 51A prescribing fundamental duties of the citizens. It has to be understood on the basis of more than 50 years experience of the working of the Constitution. The complete neutrality towards religion and apathy for all kinds of religious teachings in institutions of the State have not helped in removing mutual misunderstanding and intolerance inter se between sections of people of different religions, faiths and beliefs. 'Secularism', therefore, is susceptible to a positive meaning that is developing understanding and respect towards different religions. The essence of secularism is non-discrimination of people by the State on the basis of religious differences. 'Secularism' can be practised by adopting a complete neutral approach towards religions or by a positive approach by making one section of religious people to understand and respect religion and faith of another section of people. Based on such mutual understanding and respect for each other's religious faith, mutual distrust and intolerance can gradually be eliminated. Study of religions, therefore, in school education cannot be held to be an attempt against the secular philosophy of the Constitution.

The real meaning of secularism in the language of Gandhi is

Sarva-Dharma-Samabhav meaning equal treatment and respect for all religions, but we have misunderstood the meaning of secularism as Sarva-Dharma-Sam-Abhav meaning negation of all religions. The result of this has been that we do not allow our students even touch of our religious books. Gandhiji in his lifetime has been trying to create religious and communal harmony and laid down his life in doing so. His ardent follower Vinoba Bhave after independence has not only learnt all the languages and made in-depth study of all the religions of India but covered length and breadth of India on foot to unite the hearts of Indian people by spreading his message of non-violence and love. Based on his in-depth study of all religious books of India, he published, in his life time, their essence in the form of different books. He has very strongly recommended that the essence of various religions, which he published in book forms like Quran Saar, KhistaDharma-Saar, BhagwatDharma-Saar, Manushasanam etc., should be introduced to the students through next books because these religious books have been tested since thousands of years and proved to be useful for the development of man and human society.

In a society wedded to secularism, 'study of religions' would strengthen the concept of secularism in its true spirit. In the name of secularism, we should not keep ourselves aloof from such great treasures of knowledge which have been left behind by sages, saints and seers. How can we develop cultured human-beings of moral character without teaching them from childhood the fundamental human and spiritual values. In evolving a National Policy on Education and based thereon a curriculum, in accordance with long standing practice, it was desirable to consult CIBE although for non-consultation the National Policy and the Curriculum cannot be set aside by the court. In a constitutional democracy, Parliament is supreme and policies have to be framed and approved by the Parliament. Parliament had constituted CIBE and NCERT and if CIBE has any objection to the National Curriculum nothing prevented it from expressing its opinion accordingly. It is ultimately for the

Parliament to take a decision on the National Education Policy one way or the other. It is not the province of the Court to decide on the good or bad points of an Educational Policy. The Court's limited jurisdiction to intervene in implementation of a policy is only if it is found to be against any statute or the Constitution. We have not found anything in the Educational Policy or the Curriculum which is against the Constitution. We have found no ground to grant any relief as prayed for by the Petitioners. We would, however, direct the Union of India to consider the matter of filling the vacancies in the membership of CIBE and convening a meeting of CIBE for seeking opinion on the policy and the curriculum.

All bodies created by executive power of the State, are answerable to Parliament which is the supreme legislative body with all powers in suggesting and formulating a National Education Policy. It is open to Parliament to fill nominations to CIBE, re-constitute it or do away with it. The court can have no jurisdiction in that subject. This court can enforce constitutional provisions and laws framed by the Parliament. It cannot, however, compel that a particular practice or tradition followed in framing and implementing the policy, must be adhered to. The court has to keep in mind the above limitations on its jurisdiction and power. It is true that if a policy framed in the field of education or other fields runs counter to the constitutional provisions or the philosophy behind those provisions, this court must, as part of its constitutional duty, interdict such policy. For the reasons given above, we do not find that the National Education Policy 2002 runs counter to the concept of secularism.

Cases referred

- S.Narayana Deekshitulu v. State of A.P (1996) 9 SCC 548
- Santosh kumar v. Secy Minister of Human Resources development. (1994) 6 SCC 579
- R.Bomma v union of India (1994) 3 SCC 1
- A.V.College v. State of Punjab (1971) 2 SCC 269

Case comment

I agree with the opinion of judges in this case. Art. 28 says about prohibiting Religious instruction not about Study of Religion. If study of Religion is prohibited under Art28 it would deny child right to understand his own religion. Constitution talks about Secularism which means equal respect of all religion. So if study of religion is banned how will a person understand his own religion and other religion because essence of every religion is common only practices differ if they don't have knowledge about philosophy of all religion how can then a person respect religion.

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[1] Kashyap. s.c, constitutional law of India, introduction and background, articles 1-226, vol.1,2008 edition,universal law publishing co. at p.299.

[2] Ibid.p.300

[3] Ibid.p.301

[4] Supra.n.1.p.301

[\[5\]](#) Supra.n.1.p.302

[\[6\]](#) Bal Patil v. union of India, AIR 2005 SC 3172

[\[7\]](#) S.R.Bomma v. union of India, AIR 1994 SC 1918