

4-page box for Section Patel... S.V. Raju

Making a Mockery of Indian Democracy

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That socialists have the possibility of organising themselves as political parties while those having problems of conscience in declaring adherence to socialism should be stopped from organising themselves into a political party is wholly discriminatory and hence, clearly a breach of the fundamental right of association.

While socialism is passing into the history books as a once-noble ideal that degenerated into an instrument of tyranny in most parts of the world, it continues to bedevil Indian polity. Even while we have jettisoned a good deal of the licence permit quota raj which in India is the visible symbol of socialism, the word continues to disfigure the Indian Constitution and is making a mockery of Indian democracy.

Not many are aware that a political party cannot register itself with the Election Commission unless it swears allegiance to socialism along with secularism and democracy. In other words, as the law stands today only a socialist party can participate in the Indian political process.

When and how did this happen? In 1976, the preamble to the Constitution of India was amended. The words "Sovereign Democratic Republic" were amended to read "Sovereign Socialist Secular Democratic Republic". The amendment was adopted during the last days of the infamous emergency under Mrs. Indira Gandhi in highly controlled conditions when most leaders of opposition parties were in prison and civil liberties suspended.

Based on the amended preamble, Parliament passed in 1989, an amendment to the Representation of the People Act which introduced the concept of registration of parties for allotment of symbols and the entitlement to other facilities such as free copies of electoral rolls etc. A new section was added to the Representation of the People Act - Section 29(A). This new section stipulates among other things that a political party seeking registration should

swear allegiance to the Constitution of India in general and to the principles of socialism, secularism and democracy in particular. Every party candidate filing his nomination paper has also to so swear. Curiously an independent candidate has only to swear general allegiance to the Constitution without having to spell it out in terms of his or her allegiance to socialism.

The Swatantra Party founded by Rajaji and Masani is a party wedded to liberal democracy and is opposed to socialism in all its forms and manifestations. The party was founded in 1959 much before the enactment of 29(A).

The Swatantra Party split in 1974 when a section of the Party led by Mr. Piloo Mody decided to merge with the U.P. based Bharatiya Kranti Dal led by Charan Singh and Raj Narain.

The story of the split and the continuance of the Swatantra Party are told by this writer in *Freedom First* of September 1974 (No.268)

Soon after the notification by the Election Commission the Maharashtra Swatantra Party asked for registration. In its letter it specifically stated its inability to swear by socialism but had no difficulty in swearing loyalty to democracy and secularism. The reply on more than one occasion was truly bureaucratic. 'Please complete the registration form as stipulated by Section 29(A).' Denied registration and in the context of the then impending elections to the Maharashtra Assembly, the Party sought justice from the Bombay High Court. A Writ Petition was filed on December 15, 1994. The Petition was

heard but its prayer for interim relief (to be allowed a common symbol to participate in the elections pending the Court's decision) was denied. The Petition is likely to come up sometime in April. The Division Bench of the Bombay High Court while rejecting the prayer for interim relief however agreed to expedite the hearing.

The following is an extract from the writ petition. The Party is represented by Mr. Rajiv Patil and Mr. Sharad Bobde.

"The stipulations of Section 29(A) create problems of conscience and principles which the petitioner No.1 (The Swatantra Party) does not wish to circumvent by prevarication and falsehood as has been done by other parties in the country. For example, the extreme leftist revolutionary parties have apparently constituted themselves by a memorandum which contains a provision to the effect that they bear allegiance to the principle of democracy; crassly communal parties have sworn allegiance to secularism and the ruling party despite its declared objective of liberalisation and globalisation has pledged or at any rate continues to pledge its allegiance to the principle of socialism. Section 29(A) poses no problem that cannot be overcome by recourse to pliable conscience. There is no provision for any verification of the truth of the memoranda or regulations nor is there any instance of registration being denied to or withdrawn from any party on the basis of proven falsehood of the provisions in the memorandum of association of any party. The petitioner No.1 party has no wish to resort to such unconscionable procedure followed quasi-

2
universally.

"The petitioner No.1 has no difficulty whatsoever in confirming its allegiance to the principles of democracy and secularism as also to uphold the territorial integrity of the Republic. It encounters insurmountable difficulty in declaring allegiance to the principle of socialism. The term socialism has not been defined in the Constitution of India or in the said Act. The requirement to declare allegiance to a tenet so shrouded in vagueness can serve no possible purpose. If the provisions contained in the Constitution represent, in the view of the authors of the stipulation, the essential content of socialism, the specific requirement of the Section 29(A) is unnecessary since the oath of allegiance to the Constitution as by law established would more than cover the requirement.

"On the other hand, if the dispositions of the Constitution of India are entirely socialistic but are a little less or a little more, there would arise a contradiction between the declaration of allegiance to the Constitution and that to the principle of socialism.

"The petitioners submit that, it is significant that the Third Schedule to the Constitution which contains the texts of oaths to be taken by candidates to the election of Lok Sabha and of the State legislatures has not been modified following the amendment to the Preamble to the Constitution and of the amendment to the Act. The texts of oaths required to be taken by individual candidates continue to be limited to swearing true faith and allegiance to the Constitution of India as by law established without any reference to the principle of socialism. The oath of allegiance to the principle of socialism is insisted upon only in the case of associations of persons wishing to be registered as a political party. The petitioners further submit that the provisions of the Act which deal with qualification and disqualification for membership to Legislature does not impose any such

precondition. Nor do the provisions which lay down the requirements of a valid nomination lay down any such precondition. The effect of the relevant provisions of the Act is that whereas individual candidates i.e. those not set up by a registered political party may contest elections without having to bear any allegiance to the principles of socialism, parties which seek registration for the same purpose are required to do so. It is submitted that for the purposes of the said Act, namely to confer and regulate the right to contest election, there is no intelligible differentia between political parties and individual candidates. The provision i.e. Section 29(A) which only requires political parties to bear allegiance to the principles of socialism is wholly discriminatory and void being in violation of Article 14 of the Constitution of India. That socialists have the possibility of organising themselves as political parties while those having problems of conscience in declaring adherence to socialism should be stopped from organising themselves into a political party is wholly discriminatory and hence, clearly in breach of the fundamental right of association.

"The petitioners' grievance is not against the amendment to the Preamble incorporating therein a reference to socialism. The Constitution contains many dispositions not all of which need be uniformly acceptable to any given individual or association of individuals. What is essential is that a citizen must have the right and the possibility at par with any other citizen to act and to canvass by constitutional means, for changing the dispositions of the Constitution in accordance with his inclinations howsoever unreasonable they may look to others at a given point of time. Section 29(A) of the Act prevents committed and sincere non-socialists from agitating as an organised force in favour of getting the Constitution modified in their favour by entering the Legislature - State Assemblies as also Parliament - and influencing the persuasions of

the other members of the Parliament.

Thus, without going into the question of the precise definition of the term socialism, the right of a non-socialist citizen to hold his personal views and be entitled to all the privileges enjoyed by the socialist fellow-citizens cannot be denied. In particular his access to the legislative body as an individual and as a party cannot be hindered by denying him the privileges of registration as political party.

"The term 'socialism' has been applied to a large spectrum of theories over the last two centuries. Saint Simonism based on compassion for the less fortunate and suffering fraternity; Owenism as a serious attempt at organisation of the weaker sections into economically viable units; Fabianism with its mighty intellectual prestige provided by G. B. Shaw, Sidney and Beatrice Webb; Guild Socialism advocated by G. D. H. Cole; Welfarism providing a misplaced justification for equal distribution of wealth; the European type of liberal, democratic, welfarist socialism; the Keynesian model entrusting the responsibility of ensuring fuller levels of employment and investment; third world states resorting to planning as an instrument of accelerating growth and equality; the Soviet type of bolshevik scientific socialism based on dialectical materialism, historical determinism, class conflict, the theory of surplus value aimed at industrialisation, nationalization, planning and dictatorship of the proletariat; and last but not the least, the Maoist, Guevarist, Castroist, Royist, etc. provide only part of the spectrum of ideas that have been identified with the word socialism. By virtue of the vast expanse and the political and economic power of the erstwhile Soviet Union and the use of the word socialist in the nomenclature of the Soviet bloc countries, the word is now understood to mean, in popular parlance, a system associated with the Soviet model. Other schools of socialist thought are identified by the appendage of qualifications like democratic, chris-

3
tial, liberal. The term socialism used without qualifications is interpreted to refer to the system of thought propagated by Marx and Engels and supplemented by the lesser prophets like Lenin and Stalin.

The Concise Oxford dictionary defines the word socialism as a political and economic theory of social organization which advocates that the community as a whole should own and control the means of production, distribution and exchange; a policy or practice based on this theory. It is quite clear that the word socialism in its unmixed form means much more and much less than a system based on justice, liberty, equality and fraternity that is envisaged in the Constitution of India. It, therefore, follows that the oath of allegiance to both the Constitution of India and to socialism are in good part mutually contradictory.

"The petitioners submit that, certain traits of the mainstream theory of socialism are clearly opposed if not repugnant to the basic principles and structure of the Constitution of India; for example, class-contradiction, atheism, dictatorship of the proletariat.

"An argument may be made that the term socialism is so vague that no individual should have any difficulty in adhering to it or should feel any need to dissociate himself from it. The obvious corollary is that the declaration of allegiance to the principle of socialism is unnecessary. Further, the argument is far from true. The essential part of all brands of socialism is the notion of the paramountcy of society over an individual; of social decision-making over individual behaviour. This concept of paramountcy stands in ruins today. It is now accepted quasi-universally that mankind has, till date, not invented anything better than the market mechanism for arriving at the best decisions for society as a whole, that holistic social decision-making is a masquerade for a few individuals hijacking the system to their advantage, that individuals are

unique and hence unequal, that individuals pursuing fulfillment of their unique personality interact amongst each other to produce the most desirable results and that there are no Masters neither spiritual nor economic with superior lights.

"In most countries of the world the socialists are collapsing under the weight of their own non-viability. Even the Government of India has admitted the errors of its socialist past and professes to be pursuing the path of market oriented economics. It makes little sense in this era to deny non-socialists the possibility of organising themselves as a party in order to be able to contest political elections.

"The position of the Petitioners is thus diametrically opposed to the basic minimum of the world view, economics, sociology and politics that is associated with the term socialist. The petitioners are, therefore, approaching this Hon'ble Court to seek relief from being forced to change their convictions or to have recourse to deceit in order to be able to exercise the basic democratic human rights embodied in the fundamental rights of being able to form a party with a view to contesting elections.

"Section 29(A) makes a hostile and invidious discrimination between political parties which bear allegiance to the principles of socialism and those that do not. It is submitted that for the purpose of registration of political parties i.e. for the purpose of contesting elections and conferring certain rights and privileges and imposing certain liabilities in relation thereto, there is no intelligible differentia between the two kinds of political parties. It is further submitted that for the election law, the differences in beliefs or political philosophies which parties may hold cannot become a ground for discriminating between them so as to confer certain privileges only on parties holding one set of beliefs as long as the beliefs do not contradict or adversely affect the sovereignty and integrity of India or public order.

'Change the Law' says Mr. Seshan

On January 11, Mr. Moreswar Temurde the Convenor of the Swatantra Bharat Party in Maharashtra and I called on Mr. T. N. Seshan the Chief Election Commissioner, in New Delhi. The purpose of our visit - to make one final effort to persuade the Election Commissioner to consider an interim allotment of a symbol to the newly formed Swatantra Bharat Party.

This party's application for registration had been turned down on the technical ground that the application had not been made within 30 days of the formation of the party as required. This in itself is a very arbitrary rule. If a party does not ask for registration within thirty days, it is permanently debarred from the electoral process.

We asked Mr. Seshan if he would consider an application within the stipulated time period if we declined to swear allegiance to socialism. 'Let us not waste our time in speculation' was his immediate response, but when we persisted, he said that he does not make the law, he only implements the law. Any organisation seeking registration must fulfil all requirements under Section 23A including the bit about allegiance to socialism.

When we pointed out the fact that the law meant that only socialist parties could participate in the electoral process, he shrugged his shoulders and pointed out that the amendment to the Representation of People's Act was passed by Parliament in 1989 *without a single dissenting vote*. There was only one solution:

'Change the law' said Mr. Seshan.

The writ petition filed by the Swatantra Party is an effort to do precisely that.

S. V. Raju

Such a difference, as is sought to be emphasized by Section 29 (A) (5) is without any basis and has no nexus with the purpose of the Act which is avowedly an Act which provides for "the conduct of elections to the Houses of Parliament and to the House or Houses of Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decisions of doubts and disputes arising out of or in connection with such elections".

"The petitioners further submit that for the aforesaid objective of the Act, there is no valid difference in individuals contesting elections and parties doing so. There is thus an arbitrariness and a hostile discrimination writ large in the scheme of the Act in that it enables individual candidates contesting as independents to contest elections even though they do not bear allegiance to the principles of socialism but prevents an

association of such individuals from doing so as a registered political party unless it bears allegiance to the said principles. The petitioners submit that this constitutes an unreasonable and unjustified denial of the advantages of registration only because as an association the said individuals are non-socialists.

"The petitioners submit that the restriction which Section 29(A) imposes on political parties nullifies the very essential and basic feature of the Constitution of India namely democracy and the fundamental right of freedom of association and of thought and expression on citizens for the purpose of preserving democracy.

"It is submitted that the right to amend the Constitution so as not to change its basic structure having being upheld and socialism not being part of the basic structure of the Constitution, the restriction imposed by Section 29(A) has the effect of

virtually denying the right to attempt an amendment of the political philosophy of the Government of the day reflected in the Constitution of India."

The Petition wanted the Court to:

- strike down Sub-Section 5 of Section 29 (A) of the Representation of the People Act 1951 as being ultra vires the Constitution of India to the extent it requires the memorandum and rules and regulations of the association or body desiring registration to contain a specific provision that such an association and body shall bear true faith and allegiance to the principle of socialism; and
- direct the Election Commission to register the Petitioner as a political party under the Representation of the People Act, 1951.

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