

YASHWANTRAO CHAVAN MEMORIAL LECTURE
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SECULARISM IN INDIA : MEANING AND PRACTICE

An invitation to speak before Members of Centre for Advanced Strategic Studies is both, honor and opportunity. Discussion on contemporary issues of public importance is becoming rare and an audience of enlightened persons who have served the country in responsible position is further rare. Thank you very much for honoring me with this opportunity.

This talk is being delivered in memory of Late Shri Yashwantrao Chavan. He had a distinguished political career. He was the first Chief Minister of our State; later, he went on to become Defence, Home, External Affairs & Finance Minister of Government of India. He would be more remembered as a cultured politician, who had deep faith in democratic values. Shri Chavan, a freedom fighter, was an ideal example of emerging rural leadership of the post independence era. Socio-political reconstruction with prominence to rural population was his agenda, but he was a democrat with respect for liberal values. As the first Chief Minister of Maharashtra he secured co-operation of all sections of society and had genuine interest in culture and literature. He knew that every section of the society is important irrespective of its numerical strength for development of State. I am grateful for this opportunity to pay homage to his memory.

Secularism is a frequently used term in our political debates and so familiar to us; but the meaning it would convey differs from user to user. Broadly it is exclusion of religious considerations in public at large, more particularly in political governance. Though secular values in social and political behavior were set and advocated by Greek philosophers about 500 years before the birth of Jesus Christ, idea of secularism as understood today was born much later in nineteenth century. Denial of basic individual freedom, imposition of church mandates and other social wrongs gave rise to protest movements. Secularism was one of such movements. Leaving beyond the events and time causing its birth, it intends to exist as a positive political philosophy.

Historians tell us, how philosophy of British utilitarian sponsored secularism. So many other factors contributed. Need to keep different Christian sects together, finding common ground for this led to distance church from the world. Political philosophers like Hobbes made demands of Christian faith irrelevant to the public sphere. According to him religion will exist only in the private sphere. Nineteenth century secularism in England grew in the background of conflict between truth believed by Church and truth established by Science. Every religious apparatus has shown dictatorial tendencies; Greeks did not tolerate Socrates and neither Galileo by the Church. Secularists believed that, human development is possible by material means alone.

British rulers who came to India by and large had to stay away from religious beliefs of their Indian subjects, though at least some of them would have loved to see India turning to Christianity. New rulers were naturally apprehensive of reaction of their Hindu and Muslim subjects. Therefore, they enacted secular laws brought in a secular judiciary and a secular administration refraining from interfering into religious affairs. Legislation for social reform was an exception, that too as a cautious response to public demand for such a reform. Another factor which kept British administration in India away from religious considerations might be upbringing some of them in British liberal thought.

Leadership of freedom movement in India was also under the influence of British liberal thought and was very much impressed by British model of administration. That is perhaps one of the reasons why Indian National Congress remained a secular political party despite the fact that, the large majority of its workers were Hindus and Muslim league a communal organization was playing a rival role.

Philosophers, politicians and judges in India have claimed in their treatises and judgments that Indian secularism is different from the European one. Let us consider the proposition. Is the secularism in India is different in content from its European form? If it is so, what is the reason? Answer to this query can be found in the purpose for which the secularism was put in service. Principle purpose before Western democracies was to separate Church and Government, to separate

church and knowledge. In India secularism was thought of and adopted for the necessity to keep people of different faith together. People of different religions, Hindus & Muslims, Sikhs & Christians, Jains & Buddhas are to live together in a single polity. Logically such polity cannot have a religion of its own. If all citizens are to be assured, equal right, equal protection irrespective of their religions or castes, then the State cannot be religious. Separation of religious authority from the governance was not the agenda before founders of our nation. They wanted to achieve the unity amongst the people practicing different religions. That was the agenda and the secularism was only answer found. The meaning of the term 'Secularism' they had in mind was equal treatment to all religions and equal rights to all religious groups. Dr. S. Radhakrishnan, then President of the Republic declared "I want to State authoritatively that, secularism does not mean irreligion. It means we respect all faith and religions. Our State does not identify itself with any particular religion".

Professor Donald Smith defined secularism on the basis of inter-se relationship of State, individual and religion. In the relationship of individual and religion, State is excluded. In the relationship between individual and State, religion is excluded. Institutional arrangement for these relationships keeps relation and State separate from each other. Professor Smith underlines the importance of neutrality of the State in religious matters.

Secularism understood in India is interreligious understanding. Gandhiji stressed the importance of religious harmony and sacrificed himself for achieving this goal. He was extremely devoted man but aware that public affairs will have to be secular. In Hind Swaraj, a book published hundred years ago he said, "I swear by my religion. I will die for it. But it is my personal affair. The state has nothing to do with it. The state will look after your secular welfare, health, communications, foreign relations, currency and so on. But not my religion. It is everybody's personal concern." Though religion was purely a personal affair for Mahatma Gandhi, his religious bent of mind was the cause of his assertion for purity in public life and politics.

Here, I remember another great son of India, Justice Mahadeo Govind Ranade. Ranade was also extremely religious and devotee :

Rituals as ceremonies were important to him, but faith in eternal power and prayer did give him strength in discharge of all his public duties which most related to secular welfare of society.

Indian Judiciary has also accepted the distinct character of Indian secularism. The Supreme Court observed in the case of T.M.A. Pai Foundation V. State of Karnataka: "although the idea of secularism may have been borrowed in the Indian Constitution from the West, it has adopted its own unique brand of secularism based on its particular history and exigency".

Can the secularism differ from Country to Country or from time to time or there are set principles of this philosophy which do not change? Rationalists do not agree to any modified form of secularism. As Justice R.A. Jhagirdar, jurist and thinker, put it emphatically, "there is no such thing as Indian secularism and English secularism. There is only one secularism, which has universal meaning given by George Holyoke, who coined the word also." Sarvadharmasambhava, religious tolerance or attempt to deduce good principles from all the religions is not secularism according to rationalists. They wish to call spade a spade.

The framers of our constitution did not wish to carry anti-religious smell, which history of its origin had attached to secularism and perhaps this was the principle reason, why our Constitution has originally adopted had nowhere mentioned word 'secularism'. Prof. K.T. Shah, a learned member of the Constituent Assembly twice made attempt to get the adjective secular inserted by amendments, but both his attempts failed. (Much later, that adjective was inserted in the description of our republic in preamble to the Constitution by the infamous 42nd Amendment in 1976.) Nevertheless, the national leadership was firm and consistent on the point that the State had no religion and that no preference was to be given or disability attached, to people of any religion on that ground. We find this determination reflected in most of the resolutions and drafts that preceded the Constitution. We find it in Nehru Report of 1928, as well as in the Karachi resolution of 1930.

The right to equality before law and equal protection of law guaranteed by Art. 14, the prohibition of discrimination on grounds of

religion, race, caste etc. under Art. 15, equality of opportunity in matters of public employment guaranteed under Art. 16, the freedom of conscience and free profession, practice and propagation of religion guaranteed by Art. 25 of the Constitution of India are major provisions by which relation of State and the citizens are governed on the secular principle.

Indian Constitution does not, in clear terms, declare that State shall not interfere in religion and this omission is for a just reason. Alladi Krishnamswami Iyer, one of the experts who shaped our Constitution had written a letter to Sir B.N.Rau, in which he expressed the apprehension that the wide import of the word 'religion' may make social reform legislation impossible. After this note of caution, relevant clause was redrafted.

Religion in India had encroached upon all aspects of life from birth to death. The Constitution-makers wanted to preserve power of State to bring in social and religious reform to protect other fundamental rights. Defending this reservation, Dr. Ambedkar in his speech in Constituent Assembly on 2nd December 1948 said, "we are having this liberty in order to reform our social system, which is so full of inequality, discriminations, and other things which conflict with our fundamental rights." Necessity to preserve this power of the State was underlined by United States' Supreme Court by raising a hypothetical question in *Reynolds vs. United States* as far back as in 1878. Supreme Court asked, "Suppose that one believed that human sacrifices were a necessary part of religious worship. Should a civil government under which he lives, not interfere and prevent the sacrifice?". In India so many religious and social practices need legislative interference to protect basic human rights of the persons oppressed by such practices. We have exercised this power to reform Hindu marriage, to prohibit bigamy, to abolish untouchability, to prevent Devdasi dedication ultimately leading to temple prostitution and to many other reforms. Are there no social evils in other religious groups which call for such legislative interference? Our constitutional power is weakened by political realities.

Therefore what our Constitution ensures that, a citizen can enjoy freedom of conscience and freedom to profess, practice and even

propagate any religion, but the State reserves right to legislate and interfere in the interest of public order, morality, health and protection of other fundamental rights. Secularism of this defined scope has been held by the Supreme Court to be a part of the basic structure of the Constitution in *S.R. Bommai vs. State of Karnataka* (AIR 1994 SC 1918) and hence unauthorable by any substantial amendment.

No constitution takes birth in vacuum. Every Constitution gets its colour from the times in which it was framed, from the National struggle which gives rise to it, from the circumstances in which the Nation it is to serve is born. Our Constitution is sometimes called a compromise document. To some extent statement is true. National leadership had to counter the communal forces and intentions of the foreign powers to divide the country. Right from the Nehru Report every draft in the process of Constitution making contain provisions, which are not strictly secular; for instance, the carrying of Kirpan by Sikhs is specifically authorized.

Article 26 gives right to every religious denomination to own and acquire movable and immovable property. Look at the anomaly after right to property was removed from Part-III of the Constitution and it remained only a legal right under Art. 300-A. Now, the right to hold and acquire property is not a fundamental right for any individual or religious institution, except minority institutions: in their case, it remains a fundamental right.

One more contradiction is quite apparent in our constitutional functioning. Constitution makes no mention of political parties except in the added Tenth Schedule. Section 29 A of the Representation of People Act provides that political parties may register themselves with the Election Commission. Under the rules party who seeks registration has to affirm faith in constitution. We know that political parties who exist on communal foundation and profess communal politics also swear that, they have faith and allegiance to constitution and their affidavits are believed. Every elected legislator has to take oath swearing that, he will bear true faith and allegiance to the Constitution and the description of India as a secular State is very much there in preamble of the Constitution. Do all of them really believe in this description?

The right of propagation of religion given under Constitution is a debatable point. In Constitutions of some other Countries like Nepal, right to profess and practice religion is given, but right to propagate religion is not there. Propagation of one's religion often creates disputes. It was added perhaps to satisfy some religious groups, who consider it their pious obligation to convert others and bring them in their religious fold. Conversion to another religion caused by somebody's propagation is not in conformity with one's right to faith.

Whatever form of secularism we have accepted and incorporated in our Constitution, two relevant questions to be asked would be, how honest we have been in implementing it and whether we have succeeded in putting it into practice. Few examples would be instructive. State has reserved the right to intervene in religious matters in the interest of social welfare and reform (Art. 25). Leave aside other social reforms which one may dream of, reforms which have been set as our goal in the Constitution itself were also not attempted; on the contrary we have made some backward journey. The secular provision U/Sec. 125 of the Criminal Procedure Code was giving protection to destitute wives and divorced women till they remarry. A small amount for their subsistence can be granted by the Court. Parliament has passed a legislation bearing a misleading title Muslim women (Protection of Rights on Divorce) Act, 1986 and had excluded Muslim Women from the benefit of the provision in the Criminal Procedure Code. Was it a step towards common civil code directed by our constitution or it was a step to protect fundamental right of those women? Was it for protecting their right to life? Courts did make gallant effort to save that right by resorting to all judicial skills. But they should have declared this law void as a State had no power to take society for a backward journey.

We have committed this mistake in pre-constitution period also. Boharas and Kacchis, though Muslims, had carried their Hindu Personal Law in the new religion. They were governed in the matter of inheritance, as per Hindu Law and Hindu Customs. A Bombay Legislation in about 1937 abolished this right and forced upon them the Shariat. We are not concerned with welfare or social reform. We are more concerned with temporary political gains and for that we appeal communal elements in the religious groups and also do not

hesitate to deny human rights to helpless. In 1949 the then State of Bombay had passed a legislation namely the Bombay Prevention of Ex-communication Act. This was to protect individuals from harassment by ex-communication by religious heads. Bombay High Court had negatived the challenge and held it valid. Unfortunately Supreme Court struck it down. The consequences of this, especially the sufferings of those who dissent, are known to us.

When in Shah Bano's case Chief Justice Chandrachud quoted Dr. Tahir Mahmood's interpretation or certain Ayats of the Quran with approval, there was criticism. Objection was not about the interpretation. The point raised was, how Justice Chandrachud, a Hindu, could interpret the Quran. The very secular foundation of our judiciary was under challenge.

Sometimes at least, courts are hesitating in taking a clear stand against the rituals contrary to secular principles. Many times Hindu Pooja is performed in the official functions to mark an auspicious beginning. A Writ Petition challenging this practice was filed before Andhra Pradesh High Court, but it was dismissed. Learned judges held that, an individual performs these ceremonies on his personal behalf and not on behalf of the State. With respect to the learned judges, it must be said that the logic is unacceptable and the view is incorrect.

Secular principles of governance had a successful demonstration on an unexpected soil - Turkey. Turkey is a predominantly Muslim Country. After the fall of Ottoman empire at the end of first world war, Mustafa Kemal Pasha took the command and a new nation was born. In 1924 Caliphate was abolished. In 1926 Sharjah was replaced by Western Legal Codes - a Civil Code from Switzerland, a penal code from Italy and a commercial code from Germany. 1924 Constitution contained a clause declaring that religion of Turkey is Islam. By an amendment this clause was deleted in 1928. Prof. Donald Smith has aptly described the purpose and the consequence of these steps. He says "even if the reforms were originally motivated by political considerations, Turkey had at the same time liberated and rediscovered true Islam".

The question arises, if Turkey could do it why not India ? True that Turkey was ruled by a dictator, true that proximity to western democracy had helped change the mindset of the people of Turkey enabling them to accept western values. But we had our own plus points. India was reborn on the background of the rejection of the two nation theory. We had fought for our independence together and vowed to keep religious amity. Our constitution declares that our republic is secular one. Is our governance in last sixty years truthful to this adjective?

We do not have will and determination to govern truthfully to the constitution, even at the risk of our political prospects. Every time we are worried about future political gains and just omit to take any firm step. Only last week somebody issued a fatwa that Muslim Women should not work with male workers as that is against the Islam. I had occasion to see hundreds of Muslim women working in Government offices, Banks, Airports and Public Libraries, in Muslim Countries like Malaysia and Turkey. If Indian Muslim women are deterred in the name of religion and told not to have employment in the offices where males are also working, is it not taking away their fundamental right to have vocation of their choice? Is it not the duty of people in power to publicly denounce the fatwa and take proper action against errant religious leaders? This is the power reserved with the State under Article 25 and the purpose for its exercise is also clear. Somebody challenges the State and says that he can't be arrested and we see that in fact he is not arrested. The prevailing political truth in India is that power will continue to be vested with the person who will refrain from exercising it for the purpose of governance.

Secularism is not only a political principle; it is a way of life. How far we are secular in our social life? Apart from lack of political will to govern, another obstacle is the fact that, different religious group do not participate in our institutional life, which creates civil society. Non-governmental voluntary public institutions have no or negligible participation by Muslims. See any public institution from District Library to Senior Citizens Forum, we rarely find Muslim members. Our political parties are no more forums for discussing public issues, those have become elections machines. Where can there be a dialogue between different religious groups on secular subjects? Politicians

find their strength in religion and castes and in the atmosphere of hatred and suspicion created at their behest, people also feel insecurity, real or imaginary. Leaders of communities are strengthening different identities and for keeping their flocks and herds of followers intact for obedience. Result is that we do not live as single, unified society. We live as a group of separate societies forced to live nearby each other to share certain amenities like roads, water supply and electricity. Our task is to give such a diverse group of societies a common value fray. Secularism is one of such essential values we have to inculcate.

Are we marching towards the goals set out in the Constitution? What progress we have made in making India a secular republic after we inserted this descriptive adjective in our preamble? We presumed that urbanization would force people of different sects to live together. This has not happened. Even in cities normally hindus and muslims are segregated in different localities. They do not feel secure in area where the other community is in majority. About fifty years before muslims living in rural areas had the same clothing as the hindus living in village had. Now different identity in the nature of clothing and language is being asserted. True that everybody has a right to decide what he should wear; but should it be dictated. Religion has nothing to do with language. A muslim can pray in any language and the prayer would go to God. In south India muslims speak the regional language Malayalam, Kannada or Tamil. Now the scene is fast changing. Each community speaking different languages create obstacle in the dialogue which otherwise was very easy. No political leader has courage to say openly that language has nothing to do with your religion.

Shariat Courts and Khapa Panchayats pose a serious challenge to our secularism. It is not proper to consider it only as an additional forum to decide disputes. It challenges the secular foundation of our Judiciary. Personal laws may be applicable to a person or family but right to interpret those laws and dispense justice according to it or according to secular law if it is in the field must vest in secular judiciary established under the constitution of India. I don't find that those in power and those who aspire for power have understood the implications. The power given to the state under Article 25 (2) of the

Constitution of India is for its use and for the purpose indicated. Should we shirk our responsibility and care more for the temporary political gain.

Restoration of religious amity and ultimately establishing secular values in public life is greatest challenge before us. The very existence of our democratic system depends on our performance. Are the adjectives in the preamble to the Constitution defining our Nation only decorative or are they depositories of certain promises held out? We are answerable to posterity.