SECULARISM AND HINDUTVA: A JUDICIAL INTERPRETATION

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MASTER OF PHILOSOPHY

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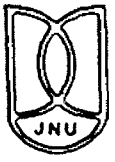

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CERTIFICATE

This is to certify that the dissertation entitled **"Secularism And Hindutva: A Judicial Interpretation"** submitted by **Chandan Chowdhary** in partial fulfillment of the requirement for the award of the degree of **MASTER OF PHILOSOPHY** is her original work and has not been submitted for the award of any other degree of this university or of any other university.

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LIST OF ABBREVIATIONS

AICTE	All India Council for Technical Education
AIR	All India Reporter
BJP	Bhartiya Janata Party
CABE	Central Advisory Board on Education
ICHR	Indian Council of Historical Research
ICSSR	Indian Council Of Social Science Research
IIMC	Indian Institute of Mass Communication
NCERT	National Curriculum of Education Research and Training
NCF	National Curriculum Framework
NCFSE	National Curriculum Framework for Secondary Education
NPE	National Policy on Education
RSS	Rashtriya Swayamsevak Sangh
RPA	Representation of People Act
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
SCW	Supreme Court Weekly
U. P.	Uttar Pradesh
UCC	Uniform Civil Code
VHP	Vishwa Hindu Parishad

LIST OF CASES

INTRODUCTION

The consolidation of the Hindu Right[1] and the ideology of *Hindutva*[2] has been the result of a consistent, well planned and strategic maneuvering of facts and history. With skillful ambiguity and a clear-cut division of labor among its various wings, the Hindu Right has significantly crept into the social and political fabric of the country. Thus, the upsurge of the Hindu Right that seems to have engulfed almost the entire nation is neither a recent phenomenon nor has it happened overnight; rather it is a product of a very conscious and organized process of constructing a Hindu political identity. As a result, they seek to crystallize a larger political goal of creating a 'Hindu Rashtra' by infusing the feelings of Hindu nationalism, which means a constant struggle between the spheres of 'Us' and 'Them'; a hate filled categorization of the 'Others'.[3] Consequently, India has been witnessing a trend where religious identities are today diffusing into well-defined political identities. This trend has increasingly posed a challenge to the secular, plural, tolerant and democratic structure of the country. The conception of *Hindutva* and 'Hindu Rashtra' as espoused by Savarkar and Golwalkar and upheld by the Hindu Right runs contrary to the ethos of secularism as enshrined in the Constitution.[4] The secularism in question concerns the relation between the state and the multiple religious communities

[1] Hindu Right refers to the main organizations and political parties in India, which primarily talk about the interests of the Hindu community. During the pre-independence era Hindu Mahasabha and the Jana Sangh represented the Hindu Right. Later, the Jana Sangh merged with the Janata Party in 1977. In the current phase 'Hindu Right' refers to – the Bhartiya Janata Party (BJP), the Rashtriya Swayamsevak Sangh(RSS) and the Vishwa Hindu Parishad (VHP), which operate at the national level. Besides, the militantly anti-Muslim Shiv Sena and the Bajrang Dal, which operate at regional levels, are also included in the category.

[2] The ideology of Hindutva is discussed at length in Chapter Two of this dissertation. In short, it is the central ideology of the Hindu Right in India.

[3] Gyanendra Pandey, Which of us are Hindus? in Gyanendra Pandey (edited), *Hindus and Others-The Question of Identity in India Today*, Viking, 1993, p. 238-240.

[4] For details see, Chapter One.

of India with their different practices, in the context of the recent developments in Indian politics where religion and religiosity have come to play a dominant role; where concentrated efforts are being made towards *cultural homogenization* or *Hinduisation* of the Indian state and society. Even though this process has become quite rampant and menacing in its impact since the destruction of the Babri Masjid in 1992 when the challenge to the 'secular nation state' reached a crisis point, it has been an ongoing process ever since the advent and elaboration of the concepts of 'Hindutva' and 'Hindu Rashtra' by Savarkar and Golwalkar respectively.[5] Since the beginning of this decade, the Sangh Parivar[6] adopted a dual strategy – the first was to clandestinely bring about erosion of pluralism by infiltrating Hindu nationalist fervor into educational syllabus and the second was to create fear among religious minorities by unleashing violence against them.[7]

The Hindutva agenda has been promoted and pushed by the Sangh Parivar wherever it has found space. For instance, legislations for banning cow slaughter or prohibiting and punishing religious conversion by coercion or fraud was enacted in states, which were either governed by it or those political parties, which were sympathetic to those causes. The RSS-BJP-VHP combine has been engaged in a consistent struggle in which they have attempted to establish their visions of Hindutva as the dominant ideology.[8] As a result it is noticed that a politically nurtured communalism has gained ground, which is employed as a tactic to exploit every possible event as an issue to excite

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[5] V. D. Savarkar, *Hindutva-Who is a Hindu?* Fourth edition, S. P. Gokhale 1949; and *Hindu Sangathan: Its Ideology and immediate Programme*, Hindu Mahasabha, Bombay, 1940; M. S. Golwalkar, *Bunch of Thoughts*, Vikrama Prakashana, 1966; and *We, or Our Nationhood Defined*, Bharat Publication, 1939.
[6] The terms 'Sangh Parivar' and 'Hindu Right' are used interchangeably throughout this work.
[7] S. P. Sathe, *Judicial Activism in India*, Oxford University Press, 2002, p xxxix.
[8] Brenda Crossman & Ratna Kapur, *Secularism's Last Sigh? Hindutva and the Mis(Rule) of Law*, Oxford University Press, 1999, p. 14.

and exact support. Tracing down the events from the Supreme Court judgment on the *Shah Bano* case in 1985 to the recent verdict on the NCERT textbook case in 2002, the links to the aforesaid statement can be disentangled.

The judiciary is envisioned as the upholder of the Constitution. At a highly contested and troubled juncture, where Indian politics and society seem to be standing at crossroads, all set to be pushed back into an era of inequality, intolerance, religious bigotry, fictitious history, myths and superstitions the state institutions, particularly the judiciary is expected to come to its citizens' rescue. Even Pandit Jawaharlal Nehru highlighted the importance of judiciary as a secular institution. To quote him in the Constituent Assembly:

> "But we must respect the judiciary, the Supreme Court and other High Courts in the land. As wise people, their duty it is to see that in a moment of passion, in a moment of excitement, even the representatives of the people do not go wrong; they might. In the detached atmosphere of the courts, they should see to it that nothing is done that might be against the Constitution, that may be against the good of the country, that may be against the community in the larger sense of the term."[9]

Law, therefore, plays a critical role in giving objective expression to secular practices, concretizing their existence in a seemingly autonomous status, stating them in explicit terms and rendering them enforceable. In fact, there are a number of instances where the judiciary has served as an umpire between competing political claims. The Court

[9] Constituent Assembly Debates IX, p. 1196. This was quoted in Sobhanlal Datta Gupta, *Justice and Political Order in India*, K. P. Bagchi & Company, 1979, p. 123.

protected the rights of the minorities to establish and administer educational institutions of their choice even against an egalitarian measure of providing free primary education to all children below the age of fourteen. While the State could certainly provide for free education in accordance with the Directive Principles of State Policy contained in Article 45 of the Constitution, it could not do so at the expense of minority educational institutions.[10] It had to mediate between tradition of restricting the use of temple to people of some castes and the modern requirement of throwing open Hindu temples to all sections of Hindus.[11] In a number of cases the Court had to mediate between freedom of religion and social reform. While interpreting the provisions of freedom of religion, the Court had to draw a line between secular affairs associated with religion, which can be regulated by the state, and matters essential to a religion that fall within the exclusive purview of individual freedom.

However, until recently, the Supreme Court did not entertain any objection on the ground that a law or an administrative action was inconsistent with secularism. Actions or laws were often examined with reference to specific provisions of the Constitution such as Articles 25, 26 or 27 but not with reference to secularism. It was only in the 1990s that the judiciary started examining the validity of actions with reference to secularism.[12] Such an interventionist role of the judiciary is inevitable in a pluralist society. The increased role of the judiciary was legitimized by the increasing pluralization of Indian polity, the need to have a counter-majoritarian check on democracy and relative erosion

[10] *Kerela Education Bill*, AIR 1958 SC 956.
[11] *Venkataramana Devaru v Mysore,* AIR 1958 SC 255.
[12] The majority decision in *S R Bommai v Union of India,* AIR (1994) SC 1918 and the minority decision in *M. Ismail Faruqui v Union of India* (1994) 6 SCC 360.

of the high profile of the political leadership that prevailed before independence.[13] Undoubtedly, the judiciary has its institutional as well as functional limitations and the tides and currents, which engulf the rest of the people, certainly do not leave the judges untouched. Therefore there have also been decisions, which have established the influence of the prevailing political climate on the judges.

The two Supreme Court judgments that this dissertation attempts to study and understand dissertations are: (1) The Hindutva judgment (1995) and (2) The NCERT Textbook judgment (2002). This is because of the fact that both these cases on one hand, provide evidence of deviation from law as well as the constitutional guarantee to secularism, and on the other, provide considerable legitimacy to the vision of *Hindutva* as espoused by the Sangh Parivar. These judgments have also been delivered at a very crucial juncture in the political life of the country, which will be discussed subsequently in this work. The decisions of the judges need to be scrutinized critically in this changed political milieu. Benjamin N. Cardozo, in his book *The Nature of the Judicial Process* remarks about the powers and duties of the judges. He writes:

> "Judges have, of course, the power, though not the right, to ignore the mandate of a statute and render judgment in despite of it. They have, the power, though not the right, to travel beyond the walls of interstices, the bounds set to judicial innovation by precedent and custom. Nonetheless, by that abuse of power, they violate the law. If they violate it willfully i.e. with guilt and evil mind, they commit a legal wrong and may be removed

[13] See, S.P. Sathe, op. cit, p. 6.

> or punished even though the judgments, which they have rendered, stand...
>
> The recognition of this power and the duty to shape the law in conformity with the customary morality is something far removed from the destruction of all rules and substitution in every instance of the individual sense of justice, the *arbitrium bon viri*. That might result in a benevolent despotism if the judges were benevolent men. *It would put an end to the rule of law.*"[14]

It is important to bring into account the decisions of the judges that reflect their biases and interests – be it on grounds of class, property, community or caste. It is important to notice that judges are also human beings and have their own predilections. The case studies, which comprise the core chapters of this dissertation, are an attempt to understand this aspect of the judicial decision making as well.

However, in order to evolve a better understanding of the cases mentioned above, it is imperative to have some conceptual clarity about the key concepts of the nature of secularism and the politics of *Hindutva* in the Indian political framework. Chapter One deals with the theoretical concept of Secularism in India. The chapter does not go into the details of the historical and cultural roots of secularism in India. This study on secularism or a 'secular- religious balance' is essentially from the constitutional and judicial point of view. The conceptual debate surrounding secularism in India has been touched very briefly. Due to limitation of space and the specificity of the area of this work, the chapter

[14] A.G. Noorani, *Citizens' Rights, Judges and State Accountability*, Oxford University Press, 2002 a, p. 25-26.

does not go into the details of each and every strand of thought on secularism. The primary objective is to bring forth the debate on the desirability or undesirability of the concept in the Indian context. Therefore, to begin with, an attempt has been made to portray the constitutional framework of secularism. Subsequently, the chapter goes on to understand the judicial interpretation of the concept, through a variety of opinions from judges themselves as well as legal scholars and the key judicial pronouncements that have shaped the concept of secularism by making the constitutional framework more precise.

Chapter Two tries to understand the politics of *Hindutva* and Hindu Right. A detailed study of the origin and consolidation of the ideology of *Hindutva* will help us understand its politics of hate and xenophobic attitude towards the minorities.[15] In the course of this study, it is noticed that *Hindutva* from its very origin has been opposed to the secular and plural credentials of the country. Even during the freedom struggle, rather than fighting for the cause of Indian nationalism, the *Hindutva* ideologues continuously aligned with the British for petty favors and kept fuelling communal passions for the cause of Hindu nationalism. The slogan, "One people, One culture, One nation, One language" provides the link between generations of Hindu Right since the early 1920s. However, it is only in the past two decades that the Hindu Right has blatantly endorsed and proclaimed the ideology of *Hindutva*. This chapter attempts to throw light on the ways in which this transformation has taken place. In short, this chapter is an attempt to understand the process whereby the Hindu Right has consolidated itself – the process

[15] India is a multi-religious, multi-cultural, multi-lingual country with the majority population comprising of the Hindus. The Hindu Right has always targeted and attacked the religious minority communities, particularly the Muslims and the Christians.

which includes myths, distortion of facts, misappropriation of personalities, contorted history and so on.

Chapters Three and Four try to analyze and understand the Hindutva judgment and the NCERT textbook judgment respectively. It is an attempt to understand the ways in which these judgments have had an impact on Secularism and Hindutva and also the ways in which these pronouncements continue/discontinue with the Hindutva doctrine of the past and the present. In a country like India where religion seems to permeate every day life, where at times it also appears to inform the national identity, the task of securing religious liberty and equality tends to become urgent and important. The burden of defining the boundaries of religious liberty and equality have often fallen on the judiciary, where many a times it has successfully mediated between the spheres of religion and daily life. In fact, Indian judges in religion cases are burdened by interpretative responsibilities that exceed their field of expertise. A reading of the judgments that this study seeks to study raises an apprehension as to whether the Supreme Court had been insensitive to the secular-religious balance and if yes, to what extent. These chapters tend to address this problematic contention. In both these chapters, there is an attempt to understand the judiciary's involvement to reconstitute the essentials of Indian secularism.

As a rational, logical and humane method of ordering society, the judicial process is highly relevant to pluralistic societies, which, because of their socio-economic and cultural complexities, face the problems of harmonizing civil liberties with the development process. It assumes all the more importance in maintaining its sanctity in a society when homogenizing forces speaking in terms of "One people, One nation, One

culture, One language" begin to assert themselves, thereby threatening the constitutional fabric of the country.[16] Thus, these chapters attempt to raise prominent questions regarding the critical role of the judiciary and the judges; the political milieu and the social setting in which these decisions have been pronounced; the vindication of *Hindutva* and the Hindu Right's vision of positive secularism; and the manner in which these pronouncements have been appropriated/misappropriated by the Hindu Right.

METHODOLOGY

The information regarding the case studies and various other judgments has been obtained from Supreme Court documents available in the Supreme Court library, the Indian Law Institute, Indian Social Institute and the Supreme Court websites. For evolving a better understanding of the politics of Hindutva and the Hindu Right the study relies on the original works of some of the prominent Hindutva ideologues. Moreover, views and opinions of various legal experts, judges and academics on issues of secularism, Hindutva and judiciary have also been relied upon. Journals, press clippings and secondary data on the subject have also been used extensively.

[16] Praful Bidwai, 'A Judicial Letdown', *Frontline*, October 11, 2002, p. 116.

Part I

TOWARDS A THEORETICAL FRAMEWORK

Chapter One

SECULARISM IN INDIA

"I am convinced that the future government of free India must be secular in the sense that government will not associate itself directly with any religious faith but will give freedom to all religious functions."

– Pt. Jawaharlal Nehru[1]

"We hold that no one religion should be given preferential status, or unique distinction, that no one religion should be accorded special privileges...for that would be a violation of the basic principles of democracy."

– S. Radhakrishnan[2]

In the recent decades pertinent questions with regard to secularism of the Indian state have surfaced prominently, particularly in reference to the significant political ascendance of the Right wing forces in India. The demolition of the historic Babri Masjid at Ayodhya has reinforced the debate on the secular character of the state's institutional structures as well as the lawmakers. The various episodes of communal violence in diverse parts of the country, the increasing assault on the religious minorities and the militant use of religious symbols and thought in the socio-political domain, in a way, raise significant issues related to defending religious liberty and secular aspirations in a deeply religious society like India.

[1] Quoted in *S. R. Bommai v Union of India*, AIR 1994 SC 1918, p. 76.
[2] Ibid.

On the whole, secularism remains a difficult and complex subject in a culturally diverse and multi-religious country like India. The conceptual debate on secularism in India oscillates between heavy criticisms against the relevance of the idea on the one hand, and on the other equally strong support from people who see secularism as being an integral part of the democratic experience in India. The secular credentials of the country has been criticized by many because it recognizes and enforces various personal laws; it exercises differential treatment between communities in terms of codification and legal reform of personal laws; and it gives credence to community rights at the cost of individual rights in enforcing personal law.[3] At a broader level, it has been asserted by several scholars that because the concept has western origins, it is not suited for Indian conditions.[4] However, it is not sufficient to determine whether or not India has deviated from secularism simply because it lacks a strict separation between religion and state (in western terminology, between the church and state). The definition of secularism is much more complex and needs to be examined within the philosophical and political context in which it was conceived, as well as through an examination of the Indian state's executive and legal behaviour since Independence.

The evolution of Indian secularism has a different political context altogether. It emerged in the context of religious pluralism as against religious authoritarianism in the

[3] Manjula Jindal, ' The Relevance of Secularism', *Seminar*, 441, May 1996, p. 46.

[4] See, for instance the arguments of T.N. Madan, Ashis Nandy and Partha Chatterjee in T. N. Madan, 'Secularism in its Place' in T. N. Madan (edited), *Religion in India*, Oxford University Press, 2002, p. 395-409; Ashis Nandy, ' The Politics of Secularism and the Recovery of Religious Tolerance' in Rajeev Bhargava (edited), *Secularism and its Critics*, New Delhi, Oxford University Press, 1998, p 321-344; Partha Chatterjee, ' Secularism and Tolerance' in Rajeev Bhargava, op. cit, p. 345-379. Madan asserts that secularism in India is 'phantom concept', which cannot fight the threat of growing fundamentalism, and for Nandy the concept remains an 'import from 19th century Europe'. Even for Chatterjee, secularism cannot fight the threat of Hindu Right in India.

West.[5] It has been said that Indian secularism is a case of *sui generis*.[6] The vision of the founding fathers was that of a nation transcending all diversities of religion, caste and creed. They were not hostile to religion but they hoped that it would be possible to forge political unity and that religious difference would hamper nation building.[7] Nehruvian *dharma-nirapekshata* and Gandhian *sarva dharma sambhava* represent the two most significant models of secular ideologies that were subsumed into the national consensus where "they are frequently mistaken for or conflated with each other." Nehru's vision was based on a strong belief to separate religion and politics. This idea of secularism was witnessed clearly in the Karachi resolution of the Congress on Fundamental Rights in 1931, which provided – "the state shall observe neutrality in regard to all religions." On the contrary, Gandhi's vision rejected the idea of separation of religion and politics, and was based instead on the principle of equal respect for all religions. However, it has been observed by several commentators that Nehru eventually compromised on his vision of secularism, and adopted Gandhi's vision of equal respect for all religions.[8] The idea of tolerance and openness, which is implied in Gandhian secularism, appears to be much closer to the reality of the deep and multi-faceted religiosity of the Indian people.[9]

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[5] For a historical background of the origin of Indian secularism, see, Asghar Ali Engineer, 'Secularism in India – Theory & Practice' in Rudolf C Heredia and Edward Mathias (edited), *Secularism and Liberation*, Indian Social Institute, No. 52/95, 1995, pp. 38-46. Also see, Bidyut Chakraborty, *Secularism and Indian Polity*, Segment Book Distributors, 1990 and Bipan Chandra, *India's Struggle for Independence*, Penguin Books, 1998. For an understanding of secularism in West see Rajeev Bhargava, op. cit, p. 73-173.

[6] P. K. Tripathi, 'Secularism: Constitutional Provisions and Judicial Review' in G. S. Sharma (edited), *Secularism: Its implications for Law and Life in India*, Bombay, 1966, p. 170-174.

[7] M. V. Pylee, *Our Constitution, Government and Politics*, Universal Law Publishing Company Private Limited, 2000, p. 7.

[8] Rustom Bharucha, 'In the name of the Secular: Cultural Interaction and Inventions', *Economic and political Weekly*, Vol. 29, Nos. 45 and 46, November 5-12, 1994, p. 2925 – 2934.

[9] Rudolf C. Heredia, 'Secularism and Secularisation: Nation Building in a Multi-Religious Society' in Rudolf C. Heredia & Edward Mathias (edited), op.cit, p. 22.

Secularism was, thus, accepted in this country by a broad social consensus, strengthened by the trauma of partition and written into the basic structure of our Constitution. Rajeev Bhargava, aptly summarizes the significance of the concept of secularism as it eventually took shape in the Constitution:

> "In a society where numerical supremacy of one religious group may predispose it to disfavor smaller religious groups, secularism was to deter the persecution of religious minorities. More than anything else, it was meant to impose limits on the political expression of cultural or religious conflicts between Hindus and Muslims, limits that were tragically transgressed immediately before and in the aftermath of the declaration of Independence in August 1947."[10]

Moreover, the founding fathers envisioned the Constitution as a charter for social reform and justice, which signifies the importance of secularism as well. Thus, by constitutional standards India's complex secularism is, at its core, a commitment to major social reconstruction.[11] Secularism, to begin with, was thus sought to provide peaceful co-existence and amelioration of the condition of the teeming masses whose lives seemed to be governed by religion at every stage of their lives. Moreover, the judiciary being the interpreter and guardian of the Constitution was entrusted with the task of steering the constitutional provisions in the right direction, as envisaged by the founding fathers.

[10] See Rajeev Bhargava (edited), *Secularism and its Critics*, Oxford University Press, 1998, p.1.
[11] Gary Jeffrey Jacobsohn, *The Wheel of Law: India's Secularism in Comparative Constitutional Context*, Oxford University Press, 2003, p. xii.

Over the years there have been numerous instances where the judiciary has been invoked to probe into the matters related to the secular-religious dichotomy. These judicial interpretations along with varied opinions from the legal fraternity seem to have provided thought provoking insights regarding the constitutional structure on one hand and the political state of affairs on the other.

Briefly, this chapter is an attempt to understand the constitutional framework of the otherwise intensely debated and contested terrain of secularism in India. It also attempts to comprehend the meaning attributed to the concept of secularism within the judicial framework at numerous occasions.

THE CONSTITUTIONAL FRAMEWORK

The Constitution, on the whole, has been described as "first and foremost a social document,"[12] and also as "a charter for the reform of Hinduism."[13] The ideals of secularism as enshrined in the Constitution clearly depicts that "the framers of the Constitution of India contemplated a secularism which was the product of India's own social experience and genius".[14] However, secularism was not mentioned anywhere in the Constitution as originally enacted.[15] The word 'secularism' was inserted in the Preamble

[12] Granville Austin, *Working a Democratic Constitution: The Indian Experience*, Oxford University Press, 1966, p. 50.
[13] Marc Galanter, 'Hinduism, Secularism and the Indian Judiciary' in Rajeev Bhargava (edited), op. cit, p. 284.
[14] See P. K. Tripathi, 'Secularism: Constitutional Provisions and Judicial Review' in G S Sharma (edited), op. cit, p.193.
[15] On two separate occasions, K. T. Shah, a member of the Constituent Assembly, attempted to have the term 'secular' included in the Constitution, but was not successful. See, Robert D. Baird, 'Secular State and the Indian Constitution' in Robert D. Baird (edited), *Religion in Modern India*, Oxford University Press, 1981, p. 391-393; also see, Manjula Jindal, op. cit, p. 47.

of the Constitution by the Constitution (42nd Amendment) Act, 1976.[16] No Article in the Constitution, however, was required to be amended because of the Amendment in the Preamble. This was because, as observed by Justice Ahmadi in the case of *S. R. Bommai v Union of India*, the Amendment merely made explicit what was already implicit in the provisions of the Constitution.[17] The Indian Constitution endeavors to build up the philosophy of secularism on freedom, equality and tolerance in the field of religion. And viewed in this context, it is clear that the Constitution does not create a wall of separation between the state and religion. The concept of secularism was built into various provisions that guaranteed equality before the law, freedom of religion, rights of the minorities and neutrality of the state between various religions.[18] The two most essential features of a secular state are - liberty and equality.[19]

Freedom of Religion

The Constitution guarantees freedom of religion to every individual. This includes the right to freedom of conscience, freedom to practice and freedom to propagate religion.[20] This freedom is not confined to only citizens but extends to 'all persons' including aliens. The phrase 'freedom of conscience' covers the liberty of persons without a religion. While 'freedom of conscience' has been declared to be absolute by the

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[16] Before the Amendment, India was described in the Preamble as a "Sovereign Democratic Republic". After the Amendment, it is described as "Sovereign Socialist Secular Democratic Republic".

[17] V. M. Tarakunde, 'Secularism and the Indian Constitution', *The Radical Humanist*, February 1996, p. 8.

[18] D. D. Basu, *Introduction to the Constitution of India*, Wadhwa and Company Law Publisher, 2001, p. 85-96, 99, 114-120; also see, S. P. Sathe, op. cit, p.177.

[19] Rajeev Bhargava, 'India's Secular Constitution' in Zoya Hasan, E. Sridharan and R. Sudarshan (edited), *India's Living Constitution – Ideas, Practices, Controversies*, Permanent Black, 2002, p. 107-110; also see, Martha Nussbaum, 'On Equal Conditions' in Mushirul Hasan (edited), *Will Secular India Survive*, Permanent Black, 2004, p. 23-49.

[20] Article 25(1), 'Subject to Public order, mortality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion'. See D. D. Basu, op. cit, p. 114, 117.

courts, freedom to practice is subject to state control in the interest of 'public order, morality and health, and to other provisions of Part III'.[21] Therefore, practices like *sati* or *devdasi* (though they may have some basis in Hindu religion) cannot be rightfully continued and the state has constitutional power to ban them. There cannot be any freedom of religion in so far as it impinges on the exercise of other fundamental rights such as the right to equality, the right to speech and expression or the right to personal liberty. The right to freedom of religion has been further subjected to the power of the state to make a law (1) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practices; and (2) providing for social welfare and reform on the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.[22] Thus, the right does not in any way become an obstacle to social welfare and reform. The modifications in the Hindu personal law, the Bombay Prevention of Hindu Bigamous Marriages Act of 1946 and Harijan temple entry laws could be made possible because of this tendency of our secular Constitution towards reform.

Individual freedom of religion is further strengthened by Article 27, which declares that no person shall be compelled to pay taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of

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[21] See Rajeev Bhargava in Zoya Hasan et al (edited), op. cit, p. 111; also see, S. P. Sathe, op. cit, p.167-168. Part III of the Constitution deals with the Fundamental Rights. It is important to note that no other provision of the Fundamental Rights starts with such qualifying expressions. All other rights are defined first and then the state's power to impose restriction in mentioned.

[22] Aricle 25 (2) (a) and (b); According to Article 25 (2) (a), the freedom of religion is subject to 'regulations or restrictions made by the state relating to any economic, financial, political or other *secular* activity which may be *associated* with religious practice, but do not really appertain to the freedom of conscience. Article 25 (2) (b) subjects the freedom of religion to 'measures of social reform and for throwing open of Hindu religious institutions of a *public* character to all classes and sections of Hindus. See D. D. Basu, op. cit, p. 115; also see, D E Smith, 'India as a Secular State' in Rajeev Bhargava (edited), op. cit, p. 199.

any particular religion or religious denomination.[23] The Supreme Court has made it clear that this provision not only prevents any person from being compelled to pay a tax for the promotion of religion but also prohibits the specific appropriation by the State of any tax for the promotion or maintenance of any religion or religious denomination (The *Shirur Math Case* – 1954 SCR 1005 at 1045). Finally, the protection of the individual's freedom of conscience is also the object of Article 28(3), which forbids compulsory religious instruction or worship in educational institutions recognized or aided by the state.[24]

Equality Of Citizenship

The Constitution ensures equality before the law and equal protection of law.[25] It further elaborates that there shall be no discrimination on the grounds only of religion, caste, place of birth or sex or any one of them.[26] Similar provisions prohibit discrimination on the grounds only of religion, caste or race in respect of government service and suffrage.[27]

However, the makers of the Constitution were not oblivious to the prevailing inequities in the social life while providing for equality. India has had a long history of

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[23] Article 27 states that 'the state will not compel any citizen to pay any taxes for the promotion of any particular religion or religious institutions. See D. D. Basu, op. cit, p. 115.

[24] According to the Article, 'even though religious instruction be imparted in educational institutions recognised by or receiving aid from the state, no person attending such institution shall be compelled to receive that religious instruction without the consent of himself or of his guardian (in case the pupil be a minor).' Ibid.

[25] Aritcle 14 states that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." ibid, p. 87-89. The 14th Amendment of the Constitution of the United States inspired this provision.

[26] Article 15(1) and (2); ibid, p. 92.

[27] Article 16(1) and (2) affirm an equal opportunity for all citizens in matters relating to employment or appointment of any under the state. Ibid, p. 93.
Article 325 deals with Universal Adult Franchise. It states – "There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or either House of the legislature of a state and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, sex or any of them." Ibid, p. 26.

social discrimination emanating from the Hindu caste system. It would not have been sufficient to provide for equal protection for groups that had been denied access to education as well as to gainful employment for thousands of years. The Constitution therefore provided that the interests of weaker sections of society should be given special attention.[28] Various protective strategies were provided for these sections of the society that had remained socially and educationally backward because of caste-based discrimination (especially the Scheduled Castes, Scheduled Tribes and the Backward Classes). The protective discrimination favoring these sections was sought in areas such as reservation of jobs in public services, exemption from tuition fees in educational institutions, loans at concessional rates of interest, or preference in allotment of largesse. Since, they had suffered because of caste, they had to be identified by their caste for such affirmative action.[29] However, the Constitution (Scheduled Castes) Order, 1950, which mentions that only persons who professed the Hindu religion could be included within the category of the Scheduled Caste, has been contested on the ground of being incompatible with the principle of secularism. Backward classes, on the other hand have been identified, on the basis of secular criteria as it includes even Muslim and Christian groups.[30] Furthermore, Article 29(2) declares that no citizen shall be denied admission into any educational institution maintained by the state on grounds only of religion, race etc.

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[28] Article 46 is a part of the Directive Principles of State Policy, which aims at promoting educational and economic interests of weaker sections and protecting them from social injustice. Ibid, p. 456.

[29] Article 15(4) states that 'Nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state. Article 341 entrusts the President with the task of specifying, by a public notification, the castes, races or tribes or parts of or groups within castes, races or tribes that shall for the purpose of the Constitution be deemed Scheduled Castes in relation to a State or a Union Territory. Ibid, p 92, 392.

[30] See S. P. Sathe, op. cit, p.166-167.

There are certain group specific rights also mentioned in the Constitution. For instance, it recognizes the rights of religious minorities.[31] Also, the Constitution provides that the state would give aid to educational institutions partly funded by the state.[32] Thus, the Constitution has not adhered to the strict 'wall of separation' notion of secularism as practiced in the west, particularly the US. The Constitution authorizes the state to regulate any secular activity associated with religion, to legislate social reforms and force open the doors of Hindu temples to Harijan.[33] Untouchability has been abolished and any disability arising out of it has been made an offence punishable by law.[34]

Thus, while the above provisions under the Constitution provides for three essential conditions of secularism, namely – (1) the states shall have no religion[35] (2) there shall be no discrimination on the ground of religion[36] and (3) the individual shall have the freedom to practice, profess and propagate religion, it did not provide for strict separation between state and religion as is found in the secular Constitutions, particularly the Constitution of the United States.

Overall, the constitutional provisions go a long way in establishing India as a secular state. While the Constitution does not provide for absolute separation of state and religion, it does not have a legal connection with any religion, and fundamental human

[31] Article 30(1); D. D. Basu, op. cit, p. 119.
[32] Article 30(2); ibid.
[33] Article 25(2); ibid, p. 115-116.
[34] Article 17. It says, " 'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law." Ibid, p. 96.
[35] Article 27
[36] Article 14,15(1) and (2), 16(1) and (2), 29(2), 325

rights are guaranteed regardless of religious considerations. A somewhat contradictory picture on secularism emerges from a reading of the Constitution. Critics have argued that there are certain conditions for a secular state to exist and none of these can be satisfied in India.[37] It is argued that Articles 17, 25(2) and 30(1 & 2) are contentious because the provisions mentioned therein compromise the secularity of the Indian state. They further argue that in a secular state all religions are supposed to be treated equally but this principle cannot be realized in India because of the principle of reservations, which negate the possibility of the equality principle. Most importantly, India has not been able to follow the principle of neutrality as the state is involved in all aspects of religious practices, like administration of temples and so on. D. E. Smith opines that freedom of religion is compromised by constitutional sanction for the extensive state interference in religious affairs. The numerous provisions made for the underprivileged classes on the basis of caste have also weakened the idea of citizenship based on equality and non-discrimination.[38] According to the critics, the contradiction therefore lies in the fact that while India consistently reiterates a desire to be secular, it is self-defeating claim as it constantly redefines what secularism itself consists of in practice. Once again, there is a need to reiterate that the manner in which the idea of secularism evolved and eventually took shape in the Constitution is unique and peculiar to India, where religion is not just an obstacle to be overcome but a presence to be accommodated. Peter van der Veer remarks that, "... Indian dreams of the nation always take religion as one of the

[37] See, Rajeev Bhargava, 'India's Secular Constitution' in Zoya Hasan et al (edited), op. cit, p. 114-115; also see, D E Smith, 'India as a Secular State' in Rajeev Bhargava (edited), op. cit, p. 221-222.
[38] D. E. Smith, ibid.

main aspects of national identity."[39] Thus, as mentioned earlier the Constitution not only seeks an amelioration of the social conditions of people long burdened by the inequities of religiously based hierarchies, but also embodies a vision of inter-group comity. It thus provides a 'contextual secularism' of the 'principled distance' variety, as has been elaborated by Rajeev Bhargava.[40] Rejecting the idea of strict separation between state and religion or merely equidistance, he puts forth the idea of including religion for some purposes and excluding it to achieve other objectives but always out of non-sectarian concerns. For him, the mere separation pf state and religion does not make a state secular. There has to be a constitutional link between a secular state and the values of peace, liberty and equality.[41]

The great challenge in pursuing the elusive goal of Indian secularism is bound up in what is distinctive about the Indian case, namely that critical elements of the social structure are inextricably intertwined with religion in a way that renders the possibilities for any meaningful social reform unimaginable without the direct intervention of the state in the spiritual domain.[42] At this juncture, the role of judiciary as the custodian and guardian of the constitutional rights comes to the fore. The following section of the chapter is an attempt to understand the judicial interpretation of secularism.

[39] Peter van der Veer, *Religious Nationalism: Hindus and Muslims in India*, Oxford University Press, 2001, p. 23.
[40] Rajeev Bhargava, ' What is Secularism For?' in Rajeev Bhargava (edited), op. cit, p. 536-539.
[41] Rajeev Bhargava, ' India's Secular Constitution' in Zoya Hasan et all (edited), op. cit, p. 110.
[42] Gary Jeffrey Jacobsohn, op. cit, p. 8.

JUDICIARY AND SECULARISM

The role of judiciary as the custodian and guardian of the constitutional rights is extremely significant. It is the duty of the state and its various institutions to safeguard and secure to its citizens the values of - democracy, pluralism, secularism and in the best sense of word, liberalism as envisioned by those who strove for India's independence. In the proceedings at the inaugural sitting of the Supreme Court of India, on January 28, 1950, Chief Justice Kama[43] remarked that –

> "... It will be our endeavor to interpret the Constitution not as a rigid body, but as a living organism... In endowing the Supreme Court of India with very wide powers, the Constituent Assembly, the Assembly representing the voice of the people through its elected representatives has shown complete confidence in the Court as the final body for dispensing justice...".[44]

The courts being the custodians of constitutional interpretation are the final authority on what constitutes 'conscience', 'religion' and restriction on these on the grounds of 'public order, morality and public health'.[45] In the first three decades of independence, the struggle against state power of regulation and control over religious communities, traditions and practices were primarily located in the adjudicatory realm of state power. The adjudicatory power produced a body of normative regime mediating religion, law

[43] He was the first Chief Justice of the Indian Republic.
[44] Proceedings at the inaugural sitting of the Supreme Court of India in the Court House, New Delhi on January 28, 1950. Quoted in Sobhanlal Datta Gupta, op. cit, p. 124.
[45] As mentioned earlier in the chapter, these are the various grounds on which the 'freedom to religion' can be curtailed by the Constitution.

and state conflicts in such ways as to produce a distinct version of Indian 'secularism'.[46] Overall, in the first three decades, it was primarily this power of the state, which established a view of 'secular' state as one, which "propounds a charter of religions".[47] The Indian judges thereby actively participated in the transformational agenda set forth by the Constitution. For instance, the courts upheld the validity of the Bombay Prevention of Hindu Bigamous Marriages Act of 1946, which later culminated into the Hindu Marriage Act of 1955.[48] In the *Appa* case the courts reached the conclusion that "religious practices must give way before the good of the people of the State as a whole."[49] If the state of Bombay chooses to compel monogamy that choice must be respected as "a measure of social reform," and under Article 25(2)(b) of the Constitution, it must be upheld notwithstanding its infringement of religious liberty.[50] In this case, Justice Chagla observed, "it is rather difficult to accept the proposition that polygamy is an integral part of Hindu religion." Similarly, in the case of *Ram Prasad* the court reached the conclusion that polygamy is not "an essential part of the Hindu religion."[51] The judiciary in both these cases encroached deeply into the domain of religious freedom. In fact, the courts seem to have curtailed the freedom of religion by propounding the view that the Constitution protects only such religious practices as are an essential and integral

[46] See Upendra Baxi, 'Redefinition of Secularism in India' in Iqbal Narain, *Secularism in India*, Classic Publishing House, 1995, p.58.
[47] Marc Galanter, *Law and Society in Modern India*, Oxford University Press, 1989.
[48] As per the provisions of the Hindu Marriage Act, the practice of plural marriages for Hindus was outlawed.
[49] *Appa v State of Bombay*, The Supreme Court website.
[50] In this case, the court also relied on the language from Article 15, with special emphasis on the word *only*. It implies that by itself religion cannot be a basis for discrimination. The court emphasized with regard to the issue of polygamy that "One community might be prepared to accept and work social reform; another may not yet be prepared for it."
[51] *Ram Prasad v State of U. P.*, The Supreme Court website.

part of a religion.[52] Besides, there have been cases relating to temple legislations[53] and excommunication.[54] These two cases are examples that suggest that the judiciary has often trodden the perplexed arena of religion, in order to cull out the Constitutional provisions mentioned with regard to freedom of religion and equality of citizenship a number of times, ever since the court became functional.

However, it has only been in the recent years that the Supreme Court has addressed the issue of secularism – its parameters, relevance, denial and prospects *directly*. It was in the *Keshwanand Bharti* case[55] that the Supreme Court declared secularism as a 'basic feature' of the Constitution. The Court held that the Parliament cannot amend the Constitution so as to destroy or tamper with its basic structure and it is for the courts to determine what constitutes the basic structure. Before this case, however, in *St. Xaviers College Society v State of Gujarat*[56], it was held by the Supreme Court in 1974 that even though the Constitution did not speak of a secular state there could be no doubt that Constitution makers wanted to establish such a state. The Supreme Court said:

> "Secularism is neither anti-God, nor pro-God; it treats alike the devout, the agnostic and the atheist. It eliminates God from matters of the State and ensures that no one shall be discriminated against on the ground of religion. The Constitution at the same time expressly guarantees freedom

[52] Dhirendra K. Srivastava, *Religious Freedom in India: A Historical and Constitutional Study*, Deep and Deep Publication, 1992, p. 313.
[53] *Venkatramana Devaru v Mysore*, AIR 1958 SC 255.
[54] *Saifuddin Saheb v Bombay*, AIR 1962 SC 853.
[55] *Keshwanand Bharti v State of Kerela*, AIR, 1973 SC 1461.
[56] AIR 1974 SC 1389

of conscience and the right freely to profess, practice and propagate religion...To allay all apprehensions of interference by the legislature and the executive in matters of religion, the rights mentioned in Articles 25-30 were made a part of the Fundamental Rights and religious freedom contained in those Articles was guaranteed by the Constitution."

Delivering his judgment in *Ziyauddin Burkharruddin Bukhari v Brijmohan Ramdas Mehra and Brother*[57]. Justice M. H. Beg said:

"The secular state rising above all differences of religion attempts to secure the good of all its citizens' irrespective of their religious beliefs and practices. It is neutral or impartial in attending its benefits to citizens' of all castes and creeds. Maitland has pointed out that such a state has to ensure, through its laws that the existence or exercise of political or civil rights or the right or capacity to occupy any office or position under it or to perform any public duty connected with it does not depend upon the profession or practice of any particular religion."[58]

The views of various judges on the issue have also given secularism a distinct Indian vision in the recent years. For instance, according to Justice Desai, a secular state deals with the 'individual as a citizen' irrespective of his religion is not connected to a particular religion nor does it seek to promote or interfere with religion. Secular state must have nothing to do with religious affairs except when their management involves

[57] 1975 Supple, SCR 281.
[58] M. V. Pylee, op. cit, p. 6.

crime, fraud or becomes a threat to unity and integrity of the state.[59] Justices Gajendragadkar, Dhawan and Beg found Secularism practiced by ancient Hindu society and equally traceable to Islamic jurisprudence.[60] Justice Beg, further suggested that "a happy harmony and synthesis of the best in secularism and religion" was possible. Justice Gajendragadkar also said, Indian secularism sought to establish a rational synthesis between the "legitimate functions of religion and the legitimate and expanding functions of the state."[61]

However, it was only recently in the *Bommai* case[62] that the Supreme Court actually set out the parameters of Secularism as adopted in the Indian Constitution. In this case, the declaration of Presidential rule in three states following the destruction of Babri Masjid was challenged. The full constitutional bench of the Supreme Court upheld the validity of the declaration of presidential rule, in the three states governed by BJP and, in doing so, passed considerable opinion on the importance and meaning of Secularism in India.[63] After a detailed account of the sequence that eventually culminated into the dismantling of the mosque, Justice Sawant held, "The destruction of the mosque was a concrete proof of the creed in which the party in question [the BJP] wanted to pursue. In

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[59] Justice D. A. Desai, 'Relevance of Secularism Today', *Indian Bar Review*, Vol. 14(3), 1987, p. 339.
[60] S. S. Dhawan, 'Secularism in Indian Jurisprudence' and M. H. Beg, 'Islamic Jurisprudence and Secularism' in G. S. Sharma (edited), *Secularism – Its Implications for Law and Life in India*, Bombay, 1966, p. 1-8, p. 102-139.
[61] P. B. Gajendragadkar, *Secularism and the Constitution of India*, Bombay, 1971, p. 52.
[62] *S R Bommai v Union of India*, AIR 1994 SC 1918.
[63] The judgment was delivered by a nine-judge bench. The opinions in this case came from Justice Sawant (on behalf of Justice Kuldeep Singh with Justice Pandian, concurring in part); Justice Jeevan Reddy (on behalf of Justice S. C. Agarwal, with Justice Pandian also concurring in part); Justice Ramaswamy, and a brief opinion by Justice Ahmadi. Only Justice J. S. Verma and Justice Dayal expressed no opinion on the question of secularism. See, Brenda Crossman & Ratna Kapur, op. cit, p. 76; also see S. P. Sathe, op. cit, p. 175-178.

such circumstances, the Ministries formed by the said party could not be trusted to follow the objective of secularism which was part of the basic structure of the Constitution and also the soul of the Constitution."[64] He further said, "any profession and action that go counter to [secularism] are a *prima facie* proof of the conduct in defiance of the provisions of the Constitution."[65]

Regarding the basic concept of Secularism, Justice Reddy opined that, "Our object is to ascertain the meaning of the expression 'secularism' in the context of our Constitution."[66] Common themes appear in various opinions in this case. Eminent authorities, like Nehru and Radhakrishnan have been quoted while giving these opinions. The stress seems to be on 'equal treatment of all religions' i.e. *sarva dharma sambhava*. Secularism, it was emphasized, "is more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions."[67] According to the judges, the destruction of the mosque by the Hindu mob, which involved the active support of the government and officials of the BJP clearly violated the principle of equal treatment. The BJP manifesto illustrating that "BJP firmly believes that construction of Shri Ram Mandir at Janmasthan is a symbol of the vindication of our cultural heritage and national self respect"[68] was also taken into consideration while reaching this conclusion. The Babri Masjid episode triggered serious questions relating to the survival of the freedom of religion in a country where one religious group seemed to be favored overtly by those in power.

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[64] *S. R. Bommai v Union of India*, op. cit, p. 143.
[65] Ibid, p. 148.
[66] Ibid, p. 232.
[67] Ibid, p. 233.
[68] Quoted in the *S. R. Bommai* case, ibid, p. 290.

Justice Ramaswamy, in his opinion mentioned – "The interaction of religion and secular forces...is to expose the abuses of religion and the belief in God by purely partisan, narrow or selfish purpose to serve the economic or political interest of a particular class or group or country. The progress of human history is replete with full misuse of religious notions in that behalf."[69]

Thus the opinions in this case seem to have gone into the depth of the prevailing political situation and the constitutional prerequisites for the functioning of the state through secular, democratic and just means of providing peace and harmony, religious tolerance and social reforms in the country. The opinions in this case also provided the assurance that there still exists a strong possibility to seek justice and secure the constitutional rights through the judiciary. The significance of the judgment lies in the fact that it was not merely an elaboration of the concept of secularism but also in the political circumstances that led to their articulation. According to S. P. Sathe, the judgment was essentially based on political assessment of the conditions prevailing during that time and the manifesto of BJP and its linkage with organizations that had been banned. He also opines that *Keshwanand Bharti* and *Bommai* are two decisions that have made the Supreme Court very powerful.[70] The opinions in the *Bommai* case opinions constitute "by far the most significant interpretation of the secular character of the Indian constitution to date."[71] The Court's action served to clarify the essence of the Indian constitutional commitment to secularism.

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[69] Ibid, p. 164.
[70] S. P. Sathe, op. cit, p. 16.
[71] K. N. Pannikar, *Communal Threat, Secular Challenge*, Earthworm Books, 1997, p. 49.

In yet another case, *M. Ismail Faruqui v India*[72] in which the court dealt with the validity of the Acquisition of Certain Areas Act, 1993, which had been passed immediately after the demolition of the Babri Masjid, the *minority judges* strengthened the principles of secularism.[73] A litigation involving claims over the site of the Babri mosque had been pending for several years. In the year 1949, the Hindus claimed that an image of Lord Ram appeared on its own in the mosque, thereby implicating that it was his birthplace. The Muslims contested this and as a result suits were filed. The court gave its decision against the use of the site by either Hindus or Muslims. Thus both the temple and the mosque existed on the site. Another court order in 1985, allowed the Hindus to worship in the disputed premise. After the demolition of the mosque, the *Acquisition of Certain Areas Act* authorized the Union Government to acquire a land adjacent to the disputed land and authorized itself to give a suitable body in the future.[74] The Act intended to promote status quo, but there appeared to be an inherent bias because the Hindus were allowed to continue to offer prayers but the Muslims were forbidden. The Act raised questions relating to violation of freedom of religion and preferred treatment to Hindus. It was alleged in the *Ismail Faruqui* case that the Union Government did not give equal treatment to the two religious groups and thereby violated secularism.[75]

In this case it was the minority opinion presented by Justice Bharucha and Justice Ahmadi that questioned the propriety of such acquisition in contrast to the majority

[72] *M. Ismail Faruqui v Union of India*, op. cit.
[73] A five-judge bench comprising Justice Verma (who later became the Chief Justice of India), Chief Justice Venkatachalliah, Justice G. N. Ray, Justice Bharucha and Justice Ahmadi heard the case. For details see, S. P. Sathe, op. cit, p. 179-180; A G Noorani, 2002a, op. cit, p.66-75.
[74] S. P. Sathe, op. cit, p. 179.
[75] S. P. Sathe, op. cit, p. 180.

opinion represented by Justice J. S. Verma, which upheld the acquisition on grounds of formal equality. The minority judges opined:

> "When adherents of the religion of the majority of Indian citizens make a claim upon and assail the place of worship of another religion and, by dint of numbers, create conditions that are conducive to public disorder, it is the constitutional obligation of the state to protect that place of worship and to preserve public order, using for the purpose such means and forces of law and order are required.
>
> It is impermissible under the provisions of the Constitution for the state to acquire that place of worship to preserve public order. To condone the acquisition of a place of worship in such circumstances is to efface the principle of secularism from the Constitution.[76]

In both the *Bommai* as well as the minority decision in *M. Ismail Faruqui*, the Court examined the validity of the state actions from the standpoint of their compatibility with the principle of secularism.[77]

However, the majority judgment in *M. Ismail Faruqui* and numerous other judgments and judicial opinions in the recent years seem to run parallel to the events during this decade, which seem to have engulfed all hegemonic apparatuses of state and society, and has thus rendered 'secularism' into a problematic affair. The court has not yet defined secularism. It is presumed to mean equal respect for all religions. But

[76] Quoted in A. G. Noorani, 2002a, op. cit, p. 74.
[77] S. P. Sathe, op. cit, p. 193.

determination of such 'equal respect' depends upon the predilections of the judges and their own conception of secularism.[78] While the *Bommai* case strengthened secularism, later decisions seem to have weakened it due to erroneous conceptualization of secularism.[79]

Interestingly, the BJP has begun proclaiming its commitment to secularism vociferously in recent years. It also criticizes the secularism of other parties as *pseudo-secularism*. It should be noted here that when India chose to be a secular country it was only the Jana Sangh, predecessor of the BJP, which rejected any concept of secularism and stood for Hindu Rashtra.[80] Even now the BJP and the other members of the Sangh Parivar stand by their ideals of Hindu Rashtra and *Hindutva* but they seem to have appropriated the concept of secularism to propagate their vision. As against the *pseudo-secularism* of the Indian state, the Sangh Parivar propounds the thesis of *positive secularism* based on the concepts of *Hindutva* and Hindu Rashtra. In the next chapter an attempt has been made to understand the politics of *Hindutva* and the Hindu Right and their attack on the constitutional ideal of secularism.

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[78] S. P. Sathe, op. cit, p. 178.
[79] The Hindutva Judgment and the NCERT Textbook judgment have been such judgments in recent years. These cases will be discussed subsequently in chapters III and IV respectively.
[80] Asghar Ali Engineer, 'Is Secularism Dead?' *PUCL Bulletin*, July 2003, p.1-2.

Chapter Two

HINDUTVA AND THE HINDU RIGHT

At the heart of Hindutva lies the myth of a continuous, thousand year old struggle of Hindus against Muslims as the restructuring principle of Indian history.[1]

The last two decades have witnessed a meteoric rise of BJP to power and the consolidation of *Hindutva* as a legitimate political ideology. From having merely two seats in the 1989 general elections, BJP emerged as the single largest party in the 1996 general elections and finally became successful in forming a coalition government in 1998. The gradual encroachment of the public sphere and institutions by the Sangh Parivar has led to an increasing debate in the academic circle regarding secularism – its crisis, future prospects, relevance etc. This is a strong indicator of the rising tide of the Hindu right wing forces that have challenged the secular foundations of the Indian Constitution.

Given the constitutional idea of a secular state and the deep religiosity of our people, Asghar Ali Engineer sees the secular as opposed to the 'communal' rather than sacred. Gandhi's *sarva dharma sambhava* i.e. equal respect for all religions was deeply rooted in the Indian soil, while Nehru's rationalist liberalism remains an alien implant for most of the people. But then the Sangh Parivar's *positive secularism* of "justice for all

[1] See, Tapan Basu, Pradip Datta, Sumit Sarkar, Tanika Sarkar and Sambuddha Sen, *Khakhi Shorts Saffron Flags*, Orient Longman, 1993, p. 2-3.

and discrimination against none" is clearly belied by their practice of 'majorityism' and leaves no room for protecting religious minorities or advantaging backward and scheduled castes and tribes. Increasingly secularism has become the site of intensive political contestation in which right wing religious and fundamentalist forces endeavor to claim the terrain as their own.[2]

This chapter is an attempt to understand the politics of *Hindutva* and the Hindu Right and their consistent attack on the secular fabric of the country through decades. The Hindu Right seems to have consolidated well in the socio-economic and cultural domain of the country in the recent years, which is apparent from the ascendance of BJP, the political face of the Hindu Right in India. The chapter seeks to understand the Hindu Right's vision of secularism and the way in which this vision contradicts the constitutional framework. However, in order to understand it well, it is imperative to understand the ideology that defines the Hindu Right. Therefore the chapter begins with an elaboration of the ideology that took birth and gradually evolved from the ideas propounded by the likes of Savarkar and Golwarkar, who are regarded as the ideological gurus of the Sangh Parivar. The chapter also attempts to unravel the continuities and discontinuities between the ideological base of *Hindutva* in its evolutionary phase and contemporary phase respectively as far as the issue of secularism is concerned.

[2] Brenda Crossman and Ratna Kapur, op. cit, p. 1.

IDEOLOGY Of *HINDUTVA*

The ideological thread that binds the Hindu Right of present times can be traced back to the early 20th century *Hindutva* ideologues and Hindu organizations.[3] The concept of *Hindutva*, the imputation of a core essence to 'Hinduness', or the 'beingness of a Hindu' that was imagined to be constitutive of Hindu identity evolved with the ideas of Vinayak Damodar Savarkar, in the year 1923. His pamphlet, '*Hindutva - Who is a Hindu?*'[4], was to be of foundational importance in consolidating various strands of Hindu nationalism into a political force from the 1920s. Beginning with Savarkar to the present times, the Hindu Right, on one hand has been meticulously stressing and propagating the 'natural' unity of 'Hindus', of the Hindu community, of Hindu tradition and its superiority, and on the other, it has been viciously attacking the Muslim and Christian communities and their respective cultures.[5] A brief review of the writings of Savarkar and Golwalkar reveals their anti-minority, particularly anti-Muslim stand and appeal to religion.[6] To begin with, Savarkar emphasized that 'Hindutva is different from

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[3] The early phase of Hindutva took shape and revolved around the ideological framework of V. D. Savarkar, M. S. Golwarkar, and K. B. Hedgewar. The Hindu organizations that came into existence during this phase were the Hindu Mahasabha and the Rashtriya Swayamsevak Sangh (RSS) formed in 1906 and 1925 respectively. The organizational backup for the task of Hindutva was taken up by the RSS founded by K B Hedgewar (at Nagpur). All the possible activities that would ignite the religious, sectarian and biased view of Hindu superiority were undertaken by the RSS, the cultural front of *Hindutva*. However, RSS maintained a clandestine relationship with the Hindu Mahasabha. Marzia Casolari in her research reveals the close association between the two organizations. In recent years also, it was only with the growing importance of the BJP during the decade of nineties that RSS figured prominently in the discourse on Indian politics. Until then, the RSS and the BJP had clandestine a bonding. For a detailed study on the relationship between the RSS and Hindu Mahasabha / BJP (in recent years) and its growth over the years see, Marzia Casolari, 'Hindutva's Foreign Tie-up in the 1930s – Archival Evidence', *Economic and Political Weekly*, January 22, 2000; D. R. Goyal, *Rashtriya Swayamsevak Sangh*, Radhakrisna Prakashan Private Limited, 2000; Tapan Basu et al, op. cit.

[4] V. D. Savarkar, *Hindutva – Who is a Hindu?*, Fourth edition, S. P. Gokhale, 1949. This book was, however, first published in the year 1923.

[5] Gyanendra Pandey, 'Which of us are Hindus?', in Gyanendra Pandey (edited), op. cit.

[6] Savarkar and Golwarkar are the ideological mentors of the Hindu Nationalists. Savarkar became the President of Hindu Mahasabha in 1937, and since then the Hindu Right became profoundly aggressive and militaristic. Throughout the 1940s the orientation of the Hindu Mahasabha was decisively preoccupied with

Hinduism.' His aim was to provide a comprehensive definition of what constituted the Hindu identity.[7] Savarkar dismissed Hinduism as a western '-ism' and repeatedly emphasized that the term *Hindutva* was not to be confused with Hinduism.

> "Hindutva is not identical with what is vaguely indicated by the term Hinduism. By an 'ism' is generally meant a theory or a code more or less based on spiritual or religious dogma or system. But when we attempt to investigate into the essential significance of Hindutva we do not primarily – and certainly not mainly – concern ourselves with any particular theocratic or religious dogma or creed. Had not linguistic usage stood in our way then 'Hinduness' would have certainly been a better word than Hinduism as a near parallel to Hindutva. Hindutva embraces all the departments of thought and activity of the whole being of our Hindu role."[8]

A serious attempt to understand Savarkar's *Hindutva* provides a coherent self–contained ideology of hate. S. S. Savarkar, publisher of the second edition of the essay *Hindutva* –

Hindu communal interests under the overwhelming ideology of *Hindutva* and Hindu *Sangathan*. It initiated a number of campaigns during this period, for instance, campaigns in support of its self styled Hindu Flag; Hindu Sangathan; Shuddhi campaign; Hindu Militarization campaigns, Census campaigns (to ensure all Hindus were enumerated in the decennial census and to ensure Muslims did not 'inflate their numbers') and the celebration of 'Hindu Nation Day'. The aggressively militant and rabid nature of Hindu Mahasabha under savarkar can be derived from 'Hindu Rashtra Darshan', a collection of his presidential speeches from 1937-1942. Chetan Bhatt, *Hindu Nationalism – Origins, Ideologies and Modern Myths*, Berg, 2001, p. 7-39.

[7] However, no clear and definitive origin was proposed for the word 'Hindu' – the word indeterminately appeared from primordial time as a name pronounced by the 'Vedic fathers', though Savarkar did speculate that it may have been a Sanskritized version of an aboriginal name for the Indus river. Ibid, p. 85-87.

[8] V. D. Savarkar, op. cit, p. 4. This definition was provided in the section called 'Hindutva is Different from Hinduism'

Who is a Hindu? emphasized that V. D. Savarkar had coined the words *Hindutva, Hinduness* and *Hindudom* in order to express the totality of the cultural, historical and above all national aspects along with the religious one, which mark out the Hindu people as a whole.[9]

V. D. Savarkar emphasized on 'cultural nationalism' and completely discarded the concept of 'territorial nationalism'. According to him, the first requisite of *Hindutva* and Hindu identity was citizenship by paternal descent within this physically bounded territory of India. However, this was not a sufficient condition since the term 'Hindu' signified more than geographical territory. The second and the most essential requirement for *Hindutva* was 'the bond of common blood'; a Hindu must be a descendant of Hindu parents.[10]

> "We Hindus are bound together not only by the tie of the love we bear to a common fatherland... but also by the tie of the common homage we pay to our great civilization-our Hindu culture... we are one because we are a nation, a race and own a common Sanskriti (civilization)."[11]

V D Savarkar also made a distinction between the Hindus, who share a common civilization and, Muslims and Christians who follow a different religion or ideology.[12] He alleged that Muslims and Christians 'belong or feel that they belong to a cultural unit altogether different from the Hindu one.'[13] Thus, his concluding definition of a Hindu

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[9] A. G. Noorani, *Savarkar and Hindutva – The Godse Connection*, Leftword Books, 2002 b, p. 66.
[10] V.D.Savarkar, op. cit, p. 113.
[11] V. D. Savarkar, op. cit, p. 31 – 32.
[12] This distinction is monotonously repeated in today's Hindutva movement also. It will be dealt with subsequently in the chapter.
[13] V. D. Savarkar, op. cited, p. 101.

was one 'who regards the land of Bharatvarsha from Indus to the seas as his Fatherland as well as his Holyland – that is, the cradle of his religion.'[14] Going by this logic, the Christians and Muslims cannot be considered as Hindus because though they 'have inherited along with Hindus a common Fatherland and a greater part of the wealth of common culture – language, law, custom, folklore and history, they are not and cannot be recognized as Hindus... their Holyland is far off in Arabia or Persia.'[15] The construction of a 'Hindu race' was thus achieved by continuously positing a conflict between the 'Hindu' and 'others', most notably the 'Muslim invader'.[16] Moreover, V. D. Savarkar claimed that Muslims remained *'Muslims first, Muslims last, Indians never.'* His strong anti-Muslim sentiment was the reason why he propounded the two – nation theory in 1923.[17] Adding further to his anti – plural, anti – Muslim stance was Savarkar's view regarding Urdu being a threat to Hindi. He held that 'Urdu should be preserved for Muslims' and the use of Hindi or Nagari should be made compulsory.[18]

These particular themes also traveled into M. S. Golwalkar's definition of Hindu Nationalism.[19] Both Golwalkar and Savarkar had identical views – similar hatred for the 'other' communities and unity of the Hindus as a nation.[20] Golwalkar held that the

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[14] V. D. Savarkar, op. cited, p. 113. Thus, the three essentials of Hindutva, according to Savarkar were: a common nation (rashtra), a common race (jati) and a common civilization (sanskriti).
[15] Ibid.
[16] Brenda Crossman & Ratna Kapur, op. cit, p. 37.
[17] V.D.Savarkar was the first to propound this theory. It is mentioned in the section *Hindus, a Nation* of *Hindutva- Who is a Hindu?*. In 1941, he reasserted that he had no intellectual disagreement with Jinnah's two-nation theory since Hindus and Muslims did constitute two separate nations.
[18] This was mentioned in his book titled *The Story of my Transportation for Life*. He wrote this book when he was a prisoner in the Andaman Islands. The book was published in the year 1927, but remained proscribed far a long time. The ban was lifted in 1947. See A. G. Noorani, *Savarkar and Hindutva – The Godse Connection*, 2002, p. 66 - 67
[19] For details see, M. S. Golwarkar, *We, or our Nationhood Defined*, Bharat Publications, 1939; M. S. Golwarkar, *A Bunch of Thoughts*, Vikrama Prakashan, Bangalore, 1966; D. R. Goyal, op. cit.
[20] In Golwarkar's writings, the words that are found to occur repeatedly are 'Hindu Nation', 'Hindu Culture', 'Hindu Life' and 'Hindu People'. The word *Hindutva* does not figure in his works. Nevertheless,

'common emotion' that bound us together was 'the feeling of burning devotion to the land... the feeling of fellowship, of fraternity... common culture and heritage... common history and traditions... common ideals and aspirations.'[21] Highlighting the glory of a Hindu, Golwalkar asserted:

> "... We are Hindu even before we emerge from the womb of our mother. We are therefore born as Hindus. About the others, they are born to this world as simple unnamed human beings and later on either circumcised or baptized, they become Muslims or Christians."[22]

The idea of Hindu Rashtra got further crystallized in the writings of Golwalkar.[23] According to him a Hindu Nation consisted of five components – country, race, religion, culture and language.[24] Based on this premise, Golwalkar argued that because Hindus qualified under each of these categories, therefore they constituted a nation. He clearly emphasized that Muslims and Christians could not be treated as Hindus on account of racial, cultural and religious differences. However, in his view they could still be a part of Hindu Nation provided certain conditions were met:

> "All those... can have no place in the national life, unless they abandon their differences, adopt the religion, culture and language of the Nation and completely merge themselves in the national Race. So long, however,

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his ideas of Hindu Rashtra / Hindu Nation are significant for understanding the contemporary deployment of the ideology of *Hindutva* by the Hindu Right.

[21] M. S. Golwalkar, 1966, op. cit, p. 134.

[22] Ibid, p. 118.

[23] M. S. Golwarkar, 1939, op. cit, p. 18.

[24] 'The idea contained in the word Nation is a compound of five distinct factors fused into one indissoluble whole the famous five unities: Geographical (country), Racial (race), Religious (religion), Cultural (culture) and Linguistic (language).' Golwarkar elaborated the meaning of these components in detail. Ibid, p.18, 20.

> as they maintained their racial, religious and cultural differences, they cannot but be only foreigners... the strangers have to acknowledge the National religion as the State religion and in every other respect inseparably merge in the National community."[25]

Like Savarkar, he too denounced the concept *territorial* nationalism and endorsed the dual test of Holyland and Fatherland. He made a distinction between his own *cultural* nationalism and the *territorial* nationalism of the Congress as led by Gandhi et al. Thus, the minorities were called upon to 'give up their present mental complexion and merge in the common stream of our national life'[26] if they had to continue living in this country. Every possible attempt was made in this phase to create a distinct political category of 'Hindu' as opposed to the religious minorities. There does not appear to be any ambiguity or double-speak in the basic premise of eliminating religious minorities either by assimilation or by violent means. It was clearly articulated in Golwalkar's writings:

> "The non Hindu population in Hindustan must adopt the Hindu culture and languages, must learn to respect and hold in reverence Hindu religion, must entertain no idea but those of glorification of Hindu race and culture i.e. they must not only give up their attitude of intolerance and ungrateful attitude towards this land and its age long tradition but also cultivate positive attitude of love and devotion instead, in a word they must cease to be foreigners or may stay in the country wholly subordinate to the Hindu

[25] Ibid, p. 45-46. It is to be noted that although Golwarkar mentioned five components of a Hindu state, he accorded primacy to Religion. The constituting category of all the other four components was religion.
[26] M S Golwarkar, 1966, op. cit, p. 130.

nation, claiming, deserving no privileges far from preferential treatment not even citizen's right."[27]

Thus, the conceptualization of the idea of *Hindutva* and *Hindu Rashtra* in this phase was an expression of hostility against the religious minorities and the denial of any protection of minority rights within the Hindu Nation. The Hindutva ideologues were very forthright and unambiguous in their formulation of this conception, which appears to be a blatant attack on the plural, secular and tolerant ideals of the National movement.

CONSOLIDATION Of *HINDUTVA* AND HINDU RIGHT

The political agenda of the Hindu Right in present times appears to be heavily inspired by the ideals set forth by its ideological predecessors. Ever since the inception of the idea of *Hindutva* and its vociferous pronouncements by Savarkar, Golwalkar and Hedgewar, the idea seems to have established itself as a central idiom in the high politics of state power in the Republic.[28] This is evident from the emergence of the Sangh Parivar or 'Hindu Right' i.e., the main organizations and political parties in the current phase of *Hindutva* – The Bhartiya Janata Party (BJP), the Rashtriya Swayam Sevek Sangh (RSS) and the Vishwa Hindu Parishad (VHP) along with the Shiv Sena and Bajrang Dal, and the political ascendance of the BJP. The long nurtured hatred for the 'others' specifically the Muslims and the Christians, which consolidated over the years eventually resulted in the destruction of the Babri Masjid in 1992 followed by the Bombay riots and gruesome

[27] M S Golwarkar, 1939, p. 47-48.
[28] John Zavos, *The Emergence of Hindu Nationalism in India*, Oxford University Press, p. 1-3.

Gujarat pogrom in 2002.[29] Right from its very inception the program of 'Hinduization' involved a specific construction of Hindu self – a virile, masculine, aggressively communal self, which is intolerant of other faiths, even of other conceptions of Hinduism.[30]

In 1989, at the BJPs National Executive, Vajpayee echoed Savarkar's theme that Hindu sentiments were synonymous with the national interest. In 1937, Savarkar had declared that so far as the Hindus were concerned there could be neither a distinction nor conflict in the least between their communal and national duties because the best interests of the Hindudom were simply identified with the best interests of Hindustan as a whole.[31] The recent unveiling of Savarkar's portrait in the Parliament reaffirms the unbroken ideological thread that binds Savarkar, Golwalkar and the BJP. Moreover, the members of the Sangh Parivar refer Savarkar as 'Veer' and Golwarkar as 'Guruji'.

Ironically, it has been noticed that until recently the BJP did not seek any association with either Hindutva or Savarkar.[32] The BJP took a different trajectory

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[29] Instead of being apologetic and taking the responsibility for whatever happened in Gujarat, Mr. Advani, the then Home Minister remarked that the BJP should not be apologetic about its agenda and about Hindutva. Shri Ashok Singhal, elevated functionary of the VHP said in 2002 that Gujarat was a 'successful experiment one which could be repeated all over the country. He was really satisfied that finally the Hindus had their 'consciousness raised'. See Mukul Dube, *The Path of the Parivar*, Three Essays Collective, 2003, p. 43.

[30] Tapan Basu et al, op. cit, p.ix.

[31] See, A G Noorani, 2002 b, op. cit, p. 81.

[32] BJP, the political front of the Hindu Right seems to have maintained a superficial distance from *Hindutva* seemingly for gains in electoral politics. It avoided any direct reference to Hindutva or its ideological mentors. On the other hand, RSS (the cultural wing) and the VHP (the religious wing, formed at the behest of RSS in 1964) have been consistently and consciously working towards infusing the ideals of *Hindutva*. While the RSS, which has functioned as an elite organization has worked at the cultural and educational level, VHP functions with a religious vision to popularize the ideology of Hindutva among the masses. For details see, Tapan Basu et al, op. cit; Brenda Crossman & Ratna Kapur, op. cit and A. G. Noorani, *The RSS and the BJP*, Leftword Books, 2000.

altogether in order to gain public legitimacy for its political goals. The emergence of the concept of *positive secularism* and progress of BJP can be traced in the following manner. In its first plenary session (in Mumbai, on December 28, 1980) BJP declared 'Gandhian Socialism' to be one of its five commitments along with *positive secularism* and value based politics. *Hindutva* did not figure in its discourse.[33] In 1985, the BJP's national executive abandoned 'Gandhian Socialism'. The National Council restored it but combined it with the Jan Sangh President Deen Dayal Upadhyay's 'Integral Humanism'. Even its Palampur Resolution on June 11, 1989 on the Babri Masjid did not mention *Hindutva*. The election manifesto of the BJP in the elections of 1989 and 1991 also did not mention *Hindutva*. It was mentioned for the first time in 1996 and again in 1998.[34] And its author Savarkar was lauded only in 2002.[35] Savarkar has never been criticized by the BJP. In fact both the BJP and RSS tend to ignore the mass of material on Savarkar's role in Gandhi's murder and laud him as a hero. The BJP's election manifesto (1996 as well as 1998) declared, 'the BJP believes in one nation, one people and one culture'. That 'one culture' which it flaunts is the heart of its *cultural* nationalism. The 1998 manifesto asserts more explicitly, 'Our National Identity, Cultural Nationalism'. It says plainly

[33] This is an apparent deviation from the blatant critique of the concept of secularism during the time of constitution making by the *Hindutva* ideologues. It is mentioned earlier.

[34] At this point it can be argued that the Ramjanmabhoomi movement that began in the late 1980s and finally led to the demolition of the Babri Masjid in 1992 generated immense mass base for the right wing in India and also facilitated the political ascendance of the Hindu Right. In the 1996 general elections, BJP emerged as the single largest political party, though short of majority. Despite the fact that the government headed by Atal Bihari Vajpayee was short lived due to their failure to prove majority, the popularity it gained cannot be ignored. This is evident from the fact that in the 1998 general elections, the BJP not only emerged as the single largest party but also formed a successful coalition with 24 different political parties giving it their support. For details see, Meenu Roy, *Electoral Politics in India*, Deep and Deep Publication, 2000; J. C. Agarwal and N. K. Chowdhary, *Lok Sabha Elections 1999: Last of the Millennium*, Shipra Publication, 2000.

[35] A. G. Noorani, 2002 b, op. cit, p. 8-9.

enough that 'the cultural nationalism of India... is the core of Hindutva,' thereby linking the Ayodhya movement to the ideology of *Hindutva.* The election manifesto further suggested that the real goal of the BJP was not limited to the Ayodhya campaign. It was to recast Indian polity thoroughly and replace the spirit and ethos of Indian nationalism with the exclusionary credo of *Hindutva.* The real goal was to establish a Hindu Rashtra.

It is precisely for cause of establishing a Hindu Rashtra that the constitutional provisions of freedom of religion and equality of citizenship, aiming at social reform and amelioration, do not appeal to the *Hindutva* ideologies and they propose their distinct version of secularism. Though they should have been speaking against the concept of secularism, they do not seem to speak against it as such. The Nehruvian version of secularism, which had a strong influence in the constitutional framework, is openly denounced as *pseudo–secularism.* The fact that India was not declared a Hindu state at the time of Independence is decried by the Hindu Right as a "a sheer betrayal, treachery and heinous crime" committed by the *pseudo-secularists* who cheated and betrayed the Hindus, the legitimate heirs to the heritage of 'Hindu Rajya' (Hindu state) as a logical corollary of the partition. Instead, they propose their own distinct vision of *positive secularism.* It is interesting to note that the judges in the *Bommai* case also spoke about *positive secularism.*[36] However, as used by judges like Gajendragadkar, Reddy and Ramaswamy, the term is intended to convey a sense of the constitutional role of the state in confronting religious impediments to social reform. Thus, under the rubric of *positive secularism* as explained by the judges, *sarva dharma sambhava* is interpreted less

[36] For details on the *Bommai* case see Chapter One, p. 25 – 27.

formalistically than it is by the Hindu Right, for whom any deviation from formal equality is viewed as a threat to the securing of majoritarian political results.

The Hindu Right critique of the constitutional framework of secularism is on the premise that it was designed and used for the appeasement of minorities, particularly Muslims. They argue that the *pseudo-secularists* failed to educate Muslims in order to bring them into the national mainstream.[37] As against the *pseudo–secularism* of the Indian state, the Hindu Right's thesis of *positive secularism* appears to be based on the concept of *Hindutva* and *Hindu Rashtra.* This is seemingly evident from the fact that they envisage the coming together of all the religious communities, rights and responsibilities and their stress on Hinduism as the only tolerant religion.[38] The thesis of *positive secularism* is coupled with the assertion that only a Hindu state can and would be secular and India cannot become a functionally secular state unless it is also declared a *Hindu Rashtra.* Only the preservation of the Hindu character of India would preserve the basic values of secularism in India.[39] They seem to appropriate the concept of secularism to propagate a Hindu state. According to them, secularism is defined as "toleration of all religions. Hinduism is defined as the only religion with a true tolerance for all other religions. Therefore, according to these terms, only a country based on Hinduism can be secular."[40] Thus, the very premise of the Hindu Right's vision of secularism is based on

[37] M. M. Sankhdher, 'Understanding Secularism' in M. M. Sankhdher (edited), *Secularism in India: Dilemmas and Challenges*, Deep & Deep Publications, 1993, p. 12.
[38] Sumanta Banerjee, 'Hindutva – Ideology and Social Psychology', *Economic and Political Weekly*, Volume XXVI, No. 3, January 19, 1991, p. 99.
[39] Madhok, Balraj, 'Secularism: Genesis and Development' in M. M. Sankhdher (edited), op. cit, p. 120.
[40] Brenda Crossman & Ratna Kapur, 'Secularism: Bench-Marked by Hindu Right', *Economic and Political Weekly*, Volume XXXI, No. 38, September 21, 1996, p. 2623.

assimilation of all various religious and cultural groups into one fold and therefore appears to stand opposed to the constitutional ideals.

The Hindu Right vociferously asserts that the Constitution is anti-Hindu and therefore it should be redrafted.[41] It argues that the present Constitution is based on British laws and is unrepresentative of the Indian ethos. It is also critical of various constitutional provisions pertaining to the Preamble, the definition of citizens and the continuing use of the English language.[42] Accordingly, it advocates changing the Constitution. Although it does not specify details of the new Constitution, it specifically emphasizes the bestowal of rights being made conditional to *loyalty* and *patriotism.*[43] This *loyalty* and *patriotism*, undoubtedly, is directed towards the cause of the Hindu culture and Hindu nation.[44]

In its election manifesto since the late 80s, the BJP had shown its commitment to the construction of the temple at Ayodhya, amendment of Article 30 and Article 370 of the Constitution and the introduction of the Uniform Civil Code (UCC). As has already been discussed, Article 30 guarantees the right to the religious minorities to establish and administer their own educational institutions and Article 370 confers special rights to the state of Jammu and Kashmir.[45] As far as the UCC is concerned, Article 44 of the Constitution lays down that the State shall endeavor to secure for the citizens' a uniform

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[41] The 'Sant Samiti' in its October 1, 1992 meeting set up a committee to redraft the Constitution. Their critique of the Constitution was published in a 63-page booklet.

[42] Saral Jhingram, 'Minorityism, Majorityism and the Category of the Community' and Asghar Ali Engineer, 'Practice of Secularism in India' in Iqbal Narain, op. cit, p. 112 – 114, p. 90 – 91.

[43] Manini Chatterjee, 'Strident Sadhus: Contours of a Hindu Rashtra?', *Frontline*, Volume 10, no. 2, January 16 – 29, p. 5.

[44] This idea has been dealt in detail later in this chapter.

[45] For a reference to Article 30 see chapter One, p. 18, and for Article 370 see D. D. Basu, op. cit, p. 255-264.

code throughout the territory. But it 'cannot be given this meaning as long as religion is playing an active role in most of the other aspects of life.'[46]

The UCC has invited a lot of debate over the desirability or undesirability of such a code in India. It generated a lot of agony especially after the *Shah Bano* case,[47] in which the Supreme Court decided in favor of a Muslim woman, granting her maintenance from her divorced husband. However, the Rajiv Gandhi government reversed the decision of the Supreme Court because the Muslim clerics claimed that the Muslim personal law did not require this support. While this gained him support within the traditional Muslim community, it enraged women, progressive Muslims, secularists, and Hindu nationalists. The Hindu Right once again got an opportunity to accuse the government and therefore the constitutional provision of secularism as a policy for the appeasement of the religious minorities. As a result the Hindu Right intensified its demand for a UCC and drew frequent parallels between the Ayodhya movement and *Shah Bano*.[48]

In the case of *Sarla Mudgal v Union of India*, in 1995, the Supreme Court while deciding the issue of a ban on polygamous marriages among Hindus since the Hindu Marriage Act of 1955 also dealt with the case of UCC. The judges advised the state on the urgency of adopting a UCC: 'The State shall endeavor to secure for the citizens a

[46] Tahir Mahmood, 'Uniform Civil Code: Facts and Fiction', quoted in Gary Jeffrey Jacobsohn, op. cit, p. 54.
[47] *Mohd. Ahmad Khan v Shah Bano Begum*, AIR 1985 SC 945, The Supreme Court website.
[48] L. K. Advani, the principle architect of the temple movement when appeared before the Liberhan Commission remarked – "The Supreme Court Judgment in the Shah Bano case was reversed to appease the Muslim vote bank. And in order to appease the Hindu vote bank, the unlocking of the temple gates and shilanyas were allowed. We had no choice but to join the movement to fight the politics of the vote bank." Quoted in *Frontline*, 2001.

uniform civil code throughout the territory of India in an unequal mandate under Article 44 of the Constitution of India which seeks to introduce a uniform personal law – a decisive step towards national consolidation.' It further held that: "since more than 80 percent of the citizens' have already been brought under the codified personal law, there is no justification whatsoever to keep in abeyance, any more, the introduction of 'uniform civil code' for all citizens' in the territory of India."[49] The BJP appropriated this decision of the Supreme Court proclaiming that the government was directed towards making a UCC.

However, due to political compulsions of forming a coalition in order to run the government at the Centre, the BJP had to compromise with these three prominent issues in the National Agenda for Governance, 1998. Even though the BJP appears to have taken a moderate form, the anti-Muslim stance in other wings of the Sangh Parivar seems to have reached new heights. For instance, in an interview in the Time magazine in the immediate aftermath of the Bombay riots in 1993, Bal Thakeray replied to a question on the role of Shiv Sena in the riots that he wanted to teach Muslims a lesson and 'if they are going, let them go. If they are not going, *kick them out.*'[50] He further said, 'Indian Muslims are beginning to feel like Jews in Nazi Germany and therefore there is nothing wrong if they are treated as Jews were in Germany.[51] The mouthpiece of Shiv Sena (*Dopahar ka Samna*) is loaded with strong anti-Muslim sentiments, branding Muslims as

[49] *Sarla Mudgal v Union of India*, AIR SC 1531 (1995), p. 1532.
[50] Brenda Crossman and Ratna Kapur, op. cit, p. 8-9; also see, Interview with Bal Thackeray, *Time*, January 25, 1993, p 43.
[51] Ibid; Even the ideological mentors of the contemporary Hindutva ideologues proclaimed their support for the totalitarian regimes in Germany and Italy. Marzia Casolari in her research has proven the existence of direct contacts between them and the representatives of the fascist regime including Mussolini. Casolari traces the chronology of various Hindu Nationalist leaders' fascist and nazi association. See, Marzia Casolari, op. cit, p. 219-224.

'barbaric', uncivilized', 'traitors who partitioned the country' and 'traitors who should be condemned'. Sadhvi Ritambhara – a leading figure with the VHP also spells out similar anti-Muslim sentiments.[52] Her speeches and comments appear to be similar to that which we can still hear in the recordings at mass propaganda rallies.[53] A number of slogans emphasizing the *Hinduness* and the great Hindu glory have been framed, for instance – *Garva se kaho hum Hindu hain* (Declare with pride that we are Hindus); *Hindu jaaga, desh jaagega* (with the Hindu awakening, the nation awakes). L. K. Advani proudly proclaimed, 'India is essentially a Hindu country'. He further added that India is one nation and not a multi-nation state and Ram is not only a religious hero but also a cultural hero. Therefore, those who recognize his greatness are alone Indians.

The presence of the different Sangh Parivar organizations which are active on different fronts and some like the RSS, which have been working quietly at grassroots level in some areas for 50-60 years in education and other cultural activities in physical training and in flood relief – has lent a great deal of strength to the Hindu Movement in this recent phase. *Hindutva* continues to be a political category. However, the *Hindutva* ideologues of the present times, unlike their predecessors seem to have conflated the meaning of *Hindutva* and Hinduism. They continuously seek justification and

[52] It is not only the Muslims who are subject to the hostility of the Hindu Right. The Christian community is also frequently attacked as a foreign threat to the fabric of the Hindu Nation.

[53] Their salient theme is that the only way Hindus can prove that they are not cowards is by initiating violent attacks on Muslims. These acts of aggression are presented as justified by the cruelties inflicted earlier by some Muslim invaders who conquered parts of India. See Madhu Kishwar, *Religion at the Service of Nationalism and Other Essays*, Oxford University Press, 1998, p. 113.

legitimization by going back to the 19th and 20th century Hindu reformers who do not seem to have any direct link with Hindu Nationalism.[54] For instance, Atal Bihari Vajpayee chose to quote Swami Vivekanand twice in his musings from Goa in December 2002. However, Vivekanand never spoke of Hindutva; he was rather concerned with the profundities of Hinduism.[55] According to the noted historian Tapan Ray Choudhary, Vivekanand was among the earliest nationalist thinkers to claim the Indo Islamic past as part of the Indian heritage.' Roy Choudhary abhorred the VHP for appropriating Vivekanand as one of the precursors of their ideology.[56] The BJP-RSS and VHP have time and again distorted facts and misappropriated personalities for the furtherance of its cause.[57]The emphasis of the BJP-VHP-RSS is on underlining the importance of doing honor to our roots, our heritage, our heroes and our culture. Gyanendra Pandey puts forth the argument that these organizations have presented a grotesque distortion of history in order to establish the division of the world into the 'civilized' and the 'barbarian'.

On the whole, it can be inferred that there is an unbroken link that connects the contemporary Hindu Right and its ideological predecessors. In both the cases, it has been noticed that the aim of either the exclusion or assimilation of the religious minorities within the fold of Hindu religion and culture, has been at the core of the *Hindutva* campaign. Thus, the strategies and approaches of the Hindu Right reveals a distinct anti-

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[54] The early Hindutva ideologues, especially Golwarkar also seem to have misappropriated the Hindu reformers of the 19th and 20th century India. Golwarkar puts forth a remarkable proposition that all social and political activities of the 19th and 20th centuries in which Hindus took part were geared to the task of re-establishing the Hindu nation in its superior and glorious splendor. See, M. S. Golwarkar, 1939, op. cit, p. 40.

[55] It was Savarkar who coined the term *Hindutva*. It has already been discussed in the beginning of this Chapter. See p. 27-28; also see, Rajni Bakshi, 'The Dispute over Swami Vivekananda's Legacy' in Iqbal Narain (edited), op. cit, p. 99-107.

[56] See, A. G. Noorani, 2002 b, op. cit, p. 65.

[57] The RSS was founded in 1925; VHP was founded in 1964. It intended to infuse the politics of *Hindutva* with a specifically religious vision. On the other hand, RSS functioned as an elite organization.

secular thrust. This is noticeable not only in their struggle for hegemony which stretches the entire gamut of history, politics and culture, but also in their attempts to consolidate the Hindutva fold. Emphasis on the Hindu State and Hindutva, the anti-Muslim bias in their rhetoric, which is discernible in their emphatic reference to appeasement of Muslims, the yet unfinished agenda of undoing the perceived historical wrongs etc. and the pronounced gender bias, clearly reflect an assault on the basic tenets of Secularism.[58]

Interestingly, the strategies of the Hindu Right have made secularism a powerful weapon in its quest for discursive and political power. These struggles over the meaning of secularism and the place of religion in politics have entered the legal arena. The following chapters are an attempt to analyze two such prominent judgments of the Supreme Court of India.

[58] At this juncture, it becomes easy to agree with Ashutosh Varshney's remark, "... Hinduism may be externally and doctrinally tolerant, but internally it has become quite intolerant." Ashutosh Varshney, 'Try Some Generosity', *Indian Express*, February 26, 1998.

Part II

CASE STUDIES

Chapter Three

THE HINDUTVA JUDGMENTS – 1995

The *Hindutva* judgments deal with twelve cases decided by the Supreme Court of India, all of which involved appeals to religion to advance a candidate's electoral process.[1] A three-judge bench headed by Justice J. S. Verma delivered the judgments on December 11, 1995. These cases were essentially appeals made by the elected representatives of the BJP/Shiv Sena alliance government in the western state of Maharashtra, whose elections were set aside by the Bombay High Court on account of committing 'corrupt practices' as defined under section 123(3) of the Representation of People Act, 1951 (henceforth mentioned RPA).[2] According to Section 123(3) of the Act, if a candidate or his agent or any other person with the consent of the candidate or his election agent appeals to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or uses religious symbols for the furtherance of the prospects of the election of that candidate or prejudicially affecting the election of any candidate, it amounts to a corrupt practice. Furthermore, sub-section (3A) makes it a corrupt practice, if a candidate promotes or attempts to promote feelings of enmity or hatred between different classes of

[1] (1) *Manohar Joshi v Nitin Bhaorao Patil*, AIR 1996 SC 796; also reported in 1996 (1) SCC 169; (2) *Ramesh Yashwant Prabhoo v Prabhakar Kasinath Kunte & others*, AIR 1996 SC 11; also reported in (1996) SCC 130, with *Shri Bal Thackeray v Shri Prabhakar Kashinath Kunte & others*; (3) *Ramachandra G. Kapse v Haribansh Ramakbal Singh*, AIR 1996 SC 817 with *Pramod Mahajan v Haribansh Ramakbal Singh & Another*; (4) *Ramakant Mayekar v Smt. Celine D'Silva*, AIR 1996 SC 826; with *Chagan Bhujbal v Smt Celine D'Silva & Another, Balasaheb Thackeray v Smt. Celine D'Silva*; (5) *Shri Moreshwar Save v Shri Dwarkadas Yashwantrao Pathrikar*, AIR 1996 SC 3335; (6) *Chandrakanta Goyal v Sohan Singh Jodh Singh Kohli,* AIR 1996 SC 861; (7) *Suryakant Venkatrao Mahadik v Saroj Sandesh Naik*, (1995) 7 Scale 92. See Brenda Crossman and Ratna Kapur, op. cit, p.16. Also See S. P. Sathe, op. cit, p.185.

[2] The elections were held on December 13, 1987 and the Bombay High Court gave its judgment on April 7, 1989, declaring the election of these candidates void.

citizens on grounds of religion, race, caste, community or language for the furtherance of the prospects of the election of that candidate.[3] The Supreme Court in its judgments dealt with the constitutionality of the RPA and elaborated the meaning of *Hindutva* and Hinduism and 'the effect of these expressions in the election speeches.'[4] The three cases that comprise the core of the judgments are:

- *Ramesh Yashwant Prabhoo v Shri Prabhakar Kashinath Kunte and Others*
- *Manohar Joshi v Nitin Bhaurao Patil and Others*[5]
- *Ramchandra Kapse v Haribash Ramakbal Singh*[6]

ON REPRESENTATION OF PEOPLE ACT, 1951

The Supreme Court upheld the constitutionality of the RPA and interpreted and applied its two subsections in a way that produced mixed results on the whole. While defending the RPA, the Court held –

> "Obviously the purpose of enacting the provision is to ensure that no candidate at an election gets votes only because of his religion and no candidate is denied any votes on the ground of his religion. This is in keeping with the secular character of the Indian polity and rejection of the

[3] The Court, according to section 100(1), declares election of a candidate found guilty of committing a corrupt practice void. According to section 8-A and 11-A, the person held guilty of corrupt practice may be disqualified for being a member of a House Legislature and also for voting in any election to such Legislature.

[4] *Ramesh Yashwant Prabhoo v Prabhakar Kashinath Kunte and others*, (1996) SCC 130, The Supreme Court website, para 32.

[5] *Manohar Joshi v. Nitin Bhaurao Patil and others*, AIR 1996 SC 796; also in (1996) SCC 169 and The Supreme Court website.

[6] *Ramchandra Kapse v Haribash Ramakbal Singh,* AIR 1996 SC 817; also in (1996) SCC 206 and The Supreme Court website.

scheme of separate electorates based on religion in our constitutional scheme."[7]

In reaching this conclusion and the essential features of a secular polity the court cited from an earlier decision of the Supreme Court in *Ziyauddin Burkharruddin Bukhari v Brijmohan Ramdass Mehra & Brother*.[8] According to this judgment:

> "No democratic, political and social order, in which the conditions of freedom and their progressive expansion for all make some regulation of all activities imperative, could endure without an agreement on the basic essentials which could unite and hold citizens together despite all the differences of religion, race, caste, community, culture, creed and language...Our democracy can only survive if those who aspire to become people's representatives and leaders understand the spirit of secular democracy."[9]

On the basis of this, the Supreme Court in the present case analyzed the content of the speeches made by the Shiv Sena leader, Bal Thackeray on several occasions and declared that these speeches violated the provisions of the RPA. The campaign rhetoric from Bal Thackeray in three different public meetings, as quoted in the judgment are as follows:

> "We are fighting this election for the protection of Hinduism. Therefore we do not care for the votes of the Muslims. The country belongs to Hindus and will remain so." (first meeting)

[7] *Ramesh Yashwant Prabhoo v Prabhakar Kashinath Kunte*, op. cit, para 13.
[8] Ibid, para 22.
[9] Ibid.

> "Hinduism will triumph in this election and we must become honorable recipients of this victory to ward off the danger on Hinduism, elect Ramesh Prabhoo to join with Chhagan Bhujbal who is already there. You will find Hindu temples underneath if all the mosques are dug out. Anybody who stands against the Hindus should be showed or worshipped with shoes. A candidate by name Prabhoo should be led to victory in the name of religion." (second meeting)
>
> "We have come with the ideology of Hinduism, Shiv Sena will implement this ideology. Though this country belongs to Hindus, Ram and Krishna are insulted. (They) valued the Muslim votes more than your votes; we do not want the Muslim votes." (third meeting)[10]

The Court held the opinion that all of Thackeray's speeches are 'examples of promoting the feelings of enmity between different classes of citizens of India'[11] and they were a clear appeal to Hindu voters to vote for Yashwant Ramesh Prabhoo on grounds of religion. It further said:

> "The offending speeches in the present case discarded the cherished values of our rich cultural heritage and tended to erode the secular polity."

However, in contrast to this, the Supreme Court in the case of *Manohar Joshi v Nitin Bhaorao Patil* did not find the speech made by Manohar Joshi, which proclaimed that 'the first Hindu state will be established in Maharastra' as violating the RPA in any way.

[10] Ibid, para 5.
[11] Ibid

According to the Court the appeals made in this case were related to *Hindutva* and therefore did not fall within the purview of the RPA. Such a statement, according to Court, was not an appeal to vote on the basis of religion but simply 'the expression at best of such a hope'. The question that remains is whether the appeal to make Maharashtra the first Hindu State' was not communal? This statement was manifestly contrary to secularism and in view of what the Court had held in the Bommai case.[12] Thus, ideally Manohar Joshi's election should have been struck down. If secularism is the basic structure of the Constitution, a Hindu state just cannot exist. A statement, promising people to establish a Hindu state violates the basic structure of the Constitution.

Most prominently, in this case the question was raised whether the contents of a party's manifesto could become the basis for alleging corrupt practice on part of a candidate.[13] The Court held that a candidate could not be accused of committing a corrupt practice on the basis of the party's manifesto unless she had taken part in its drafting or have alleged to have used it in her campaign. Thus, the Court, in a way, distanced the candidate from her party's program and ideology. The charges against Ramakant

[12] The Constitution visualizes India as a multi-cultural society. Article 29 provides that 'any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. The *Bommai* Case established the fact that secularism was part of the basic structure of the Constitution. According to the majority (i.e. 6 out of 9) any state government that undermines any of the aspects of the basic structure of the Constitution must be said to be not functioning in accordance with the Constitution.

[13] The High Court had inferred from the manifesto of the BJP that the candidate had committed corrupt practice. The Supreme Court pointed on section 29A of the Representation of People Act, which required every party to file an affidavit that it swore by the principle of secularism, democracy and socialism while applying for registration to the Election Commission. The BJP as well as the Shiv Sena had been so registered as political parties. It during the election time that a party announces its manifesto and the manifesto of a so called secular party may also contain appeal on the ground of religion. Just because a party is registered under the Representation of People Act, its manifesto does not become immune from scrutiny under section 123(3) or 123(3A). see, S. P. Sathe, op. cit, p.189.

Mayekar (a Shiv Sena leader) were also dismissed. It was held that the mere fact that Bal Thackeray, the leader of Shiv Sena, was found guilty of corrupt practices was not in itself sufficient evidence to establish that other members of the party were also guilty of corrupt practices.[14] It further held:

> "The public speeches in question did not amount to appeal for votes on the ground of his religion and the substance and main thrust thereof was 'Hindutva' which means the Indian culture and not merely the Hindu religion."[15]

Turning to the question of the meaning of section 123(3) i.e. prohibition of appeals to religion to gain votes, the Supreme Court held that the prohibition did not mean that religion could never be mentioned in election speeches. Justice J. S. Verma, speaking on behalf on Justice N. P. Singh and K. Venkataswami pointed out that mention of religion might not always be against secularism.

> "It cannot be doubted that a speech with a secular stance alleging discrimination against any particular religion and promising removal of the imbalance cannot be treated as an appeal on the ground of religion as its thrust is for promoting secularism... An election speech made in conformity with the fundamental right to freedom of religion guaranteed under article 25 to 30 of the Constitution cannot be treated as anti-secular

[14] Brenda Crossman & Ratna Kapur, op. cit, p.23.
[15] ibid

to be prohibited by sub-section (3) of section 123, unless it falls within the narrow net of the prohibition indicated earlier."[16]

This decision was arrived on the basis of the appellant's argument that the public speeches merely criticized the anti-secular stance of the Congress party in practicing discrimination against Hindus and giving undue favor to the minorities. Therefore, it was not an appeal for votes on the ground of Hindu religion.[17]

However, the question that the Supreme Court seemingly fails to address is that if a speech contains an allegation of a favored treatment or appeasement of a particular community, and such allegation is based on misleading facts or results in creating hatred or enmity against that community rather than against those who give such favored treatment or indulge in appeasement would it not amount to corrupt practice? There is a difference between finding fault with a policy and holding a particular community responsible for such a policy. Is it not that the Supreme Court was indirectly upholding the BJP argument that giving favored treatment to minorities amounted to appeasement?[18] After all, as it has already been discussed in Chapter One, even the Indian constitution guarantees some special rights to the minorities.[19]

[16] Ibid, para 17.
[17] Ibid, para 7.
[18] S. P. Sathe, op. cit, p. 186-187.
[19] For details refer to Chapter One.

ON *HINDUTVA*

Having dealt with the provisions under the Representation of People Act, 1951 the Court turned to consider the meaning of 'Hindutva' and 'Hinduism' and the effect of the use of these expressions in the election speeches.[20] The main question raised by the appellants in these cases was whether the use of the term *Hindutva* in an election speech amounted to corrupt practice within the meaning of section 123(3). On the question concerning whether the use of the term *Hindutva* violated the RPA the court held that:

> "...mere use of the word 'Hindutva' or 'Hinduism' or mention of any other religion in an election speech does not bring it within the net of sub-section (3) and/or (3-A) of section 123, unless the further elements indicated are also present in the speech. It is also necessary to see the meaning and purport of the speech and the manner in which it was likely to be understood by the audience to which the speech was addressed. These words are not to be used in the abstract, when used in an election."[21]

Thus, it can be inferred that the Supreme Court in its judgment has used the word *Hindutva* along with Hinduism and other religious philosophies to begin with. However, in reaching its final conclusion regarding the meaning of *Hindutva* the Supreme Court quoted extensively from two earlier judgments of the constitutional bench of Supreme Court. In the first case *Sastry Yagnaparushadji and Others v Muldas Bhuradas Vaishya*

[20] *Ramesh Yashwant Prabhoo v Prabhakar Kashinath Kunte and Others*, op. cit, para.32.
[21] Ibid, para 34.

and Another, the Supreme Court dealt at considerable length with the meaning of Hindu and Hinduism. The Court after a detailed analysis of the various meanings of these terms came to the conclusion that Hinduism is a 'way of life'. The constitutional bench in this case provided a lengthy explanation of why it is "difficult, if not impossible to define Hindu religion or even adequately describe it."[22] The second case *Commissioner of Wealth Tax, Madras and Others v Late R. Sridharan,* which the present constitutional bench quoted dealt with the meaning of the term Hinduism as follows:

> "...it is a matter of common knowledge that Hinduism embraces within itself so many diverse forms of beliefs, faiths, practices and worship that it is difficult to define the term 'Hindu' with precision."[23]

It is interesting to note at this point that neither of the earlier judgments dealt with the meaning of *Hindutva*. They merely focused on the meanings of who and what are Hindus and what is Hinduism. Nevertheless, the present constitutional bench came to the conclusion that:

> "No precise meaning can be ascribed to the term 'Hindu', 'Hindutva' and 'Hinduism; and no meaning in the abstract can confine it to the narrow limits of religion alone, excluding the content of Indian culture and heritage. It is also indicated that the term 'Hindutva' is related more to the way of life of the people in the sub-continent. It is difficult to appreciate

[22] Ibid, para 35.
[23] Ibid.

how in the face of these decisions the term 'Hindutva' or 'Hinduism' per se in the abstract, can be assumed to mean and be equated with narrow fundamentalist Hindu religious bigotry, or be construed to fall within the prohibition in sub-section (3) and or (3A) of section 123 of the Representation of People Act."[24]

Thus, it can be inferred from the above statements that according to the Supreme Court, *Hindutva* is understood as 'a way of life' or a state of mind and it is not to be equated with or understood as religious Hindu fundamentalism. Thus, Justice Verma failed to distinguish between *Hindutva* with Hinduism. It is prominently apparent in a further reading of the judgment where the Court distinctly held the opinion:

"Thus, it cannot be doubted particularly in view of the constitution Bench decisions of this court that the words 'Hinduism or 'Hindutva' are not necessarily to be understood and construed narrowly, confined only to the strict Hindu religious practices unrelated to the culture and ethos of the people of India, depicting a way of life of the Indian people."[25]

The Court also held that simply referring to *Hindutva* or Hinduism in a speech does not automatically make it one based on the Hindu religion and would not necessarily constitute an appeal to religion. It was held that:

"It is therefore a fallacy and an error of law to proceed on the assumption that any reference to Hindutva or Hinduism in a speech makes it

[24] Ibid, para.37
[25] Ibid, para 42.

automatically a speech based on the Hindu religion as opposed to the other religions or that the use of the words 'Hindutva' and 'Hinduism' per se depict an attitude hostile to all person practicing any religion other than the Hindu religion."[26]

The Court further said that 'the kind of use made of these words' and the 'meaning sought to be conveyed in the speech' have to be taken into consideration before concluding that the use of *Hindutva* or 'Hinduism' violates Representation of People Act; the mere fact that these words are used in the speech would not bring it within the prohibition of Article 123(3) and/or (3A). However, the court itself seems to have failed to consider the manner in which the term *Hindutva* has been used ever since its inception in the year 1923. As a matter of fact, this term was coined in the first place as a distinct political term different from Hinduism. V. D. Savarkar, in his book *Hindutva-Who is a Hindu?*, mentioned at the beginning of his book without any ambiguity that:

"...a new term Hindutva was being coined."[27]

Thus *Hindutva* has never been the same as Hinduism. This term has always been used by the Hindu Right to describe Hindus as a community as distinguished from people of other religious faiths. The conceptualization of *Hindutva* by the Court agrees neither with its definition by Savarkar nor with its practical content given by the political parties that have crusaded for it. Thus, the judgment ignored the mass of materials on the subject.

[26] Ibid, para 44.
[27] V. D. Savarkar, op. cit, front page. For a detailed meaning and political significance of the term *Hindutva* see Chapter Two.

Justice Verma completely obscured the historical background as well as the contemporary political context within which the term has acquired meaning.

Hindutva is a term for Hindu nationalism, which is clearly exclusivist and contrary to pluralistic nationalism, which the Constitution of India cherishes. It therefore, provides an ideology to militant excluvism based on religion. Appeal on the ground of *Hindutva* may not be an appeal on the ground of religion but it is an appeal on the ground of nationalism based on the religion.[28] For the minorities then the option of retaining both their faith and their Indian nationality is extinguished. This is the reality of Hindu Rashtra based on *Hindutva* – a reality of perpetual hatred and contempt towards Muslims and Christians. In the works of Savarkar and Golwalkar, we come across several passages that are not merely abhorrent to the idea of secularism but also to the idea of preferential treatment for the minorities, for their upliftment and the very notion of democracy on the whole. The Court however, blurred all lines of demarcation and equated *Hindutva* with Hinduism in a number of passages of this judgment. In one of the passages it is mentioned:

> "Considering the term Hinduism or Hindutva per se depicting hostility, enmity or intolerance towards other religious faiths or professing communalism proceeds from improper appreciation and perception of the true meaning of these expressions emerging from the detailed discussion in the earlier authorities of this..."[29]

[28] S. P. Sathe, op. cit, p.188.
[29] *Ramesh Yashwant Prabhoo v Prabhakar Kashinath Kunte and Others*, op. cit, para. 44.

The Court praised Hinduism as being a tolerant faith and has used Hinduism and *Hindutva* interchangeably. However, a constitutional court interpreting a Constitution, which has secularism as a part of its 'basic structure', ought not to praise one religion as being more tolerant and generous. Ideally, the Court ought to steer clear of such controversies by remaining neutral towards all religions. To say that *Hindutva* is not a religion but a way of life is to consider it to be superior to other religions. Is Islam or Christianity or Judaism or Zorastrianism not a way life? Further, if *Hindutva* is Bhartiyata (Indianness) why not use Indianness instead of *Hindutva*?[30]

Moreover, Supreme Court's opinion on the "Indian cultural ethos" is also questionable because though the Court uses the term in a very liberal sense, it remains ambiguous with regard to its meaning. Hinduism certainly does not represent the Indian culture on the whole. If at all the Court intends to convey this meaning, it can be accused of uncritically assuming the norms of the majority, which conveniently states that Hinduism can simply be extended to apply to all Indians irrespective of their religious or cultural identity. Justice J. S. Verma went so far as to rule that:

> "The word 'Hindutva' is used and understood as a synonym of Indianisation."

In order to support this argument the judgement quoted a passage from the work of Maulana Wahiduddin Khan (1994):

> "The strategy worked out to solve the minorities problem was, although differently worded, that of Hindutva or Indianization. This strategy briefly state, aims at developing a uniform culture by obliterating the differences

[30] S. P. Sathe, op. cit.

between all the cultures co-existing in the country. This was felt to be the way to communal harmony and national unity. It was thought that this would put an end once and for all to the minorities problem."[31]

The judge, even here, apparently failed to take into account the fact that the term 'Indianization' was Jana Sangh's slogan in 1969, which was directed against the Muslims and contained the insinuation that they were not Indian enough.[32] *Hindutva* is synonymous with Indianization principally in the RSS discourse. Even though everyone knew that it was a dishonest euphemism for Hinduization, the Court held this remark.[33] Furthermore, it has been argued that the Court in this case does not mention the fact that the passage quoted was a description of a particular strategy worked out by the Jana Sangh. Thus the Court can also be held responsible for selectively appropriating statements to re-enforce its judgment on *Hindutva*.

Overall, the pronouncements of the Supreme Court regarding *Hindutva* show that its understanding remains flawed. What is most extraordinary about the Court's reasoning from a strictly legal point of view is that it can draw such an unequivocal conclusion as to the meaning of *Hindutva* without having cited virtually any authorities – judicial or otherwise – in its support. It was an arbitrary and ambiguous judgment. None of the

[31] *Ramesh Yashwant Prabhoo v Prabhakar Kashinath Kunte and others*, op. cit, para 39.

[32] The Standing Committee of the NIC accepted a statement on Oct 16, 1969, which said – 'We condemn the spread of the idea that any community requires to be Indianized.' An all party conference was convened under its auspices on Nov 3, 1969 with the Prime Minister Indira Gandhi in the chair. It denounced Indianisation. The Jan Sangh alone opted out. See A G Noorani, 2002 b, op. cit, p.74-75.

[33] Justice Verma had studiously refrained from pronouncing Secularism to be a 'basic feature' of the Constitution in the *Bommai* case in 1994. His judgement in the *Ayodhya* case was just as flawed. In that case he praised the principle of religious toleration found in Hindu scriptures while concluding that 'a mosque is not an essential part of the practice of the religion of Islam and Namaaz (prayer) by Muslims can be offered anywhere, even in the open.'

Constitution Bench decisions from which it purported to draw its support addressed the meaning of the term 'Hindutva' but simply the meaning of 'Hindu' or 'Hinduism'.[34]

While giving its judgment, the Court specially Justice Verma failed to realize that a term doesn't have a meaning on its own. Rather the meaning of any term is embedded in a particular context. The Supreme Court itself has ruled time and again that a precedent must be read in the context of the facts of that particular case. Moreover, it is not very difficult to distinguish between Hinduism and *Hindutva*. It may be hard to define the former, but the latter's definition and overt political objectives were clearly defined by the ideological predecessors of the contemporary Hindu Right. Despite this, the Supreme Court deliberately identified *Hindutva* with Hinduism.

Furthermore, any statement made before an audience should also be integrated in the sense in which the members of the audience are expected to understand it. During an electoral campaign the purpose of almost every meeting is to appeal for the vote of the electorate. Would the normal electorate in India understand that what is meant by *Hindutva* is the culture of all the people of India including those of the non-Hindu faiths?

At this stage, it is also pertinent to ask, whether this discourse on who a Hindu is, what constitutes *Hindutva* and the rest was at all necessary in giving the verdict in the above case. A.G. Noorani opines that it was pure obiter. But the obiter was pronounced consciously, with effort and in gross error. Despite the fact that *Hindutva* was given a benign gloss, the three impugned speeches of Mr. Thackeray were considered offensive enough to be regarded as 'corrupt practices' under Section 123(3) of the Representative

[34] Brenda Crossman & Ratna Kapur, op. cit, p.27-29; A. G. Noorani, 2002 a, op. cit, p.79-81.

People Act, 1951. The case could very well have been disposed of accordingly without venturing into such issues as who a Hindu is and what *Hindutva* means. The election cases could have been set aside merely on the basis of violating the constitutional norms regarding secularism. However, the judgment proves to be a landmark in Indian history vindicating *Hindutva* and thereby 'positive secularism' of the Hindu Right.

Chapter Four

THE NCERT TEXTBOOK JUDGMENT – 2004

Who controls the past controls the future
Who controls the present controls the past.

This judgment was delivered by a three-judge bench on the writ petition (CIVIL) No. 98 of 2002 filed by petitioners Ms Aruna Roy and Others.[1] The petition challenged the legality of the National Curriculum Framework for School Education (NCFSE) framed by the National Council of Educational Research and Training. In this public interest litigation, filed under Article 32 of the Constitution of India, the two fundamental issues that were raised by the petitioners were related to the issues of federalism and secularism directly. It was contended that the issues involved were of 'grave constitutional importance' affecting the future of children. The points raised in the petition were as follows:

1. The respondents have not sought the approval of the Central Advisory Board of Education (CABE) to the National Curriculum Framework for School Education (NCFSE)-2000, and without obtaining the approval of the CABE, the NCFSE cannot be implemented.

2. The NCFSE and the syllabus framed there under are unconstitutional as the same are violative of the rubric of secularism, which is part of the

[1] The other petitioners were B. G. Verghese and Mina Tyabji. The judgment was delivered on September 12, 2002 by a three-judge bench comprising Justice M. B. Shah, Justice Dharmadhikari and Justice Sema.

basic structure of our Constitution. The NCFSE and the syllabus are also violative of the fundamental right to information (which have all been read into the right of life under Article 21) and also Articles 27 and 28 of the Constitution of India.[2]

However, the textbook case was heard quickly, amidst great controversy and with volumes of relevant and irrelevant material. This chapter aims at understanding and analyzing the judgment critically because the Sangh Parivar has once again appropriated the judgment. It seems to have taken the view that the Supreme Court has given it sanction to go ahead with their program of 'saffronisation.'

ISSUE OF FEDERALISM

The controversy over the textbooks is not only limited to a contestation between secularists and Hindu communalists, it also has a federal dimension.[3] It was contended by the petitioners that the NCFSE published by the NCERT was 'against the constitutional mandate, anti-secular and without consultation with Central Advisory Board of Education (CABE) and, therefore, requires to be set aside.'[4]

The problem with the NCFSE is related to the process, the content and the likely impact on a host of matters, including the rights of the child, center-state relations and the fundamental right to education. Consultation with CABE is pivotal for approving the curriculum. It is a 104-member body consisting largely of state representatives and

[2] The NCERT Judgment, The Supreme Court website.
[3] Rajeev Dhawan, The textbook case, *The Hindu*, October 4, 2002 ; also see Praful Bidwai, *The Daily Star*, September 23, 2002.
[4] The NCERT Judgment, op. cit.

independent experts, which forms a structured and competent forum for serious deliberation on the implementation of National Policy on Education (NPE).[5] However, the NCERT did not consult CABE and the enormous amount of debate generated in the academic circles has shown that the so named 'national' curriculum did not enjoy political consensus. This was also evident from the manner in which the NCERT got post-facto approval for it in the 38th meeting of its general body held in May 2002. As many as 14 state education ministers walked out of this meeting and then issued a press statement specifying their objection to the curriculum framework.[6]

On the issue of the role and importance of the CABE, the three judges of the Supreme Court in their separate judgments agreed only on one point, that non-consultation with the CABE cannot be the ground for setting aside the NCFSE. Justice Shah admitted that the "CABE is a pivotal and the highest body in the matters pertaining to education as it not only has the required expertise but also an effective mechanism for Centre-State co ordination."[7] However, this is where he sets limits to the functions of CABE as an important body that would keep checks and regulations on the content of the NCERT textbooks. He further stated that the "CABE is not constituted under any Act or the Rules, hence it is not a statutory body" and therefore, "it cannot be held that as the CABE is not consulted, the policy laid down by the NCERT is violative of any statutory provision or rules."[8] He noted that the "CABE is only an advisory body and there are other institutions including the NCERT which also assist the Government in formulation

[5] The importance of CABE was highlighted in NPE'86 where it was stated that, "CABE will play a pivotal role in reviewing educational development, determining the changes required to improve the system and monitoring implementation." The Programme of Action 1992, based on NPE'86 also stated that CABE is "the historic forum for forging a national consensus on educational issues."
[6] Rajeev Dhawan, op. cit.
[7] The NCERT Judgment, op. cit.
[8] Ibid.

and implementation of policies and programs. Further, there is nothing on record to establish that in the past, approval of the CABE was sought before NCFSE was published or implemented."[9] He stated that "the main object of constituting CABE is to have interactions so that imparting of education is helpful in national reconstruction and social cohesion."[10] Justice Sema, however, took a clearly different stand from that of Justice Shah's in stating that the CABE has been an important functional unit and it should be reconstituted. He held that the Board has a pivotal role to play in the implementation of the National Policy on Education. In his words –

> "While it is true that the CABE is a non – statutory body but one cannot overlook the fact that it has been in existence since 1935. It has also been accepted as an effective instrument of meaningful partnership between the states and the center, particularly at evolving a consensus on the major policy issues in the field of human resource development."

He, therefore asserts that,

> "The important role played by CABE cannot be side tracked on the plea that the body is non-statutory, particularly when it has been playing an important role in the past for evolving a consensus on major policy decisions involving national policy on education."

However, side stepping of such an important advisory board as CABE on the plea of non-reconstruction of nominated members does not appear to be proper. There is yet another reason as to why consultation of the Board is highly essential in issues relating to the

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[9] Ibid.
[10] Ibid.

Centre and state coordination. As education has now been brought to the concurrent list by 42nd Amendment to the Constitution it becomes all the more necessary to consult CABE in issues relating to the Centre-State coordination. This would dispel the lurking suspicion in the minds of the people and also to project the transparency and purity in the decision making process of the government.

It is true, whether to continue or to discontinue such Board is within the realm of the executive authority, but as long as it exists, consultation with such body, which has been in existence since 1935, cannot be ignored. The Union of India is, therefore, directed to consider filling up the vacancies of the nominated members of CABE and convene a meeting of CABE for seeking its opinion on the NCFSE as expeditiously as possible and in any case, before the next academic session. This would not however mean that, "NCFSE-2000 published by NCERT is illegal for non-consultation of CABE."[11]

Justice Sema, in his decision has clearly established the importance of the CABE as a Board, which has a pre-eminent role in forging a national (i.e. Centre-State) consensus on matters relating to education. However, the majority judgment does not emphasize much on the importance of CABE; rather it emphasizes on the primary role of NCERT and establishes NCERT as a 'superior institution'. Justice Shah submitted that "the authority of the NCERT to publish a national curriculum to serve as a model for the state as well as to be a guide for publication of its own books and literature cannot be seriously disputed." He further stated that "there is no statute nor there is any limitation in the Rules or Regulations framed for the working of NCERT, which would require it to seek the approval or concurrence of any other authority before publishing the national

[11] Ibid.

curriculum. There is nothing in either the constitution of the NCERT or in any other Rule, Regulation or Executive order to suggest that the NCERT is structurally 'subordinate' or inferior to any other body in the field."[12] Justice Shah, in giving his verdict, however, gave legitimacy to whatever changes NCERT had sought to introduce in the curriculum.

This is not the only time when changes were introduced in the textbooks. However, any such change cannot be made in an arbitrary manner without consultations and deliberations. For instance, in the 1960s when the textbooks were written, certain procedures were followed – a group of historians selected the authors, the content of the books was discussed and debated in the committee, copies were also sent to other historians for comments. In case, there was any objection after the publication, the concerned topic or area was reworked.[13] Thus, writing textbooks for schools has been an arduous task to maintain objectivity and clarity in the concepts. Nothing to this extent was done by the NCERT in framing the National Curriculum Framework. Praful Bidwai remarks that "The NCERT willfully short circuited the established step-by-step process through which the NCFSE is meant to be evolved, beginning with the National Policy on Education (NPE), last adopted in 1986."[14]

The questions that arise here are whether or not the Supreme Court erred in not having done an in-depth study of why the NCERT did not view it as necessary to consult CABE. What were the changes introduced in the textbooks and the kind of impact these

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[12] Ibid.
[13] Romila Thapar, 'The Enveloping Danger', *Mainstream*, December 22, 2001, p. 4.
[14] The NPE lays the formulation for NCFSE, in which its philosophy and pedagogical principles must be reflected. Syllabi for different classes and courses are derived from the finalized NCFSE. And textbooks are derived from the NCFSE. See Praful Bidwai, 'A Judicial Letdown', *Frontline*, 11 October, 2002, p. 116.

changes will have on the public at large. Whether it is /it is not inconsistent with the constitutional imperative of secularism and the fundamental values of citizenship and right to information.

It has been held by academics that until now, the NCERT on its part has always held extensive, open and democratic discussions with teachers, scholars and educationists both at the state and the central levels before drafting and revising the NCFSE; CABE has always discussed and approved the NCFSE. It has been questioned as to what were the reasons that deterred the NCERT from holding any discussion or consulting the CABE? Is it not imperative on the part of the Supreme Court to go into such details?[15]

Finally, the Court said that "in this case, it is difficult to accept the contention raised by the learned senior councel, Mr Vaidyanathan that NCERT General Council has not given its approval to NCFSE. Approval depends upon the view of the majority." It further added, "the contention of the learned senior counsel for the petitioners that as CABE is not consulted or its approval is not sought by the government before framing the NCFSE-2000 the said policy requires to be set aside, cannot be accepted."

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[15] The BJP Government during its rule took certain crucial institutional measures. For instance, it filled the Indian Council of Historical Research (ICHR) with historians notorious for their association with the VHP campaign on Ayodhya and without any credibility in the field of history writing. Of the twelve secular and eminent historians who if the established practice had been followed would have remained for a second term, not a single one of them was permitted to continue. Among them are Prof. Sumit Sarkar and Prof. K. N. Pannikar. The Member Secretary, T. V. K. Subramaniam, a noted historian, was not allowed to finish his term and now hardly any secular historian remains as a council member. Of the new faces, three appeared on the VHP committee to argue the case for the RSS stand on Ayodhya temple and one is active RSS pracharak. The BJP also tried to appoint a chairperson from amongst three nominees who are known for their active support to the *Hindutva* campaign, two of them having actually been the leading participants on the RSS panel to prove the existence of a Ram temple on the Babri Masjid site. Similar is the case with many other key institutions such as the Indian Council of Social Science Research (ICSSR), Indian Institute of Advanced Studies (IIAS), Indian Institute of Mass Communications (IIMC), All India Council for Technical Education (AICTE), Delhi university, Himachal Pradesh universities, National Institute of Planning (NIEPA) and also National Council for Educational Research and Training (NCERT). See, Nalini Taneja, 'BJP's assault on Education and Educational Institutions', *Economic and Political Weekly*, 26 February, 2003, p. 3 –6.

Overall, it seems that the Court failed to critically adjudge the federal dimension in this matter relating to education and overpowered NCERT.[16] This judgment has not only placed the NCERT in the position of an official body (though it is a private body with a public profile) but also treated it as a substitute for CABE and federal consultation. The Supreme Court in taking this stand has overlooked its own decision in the NCERT case (1991, 4 SCC 578) in which the council successfully argued that it was a private body and not state within the meaning of Article 12 of the Constitution and in respect of fundamental rights. It is really strange that a body declared to be private in 1991 has been declared co-equal if not superior to all in 2002 without the earlier ruling being examined.[17] However, the only consolation that the Supreme Court offers is its thrust on the reconstitution of CABE thereby rejecting the death sentence pronounced by the then Union Minister of Human Resource Development and NCERT on the CABE.[18]

THE SECULAR DIMENSION

The petitioners' second important contention was that the NCFSE militates against the principles of secularism, equality and right to education and development, all

[16] The petitioners' had strongly contended that due to the presence of education in the Concurrent List, the issue relating to State-Centre co ordination must not be lost sight of in evolving national consensus on any issue pertaining to education, which requires implementation in all states. The NPE'86 also referred to the 42nd Amendment Act 1976 whereby education was brought to the Concurrent List and talks of a meaningful partnership between State and Centre in this regard was essential.

[17] See, Rajeev Dhawan, op. cit.

[18] CABE plays the central role in evolving a national consensus not only because of its expert members who are nominated by the Government of India but primarily because of the presence on it of all the States through their Ministers of Education – their presence and their approval impart the 'authority' for the countrywide acceptance and implementation of course curriculum. It is noteworthy that the Union Minister of HRD refused to convene the CABE and pronounced it dead because of the fact that the policies pursued by him in the area of education, particularly in changing the curriculum was not acceptable to the majority of states in the country. It seems, therefore, that CABE was bypassed purposefully and under such conditions the prefix 'National' in the NCFSE seems to have little meaning. See, Arjun Dev, 'Supreme Court Judgment and After', *Mainstream*, October 12, 2002, p. 8; also see Praful Bidwai, op. cit, p. 116.

embedded in the Constitution. The petitioners' claimed that the changes introduced in the NCERT textbooks were violative of Article 28 of the Constitution. Article 28 specifically prohibits the government from teaching religious instruction through its schools or those maintained by it or allowing the compulsory teaching of religion by grant-aided schools. NCFSE-2000 has numerous formulations that, however, subtly favor religion and spirituality. It roots its own philosophy on the view that religion is 'a major source' of 'universal' or 'essential' values to be inculcated through education. This is a major departure from the National Policy on Education 1986 (NPE '86), from which the NCFSE must be legitimately derived. It endorsed 'universal' values without mentioning religion. The Supreme Court has itself held in any number of cases that 'religion cannot be mixed with any secular activity of the state. In fact, the encroachment of religion into secular activities is strictly prohibited. When the state allows citizens to practice religion it does not allow them to introduce religion into non-religious and secular activities of the state.

However, strong *Hindutva* biases are evident in the new textbooks where changes have been made in a dubious manner without consulting the authors. This necessitated a compelling case for ruling against the existing NCFSE and for its reformulation on a democratic and secular basis. The Supreme Court however, dismissed the petition and legitimized the new curriculum on several grounds. Justice Shah and Justice Dharmadhikari have in their separate judgments gone into the issue of education about religion in detail while Justice Sema has concurred with the views of Justice Shah. All the three judges have given the verdict that giving education on and about religions does not violate Article 28(1) of the Constitution. The judges seem to make a distinction between

'religious instruction' and 'education about religions' and pronounce that the former is prohibited while the latter is not. Two of the judges have, in fact, emphasized at length the importance of education about religions though the reasons given by them for this view are different.

Regarding the importance of religion in value generation Justice Shah mentions that –

> "Although it is not the only source of essential values, it certainly is a major source of value generation.' Going on to illustrate the difference between 'religious education' and 'education about religions' he says, 'what is required today is not religious education but education about religions, their basics, the values inherent therein and also a comparative study of the philosophy of all religions. These need to be inculcated at appropriate stages in education right from the primary years."[19]

Justice Dharmadhikari makes the distinction in still clearer terms – "a distinction thus has been made between imparting "religious instructions" that is teaching of rituals, observances, customs and traditions and other non-essential observances or made of worship in religious and teaching of philosophy of religion with more emphasis on study of essential moral and spiritual thoughts contained in various religions."[20] He also states that –

> "... education on religion which can be imparted in educational institutions fully maintained out of state funds as mentioned in clause (1) of Article 28 of the constitution has to be education of a nature different

[19] The NCERT Judgment, op. cit.
[20] Ibid.

from religious education or religious instructions which can be imparted in educational institutions maintained by minorities or those 'established under any endowment or trust' as referred in clause (2) of article 28."[21]

However, the pronouncement seems to be erroneous in many respects. The judges seem to have presumed that it is the first time that the role of education in promoting values has been emphasized in the curriculum document. They have accepted the view accepted in the NCFSE that religion is a major source of value inculcation. They appear to give a predominant place to religion in value education, which is contrary to the basic principle of value education laid down in the NPE '86 as well as the basic thrust of the Chavan Committee report.[22] Both the NPE'86 and the report differ in crucial respects, including on the specific meaning they give to 'education about religions'; it can be argued that neither is in consonance with the principle of providing education about different religions.[23]

The judges seem to have totally ignored the specific examples of bias that were brought to the notice of the Court as evident in the syllabi brought out by the NCERT. The importance given to the concept of spiritual quotient which has been criticized by a number of learned scholars and intellectuals, the general orientation of the NCFSE in terms of 'indigenization' (meaning only ancient, Vedic), tampering with and diluting the concepts of gender equality and scientific temper and the bias reflected in the deletions ordered by the NCERT from its existing history textbooks. It was pointed out for example, that the exclusion of Islam from Class VI social science syllabus brought out by

[21] Ibid.
[22] This is despite the fact that Justice Shah dwelled at length on the objectives put forth by both the documents.
[23] Arjun Dev, 'Supreme Court Judgment and After', October 12, 2002, *Mainstream*, p 8 – 9.

the NCERT showed a bias against Islam and the deletion from the textbooks tampered with historical knowledge with a view to imposing a blatantly communal view of Indian history.[24]

The two judges referred to their concept of secularism on their discussion on religious education. Justice Dharmadhikari asserts, "Education in India which is to be governed by secular ethos contained in the Constitution and where 'religious instructions' in institutions of the state are forbidden by article 28(1), the 'religious education' which can be permitted would be education based on 'religious pluralism'." We come across several such paragraphs in the judgment where ideas of tolerance, pluralism and the secular ethos of the Constitution have been elaborated. However, none of the statements thus made seem to be relevant in the context of the petition because the judgment fails to correspond to the changes made in the textbooks. Justice Shah forcefully declares – "Religion is the foundation for value based survival of human beings in a civilized society." But the question arises – Which religion? And what aspects? If religion is to be the basis of the resurrection of values how is it to be achieved? The NCFSE-2000 and the judgments in this case seem to give considerable support to Hindu motifs. Justice Shah's judgment in particular refers to an earlier Andhra Religious Endowment case, which treated Hindu concept of dharma as ubiquitous. But, very clearly dharma is a Hindu concept and not a secular one, which held together a society to defend concepts of casteism, untouchability, inequality and gender injustice.[25]

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[24] ibid
[25] Rajeev Dhawan, op. cit.

While Justice Verma's judgment on *Hindutva* suggested that it meant 'Indianess' and 'a way of life',[26] this judgment goes further to suggest that a reified Hinduism can and should be taught as the basis of India's moral revival. But, will the syllabi teach of an abstract 'dharma'? Or will students also be taught of the social horrors which were cloaked by 'dharma' and which have been found abhorrent by the Constitution?

It is also important to note the word of caution in Justice Dharmadhikari's judgment. He states –

> "There is a very thin dividing line between imparting of 'religious instructions' and 'study of religions.' Special care has to be taken of avoiding possibility of imparting 'religious instructions' in the name of 'religious education' or 'study of religions'."[27]

He further states –

> "This distinction between 'religious instruction' and 'religious education' has to be maintained while introducing a curriculum of religious education and implementing it. This would require a constant vigil on the part of those imparting religious education from primary stage to the higher level; otherwise there is a potent danger of religious education being perverted by educational authorities whosoever may be in power by imparting in the name of religious education; 'religious instructions' in which they have faith and belief."[28]

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[26] Discussed in Chapter Three.
[27] The NCERT Judgment, op. cit.
[28] Ibid.

From a reading of what Justice Shah and Justice Dharmadhikari have stated there appears to be a major flaw in the judgment. This is basically due to a seemingly erroneous assumption that they have made. The judges seem to have assumed that imparting knowledge about religions has been under a ban all these years.

Justice Dharmadhikari has gone to the extent of stating that "the result of this has been that we do not allow our students even a touch of our religious books."[29] This assumption has absolutely no basis in reality. All social studies and history courses, syllabi and textbooks include description of various religions, biographies of their founders, their basic levels and observances as well as description of various religious reform movements which arose in different periods of history. The Supreme Court has not probed into the biased and inauthentic presentation of religions in the new curriculum at all. While Islam is often presented to be basically intolerant, Buddhism and Jainism have been held responsible for weakening the country because of their emphasis on non-violence. These distortions have been brought to light in the various reports of textbooks evaluation prepared by the NCERT from time to time.[30]

The verdict also proposes a significant departure from past practice and also a shift in the theoretical basis of the policy followed so far. In the matter of education and especially in curricular policy secularism has been construed to mean apathy to religion. The school's domain in India has remained quite distinct from the domain of the family or home in this respect, even though there have been recommendations and pressures to

[29] Ibid.
[30] Arjun Dev, op. cit, p. 10-11.

bring them closer.[31] It is to be noted that the debate on the appropriateness of religion for schools goes back to the Constituent Assembly Debates in which Ambedkar pointed out the difficulties involved in allowing the introduction of religion in the process of schooling. Ambedkar pointed out that – "the religions prevailing in this country are not merely unsocial; so far as their mutual relations are concerned they are anti-social, one religion claiming that its teachings constitute the only right path for salvation that all other religions are wrong." The debate can be traced further back to Gandhi who did not include religions or any other form of moral instruction in his program of basic education. When asked about it, he simply referred to the likelihood of conflict being encouraged by the teaching or religions and to the futility of teaching values with the help of books. This position taken by Gandhi in the late 1930s was quite different from the one he had articulated in 'Hind Swaraj', which the Supreme Court verdict quotes in support of its own position.[32]

Moreover, this study attempts to bring out that the Supreme Court has also erred in completely ignoring the questions relating to history. The NCERT textbooks have been tampered with to the effect of deleting several important facts written by some of the country's most outstanding scholars, on grounds, which appear to be completely unhistorical and blatantly communal, that too without even consulting the authors. The court also seems to have failed to take into consideration the secrecy surrounding the

[31] The Kothari Commission Report (1964-66) favored the study of religion at school, following a line similar to the one used in the present verdict, but this recommendation did not sit well with the Commission's general perspective and was, in fact rejected by the parliament when objections to it were raised. See, Krishna Kumar, 'Winning Values – Secular Education Redefined', Economic and Political Weekly, December 28, 2002.
[32] ibid

preparation of new history textbooks with even the names of the new author historians being kept a secret.

The NCERT-censored-textbooks explicate and elaborate what is in the NCFSE's core. Their recurrent theme is the depiction of Hinduism as the "essence of culture" and of other religions as "alien or invading" faiths and the glorification of ancient India as the world's "master civilization", denying the validity and value of other civilizations. The facts about people in ancient India eating beef,[33] Jats of Bharatpur conducting plundering raids in the regions around Delhi,[34] the gradual decimation of cattle wealth due to numerous Vedic sacrifices[35] and various other evidences regarding the *varna* system, the Sikhs etc. have been conveniently deleted from the history textbooks.

The new NCERT textbooks depict Rama and Krishna not as mythological but historical figures.[36] The part relating to the epics in the old Ancient India has been deleted. This deleted portion illustrated clearly that –

> "Archaeological evidences should be considered far more important than long family trees given in the Puranas. The Puranic tradition could be used to date Rama of Ayodhya around 2000 BC, but diggings and extensive exploration in Ayodhya do not show any settlement around that date. Similarly, although Krishna plays an important part in the Mahabharata; the earliest inscriptions and scriptural pieces found in Mathura between 200 BC and AD 300 do not attest his presence. Because of such difficulties the ideas of an epic age based on the Ramayana and the

[33] Romila Thapar, Ancient India, p 40-41.
[34] Arjun Dev and Indira Arjun Dev, Modern India, p 21.
[35] R. S. Sharma, Ancient India, p 90.
[36] Makhan Lal, Ancient India, Class XI.

> Mahabharata has to be discarded, although in the past it formed a chapter in most survey books on ancient India. Of course several stages of social evolution in both the Ramayana and the Mahabharata can be deleted. This is so because the epics do not belong to a single phase of social evolution. They have undergone several editions as has been shown earlier in the present chapter."[37]

The new textbook on Ancient India also mentions that, "the Vedas prescribe a penalty of death or expulsion from the kingdom to those who kill or injure cows."[38] Once again, this is inaccurate because the Vedas consist of mantras or prayers to the gods/goddess. They are not normative texts and do not prescribe punishments. In several other instances the new textbooks in testimony to distortions in the proportion of evidence, lack of chronology, lack of sources i.e. statements not being supported by evidence, anachronisms, cryptic and confusing statements and a series of inaccurate statements.[39]

As far as the importance of 'education about religions' and the study of 'religious' philosophy is concerned (which the Supreme Court has defined at length) the anomalies can be noticed when one goes through the book on Ancient India. The Supreme Court judgment is fully agreeable provided one looks at it in isolation. Sadly, judicial pronouncements cannot be seen in isolation because they are given in a specific context and specifically in this case the judgment would have an impact on the society at large. Therefore, both the context and the judgment have to be viewed as a 'whole'. The judgment appears to have been given in complete ignorance of the context in the new

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[37] R S Sharma, Ancient India, p 20-21.
[38] Makhan Lal, Ancient India, p 86.
[39] For details see, Kumkum Roy, 'Where do we go from here' in *Saffronised and Substandard*, SAHMAT,December 2002, p. 25-38.

textbooks. In the chapter on Harappan Civilisation certain pots are identified as Kamandalu, although we do not know how they were used and a rare seal representing the swastika is highlighted.[40] Moreover, in the chapter on 'the Vedic Civilization' there is absolutely no reference to dates. Does it imply that the students are to be told that the Vedic texts are timeless? In the chapter on Major Religions, Hinduism, Buddhism and Zoroastrianism do not have any dates assigned to them and Hinduism is defined as eternal. Apart from Hinduism none of the other religious traditions are credited with any philosophical ideas, neither are they supposed to have traditions of devotion. Also Hinduism is the only religion that is credited with tolerance. Furthermore, in the discussion on the geographical spread Hinduism is understood to be an all time, all India phenomenon whereas there is no mention of the spread of Christianity anywhere including to India by the early centuries of the Christian era.[41]

The textbooks also tend to be blind towards gender, tribes and dalits. One is left wondering whether women, dalits, tribals are part of the nation or not, or whether the nation is envisaged as an upper caste, brahmanical construct centered on the Ganga Valley.[42]

Briefly, this is how the new textbooks tend to impart 'education about religions' to the students. The effects of such a warped nation of 'education' are bound to be

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[40] Ancient India, Class VI, p. 83.
[41] ibid, 'Major Religions', p 36-38.
[42] Women are mentioned in such a way that a reader gets the impression that either women do not exist or that they are irrelevant or unimportant from the point of view of the subject in question. For instances see, Ancient India, Class XI, p. 96, p. 86, p. 160, p. 226.
The word 'tribe' figures nowhere in the Class VI text, the only reference to tribe occurs in the context of the Kusanas who are connected with Central Asian tribes. There is an illustration of tribal coins but beyond that the student would be left in the dark about the possibility of tribal societies existing in the past. See, Ancient India, Class VI, p. 145, p. 142.
Regarding the question of Untouchability too the Class XI text remains ambiguous.

disastrous. Such seemingly incorrect views are not only limited to history, but they extend to social science and languages as documented by Delhi Historian's group. However, the Supreme Court, to reiterate turns a blind eye to all these considerations and also to the NCFSE's context- the saffronization of the MHRD and the packing of numerous cultural-educational institutions with Hindutva adherents as part of a well-worked-out agenda of 'cultural nationalism.' On the NCFSE's context the judgment seems to be either elusive or approving.

The judgment has thus legitimized the teaching of Vedic Astrology by pointing out "what has been mentioned in the curriculum is 'astronomy' and not 'vedic astrology'.[43] Astronomy is a well-known science and different from Vedic astrology. The judgment failed to address the issue of astrology being taught in schools as part of regular curricula all over the country. There appears to be a serious lacunae in the judgment for it does not deliberate enough on the question of whether or not astrology is science enough and can measure up to the modern understanding of science. The study of Vedic astrology as a historical practice is still acceptable but to make it relevant to the contemporary notion of science and progress, a deeper study of the subject itself was required. The Bench was hasty in its decisions about the introduction of Vedic astrology as part of the school and university curriculum.

Overall, the judgment gives an impression that the bench has ignored the highly controversial rhetoric that has become part of the new NCERT textbooks in school. The rhetoric is combined with highly confusing historical knowledge as well and in some cases it does not speak of important historical facts such as the assassination of Mahatma

[43] The NCERT Judgment, op. cit.

Gandhi. The judgment appears to be far reaching in terms of their inability to probe deeply into the serious issues pertaining to the content of the NCERT textbooks. Praful Bidwai gave a remark when the verdict was passed – "this verdict will go down as a starkly negative landmark in independent India's judicial history. It is internally inconsistent, logically inadequate in its treatment of issues and incompatible with the principles of secularism, equality and fundamental right to education that are embedded in India's constitution." The judgment has certainly ignored vital aspects of the new face of *Hindutva* and the political agenda of the right wing government at the Centre. Once again, the apex court's judgment has posed serious questions to its own legitimate authority as upholder of the constitutional principles of secularism.

CONCLUSION

Judges have been known to be swayed unconsciously by their own notions of equality and equal protection of law, by their reactions to the social structure of society, by their conception of protection of certain basic rights and even by their respect for legislature. To some the written word has a meaning which they do fit into their scheme of thinking while others read their own notions and theories into the law itself, some others look at law with blinkers on.

– Justice M. Hidayatullah[1]

In both the case studies that have been discussed in this dissertation there is evidence of apparent deviation from Constitutional law as well as jurisprudence. There is much historical evidence suggesting that the Constitution framers sought to make India a strong secular State. To its credit, the Supreme Court has declared that secularism is a part of the Constitution's basic structure. However, the apex court's precedent has been inconsistent on this issue. In some cases such as in *S. R. Bommai v Union of India*, the Court has exhibited resolve in defending the principle of secularism. On the other hand, in cases such as *M. Ismail Faruqui v Union of India* (majority decision), the language of the opinions seems to indicate a lack of commitment towards maintaining a separation between religion and State power.

[1] Justice M. Hidayatullah, *Judicial Methods*, New Delhi Institute of Constitutional and Parliamentary Studies, 1970, p. 25.

Moreover, examining the present trend of the Supreme Court judgments (refers to the case studies), it can be apprehended that the Supreme Court has been rather insensitive to the secular-religious balance. At a period of time when the impact of the Hindu Right had been strongly felt by the entire nation, when it had gathered momentum in the cultural and political domain of the country, the Supreme Court's 'Hindutva judgments' came in as a catalyst for the furtherance of the *Hindutva* ideology. The Hindu Right exhibited a euphoric reaction and appropriated the verdict to legitimize its ideology.

> 'The apex court has fully and unambiguously endorsed the concept of Hindutva which the BJP has been propounding since its inception.'[2]

Similar sentiments have been expressed by various other members of the Sangh Parivar, who welcomed the verdict as 'a vindication of the philosophy of the Hindu Rashtra.'[3]

The Supreme Court's NCERT textbook judgment, similarly has been appropriated by the Sangh Parivar, which got a legitimacy to tamper with history and other social science textbooks in a bid to control the minds of children and therefore carry forward its goal of redefining the future of the country. Thus, the verdict led to dangerous consequences. The legitimacy of the Sangh Parivar got a further boost in a substantial manner, which steered the NCERT textbooks, especially history textbooks into the direction of misconstrued facts, fictitious and mythical history and ideas that they

[2] *Organiser*, Editorial, December 24, 1995.
[3] H. V. Sheshadri, *Organiser*, December 31, 1995, p. 7.

consider necessary to create the superiority of the 'Indian' culture and 'Indian' people ('Indian' is synonymous with 'Hindu').

It has always been the central aim of the Sangh Parivar to change the mores of the Indian polity for denying basic democratic rights to a large segment of the citizenry; its game plan includes modes of action which in effect threaten the life and security of the entire population, its aspirations and operations do certainly constrict the most basic democratic right to information and expression. A reading of the works done by Savarkar and Golwarkar aptly justifies the above mentioned arguments because Hindutva, the driving force and ideology of the Hindu Right in India, was essentially conceptualized as a distinct political concept aiming at securing a Hindu Rashtra comprising of 'Hindus, and Hindus alone'. The dismantling of the Babri mosque in 1992 provided practical testimony to the ideals set forth by the ideological gurus and pursued by the contemporary Hindu Right.

However, the Supreme Court, which became a site for heavy judicial activism during the post-emergency period[4] and evolved itself from an originally detached, positivist institution to one that is an active player in daily political life by pronouncing landmark judgments like in the case of *Bommai,* also gave certain decisions, which heavily compromised with the constitutional provisions for secularism. In these cases, the Court seemingly failed to deal with the issues in the context of the political realities prevailing during the time and the political ramifications of such judgments indirectly worked in favor of the so called representatives of the majority community. The judiciary in such instances needs to work out a secular-religious balance which requires judicial

[4] S. P. Sathe, op. cit, p. 100-160.

statesmanship of the highest order, jurists who are sensitive to both the nuances of law and political realities. This is really important in a country like India where the judges have at times been very bold in making broad pronouncements about the content and role of law. The Supreme Court through its pronouncements in these cases provided enough space for the *Hindutva* forces to encroach upon the terrain of secularism and cultural federalism. This need to be questioned because the occasions for constitutional judgments about the secular-religious balance will probably increase if a Hindu majority attempts to legislate practices that favor the dominant religion and disfavor a minority.

Several legal experts, scholars, judges and even judicial benches in some cases have held that the opinion of a judge should conform to the community. The question that arises is where do we place the Hindutva judgments and the NCERT textbook judgment, because as it can be inferred these judgments do not conform to the community at large, rather they seem to conform to the norms of the majority community. Furthermore, these pronouncements also raise questions over the role of the judiciary in the campaign to reconstruct the foundational blocks of secularism. It has been noted that the Hindu Right has time and again taken every opportunity to appropriate/misappropriate for legitimizing its cause right from the post *Shah Bano* case to the recent NCERT textbook case. On one hand there is a remarkable example of the *Bommai* case in which the Supreme Court, assuming a truly political character, analyzed the situation on the basis of prevalent facts about the Hindu Right on the basis of BJP's election manifesto and the involvement of top political leaders of the Sangh Parivar in the Ayodhya movement. This judgment was

understandably quoted as 'misguided secularism' by the Hindutva proponents.[5] However, a detailed reading of the judgment shows that the decisions provided legitimacy to the constitutional notion of secularism in India. On the other hand, there are the *Hindutva* and the NCERT judgments, which aided in legitimizing and consolidating the hold of *Hindutva* on the Indian social, political and cultural ethos. The two diametrically opposed reactions to these judgments i.e. enthusiasm within the Sangh Parivar and disappointment among the secularists definitely command our attention.[6] However, the Court cannot be held responsible for the manner in which its judgments are received. Interests on both sides of an issue can usually be expected to offer tendentious readings of judicial decisions; moreover, unattractive results flowing from the deployment of entirely reasonable interpretive principles of constitutional adjudication are quite common.[7]

However, on the whole there are many aspects that this dissertation touches upon but does not go into the depths of exploring all of it. There is still scope for further research on many prominent issues. Firstly, why do such decisions that undermine the constitutional fabric of the country come about in a particular period of time. As has already been mentioned that these judgments reflect the personal biases and predilection of the judges. If it is so, how is it possible for the judiciary to maintain a secular- religious balance in a religiously charged society? Secondly, is it the absence of a distinct political philosophy and ideology in the Constitution, as to why the judges indulge in arbitrary exercise of judicial discretion? Thirdly, because judiciary is an integral part of any

[5] These remarks were made by Ram Jethmalani, the Union Law Minister during the NDA rule, on January 28, 2000. It was reported in *The Hindu* on January 29, 2000.
[6] Gary Jeffrey Jacobsohn, op. cit, p. 190.
[7] op. cit.

democratic society, therefore, in what ways these pronouncements have affected the notion of democracy at large, and fourthly, at a much broader level, what has been the public response to these judgments i.e how has the judgment affected the social lives of the people at large. There is a strong possibility of doing an empirical socio – political analysis of such judicial pronouncements at a much broader level, to understand its impact on the inter – personal social relations of the people at large.

Appendix I

FUNDAMENTAL RIGHTS						
Right to Equality	***Right to Freedom***	***Right against Exploitation***	***Right to Freedom of Religion***	***Cultural and Educational Rights***	***Right to Property***	***Right to Constitutional Remedies***
1. Equality before law and Equal protection before law [Art. 14]. 2. Prohibition of discrimination on ground of religion etc. [Art. 15. 3. Equality of opportunity in employment [Art. 16]. 4. Abolition of untouchability [Art. 17]. 5. Abolition of titles [Art. 18].	1. Freedom of speech and expression; assembly; association; movement; residence and settlement; ....[1] Profession [Art. 19]. 2. Protection in respect of conviction for offences [Art. 20]. 3. Protection of life and personal liberty [Art. 21]. 4. Protection against arrest and detention in certain cases [Art. 22].	1. Prohibition of traffic in human beings and forced labour [Art. 23]. 2. Prohibition of employment of children in hazardous employment [Art. 24].	1. Freedom of conscience and free profession [Art. 25]. 2. Freedom to manage religious affairs [Art. 26]. 3. Freedom as to payment of taxes for promotion of any particular religion [Art. 27]. 4. Freedom as to attendance at religious instruction in certain educational institutions [Art. 28].	1. Protection of language, script or culture of minorities [Art. 29]. 2. Right to minorities to establish and administer educational institutions [Art. 30].		Remedies for enforcement of the fundamental rights conferred by this Part, – writs of *habeas corpus, madamus,* prohibition, *certiorari* and *quo warranto* [Art. 32].

[1] Right to property omitted from Part III of the Constitution, by the Constitution (44th Amendment) Act, 1978.

Appendix II

DIRECTIVE PRINCIPLES OF STATE POLICY		
Direction in the Nature of Ideals of the State:	***Directives Shaping the Policy of the States:***	***Non-justiciable Rights of Citizens:***
1. The State shall strive to promote the welfare of the people by securing a social order permeated by social, economic and political justice [Art. 38(1)]; *to minimise inequality in income, status, facilities and opportunities, amongst individuals and groups* [Art. 38(2)].[1] 2. The State shall endeavour to secure just and human conditions of work, a living wage, a decent standard of living and social and cultural opportunities for all workers [Art. 43]. 3. The State shall endeavour to raise the level of nutrition and standard of living and to improve public health [Art. 47]. 4. The State shall direct its policy towards securing equitable distribution of the material resources of the community and prevention of concentration of wealth and means of production [Art. 39(b)-(c)]. 5. The State shall endeavour to promote international peace and amity [Art. 51].	1. To establish economic democracy and justice by securing certain economic rights (to be enumerated in the next column). 2. To secure a uniform civil code for the citizens [Art. 44]. 3. To provide free and compulsory primary education [Art.45]. 4. To prohibit consumption of liquor and intoxicating drugs except for medical purposes [Art. 47]. 5. To develop cottage industries [Art. 43]. 6. To organise agriculture and animal husbandary on modern lines [Art. 48]. 7. To prevent slaughter of useful cattle, i.e., cows, calves, and other milch and draught cattle [Art. 48]. 8. To organise Village Panchayats as units of self-governance [Art. 40]. 9. To promote educational and economic interests of weaker sections and to protect them from social injustice [Art. 46]. 10. *To protect and improve the environment and to safeguard forests and wild life* [Art. 48A][2]. 11. To protect and maintain places of historic or artistic interest [Art. 49]. 12. To separate the judiciary from the Executive [Art. 50].	1. Rights to adequate means of livelihood [Art. 39(a)]. 2. Right of both sexes to equal pay for equal work [Art. 39(d)]. 3. Right against economic exploitation [Art. 39(e)-(f)]. 4. *Right of children and the young to be protected against exploitation and to opportunities for healthy development, consonant with freedom and dignity* [Art. 39(f)].[2] 5. *Right to equal opportunity for justice and free legal aid* [Art. 39A].[2] 6. Right to work [Art. 41]. 7. Right to public assistance in case of unemployment, old age, sickness and other cases of underserved want [Art. 41]. 8. Right to humane conditions of work and maternity relief [Art 42]. 9. Right to a living wage and conditions of work ensuring decent standard of life for workers [Art.43]. 10. *Right of workers to participate in management of industries* [Art. 43A].[2] 11. Right of children to free and compulsory education [Art. 45].

[1] Added by the 44th Amendment Act, 1978.
[2] Added by the 42nd Amendment Act, 1976.

Appendix III

FUNDAMENTAL DUTIES OF CITIZENS

(a) To abide by the Constitution and respect its ideas and institutions, the National Flag and the National Anthem;

(b) To cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) To uphold and protect the sovereignty, unity and integrity of India;

(d) To defend the country and render national service when called upon to do in;

(e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) To value and preserve the rich heritage of our composite culture;

(g) To protect and improve the national environment including forests, lakes, rivers, and wild life, and to have compassion for living creatures;

(h) To develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) To safeguard public property and to adjure violence;

(j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.

Appendix IV

CBSE Circular

Central Board of Central Education

Delhi

Dated 23rd October, 2001

Circular No. 24

To

All Heads of Institutions

Affiliated to CBSE

Dear Principal,

Sub: Deletions of some portions and statements form the history textbooks of NCERT-Reg

The National Council for Education Research and Training, New Delhi has notified that certain portions and statements from the history books of various classes published by them have been deleted with immediate effect. They have further informed that these portions and statements are not to be taught in the respective classes or discussed in the classroom. It may also be noted that no questions will be set in any examination or to evaluate the students' understanding of the content of the portions.

You are directed to comply with the directions with immediate effect. A list of portions/statements deleted from the books is appended for your compliance.

Yours faithfully,

Sd/ G. Balasubramanian

DIRECTOR (ACADEMIC)

Appendix IV (contd...)

Portions to be deleted from the NCERT History Books

Book 1 (Ancient India) – Class VI – Romila Thapar

1. In fact... as a punishment – Life in the Vedic Age – p.p. 40-41.

Book 2 (Modern India) – Class VII – Arjun Dev and Indira Arjun Dev

2. Another power...intrigues at Delhi – India in the Eighteenth Century – p.p. 21

Book 3 (Ancient India) – Class XI – Ram Sharan Sharma

3. To the second... societies of before – Modern Historians of Ancient India – p.p. 7

4. Archaeological evidence...is the present chapter – Types of Sources and Historical Construction – p.p. 20-21

5. The people living... nearly four hectares – Chalcolithic Farming Culture – p.p. 45

6. The cattle...Vedic sacrifices – Jainism and Buddhism – p.p. 90

7. Vardhaman Mahavira and Jainism: According to Jainas...in 527 BC – Jainism and Buddhism – p.p. 91-92

8. Brahmanical Reaction: The brahmanical reaction...neglected by Ashoka – Significance of the Maurya Rule – p.p. 137-138

9. The Varma System – Legacy in Science and Civilization – p.p. 240-241

Book 4 (Medieval India) – Class XI – Satish Chandra

10. The Sikhs: Although there...regional independence – Climax and Disintegration of the Mughal Empire – p.p. 237-238

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