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Indian Judiciary and Hindutva: A Critical Examination of Judicial Perspectives

PRANOV ROCHE J.C.¹

ABSTRACT

This paper explores the role of the Indian judiciary in cases involving Hindutva, examining its interpretation of religious, cultural, and political dimensions. Hindutva, as articulated by the Supreme Court, is often understood as a broader cultural identity associated with Indian civilization rather than a purely religious ideology. The central research objective of the paper is to assess how judicial interpretations of Hindutva have shaped legal outcomes in key cases and their impact on the constitutional framework of secularism and democracy. While some judicial pronouncements have aligned Hindutva with cultural nationalism, concerns have arisen regarding how these interpretations interact with the secular principles enshrined in the Constitution. Through the examination of case studies such as Jagdev Singh Sidhanti v. Pratap Singh Daulta (1964), Bhairon Singh Shekhawat (1995), and Dr. Ramesh Yashwant Prabhoo v. P.K. Kunte, the paper investigates instances where the judiciary engaged with issues of religious and cultural symbolism in electoral contexts. These case studies illustrate the influence of cultural identity on legal reasoning, particularly regarding the use of religious symbols and references during election campaigns. By exploring such cases, the paper aims to reflect on how the judiciary's stance on Hindutva impacts the safeguarding of democratic values and constitutional principles. Ultimately, the paper critically analyzes the relationship between Hindutva and the judiciary, highlighting how the courts' interpretations of cultural and religious symbols have influenced their legal decisions. It further examines the potential of Hindutva's political and cultural underpinnings to shape the judiciary's role in upholding secularism, potentially shifting the balance between democratic values and ideological influence in modern India.

Keywords: Electoral, Hindutva, Judiciary, Perspective, symbolism.

I. INTRODUCTION

Hindutva, as derived from existing theories, embodies the concepts of religious, cultural, and rational identity that are inherently geography-based and rooted in the propagation of 'Indianness.'² It is often seen as a broader way of life that extends beyond the confines of Hindu

¹ Author is a LL.M. Student at Christ University, India.

² Saxena, S. (2018) "'Court'ing Hindu nationalism: law and the rise of modern Hindutva", Contemporary South

religious practices. The Supreme Court of India, in the landmark *Ismail Faruqi* case³, articulated this perspective by stating, “Ordinarily, 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.” This definition attempted to project Hindutva as a cultural and civilizational idea rather than a sectarian ideology, emphasizing inclusivity and its connection to the larger framework of Indian identity⁴. Despite this interpretation, the judiciary’s engagement with cases involving Hindutva has not always adhered strictly to constitutional neutrality. In several instances, judicial pronouncements have reflected communal overtones, seemingly subscribing to appeals that align with the ideology of Hindutva rather than upholding secular principles enshrined in the Constitution. Such deviations raise critical concerns about the erosion of constitutional ideals and secularism, which the judiciary is fundamentally tasked to protect.

The institutional inclination towards interpreting Hindutva as merely a cultural or geographical marker has occasionally legitimized the exclusionary and political interpretations of the term⁵. This has inadvertently allowed certain groups to advance divisive ideologies under the guise of cultural nationalism, thereby contributing to societal polarization. The judiciary’s role, envisioned as a safeguard against such encroachments, is compromised when communal sentiments influence its decisions. This shift not only undermines public confidence in the judiciary’s impartiality but also threatens the core democratic and pluralistic values that are foundational to India’s Constitution and ethos. Consequently, such instances mark a significant departure from the ideals the judiciary is meant to uphold.

II. JUDICIAL INTERPRETATION OF RELIGIOUS APPEALS IN ELECTORAL POLITICS

In modern Indian electoral politics, the relationship between religion and politics continues to be a controversial and widely discussed issue, often evaluated through judicial review. This is particularly relevant regarding *the Representation of the People Act of 1951*⁶, which prohibits religious appeals, whether through symbols or language, during electoral campaigns as potentially corrupt practices. However, various judicial decisions have introduced significant room for interpretation, especially in situations where religious symbols, deities, or expressions are utilized in electoral discussions. This paper thoroughly analyzes key judicial cases where India's courts, especially the Supreme Court and High Courts, have assessed whether such

Asia, Vol. 26, Iss 4, 378–399.

³ MANU/SC/0860/1994

⁴ Ibrahim, F. (2012) ‘Representing the “Minority”’ in Robinson, R. ed. *Minority Studies*. New Delhi, Oxford University Press

⁵ Sarathi and P Vepa (2003): *Interpretation of Sta* 4th ed, Lucknow: Eastern B

⁶ *The Representation of the People Act, 1951* (No. 43 of 1951).

religious appeals constituted corrupt practices as outlined by the Act. Cases such as *Jagdev Singh Sidhanti vs. Pratap Singh Daulta* in 1964, *Bhairon Singh Shekhawat Case* in 1995, and *Dr. Ramesh Yashwant Prabhoo vs. P.K. Kunte* in 1997, illustrate the intricate challenge faced by the judiciary when addressing the use of religious imagery and language in election campaigns. Through these rulings, the courts have had to navigate the changing dynamics between religion and politics, ensuring that democratic ideals and secularism are upheld in electoral processes. This paper investigates these cases to understand the judicial interpretations, their influence on electoral behavior, and the ramifications for the politics of Hindutva within India's democratic landscape, with a specific focus on how the judiciary has approached the convergence of religious expressions and electoral law.

1. The Case of Jagdev Singh Sidhanti V. Pratap Singh Daulta⁷

The Apex Court in the case of *Jagdev Singh Sidhanti Versus Pratap Singh Daulta* dealing with corrupt practice under Section 123 of the Representation of the People Act, 1951 in the year 1964 the religious symbol 'Om' used in a flag during the election campaign of Sidhanti was the core of the issue. The Supreme Court had to decide whether the symbol 'Om' was a Hindu religious symbol and if it could be accommodated within **Section 123 (3)** of the *Representation of People's Act of 1951* which states "***appeal by a candidate, ...to vote or refrain from voting for any person on the ground of his religion....or the use of, or appeal to religious symbols..." will be a corrupt practice***. This is to hold Sidhanti accountable for corrupt practices if he violated the Act. This was on an appeal in which the high court had previously decided to set aside the election victory of Sidhanti under **Section 100 (1) B of the Act**⁸. Before setting aside the order of the tribunal on various grounds, the Supreme Court had observed that in case of establishing the violation of the Act using corrupt practice under Section 123 of the Act, it is further to prove if the use of *Om* in the flag was done with the consent of Sidhanti during the election meetings.

As far as the deciding factor of the judgment is concerned the Supreme Court noted⁹,

"Om' is regarded by Hindus as having high spiritual or mystical efficacy: it is used at the commencement of the recitations of religious prayers. But the attribute of spiritual significance will not necessarily impart to its use on a flag the character of a religious symbol within the meaning of Section 123¹⁰".

⁷ *Jagdev Singh Sidhanti v. Pratap Singh Daulta*, 1965 AIR 183,

⁸ *ibid*

⁹ *Jagdev Singh Sidhanti v. Pratap Singh Daulta*, (1964) 6 SCR 750

¹⁰ *Jagdev Singh Sidhanti v. Pratap Singh Daulta*, 1965 AIR 183, para 10

Here the court had relied in the first instance that 'Om' is an essential part of Hinduism and used in Hindu practices, to support this the court added that it had high spiritual efficacy but went on to state that such significance used on a flag cannot be held liable under **Section 123 of the Act¹¹**. The Supreme Court failed to address how exactly it had drawn a line between being 'religious' and 'spiritual', with no explanation to denote how it varied. It resorted to understanding religious symbolization as spiritual significance to avoid the use of 'Om' in the flag to fall within *Section 123*. It serves as an irony, having previously said that 'Om' equates to spiritual significance, and later avoiding the usage of religious imperativeness to justify that 'Om' cannot be seen as a religious symbol. This went on to set an infamous precedent on the part of the Apex court in its record as it was further used in other judgments.

2. The Case of Mohammad Yusuf And Anr. vs Bhairon Singh Shekhawat¹²

Yet another case was the case of Bhairon Singh Shekhawat before the Rajasthan High Court in 1995. Shekhawat belonging to the BJP party had previously raised slogans invoking Lord Ram and the construction of Ram temple and referred to the demolition of the Babri Mosque. His speech also included references to the *Dhanteras¹³* festival (observed as Lakshmi Puja), during which individuals purchase images of Lakshmi sitting on a lotus. He asserted that this would contribute to his success in the election, as voters are compelled to choose the BJP represented by the lotus symbol. Deciding on the case, the court noted the petitioner failed to prove which part of the speech was offensive, as the whole speech was submitted as evidence. As far as the deciding factor and the reasoning laid out by the court is concerned it stated that building the temple of Lord Ram at his birthplace, Shekhawat did not campaign for the temple to be built at the site of the mosque. And reasoned it by stating that not every Hindu would agree for a temple to be built at the site of the mosque and not every Muslim would want a mosque at the place of the temple and are free to be opinionated according to their perceived facts of history. Here while deciding upon the speech referring to the building of the temple, the court was noted for its understanding of socio-political context as to how the Babri Masjid demolition is perceived by the general public. Its emphasis on the demolition of a mosque as not being offensive, while presenting it as the view of a Hindu to have a temple at a site they believe to be the birthplace of Ram, reflects its perspective of history. The High Court had ultimately observed that the speech connoted the blame on the congress party, and there was no appeal on religious grounds. Furthermore, the court concluded that when the usage of the words 'Ram' and 'Lakshmi' in the

¹¹ ibid

¹² Mohammad Yusuf v. Bhairon Singh Shekhawat, 1995 SCC OnLine Raj 47

¹³ Abhedha, A. B., & Darshan, A. P. Part of a series on.

speech is contextualized it does not equate to an electoral appeal on religious grounds.

The court in both cases concluded that appeals related to Hindu deities or religious symbols, which don't clearly express or reproduce religious messages, indicate a transition from legal conformity to considerations of community viewpoints¹⁴. Furthermore, the efforts of the court by not merely ignoring facts that are precisely applicable to put a law into the act but also the attempt to amuse Hindutva elements by granting them the benefit of empathizing precedents will go down as one of its major shortcomings to a majoritarian agenda.

3. Case of Dr Ramesh Yashwant Prabhoo V. P.K. Kunte¹⁵

The major case down this line that fetched the limelight was Dr. Ramesh Yashwant Prabhoo v. Prabhaar Kashinath Kunte. Shiv Sena leader Bal Thackeray was charged under *Section 99 of the Representation of the People Act, 1951*¹⁶ for his three speeches and was found guilty by both the Bombay High Court and the Supreme Court, thereby setting aside the election of Shiv Sena Candidate Dr. Ramesh Prabhoo by the Bombay High Court, but the supreme court had dismissed both appeals and to bear their costs further. In specific parts of Bal Thackeray's speeches, the Supreme Court attempted to accommodate such speeches within the shelter of Hindutva, considered to be a way of life. The main issues dealt in the case were,

“Whether a speech in which reference is made to ‘Hindutva’ or ‘Hinduism’ or any religion during political canvassing would violate section 123(3) and/or 123(3A)?”

Previously The Bombay High Court observed that the use of 'Hinduism' or 'Hindutva' by the original defendants in their political campaign had a provocative effect, which violated sections 123(3) and 123(3A) of the Representation of the People Act. The original defendants appealed the High Court's decision. The Supreme Court upheld the ruling and declared Dr. Ramesh Yashwant Prabhoo's election invalid under section 100 of the Representation of the People Act, 1951. While the case clarified that terms like 'Hindu,' 'Hinduism,' or 'Hindutva' refer to a way of life rather than a specific religion or caste, the respondents' counsel convinced the court that the public's perception and impact of the term 'Hindu' should not be assessed purely by its theoretical meaning but must also consider its broader influence on the general population.

The Supreme Court, in its observations, discussed the use of religion in political campaigns, stating: ***“Mention of religion is not forbidden, so long as it does not amount to an appeal to vote for a candidate on the ground of his religion or to refrain from voting for any other***

¹⁴ Patel, A., n.d. Our Hindu rashtra. Westland Publications

¹⁵ Dr. Ramesh Yashwant Prabhoo v. Prabhakar K. Kunte, (1996) 1 SCC 130

¹⁶ ibid

candidate on the ground of his religion...¹⁷”

However, the Court noted that the use of the term 'Hindutva,' which has been associated with promoting communal sentiments, did not alter its inherent meaning. This left room for debate regarding its potential use in a way that could be interpreted as communal in nature.

4. The Babri Masjid Judgment¹⁸

Before the verdict of the Supreme Court was pronounced, the Allahabad High Court had previously held that the disputed site in Ayodhya, which has long been contested between Hindus as the birthplace of Ram and Muslims, to be divided into three equal parts between Nirmohi Akhara, Lord Ram (represented by Triloki Nath Pandey) and to the Sunni Waqf Board. This later elevated to the Supreme Court where it had dismissed the order of the High Court and asked the parties to settle through peaceful means by mode of mediation. The Supreme Court, in its ruling, decided to allocate the entire disputed land to the deity Shri Ram Virajman for the construction of the Ram temple through the formation of a trust. The Court also directed that an alternate piece of land be provided to the Waqf Board for the construction of a mosque.

An examination of the judgement would highlight the following questions at hand,¹⁹

- Do the shebaites possess the right to initiate a lawsuit, and is that right exclusive?
- Can Suit 5 be litigated with the constraints given that the deity is perpetually considered a minor?
- Is the Ram Janmabhoomi recognized as a juristic entity?
- Does a temple exist under the disputed structure? If so, does this existence confer title to the Hindu parties?

Furthermore Tensions surrounding the Babri Masjid escalated following the Faridabad Court order in 1949, which allowed the installation of Hindu idols inside the mosque. This led to increased religious and political friction. The situation grew more intense over the decades, culminating in the demolition of the Babri Masjid by Hindu activists in 1992. The destruction of the mosque sparked widespread communal violence and further deepened the rift between the Hindu and Muslim communities, making the site a focal point of religious and political conflict. However, there were tensions even before 1949, which was a timely intervention by British courts that maintained the status quo²⁰. The two main reasons the courts concluded with

¹⁷ ibid

¹⁸ M. Siddiq (D) through LRs v. Mahant Suresh Das (2020) 1 SCC 1.

¹⁹ MANU/SC/1538/2019.

²⁰ S.P Udayakumar, Historicizing Myth and Mythologizing History: The 'Ram Temple' Drama, 25 Social Scientist

the verdict were that the Sunni Waqf Board had failed to garner enough evidence to substantiate its claim over the disputed property. The evidence produced before the court which included revenue records dating back a century, English Gazetteers, and grant papers among several others also failed to corroborate its claim over the property the second reason being the right to pray of Muslims in the interior of the courtyard since 1858 remained contested, while the same right for Hindus in the outer courtyard was absolute.

The court observed that mosques to not an integral part of the Muslim faith. In the verdict the court decided to allot a particular piece of land elsewhere in Ayodhya by the government, which was essentially not a prayer from the Sunni Waqf Board. The Vishwa Hindu Parishad has called for the Muslim community to completely relinquish the disputed area, proposing that they look for another site. The Court's approach to this matter has been observed as not adequately covering this issue. The Supreme Court's criticism of the mosque's demolition and the illegal gathering by certain individuals appears to be contrary with the rationale outlined in the ruling. In another part of the ruling, the Court cited the Allahabad High Court's decision, highlighting the lack of evidence from the petitioners demonstrating that the mosque had been used for prayers since its establishment until 1857, while still designating it as a 'mosque.' This brings up the concern of whether the Court recognized that similar arguments could be employed by other groups to contest the protection of different mosques. Moreover, the Court's ruling did not necessitate Hindu organizations to demonstrate ownership of the land before 1856, instead prioritizing faith and belief as adequate justification. Simultaneously, the Court deemed the evidence of the mosque being consistently maintained as Waqf property from the 17th century through the British period as insufficient. These comments from the Court have led to inquiries about the logical coherence and factual backing for certain elements of the ruling, especially in relation to the core matters under contention.

III. CONCLUSION

The role of the judiciary in India has faced criticism due to its perceived alignment with shifting political circumstances, particularly regarding matters related to religious identity and ideological influence, as noted in various cases. These observations raise concerns that the judicial system may have occasionally compromised its impartiality, leading to a situation where the political executive seems to exert greater control. This development threatens the crucial separation of powers that is essential for a healthy democracy. Judicial independence is fundamental to any effective democracy; however, there are instances where the judiciary's

reactions to specific socio-political events indicate a tendency to align with political interests, especially concerning religious identity issues, like those surrounding Hindutva.

Although the judiciary is not fundamentally opposed to upholding the democratic values enshrined in the Constitution, there are worries that in these particular cases, it has shown a degree of leniency towards certain majoritarian influences, which could undermine its credibility. This scenario permits interpretations that may resonate more with political sentiments than with constitutional principles. Such trends could inadvertently amplify the executive's authority, disrupting the balance of powers inherent in the democratic system, which necessitates checks and balances among the legislative, executive, and judicial branches. Ideally, when one branch becomes too powerful, the integrity of democracy itself is jeopardized.

In times when democracy encounters challenges from outside political forces, the judiciary ought to assume a more assertive role in safeguarding democratic ideals and constitutional values. The primary obligation of the judiciary is not just to interpret laws but also to ensure that the executive, legislative, and other political entities operate within constitutional boundaries and protect individual fundamental rights. Any inclination towards judicial restraint or leniency influenced by ideological or political factors risks undermining the core principles that support democratic governance. The judiciary's responsibility lies not in yielding to political trends but in maintaining its position as an unbiased arbiter, championing individual rights and democratic freedoms.

Furthermore, judicial rulings, particularly in politically charged cases, can significantly influence the social and political landscape. Thus, the judiciary must be cautious in preserving its independence and keeping itself removed from blatant political or ideological influences. The public's trust in the judiciary as a neutral entity is crucial for ensuring that individuals have fair and equal access to justice. Consequently, a failure to uphold impartiality or an explicit alignment with a specific political narrative could result in a decline of public faith in the institution designated to uphold the rule of law. As a vital component of the democratic structure, the judiciary must ensure that it steadfastly fulfills its duty to uphold constitutional values. This duty should take precedence over any political or ideological pressures. While this may present challenges, the judiciary should consistently endeavor to operate as an independent body, resistant to external influences. It must tackle the challenge of confirming that governmental actions align with the principles outlined in the Constitution, thereby reinforcing the resilience of democracy. By adhering to its foundational responsibilities, the judiciary can continue to play a crucial role in upholding justice and protecting democracy.