

1. It is after some reflection & consideration that I decided to speak on the topic of the Constitution of India AND Secularism – on Constitution Day.

2. The topic is of importance inasmuch as, Secularism [in the sense of equal treatment of all religions] and an Indian citizenship based on birth and domicile and not based on religious or cultural affiliation is the cornerstone of our Republic & Constitution. However from the 1990's these fundamental basis / tenet have been under constant and rising threat from those who had from the 1930s thought that Indian Nationalism / citizenship could not be only on the basis of birth or domicile, but had necessarily to be rooted in the Hindu Religion and culture. In fact, from 2014, the Indian State has come under the Political control of the same groups / parties who have for decades propounded the view that Indian Nationalism/ citizenship had necessarily to be rooted in the Hindu Religion and culture. Moreover the institutions of the Indian State and in particular the Supreme Court have by their decisions and their ambivalence enabled rather than stopped this rising tide.

3. **First let us go to this first phase which really starts from 1931 to 1994 :**

4. India was and is home to one of the world's most heterogeneous society. Several races have converged in this sub-continent bringing with them their own cultures, languages, religions and customs. As Justice Aftab Alam wrote in an article "***India is home to eight major religions of the world. The Constitution of India recognises twenty-two languages as Indian languages. Indians speaking the same language may belong to***

different religions. Conversely, Indians belonging to the same religious group may come from different ethnic stocks, may speak different languages, dress differently, eat different kinds of food in entirely different manners and may have completely different social and economic concerns.”

- It was in this context of diversity that the Congress Party at its Karachi Session in 1931 affirmed the ideas of religious liberty and adequate protection to the minorities and asserted emphatically that ***“the State shall observe neutrality in regard to all religions”***. In fact while moving the Resolution Gandhi stressed that ***“Religious neutrality is important and Swaraj will favour Hinduism no more than Islam, nor Islam more than Hinduism... Let us from now on adopt the principle of state neutrality in our daily affairs.”***
 - This resolution is the genesis of the attitude adopted by those who framed the Indian Constitution nearly twenty years later, embodying in it the guarantee of religious equality and neutrality
5. It requires to be pointed out that even at that time there were others who harbored a totally different view. The Hindu Rashtra ideology, first enunciated in the 1920s by V. D. Savarkar in ***“Hindutva: Who Is a Hindu?”***, sought to ***define India as a Hindu country : i.e., as a Hindu nation based on Hindu religion and culture*** : i.e., a Hindu Rashtra (nation-state). Savarkar’s concept of the Hindu nation / rashtra covered all those who accepted India as their holy land and included Sikhs, Buddhists, Jains BUT clearly excluded Muslims and Christians. Savarkar believed that the Hindu nation (as per the above definition) constituted the Indian Nation and that Hindutva would help achieve the political consolidation of the Hindu peoples. In fact Guru Gowalkar the second Sarsanghchak of the RSS writing in ***“ We or our nationhood defined”*** in 1938 , went much further and said that ***“Muslims must entertain no***

idea but those of glorification of the Hindu race or culture.. may stay in the country wholly subordinated to the Hindu nation, claiming nothing, not even citizens rights."

6. In the 1940s, both Muhammad Ali Jinnah, [the founder of Pakistan], and Vinayak Savarkar, a leading RSS ideologue, were both proponents of a two-nation theory. As Niraja Jayala, a political scientist has written the only difference ***"was that Jinnah wanted the territory of undivided India to be cut into two, with one part for Muslims. Whereas Savarkar wanted Hindus and Muslims in the same land, but with the Muslim living in a subordinate position to the Hindu."***

7. The Partition of India in 1947 emphasised the great importance of secularism, as even after partition a large Muslim minority consisting of a tenth of the population continued as citizens of independent India. There were other important minority groups of citizens. In the circumstances, for Gandhi, Nehru, Patel and Ambedkar, a secular Constitution for independent India under which all religions could enjoy equal freedom and all citizens equal right and which could weld together into one nation, the different religious communities, become imperative.

8. The Hindu nationalists largely from the RSS, who later came to populate the Jan Sangh and now the Bharatiya Janata Party (BJP) and their affiliates harbored a starkly different view; they saw India as a majoritarian nation-state, not a multicultural one.

They also believed that as the Muslims had got Pakistan, the Hindus should get a Hindustan / a Hindu Rashtra - based on Hindu beliefs and culture.

9. Accordingly, in 1947 at the time of independence, there were two competing visions of India :

- (i) a secular state – **where birth and domicile would define citizenship** and which would **treat all religions and communities equally** and
- (ii) a Hindu Rashtra – a Hindu nation / state based on the Hindu beliefs and culture.

10. However, at the time of independence in 1947, and in the formation of the Constitution of India, those who saw India as a plural and secular Country, clearly prevailed over those who wanted India to become a Majoritarian Hindu State.

11. Dr. Ambedkar, as Chairman of the Drafting Committee, ensured that adequate safeguards were provided in the Constitution to protect the secular character of the country and to check the divisive forces, so that the interests of minority religious, linguistic and ethnic groups were not prejudiced. **He weaved Gandhiji's concept of secularism into the constitutional fabric.** Nehru and Ambedkar, **successfully proposed a form of “composite culture” that, in India, was called “secularism.”** They ensured that the Constitution **defined the nation politically, as comprising those who inhabit sovereign Indian territory, and as a place where all citizens are equal. It was birth, circumstance and domicile and not religion or culture which would define citizenship**

The debates in the Constituent Assembly make it clear that the secular content of the Constitution was equal treatment of all religions – with *no particular religion receiving any State patronage to the exclusion of or in preference to others.*

12. Guru Gowalkar the second and most revered Sarsanghchalak of the RSS in fact wrote that India's freedom from colonial rule in 1947 was not **real freedom** because it was founded on a "perverted **concept of (territorial) nationalism**" where citizenship was not religion or culture based.

13. As Rajmohan Gandhi has recently written: *"What took place in August 1947 was emphatically not the creation of two nations, one Hindu and the other Muslim. It was only the separation of contiguous Muslim-majority areas in the subcontinent's north-west and east. Later, Pakistan indeed chose to become an Islamic nation, yet India remained a nation for all, with equal rights, firmly entrenched in its Constitution, for all its citizens, irrespective of religion (or race, gender or caste). Though the two-nation theory was indeed advanced by the Muslim League after March 1940 and by the Hindu Mahasabha from 1937, India's 1947 partition did NOT validate the two-nation theory."*

14. The Indian Constitution as framed by the constituent assembly, did NOT specifically refer to "secularism". In fact the proceedings of the Constituent Assembly show that two attempts made to introduce the word "**secular**" in the Constitution had been turned down – probably due to conflicting connotations of the term i.e., (i) separation of religion/ church and state AND (ii) equal treatment of all religions.

It is important to note that the “Secularism” that the Constituent Assembly accepted through fundamental rights guaranteed in Part III, was not the western concept of strict separation of State & Religion [i.e., secularization], but rather, the equal treatment by the State of all religions. As Dr. Radhakrishnan has stated “*the religious impartiality of the Indian State is not to be confused with secularism or atheism.*”

Divers provisions in the Chapter on Fundamental Rights i.e., Part III, embodied the principle of **religious neutrality and equal treatment to all religions and religious minorities.**

The Preamble itself spoke of liberty of thought, expression, belief, faith and worship. It also spoke of promoting fraternity, thereby assuring the dignity of the individual and the unity and integrity of the nation.

While granting to its citizens liberty of belief, faith and worship, the Constitution clearly precluded discrimination on grounds of religion, etc. vide Articles 15 and 16.

Articles 25 to 30 guaranteed “freedom of conscience and the right to profess, practice and propagate religion” and protected minority rights.

These provisions clearly prohibited the State from either identifying itself with or favouring any particular religion and provided for equal treatment to all religions and religious sects and denominations.

15.As M.C. Setalvad in his lecture on secularism (Patel Memorial Lectures — 1965) pointed out, the debates in the Constituent Assembly leave little doubt that what was intended by the Constitution was not the **secularisation of the State**, in the sense of its complete dissociation from religion, or the separation between religion and the State, **but**

rather a State which treated all religions alike and displayed benevolence towards them with an attitude of religious neutrality, with equal treatment to all religions and religious minorities”.

16. Consistent with this constitutional philosophy, sub-section (3) of Section 123 of the Representation of the People Act, 1951 treated an appeal to the electorate to vote on the basis of religion, race, caste or community of the candidate or the use of religious symbols as a corrupt practice.

17. Nehru successfully fought against all forms of communalism, whether Hindu, Muslim or Sikh. In fact, till the 1970s India's secular model seemed to work reasonably well. Religious minorities including Muslims remained well represented in the country's political life and in the elected assemblies.

18. In 1973, a 13 judge bench of the Supreme Court in Keshavananda Bharti's case held that the secular character of the State / Constitution constituted a part of the **Basic Structure of the Constitution of India** and was accordingly beyond the amending powers of the Constitution.

19. In 1976, by the 42nd Amendment of the Constitution the word 'Secular' was introduced for the first time into the Constitution and was added in the Preamble of the Constitution – but there was no definition of either of these terms stipulated.

20. By the mid 1980s the Congress party had started undermining India's constitutional commitment to secularism by jockeying for the support of different voting blocs and by stoking divisive issues of social identity.

- In 1985, PM Rajiv Gandhi buckled under pressure from Muslim groups and sought to overturn the Supreme Court's judgement in Shah Bano's case which had held that a Muslim widow was entitled to claim maintenance under the Criminal Procedure Code. Concerned about losing Muslim support, he decided to enact the Muslim Women's (Protection of Rights on Divorce) Act (MWA) of 1986, which declared that Muslim women would not have recourse to the provisions of the CrPC in regard to maintenance in the event of divorce. This legislation ruined his reputation for modernity and progressiveness, and also justifiably inflamed Hindu sentiments. There was resentment from Hindus generally, which regarded the MWA as a concession to Muslim fundamentalism that India's Muslims were being pampered by the Congress. This also provided support for the BJP's view that the Congress was "pseudo-secular".

- The political fallout was severe. Having done this, the Congress felt compelled to mollify Hindu militants demanding concessions on the Ayodhya dispute. To appease the Hindus, the Govt arranged for the locks of the Babri mosque, [which had remained padlocked for decades] to be opened for Hindu worshippers on 1 February 1986. The unlocking of the gates was "manipulated through a judicial order" with the aid of the Uttar Pradesh government.

21. The Congress permitted the shilanyas ceremony at Ayodhya in 1989, in an attempt to harness the political advantages opened by the Ayodhya controversy. Rajiv Gandhi also launched his party's election campaign with a meeting at Ayodhya-Faizabad on 3 November 1989. At that meeting he promised to establish Rama Rajya.

22. However, the principal consequence of this process of competitive communalism, was the acceleration of communal polarisation, and a groundswell of support for the BJP.

23. In Dec 1992 pursuant to a nationwide mobilization the BJP, the RSS and its group organisations demolished the Babri Masjid, while PM Narasimha Rao did very little to stop it.

24. The Govt then dismissed the BJP State Govts in UP, MP and Haryana, and imposed Presidents Rule, on the ground that these Govts had supported / enabled the demolition of the Babri Masjid and accordingly could not be trusted to adhere to secularism.

25. In 1994 a 9 judge bench of the Supreme Court in Bommai's case, dealt with a challenge to the proclamations issued by the GOI under Art 356 removing the Govts of MP, Haryana, Uttar Pradesh, on the ground that after the Demolition of the Babri Masjid in Dec 1992, the Ministries heading the Administration in these States could not be trusted to adhere to secularism, which was part of the basic structure of the Constitution and also the soul of the Constitution, inasmuch as they had come to power on the political plank of constructing Sri Ram Mandir on the site of the mosque by relocating the mosque elsewhere, which meant by destroying it and then reconstructing it at another place.

The Supreme Court upheld the Proclamations / dismissal of the State Govts and

- (i) reiterated that secularism is a part of the basic structure of the Constitution.
- (ii) If a state Govt or a political party espousing a particular religion comes to power, that religion tends to become, in practice, the

official religion. All other religions come to acquire a secondary status, at any rate, a less favourable position. This would be plainly antithetical to Articles 14 to 16, 25 and the entire constitutional scheme adumbrated hereinabove.

- (iii) held that the introduction of religion into politics was a positive violation of the constitution and that if a political party espoused a particular religion, it would be plainly antithetical to Articles 14 to 16, 25 and the entire constitutional scheme and would have no right to function as a political party.

As Justice Aftab Alam points out in his article, the Bommai Court reiterated the view that secularism was a basic feature of the Constitution and further held that **in case a State Government acted contrary to the constitutional mandate of secularism or, worse still, directly or indirectly, subverted the secular principles, that would tantamount to failure of the constitutional machinery and the State Government would make itself liable to dismissal under Article 356.**

This was the High Point of the Supreme Court's insistence on political parties' adherence to secular politics .

Of course the judgement **did not consider what would happen if the Party in power at the Centre espoused non secular politics/ majoritarian politics!!**

THAT TAKES US TO THE 2nd PHASE: From 1995 to 2021:

1. However in the next elections, the Hindu parties, i.e., the BJP and the Shiv Sena sought to consolidate Hindu votes by campaigning essentially on the ground of Hindutva [a homogenized Hindu nationalism based on Hindu beliefs and culture] and an appeal for a Hindu Rashtra coupled with strong anti-Muslim rhetoric.
2. The Bombay High Court struck down the elections of 12 candidates of the BJP Shiv Sena alliance [including the Chief Minister: Mr. Manohar Joshi] who had campaigned on these grounds – on the basis that it violated the prohibition contained in sec 123 of the R P Act from campaigning on the ground of religion.
3. In 1996, barely two years after the Bommai judgement, the Supreme Court had before it, appeals from these judgements of the Bombay High Court. The Judgements of the Supreme Court [Verma J - who had been part of the Bommai Court] reversed the Bombay High Court, sought to equate Hindutva [which was a political mobilization of Hindus for a Hindu Rashtra based on Hindu religion and culture] with Hinduism or the Hindu way of life and thereby effectively excluded election appeals on the ground of Hindutva – from the bar of the RP Act sec 123.
4. In the first case: Dr. Ramesh Prabhoo, a Shiv Sena candidate, had made appeals on the ground of Hindutva. The Shiv Sena leader, Mr. Thackeray had also made vituperative comments against Muslims in the course of election speeches supporting Mr. Prabhoo's candidature.

The judgement records that Mr. Thackeray had said in his election speeches: “ ***The Muslims should bear in mind that this country is of Hindus, the same shall remain of Hindus. ... If Shiv Sena comes to***

power .. first of all we shall make them come. Everybody will have to take diksha (initiation) into Hindu religion.”

(1) The High Court had set aside Mr. Prabhoo’s election and also held Mr Thackeray guilty. The Supreme Court [Justice Verma speaking for the three judge bench] :

- i. referred to divers texts on Hindus and Hinduism as being more a way of life than religion; – and then without any basis / material equated Hindutva with Hinduism and held that ***“The term ‘Hindutva’ is related more to the way of life of the people in the sub-continent. It is difficult to appreciate how in the face of [prior rulings] the term “Hindutva” or “Hinduism” per se, in the abstract, can be assumed to mean and be equated with narrow fundamentalist Hindu religious bigotry....”***.
- ii. However, it held that the political speeches made by Mr. Thackeray in support of Dr Prabhoo were “a clear appeal to Hindu voters” to vote for Dr. Prabhoo on the ground of his religion as a Hindu and the derogatory references made in such speeches to Muslims constituted a corrupt practice under the RP Act.

Accordingly, while confirming the High Court order setting aside Dr. Prabhoo’s election, the Supreme Court equated Hindutva with Hinduism as a mere way of life and thereby excluded appeals for Hindutva from the bar of the R P Act.

(2) In Manohar Joshi’s Petition, the High Court had set aside the election on the ground that the BJP-Shiv Sena alliance’s poll plank

was Hindutva and that Manohar Joshi had himself made numerous election speeches stated that ***“the first Hindu state will be established in Maharashtra.”***

The court relied on its judgement in Prabhoo to hold that statements re Hindutva did not fall within the prohibition of sec 123. In para 62 the Court then went further and held that ***“ a mere statement that the first Hindu state will be established in Maharashtra is by itself not an appeal on the ground of religion , but the expression at best , of such a hope.”*** and was not hit by sec 123 of the R P Act. The Court accordingly allowed Manohar Joshi’s Appeal.

5. Later, in the same year, a writ Petition under Art 32 was filed in the Supreme Court for reconsideration of the judgement in Manohar Joshi’s case.

Verma j now sought to explain the Manohar Joshi judgement by holding that in that case the allegation that Manohar Joshi had stated in his speeches that ***“the first Hindu state will be established in Maharashtra”*** **had not been admitted by Manohar Joshi and there was no “finding that it was so proved”**.

This was clearly not the basis of Manohar Joshi’s case, as even a cursory reading of para 62 would establish.

The Court further held that there was nothing in Manohar Joshi’s judgement which conflicts with the concept of secularism in Bommai’s case and that the question of sec 123 of the RP Act had not arisen in that case.

6. These judgements conflated / equated “Hindutva” with Hinduism – the Hindu way of life and thereby sought to erase/ avoid its majoritarian elements – i.e., a Hindu Rashtra/ Nation based on Hindu beliefs and Culture - which are otherwise clearly antithetical to secularism.

These decisions of the Supreme Court opened the door wide for election appeals to support Hindutva, and as we will see, undermined secularism as the basis of Indian Politics.

From just two seats in 1984, in 1996 the BJP won 161 seats and became the single largest party in the Lok Sabha.

7. The Vajpayee led Coalition [i.e., the NDA] came to power in 1996. However, it was a coalition, and all member parties did not share the Hindutva agenda. Accordingly, while Vajpayee and his Govt sought to make India more Hindu in public symbolism and discourse, there was no vituperative attacks on Muslims.
8. From 2004 to 2014 there was a lull / pause while the UPA won the two elections and formed the Govt.
9. However even during this period, the Gujarat Govt [which was a BJP Govt] pressed ahead with its majoritarian agenda.
- (a) The Constitution of India had not prohibited Cattle slaughter on religious grounds as had been sought for by the Right wing Hindu factions. Article 48 of the Constitution only required the state to “organize agriculture and animal husbandry on modern and scientific

lines and shall in particular, take steps for preserving and improving the breeds and prohibiting the slaughter of cows, calves and other milch and draught cattle”.

(b) In a series of judgements from 1958 onwards the Supreme Court had accordingly held that the slaughter of bulls and bullocks above the ages of 15 years i.e., after they had ceased to be useful as draught cattle could not be prohibited. Divers State Govts under the control of the BJP had sought to bring laws either totally banning the slaughter of bulls and bullocks or directing that only bulls and bullocks beyond the age of 20-25 years could be slaughtered. All these legislations had been held to be unconstitutional in repeated judgements of the Supreme Court.

(c) In 1996 the Supreme Court considered an Appeal from the MP high Court’s judgement upholding the state law totally banning slaughter of bulls and bullocks. The State Govt had contended successfully that bulls and bullocks, even though they had ceased to be draught animals, were still useful as cattle dung was a source of manure and bio gas. Reliance was also placed on Art 51A(9)(g), which imposed a duty of compassion for living creatures. The supreme court noted [Hashmatullah vs State of MP : (1996) 4 SCC 391] that *“this the fourth attempt by the State of MP to impose a total ban on the slaughter of bulls and bullocks even after they ceased to useful / draught cattle.”* And that three constitution benches had held such a ban to be unconstitutional. The Court held that it was pained to notice the successive attempts to nullify the Courts decisions from 1958 onwards, on such flimsy grounds and reversed the Act.

(d) The state of Gujarat passed a similar law totally banning the slaughter of bulls and bullocks. The Gujarat High Court, following the

settled legal position, declared the law unconstitutional. An Appeal was carried to the Supreme Court. Chief Justice Lahoti constituted a seven judge bench and in the judgement, in the case of State of Gujarat vs Mirzapur Moti Kureshi [(2005) 8 SCC 534] the Court upheld the very same submissions which had been repeatedly rejected by earlier Benches; - reversed the Gujarat High Court, and for the first time upheld a total ban on the slaughter of bulls & bullocks.

(e) Since then, most BJP ruled states have in pursuance of an evident majoritarian agenda, passed similar laws totally prohibiting the slaughter of bulls and bullocks.

10. Moreover, even during these years the BJP and its cohorts sought to stigmatise any act done to protect / advance minority rights as “appeasement politics”, as being pro Muslim and anti-Hindu and “vote bank politics”. The attempt has been to promote and support a narrative, which equates any effort to support Secularism as being appeasement politics, pro Muslim and anti-Hindu

11. After the BJP won the 2014 elections and formed the Govt, this process of subversion of constitutional secularism and the imposition of a majoritarian ethnocracy [based on a Hindu religious and cultural identity] gathered pace. This was evidenced by :

- i. the virtual exclusion of Muslims from the political and public field by the BJP and its repeated assertions that having regard to its consolidation of the “Hindu Vote” – it did not seek any Muslim votes, or care if it did not get Muslim votes
- ii. the targeting of fraternization between the communities and in particular interfaith couples / marriages , with baseless fears of

a Love jihad – by legislation which virtually makes inter faith marriages seen as a crime.

Moreover vigilante groups used these laws to target Muslims marrying Hindu women by accusing them of seducing and marrying young Hindu women to convert them.

There were also laws [in the state of Gujarat] where by the stratagem of declaring a town as a disturbed area, the Govt could prevent a Muslim from buying a house / land from a Hindu which was situated in a Hindu area. Mr. Rupani, the ex-Chief Minister of Gujarat said in an interview in July 2019 : “We have set this rule in areas where there have been riots to tell them (Muslims) that they must buy property in their own areas”.

- iii. by passing laws resulting in the criminalization of cattle slaughter and the consumption / possession of beef. Resulting in lynchings and bovine related hate violence.

State Govts have also ignored the Supreme Court’s directives in 2018 to take steps to stop hate messages on social media, or compensation to victims, or re bringing in an anti-lynching law.

- iv. laws banning non vegetarian food in divers “holy” cities. In the State of UP, ban orders were already in force in Haridwar, Rishikesh, Barasana , Ayodhya, Chitrakoot, and Deoband. In 2021, the UP Govt further notified 22 out of 70 wards in Mathura Vrindavan as “holy pilgrimage sites” effectively banning the sale of non-vegetarian food there.

12. Moreover, apart from overt governmental actions, all these matters were supported by vigilante groups which operated under the support and cover of the Govt. In fact, in BJP ruled states, there has been an **osmosis between vigilante groups and the state and the imposition of a majoritarian social and cultural order.** The lack of distinction between non-state actors and government authorities had probably never been so great.

(a) BJP/ RSS/ VHP vigilantes formed a movement called the Gau Raksha Dal. This militia patrolled highways to ensure that Muslims were not taking cows to slaughterhouses. In the state of Haryana, Gau Raksha Dal-affiliated groups—armed with field hockey sticks—patrol the highway linking Chandigarh and New Delhi, where they inspect trucks (often with the blessing of the state police) likely to be transporting cows. In Maharashtra, the BJP government created a new civil service position, called honorary animal welfare officers, in each district. All of the applicants for these posts (whose files have been made public) are gau rakshaks from various militias that regularly intercept alleged traffickers and burn their cargo. The perpetrators' ideological orientation could be surmised from the fact that they often made their victims raise slogans such as "Gau mata ki jai (Hail the cow-mother)" or "Jai Hanuman (Hail Hanuman)". That **the choice of victims for assault had less to do with cow protection than with underlying hostility toward Muslims, is clear in the way Hindu cow-breeders and transporters have been spared during attacks.**

(b) Similar vigilantes acting in collusion with the police attack and dissuade Hindu women who decide to marry Muslim men. Provisions have been made in laws / regulations for prior public notice to be given by any Hindu woman who wishes to have an inter faith marriage / marry a Muslim man. This Notice is then utilized by Vigilante groups to harass and intimidate such women in

order to dissuade them from proceeding with such an inter faith marriage.

(c) The formal ruling political establishment, with its silences, utterances, and the formalizing of new laws and norms, is virtually indistinguishable with the ideas guiding the mobs and vigilantes.

13. The Citizenship Amendment Act, which was passed in December 2019, brings the Hindu Rashtra concept into Central Legislation for the first time. It brings in, for the very first time a majoritarian notion of religion-based citizenship. In the process, the CAB changes completely the idea of equal and inclusive citizenship promised in the Constitution. The Home Minister has in fact sought to justify this Act by stating that it was a consequence of partition of the Country according to him on the basis of Religion and that India was **the natural home for the majority (Hindu) community**. This underpinning of the CAA effectively differentiates between Muslims and Hindus and treats India as the natural home only of Hindus. It thereby violates the secular character of the Indian Constitution.

The Act in effect, endorses the two-nation theory by creating a hierarchy of citizenship based on religious faith, excluding Muslims from this hierarchy.

As Adv Gautam Bhatia has pointed out, beyond issues of strict constitutionality, the disturbing issue raised by the Citizenship Amendment Act is that it dramatically seeks to alter the basis of citizenship in India. During the framing of the Indian Constitution, it was agreed that the primary basis for Indian citizenship would be *jus soli* — or, citizenship by birth (in the territory of India). The Act, however, is the first time that religion or ethnicity was made the basis

of citizenship. Moreover, the announcement that this Act would be accompanied by a Nationwide National Register of Citizens – indicated that it would be used to protect Hindu citizens having a lack of documentation, whilst excluding and targeting Muslim citizens who lacked adequate documentation re their descent or domicile.

14. Moreover all this was and is accompanied by a relentless propaganda blitz carried out at two levels

- (i) By the BJP and its affiliates and their IT Cell and their Troll armies by accentuating differences between the dominant Hindu culture and Muslims and spewing out misinformation and disseminating hate and prejudice on social media channels ; - AND
- (ii) by certain TV Channels and TV Anchors who virtually act as the propaganda arm of the BJP.

This propaganda blitz has sought to equate any protection / benefit given to minorities [and in particular Muslims] as being appeasement politics, whilst at the same time justifying acts that favoured Hindus / Hindutva Culture on the ground of astha – i.e., the faith of the majority community. This propaganda blitz has demonized / criticized Muslims and even non Hindutva / Hindu liberals.

15. Moreover, as Pratap Bhanu Mehta wrote in December 2019, the BJP has by relentless campaigns & propaganda, changed the norms and perceptions of politics and society, and apparently even affected the response of courts and judges. Given that constitutional adjudication mixes both normative (what is the right thing to do) and what is

perceived public sentiment, the BJP has effectively affected the law, by conveying through a well-greased propaganda machine and a complicit / at times enthusiastic TV media, a different sense of what public sentiment is. This is apparent from the Supreme Court's judgement in the Ayodhya Appeal.

The verdict is stated to be based on evidence of possession/ adverse possession. However, the verdict was not written in a vacuum and the role of the sangh parivar's political mobilisation cannot be underestimated in giving the dispute the flavour and momentum it got in the last three decades.

To understand how far the narrative had shifted, please recall that after 1992, most people, including quite a few of those who had led the movement, expressed regret at the demolition of the mosque and many spoke of how only reconstruction of the demolished mosque would represent justice. However, a decade later, by the time the appeal was decided in the Sup Court, that claim of reconstruction was not and could not have been made by any political organization / party.

The perception of overwhelming public support for the construction of the temple; the older "secular" opposition's silence on Ayodhya and even support for the temple as indicated in their responses after the verdict; the domination of the public sphere, especially electronic and social media, by supporters of Hindutva / Hindu Rashtra; and a sense of fatigue and resigned acceptance among Muslims of the fate of mosque , meant that by the time of the judgement, **the BJP had already won the political and intellectual battle on Ayodhya.**

So while the judges/ acknowledged that the demolition of the Masjid was illegal - they termed the destruction of the mosque "an egregious violation of law", that apparently had no meaningful bearing on the outcome of the case.

16.As Prashant Bhushan wrote recently *“The RSS and the BJP’s success, over the past six years, is owed in part to its adept poisoning of the public discourse. Politicians, indoctrinated media outlets and squadrons of social media trolls lie, polarise and demonise all day long. Among their stratagems is the invention of categories of abuse for their opponents, to convey with a single label why such people should not be trusted to have India’s interests at heart.”*

- “Presstitute” is one, applied to liberal journalists [of all castes / creeds] to accuse them of selling their coverage for money or influence.
- “Sickular” is another, born of the RSS’s opinion that Indian secularism is a demented version of minority appeasement.
- The term “JNU type” refers to leftists of every stripe – from Maoists yearning for the revolution, to moderates who abhor Hindutva. JNU types are slotted into the mother category: “anti-national”.
- These Trolls threaten all those who have the courage to disagree with the Hindutva idea of India, with assault, injury and worse. Even the family and children of such persons are not spared. Arun Shourie and his family felt the brunt of this assault when he had the courage to criticize the powers that be.
- As Avijit Pathak [Professor of Sociology at JNU] has pointed out, this propaganda and attacks are not directed merely against Muslims; it is no less hostile to those Hindus who think and live differently — while some would be castigated as ‘leftists’, ‘pseudo secularists’ and ‘urban Naxals’, the rest would be regarded as ‘effeminate idealists’ or ‘Gandhian fools’.

- As Mr. Darius Khambatta, the ex-Advocate General of Maharashtra has pointed out in a recent article, these methods are not new. The Nazis brainwashed the Germans with propaganda adopting Joseph Goebbels’s doctrine of the “Big Lie”. They recalibrated the truth and history, demonised the Jews (as being neither German nor human) and accused the Weimar Republic of “appeasement” (yes, that very word). The contrived narrative pandered to prejudices of the German citizen. Even after the Nuremberg citizenship laws were enacted, few in Germany, could forecast where this was leading to. Ultimately, the politics of hate wrought havoc on every German.”

17. Moreover the past few years have seen a relentless attack on secularism as a constitutional tenet and a continuous effort to stigmatise it as “appeasement of minorities” and a means of denying to Hindus/ Hindutva its majoritarian status. In fact by the time of the BJP’s and Narendra Modi’s electoral victory of 2019, the PM himself, the BJP and Sangh Parivar leaders were all openly mocking and celebrating the death of secularism :

- i. In his victory speech after the Lok Sabha election, Prime Minister [Narendra Modi](#) mocked his opponents by saying that no political party could muster the courage to even mention the word secularism while campaigning.
- ii. As Prof. Chandhoke has said, ***“the language of secularism has practically vanished from the political horizon of Indian politics. Whatever remains of secularism is subjected to contemptuous remarks, some ribaldry and offensive dismissal by cadres and supporters of the religious right. The concept is,***

in their depressingly vulgar and crude language, no longer 'pseudo-secularism', but 'sickularism'."

- iii. VP Hamid Ansari sees 2019 as the real turning point. He says that "the term secularism itself has almost disappeared from the government's official vocabulary". In its place, he says, "the politico-ideological effort now (is) to superimpose ... the primacy of a religious majority."
- iv. Writing in the Hindu in January 2020, Mr. Sampath stated how in a televised debate, former student leader Kanhaiya Kumar asked a BJP politician to clarify whether or not he was "Godse-virodhi" [against Nathuram Godse]. The BJP veteran, who had earlier parried Mr. Kumar's charge that he was a "fascist" by asserting that he was actually a "nationalist", eventually admitted, **"No, I am not against Godse"**. For today's Sangh Parivar members, it has become a risky proposition to even publicly disown the man who killed the Father of the Nation. Seven years ago, the risk would have been the other way around — of appearing to endorse the man who killed Mahatma Gandhi.
- v. To see how far we have gone from the Bommai heyday, it is worth noting that in Oct 2020 the Governor of Maharashtra in a letter to the CM of Maharashtra [protesting at his refusal to open places of worship due to the Covid Pandemic] mocked the CM by stating ***"have you suddenly turned secular yourselves, the term you hated."***

18. In the recent years, Muslim gatherings have been stigmatized as Covid spreaders – while large religious Hindu gatherings such as the Kumbh Mela were initially sought to be justified [even in the face of a growing covid second wave] on the ground of the religious faith of the Majority community.

Performances have been stopped by Hindu Vigilantes on the ground that they somehow offended the faith of Hindus – and these vigilantes have been fully supported by BJP Govts.

The MP home minister has stated that he would ban Salman Khurshid's book, which had sought to draw a parallel between the VHP / Bajrang Dal and Muslim fundamentalist Groups.

The Bajrang Dal has sought to prevent Muslim youth from attending Garba celebrations at their college.

The PM and the BJP leadership from time to time makes platitudinous statements of sabke saath and sab ka vishwas. However, by their words, actions, and their silence, they both encourage and protect such vigilantes.

19. In fact so effective and successful has the BJP/ RSS's campaign been against secularism and in favour of a Hindutva / a Hindu Rashtra, that today, there are very few if any voices heard in favour of secularism and against the advent of a Hindu Rashtra.

In fact, the political public life of the country has been changed so much by the BJP's relentless campaigns against so called appeasement and to mobilise hindus / hindutva, that most opposition political leaders have been forced to emulate, albeit to a lesser degree, the BJP's tilt towards a majoritarian ethnocracy [referred to as soft Hindutva] by public displays of their Hindu religiosity.

20. The Supreme Court, which, by its “Hindutva” and “Hindu Rashtra” judgements of 1996 gave judicial sanction to political mobilization on the ground of Hindutva, has while repeating platitudes on the importance of Secularism being a basic tenet of the Indian Constitution, in fact shied away from effectively confronting and controlling this Hindutva based attack on India’s secular principles and basic structure .

- In 2017, a bench of seven judges was considering a reference inter alia from the Judgement in Ramesh Prabhoo’s case – which had inter alia held that Hindutva could be equated with Hinduism/ being a Hindu and had also interpreted Sec 123 RP Act in a very restricted manner.
- However while reiterating that secularism was a part of the basic structure, and that sec 123 was required to be given a broad purposive interpretation which would prevent the invocation of religion in elections, the Court declined to re visit / reconsider the Judgement of Justice Verma in Prabhoo’s case which had wrongly [it is submitted] equated Hindutva with Hinduism and thereby excluded appeals for Hindutva from the prohibition contained in sec 123 of the RP Act.
- Similarly, the Court has to date failed to take up for hearing the challenges to the Citizenship Amendment Act, which fundamentally seeks to change the very basis of Indian citizenship.

21. It would appear that while the Constitution still refers [in its preamble] to secularism and while the Supreme Court’s judgements that secularism is a part of the basic structure of the Constitution

remain unchanged, the Country has de facto transitioned from being a secular state [which treated all religions equally and alike] to becoming a majoritarian ethnocracy, where Nationalism and citizenship is defined by Hindu beliefs and culture.

With the BJP and its governments at the state and centre avowedly and openly supporting Hindutva and justifying its acts on the ground of Hindu astha or faith of the Hindu community, and the Supreme Court seemingly unable or unwilling to confront this undermining of secularism, India remains a secular state only in form and de jure.

The Constitutional guarantees of secularism and equal treatment of all religions have de facto been hollowed out and seriously undermined.

The BJP being the govt at the Centre and having an absolute and overwhelming majority in parliament, sees no need to alter the de jure status of India as a secular country and constitution. Being in control of the state and its divers instrumentalities, it has been able to achieve its goal of undermining India's secular constitution and introduce a Hindutva based Ethnocracy, even without amending and altering the de jure secular status.