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Graduate Workshop

**“Authoring (In)Authenticity, Regulating Religious  
Tolerance: the Legal and Political Implications of Anti-  
Conversion Legislation for Indian Secularism”**

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## **Authoring (In)Authenticity, Regulating Religious Tolerance: the Legal and Political Implications of Anti-Conversion Legislation for Indian Secularism**

“... [C]onversion ranks among the most destabilizing activities in modern society, altering not only demographic patterns but also the characterization of belief as communally sanctioned assent to religious ideology.”<sup>1</sup>

“Great is the hand that holds dominion over  
Man by a scribbled name.”<sup>2</sup>

In June 2006 a mob of Hindu villagers—with the apparent support of the local Bharatiya Janata Party leadership—violently beat up two local Christian men after one ‘refused to deny Christ’ and then gang-raped both of their wives. After the women filed a complaint with the authorities regarding the sexual assaults, the accused Hindu villagers filed a counter-complaint, claiming the Christian women and men were guilty of attempting the ‘forceful conversion’ of Hindus under the Madhya Pradesh *Freedom of Religion Act* (the state’s anti-conversion law). During meetings in the capital of Bhopal regarding the rape of the two women, the Hindu militant group Bajrang Dal physically threatened anyone who supported the forced conversion of Hindus.<sup>3</sup>

This chapter examines the debate over the passage, institutionalization and increasing popularity of anti-conversion legislation in India—policies designed to regulate, if not prevent, religious conversions. These state-sponsored bills (ironically entitled ‘Freedom of Religion’ acts) are illustrative of the ongoing Hindu nationalist agenda to problematize the question of ‘rational’ behavior and proper citizenship vis-à-vis religious choice and identity. The aim of the legislation is to put the spiritual sincerity of conversions (specifically to Christianity and Islam) in doubt and

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<sup>1</sup> Gauri Viswanathan, *Outside the Fold: Conversion, Modernity, and Belief* (New Jersey, Princeton University Press, 1998) p. xvi

<sup>2</sup> Dylan Thomas, “The Hand that Signed the Paper”, *Collected Poems 1934-1952*, (New York: New Directions Books, 1956), p. 71

<sup>3</sup> “India: Rape Victims Charged with ‘Forced Conversion’”, *Compassdirect.org*, May 11, 2006.

highlights the extent to which religious freedom remains demographically threatening to ‘Hindu’ upper caste hegemony. In short, conversion is conceptualized as hostile to Indian national solidarity as a whole. The regulation of conversion, then, is an attempt to manage ‘legitimate’ and ‘illegitimate’ shifts in religious identity. The targets of ‘illegitimacy’ and ‘irrationality’ in these bills are women, children, lower caste Hindus, scheduled tribes and untouchables.

I explore the manner in which ‘Freedom of Religion’ legislation has shaped the meaning and content of the Indian secular project, focusing on the ways in which the bills challenge the understanding of ‘freedom of religion’ as ‘freedom of conscience’, and the role gender concerns have played in these debates. Drawing broadly on the theoretical work of Gauri Viswanathan, Talal Asad, Robert Baird and scholarship linking the role of gender to the construction of nationalism and secularism in modern India, I evaluate recent policies and legal decisions shaping the politics of conversion. I aim to provide a more thorough and up-to-date understanding of the contest over Indian secular thought in law and policy. In particular, I propose that while Indian secularism continues to be an evolving and dynamic process of negotiation and balance, the increasing prominence of ‘Freedom of Religion’ legislation will be a dramatic pivot point influencing the future limitations and possibilities of Indian democratic consolidation.

### *An Overview of the Debate*

Broadly speaking, conversion is a movement between or among faiths, a change in legal status, a political statement, a spiritual engagement. Challenging and unsettling, the act of conversion brings into question not merely the substance of political tolerance as defined by secular thought, but illustrates the boundaries of such tolerance as a legal category and a normative claim, as well as underscores the ways in which faith is delimited and transformed by modern institutions and social expectations. The study of the disorienting, redistributive quality of conversion in the case of India seems to also entail the study of conquest, colonial domination, the dynamics of spiritual and electoral imbalance, and the negotiation of gendered citizenship through the politics of religious freedom.

Since Independence, Indian secularism has evolved as a political ideology and a set of institutions designed to effect national unity, providing a forum for conflict resolution among India's vast and diverse cultural communities. Yet while secular institutionalism was originally adopted as a tool to achieve such goals, secularism has been interpreted more as a means to negotiate stability among religious *communities* rather than situate the state as an abstract distributor of *aspiritual* tolerance. Indian secularism is a process backlit by more traditional concerns for universalism and individual autonomy, and yet one which led to the development of a proactive, interventionist secularism in the name of practical need. The founding political elites assumed rightly that such 'unity' demanded that processes of compromise be directed toward balance—processes that emphasized the role of religious identities as the epistemic communities of choice, if not necessity.

Secularism—while propounding neutrality with respect to gender, religious denomination, class, and so forth—has tended to capture (and even manufacture) essentialized

identities within its legal and political apparatuses.<sup>4</sup> Asking who and what are the subjects of secularism, then, is a crucial question, especially in light of continued aggravation and the reification of religio-cultural and gendered identities within modernity and, for the purpose of this analysis, contemporary Indian politics.<sup>5</sup>

How secularism is understood as an abstract idea (as an ideology, set of institutions, or symbolizing the negation of the ‘sacred’ realm of myth, religiosity, and spiritual practice) is defined in accordance with these competing social and political goals. As such, the fact that secularism is often presented as a universal goal with universal application ignores the factual realities of its creative imposition across varying geographies and cultural settings.<sup>6</sup> Secularism is simultaneously a political doctrine underlined by normative, liberal impulses, but must be situated in relation to the institutional structures created to inform the passage of ideals from the confines of theory to the practical trench-digging of social reform.<sup>7</sup> Moreover, while secularism assumes the autonomy and equality of all citizens within the imaginative project of national unification, because of rival objectives and unique local circumstances secularism tends to create a system of citizenship not unaccustomed to traditional social inequalities—specifically, I argue, those shaped by gendered identities, which are further compounded by the politics of conversion.

During the tenure of Jawaharlal Nehru, secularism was proposed as an answer to various social dilemmas; now, and especially since the rise of the Hindu right in the mid-to-late 1980s, secularism is a more a framework, a question, a polemic. Like the varied cultural landscapes of the Subcontinent, the definitional boundaries of ‘secularism’ have fractured. In the last two

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<sup>4</sup> See Rajeswari Sunder Rajan, *The Scandal of the State* (New Delhi: Permanent Black, 2003)

<sup>5</sup> See Susanne Rudolph and Lloyd Rudolph, “Living with Difference in India”, in *Religion and Personal Law in Secular India*, edited by Gerald James Larson (New Delhi: Social Science Press, 2001), pp. 39-40. While the Rudolphs write that British Orientalists accepted a vision of Indian society as constituted by communities and not individuals, these were explicitly religious groups. “They came to understand legal pluralism in terms of large, coherent cultural wholes defined by great languages and their classic texts,” leading, ultimately, to the legal reification of religious categories of belonging which often trumped concerns for individual liberties.

<sup>6</sup> Talal Asad, *Formations of the Secular* (Stanford: Stanford University Press, 2003)

<sup>7</sup> See Rajeev Bhargava, ed., *Secularism and Its Critics* (New Delhi: Oxford University Press, 1998) and Francine Frankel, “Contextual Democracy: intersections of society, culture and politics in India,” *Transforming India: Social and Political Dynamics of Democracy*, edited by Francine Frankel, Zoya Hasan, Rajeev Bhargava and Balveer Arora (New Delhi: Oxford University Press, 2000), p. 3

decades political and legal elites have allowed secularism to shirk its egalitarian ambitions and, according to many scholars, morph into an imprecise, tainted and disfigured creature of law and politics, diluted to the status of a catch-word in some cases, or a post-Independence badge of internal colonialism in others. And yet Indian secularism—in its successes and defeats—continues to wage a war of position against the following question: “How are minority religious groups to be brought into the modern nation and protection extended to their claims to certain rights and privileges guaranteed to all members of that nation, without at the same time effacing either their unique religious differences or the content of their religious beliefs?”<sup>8</sup>

The project has had the effect of juxtaposing ‘authentic’ and ‘inauthentic’ religious identities in the effort to demarcate the terrain of the ‘secular’ (or that which can be justifiably regulated by the state). To this end, the prospect of ‘conversion’ challenges these categories and poses the perpetual threat of undermining their legibility. Conversion has been characterized as a confrontation with the new partitioned nation, as well as with the pride and hegemony of an amorphous Hindu majority. The question of conversions in India hangs like Damocles’ sword above secular and culturally conservative narratives alike. The future meaning and content of ‘unity in diversity’ has typically been premised upon producing religious communities as bounded and manageable, a process hampered by the demographic, national, and upper caste Hindu anxieties religious conversion inspires.

Toward the end of unity, equality, the elimination of untouchability and a host of other empowering aims, the Indian state has created and shifted the spiritual and cultural boundaries of in/out group dynamics throughout its history, coupling policies of forcible inclusion (such as the *Shariat Act*) with those which set communities in contrast to—if not opposition with—each other. For example, the *Shariat Act* of 1937 sought to rationalize, regulate and normalize Muslim

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<sup>8</sup> Viswanathan, p. xi

personal law in divisive ways, wiping out the ability of different Muslim communities to continue practices associated with Hindu customs, such as laws that manage inheritance, or matriarchal laws. As Susanne and Lloyd Rudolph suggest, “Since the 1970s, forces of difference and identity appear to have strengthened the heterogeneity of religiously based personal law,” yet a process that was originally premised upon the homogenization of certain (religious) groups’ identities, most explicitly those of Hindu and Muslim communities.<sup>9</sup> In turn, Indian secularism has minimized the ‘Otherness’ of certain groups while expanding the cultural heritages and hierarchies that privilege certain identities over yet *other* ‘Others’. How has the ‘right to conversion’ become a trope in this debate?

### ***Dimensions of the Conversion Polemic***

Conversion is an act transfigured by the processes surrounding it, emphasizing both its threat value as a destabilizing socio-political counter-narrative (to that of Hindu nationalism and the predictability of religious demography preferred by the secular state), as well as a personal act of spiritual transference and transcendence. A key subset of these concerns revolves around the topographies of difference, specifically those ensured by the specification of mutually exclusive religious identities. To the extent that conversions upset perceived balances between religious or ideological communities, they bring into tension the politics of electoral balance, a tension aggravated by the popularity of community mass conversions vis-à-vis individual conversions.

Religious demography matters in India for a variety of reasons, some related to the politicized socio-religious cartographies dividing India and Pakistan since Partition, others

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<sup>9</sup> Rudolph and Rudolph, pp. 51-2

pitting internal enemies against one another toward the end of electoral advantage and strategizing national narratives of belonging. As J. Chatterjee and other scholars have noted,<sup>10</sup> the Subcontinent's partition has yet to be concluded: the history of traumatic separation continues to be the defining medium through which Indo-Pakistani relations constitute one another. Accordingly, Smita Tewari Jassal and Eyal Ben-Ari write, "[P]artition and conflict with the 'separated other' became an organizing principle on which a variety of exclusions and inclusions were based."<sup>11</sup> While Pakistan exists as the constant external Muslim/non-secular Other, illegal Bangladeshi migrants have increasingly been portrayed as upsetting the 'balance' between Hindu-Muslim populations in Assam<sup>12</sup>; alternatively, the question of inclusion and Indian national authenticity continues to manufacture competing sets of internal Others. Those who would challenge the hegemony of the Indian nation as explicitly 'Hindu' are numerous: not merely do they include so-called 'foreign' religious denominations (specifically Muslims and Christians) or imperialist impulses (Western secularists), but also those whose place in the Hindu/tva fold remains uncertain, including lower caste Hindus, untouchables, and tribals. Women converts pose a double challenge to religious community stability, as the confrontation with patriarchy that the religious freedom of women symbolizes is not merely a threat to community purity and continuity, but sets the stage for potential statistical and economic power imbalances between the communities more generally. As such, the vilification of these identities by Hindu nationalists has been well-documented<sup>13</sup>.

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<sup>10</sup> See Chatterji, J, "The Fashioning of a Frontier: The Radcliffe Line and Bengal's Border Landscape, 1947-52", *Modern Asian Studies*, 33:1 (February 1999), pp. 185-242 and Gyanendra Pandey, *Remembering Partition: Violence, Nationalism and History in India* (Cambridge: Cambridge University Press, 2001)

<sup>11</sup> Smita Tewari Jassal and Eyal Ben-Ari, "Listening for Echoes," *Economic and Political Weekly*, June 3, 2006, p. 2213

<sup>12</sup> See the reaction against the Bangladeshi immigrants in Assam as well, the *Foreigners Act of 1946* and the failed *Illegal Migrants Act*.

<sup>13</sup> See the following works: Rada Iveković and Julie Mostov (eds), *From Gender to Nation* (Ravenna : Longo, 2002); Amrita Basu and Rekha Basu, "Of Men, Women and Bombs: Engendering India's Nuclear Explosion," *Dissent*, 46:1 (Winter 1999); Paolo Bacchetta, "Militant Hindu Nationalist Women Reimagine Themselves: Notes on Mechanisms of Expansion/Adjustment," *Journal of Women's History*, 10:4 (Wntr 1999); Tanika Sarkar, "Historical pedagogy of the Sangh Parivar," *Seminar*, 522 (2003) and her *Hindu Wife, Hindu Nation* (London: Hurst and Company, 2001); Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* (New Delhi: Permanent Black, 2004); Tapan Basu, Pradip Dutta, Sumit Sarkar, Tanika Sarkar, and Sambhuddha Sen, *Khaki Shorts, Saffron Flags* (New Delhi: Orient Longman, 1993).



Writing in relation to the anxieties born of the ‘Muslim question’ in Europe, Talal Asad writes, “More than ever before identity now depends on the other’s recognition of the self... Perhaps in both places the discourse of identity indicates not the rediscovery of ethnic loyalties so much as the undermining of old certainties. The site of that discourse is suppressed fear.”<sup>14</sup> With this in mind it becomes easier to appreciate that the caste Hindu majority is *only one* of many parties agitated by more open-ended and flexible interpretation of religious freedom as a feature of *individual choice*. Outside of the record of forced conversions during Partition and the celebrated-debated conversion to Buddhism by the Dalit leader B.R. Ambedkar in 1957<sup>15</sup>, contests over conversion have been intermittently ignited throughout India’s history, one of the most famous of which was the 1981 mass conversion to Islam at Meenakshipuram by non-caste Hindus. Indeed, extremist Hindu reactions to this mass conversion were one of the first indications of a more virulent Hindu nationalism to come and highlighted the growing influence of groups such as the Vishwa Hindu Parishad (VHP) among conservative Indians.<sup>16</sup>

While newspapers are punctuated by reports of the short lifespan of some conversions (Dalit or tribal communities converting to Christianity, deciding there is ‘no marked difference’, and ‘returning to the fold’, as it were), more often than not the headlines echo VHP and

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<sup>14</sup> Asad, p. 161

<sup>15</sup> How might a sincere conversion, then, be defined according to rational qualifications? Many scholars have attempted to frame the Dalit leader Ambedkar as the ideal convert; and yet, as a reference point for larger debates over the impact of conversion as a ‘right’, Ambedkar’s reasoning and experience are of limited practical import. Firstly, Ambedkar sought to posit a particular breed of enlightened ‘reason’ as the lens through which to judge the sincerity of conversions—ironic in a sense, as the revelatory quality inherent to what many might qualify as the emotive value of faith is, almost by definition, beyond the realm of the ‘rational’. To assume that conversions between spiritual dispositions be subjected to the requirements of ‘reason’ is to ignore the difficulty—if not essential nature—in articulating the meaning of faith itself. In fact, to assume that the sincerity of conversion could be captured and explain by the language of rationality denies the resonance of conversion as an act of ‘faith’. This is not to say that Ambedkar’s decision to convert is any more or less sincere than a given unrecorded conversion; it is simply strange to assume that the decision to convert is translatable in this sense. Second, while conversion is certainly perceived as a subversive, political act, this is not always the case. Again, it is difficult to discern the sincerity of conversions—as any act or claim to conversion as a right is riddled with suspicion (from both the Right and Left, I might add)—it is hard to maintain that conversion should, at least in theory, lie outside the domain of the public-political, and instead be the preserve of private, individual conscience. Finally, the decision of Ambedkar to convert to Buddhism was not as traumatic for anti-conversion proponents as it might have been: for the purposes of political and legal regulation, Buddhism had been conveniently slotted under the overarching heading ‘Hindu’, giving the impression that the ‘conversion’ could be perceived as a shift between Hindu identities, rather than a wholesale rejection of the Hindu faith. The less than shocking nature of the conversion was also aided by the convenience of Hindu narratives more generally, specifically the traditional inclusion of the Buddha as the 9<sup>th</sup> incarnation of Vishnu in Hindu lore. This is not to mention the history depth of Ambedkar’s decision to convert—after discussing the prospect of conversion for almost 20 years, Ambedkar converted in 1957, two weeks before his death.

<sup>16</sup> See Sumit Sarkar, *Beyond nationalist frames: postmodernism, Hindu fundamentalism, history* (Bloomington, Ind. : Indiana University Press, 2002)

Rashtriya Swayamsevak Sangh (RSS) calls to halt the infiltration of Bangladeshi immigrants and Christian missionaries and for the total ban of conversions. In February, 2006, BJP president Rajnath Singh requested that the Chief ministers of BJP ruled states eliminate all the “conversion attempts by Christian missionaries at any cost”, calling also on the United Progressive Alliance government to pass legislation against this ‘proselytization’.<sup>17</sup>

The breaking points of conversion are characterized in modern India by the drive to rectify and usurp the intractable influences of untouchability and caste, which, by shifting the geographies of heresy and enlightenment as they relate to national identity, consequently shape the dynamics of using secularism as a unifying national directive and, alternatively, mold the anxieties of all realms touched by such policies. This line of inquiry is guided by the following questions: was the instance of conversion voluntary or forced? How can a mass conversion be certifiably voluntary? Are the religious communities involved ‘authentic’ and legally recognized? Is conversion more an issue of economics and relative social deprivation than a declaration of faith? How important is the level of analysis in ascertaining claimed ‘sincerity’ and ‘authenticity’ in the matter of individual or community conversions?

In light of the economy of religious demography and the question of ‘sincerity’ and ‘motivation’ (spiritual versus material), the narrative space of freedom of religion appears rather narrow. Is it the case that religious freedom is more likely to have been defined as the freedom to practice the religion of one’s birth, rather than as an overarching claim to religious choice? In other words, does the right to freely practice religion according to the stipulated ‘essential’ features of one’s faith implicitly exclude (or, at least, casts a spurious eye on) the right to conversion as such? When the stability of the Indian social order has been directly tied to the

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<sup>17</sup> “VHP demands total ban on conversion”, *Asian Age* February 19, 2006; “Missionaries must end conversions: Rajnath”, *The Hindu*, February 20, 2006 2/20/06

legibility and regulation of established religious group identities in law and policy, the treatment of ‘religious freedom’ as a right to change religions or as a creative volition comes into conflict with the secular impulse to balance religious communities against one another. If the right to religious freedom shifts the demographic predictability of religious group identity, and if the politicization of conversion itself—if not a serious demographic threat—polarizes the contest over Indian national identity to the point of violent protest and political immobility, how should we expect that the right to religious freedom—and specifically that to propagation—*not* be perceived more as a political act of revolt and revolution? Or, alternatively, how is conversion to avoid labels associated with irrationality or manipulation in light of communal interests? How does the question of conversion shift the terrain upon which the battle for a ‘practical’ secularism will be fought? <sup>18</sup>

The freedom to convert and the challenge of proselytizing symbolize a potential rupture in a soul, a fissure projected onto the spiritual legibility of the national landscape. To what extent does conversion mimic the topographical partition between India and Pakistan, between colonial domination and national self-determination, a leap of faith toward the ‘modern’<sup>19</sup>? How is the Indian state to evaluate conversions, ensured they are unsoiled by the decadence of material gain and guarded as an sincere act of conscience? How is the sincerity, the authenticity of a conversion to be measured toward the end of state sanction and protection? To what end do efforts designed to regulate conversion as a ‘right’ to propagation inform the development of a more inclusive or individualist secularism?

### ***Rationality and the Secular Subject***

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<sup>18</sup> See Pratap Bhanu Mehta, “Passion and Constraint”, *Seminar* 521 (2003)

<sup>19</sup> See Gyanendra Pandey, “The Time of Dali Conversions,” *Economic and Political Weekly*, 41: 18 (May 06 - May 12, 2006), pp. 1779-1788

With the Enlightenment came defenses of human rights and liberties based on the universal faculty of reason—and yet how rarely ‘universality’ has had much to do with the construction of human rationality *as such*. While non-property owners, non-whites, non-Christians, women, and homosexuals have slowly been incorporated into the category of potential ‘rational beings’, contemporary liberalism has matured and expanded its boundaries in some but not all cases. The invention of political ‘neutrality’ to govern such ‘inclusiveness’ is a relatively modern enterprise. As a project, ‘universal rationality’ continues to be an exceptionally flawed and incomplete political supposition.<sup>20</sup> There is nothing that exists as a liberty that does not contain within it the foundations of its limits and reach, that it posits boundaries within its self-definition. Who qualifies as being ‘rational’ and, in effect, a responsible citizen of the modern state enterprise—one who has the opportunity to demand rights from the state and is thus obligated to perform duties as a citizen—remains, in many cases, an open question.

The evolution and illumination of who counts and why is simultaneously a reflection of who does not; the bones and sinews of liberal nationalism demarcate a particular territory, mark one people or peoples out from the next, elevate members of chosen communities while casting a spurious, suspicious eye on others. With the rise of the regulatory aspects of modern religious freedom and secular democracy, Talal Asad argues “... the only legitimate space allowed to Christianity by post-Enlightenment society is the right to individual belief.”<sup>21</sup> In the case of secularism in India, the construction of this space fluctuates between the legitimacy of individual

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<sup>20</sup> See, among others, Uday Mehta, “Liberal Strategies of Exclusion”, *Politics & Society*, Vol. 18, No. 4, 427-454 (1990); Partha Chatterjee, *The Nation and Its Fragments* (New Jersey: Princeton University Press, 1993); Peter Fitzpatrick, *Mythology of the Modern Law* (New York: Routledge, 1992); Talal Asad, “Secularism, Nation-State, Religion” in *Nation and Religion: Perspectives on Europe and Asia*, eds. Peter van der Veer and Hartmut Lehmann. (Princeton, N.J.: Princeton University Press, 1999); Talal Asad, “Trying to understand French secularism,” *Political Theologies: Public Religion in a Post-Secular World*, eds. Hent de Vries and Lawrence E. Sullivan (New York: Fordham University Press, 2006); Wendy Brown, *States of Injury* (Princeton, N.J.: Princeton University Press, 1995)

<sup>21</sup> Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: Johns Hopkins University Press, 1993), p. 45

conscience in law and policy, and the more pressing concerns of proselytism and group conversion vis-à-vis socio-religious and electoral stability. The perception that ‘freedom of religion’ is synonymous with ‘freedom of individual conscience’ is, according to some scholars, a culturally Western concept. For example, Donald Horowitz writes that perceiving religion as a personal act or choice, or “voluntary or affiliational, an act of faith” is a creature of the Reformation culture of the Enlightenment politics following the French Revolution. The perception—or ideal—of faith as an individual disposition and volition is, then, largely a Western idea which can be traced through intellectual and political history.<sup>22</sup> Secular modernity has manufactured the hegemony of the individual believer as a general rule, even while such rules have typically afforded certain communities greater control over the ‘flock’ than others, as the practical implications of freedom of religion have not exactly implied freedom *from* religion, nor the rigid separation of religiosity from the cultural constitution of secular imperatives invoked in the name of nationalism.

Satish Kolluri asserts, like many scholars of Indian secularism, that the Western species of secularism is characterized by the “strict separation between church and state and [that] religious belief in the West is an individual affair”. Indian secularism stands in stark contrast to this rendering, as its advocacy of both ‘impartiality’ and ‘equal respect’ has led to both the construction of a ‘communitarian’ or ‘multicultural’ framework (which prioritizes religious community identity over individual religious freedom) and the justification of a high degree of state intervention. In other words, while scholars like Kolluri present the Western secular state as barricading off the political sphere from private religious worship, and while the state remains ideally passive with respect to the religious preferences (or absence thereof) of its citizens, the Indian secular state is an active arbiter of religious identity. It not only defines which religious

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<sup>22</sup> Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985), p. 50.

identities matter, but it is the responsibility of the state to create some semblance of ‘equality’ between ‘legitimate’ religious communities—a project that often puts community solidarity and recognition often above the political agency and liberties of the individual. Even so, as Partha Chatterjee suggests, while Indian secularism has essentially redefined its meaning and substance vis-à-vis its Western counterparts, this creative venture has brought into question the loyalty and salience of Indian secularism as a discourse heavily influenced by Enlightenment values.<sup>23</sup>

It is hard to extract the politics of conversion in contemporary India from the politics of demography. This is especially the case because the socio-political playing field is explicitly structured by religious group identity and the statistical balance of power that bounded identities ensure. The regulation of conversion, then, is not merely the attempt to manage ‘legitimate’ shifts in religious identity, but also symbolizes the projection of anxieties caused by demographic rifts in the religious landscape. “Conversion establishes the principle of the nation as egalitarian, just, open, protective, and constitutional, and at the same time committed to a leveling of religious differences.”<sup>24</sup> And yet the state-centered control of faith—specifically the means by which one might convert—is, like policies designed to regulate the body or property rights, used to manufacture a larger sense of national belonging, one premised upon a territorial inclusiveness, and yet one that seeks the establishment of static identities for the purpose of negotiating such inclusiveness.<sup>25</sup> The division of religious communities along so-called ‘natural’ lines has been the project of various ruling elites long before Independence, and remains a process of categorization premised upon the presumed ‘unity’ of the ‘nation’. While the category of ‘Mohammedan Hindus’ was present as late as the 1911 Census, the process of separating

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<sup>23</sup> See Partha Chatterjee, “Religious Minorities in a Secular State,” *Public Culture* 8: 1 (Fall 1995)

<sup>24</sup> Viswanathan, p. 76

<sup>25</sup> Viswanathan, p. 87 “By vitally affecting the numerical strength of one group or the other and rendering the relation between ‘majority’ and ‘minority’ and ‘dominant’ and ‘subordinate’ groups forever uncertain, unstable, and unpredictable, the material impact of conversion on patterns of demography undermines—and renders illusory—what the dominant community would like to regard as the self-perpetuating strength of its cultural norms.”

Hindus from Muslims had begun long before, a process which eventually situated both communities as distinct, if not as natural competitors for political leadership. As the Madras Missionary Conference report of 1876 claims, “though, by reason of the distinct laws affecting every relation of life, [Hindus, Muslims, and Christians] co-exist as separate and very distinct communities—they are yet regarded as one nation.”<sup>26</sup>

For the purposes of legal administration, the Indian Constitution distinguishes between the general category of ‘Hindu’ (which also incorporates Jain, Sikh and Buddhist communities), from Muslims, Parsis, Christians, and the broad identities of ‘Scheduled Castes’ and ‘Scheduled Tribes’. While outlawing untouchability and seeking to guarantee the protection of ‘essential’ religious identities, the architects of Indian law and policy have typically treated these broad identities as actual reference points, rather than simply as ideal-types. These divisions have been used to justify governmental benefits and reservations for certain groups over others, specifically those with Scheduled Caste status: while caste and untouchability are traditionally associated with Hinduism, caste is not extinguished through conversion alone. Caste, being so tied to the body, penetrates much of Christian, Muslim and wider Indian society, even while these low caste and untouchable Christian and Muslims are not guaranteed equal access to the government’s affirmative action policies and quota systems.<sup>27</sup> In light of these categories, ‘religion’ is itself nowhere defined in the Constitution; this responsibility has fallen to the Court. To the extent that the Court actively defines ‘religion’, it typically has done so through the art of negation—by distinguishing essential religious practices from the ‘secular’ jurisdiction of the State.

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<sup>26</sup> Cited in Viswanathan, p. 75

<sup>27</sup> See also Robert Baird, “Religion and the Secular”, in *Religion and Social Conflict in South Asia*, ed. Bardwell L. Smith, (Leiden: e.J. Brill, 1976), p. 50; *S. Swiggardoss v. Zonal Manager, FCI (1996) 3 SAA*, p. 103: “Christian is not a scheduled caste under the notification issued by the President.” It might be added that individual states have jurisdiction over many issues related to affirmative action policies and reservation quotas and, as such, provide such benefits to non-Hindu backward caste and untouchable communities, such as in the case of 1996 Valsamma Paul case discussed below.

Robert Baird argues that the Constitution embraced a conceptual dichotomy of sorts, distinguishing the ‘secular’ from ‘religion’ as if they existed as theoretically and practically distinct, ‘all-encompassing’ spheres. The Constitution claims that while religion cannot be regulated, the secular realm can, which leads directly to the problem of ascertaining the boundary between both—a project left up to the Court.

“These categories, then, are not only a means for handling religious conflict and religious change, but are at the same time a part of the religious system whose survival is constitutionally assured. Hence it is determined that religious conflict is handled through categories contained in one of the two conflicting ideologies. The categories of ‘religion’ and the ‘secular’ have become axiomatic, so that neither side of litigation is able to deny or question the categories themselves.”<sup>28</sup>

This characterization of the Indian state’s idealistic ‘secular’ impulses has been put into question time and time again, most notoriously in the Constitutional protection of ‘rights to culture’ as proscribed in Articles 25-30. This has been especially visible in court cases that juxtapose these multicultural laws against the fundamental rights embodied in Articles 14-24, laws more clearly based upon traditional interpretations of liberal individualism.<sup>29</sup> Much debate has arisen over questions regarding whether religious rights are fundamental rights, whether under Article 25 there is really a right to propagate religion, whether under Article 26 religious communities have a right to a certain measure of autonomy vis-à-vis the state, whether there is an absolute right to ‘preserve’ the cultures of religious communities under Article 29, whether these communities have a right to establish and manage their own educational institutions toward the end of safeguarding certain cultural artifacts of language and script, etc.

To the extent that the Indian state was already seeking out a comprehensive and practical secularism, the word ‘secular’ was only added to the preamble of the Indian Constitution in 1976

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<sup>28</sup> Robert Baird, “Religion and Law in India: Adjusting to the Sacred as Secular,” in *Religion and Law in Independent India*, edited by Robert D. Baird (New Delhi: Manohar, 1993), p. 19

<sup>29</sup> See the discussion between ‘legal pluralism’ and ‘legal universalism’ in Rudolph and Rudolph.



through passage of the 42<sup>nd</sup> Amendment. This important addition to the Constitution emphasized that the Indian State would not be biased toward any one or group of religions, that it would be neutral toward religious communities and doctrines, that it would not discriminate between communities of faith. In short, religious particularity would not play a role in the governance of the Indian state.

The Constitutional safeguards for both individual and collective rights of minorities are multiple, and yet have expanded and contracted given the court case in question. In *Kesavandanda v. State of Kerala* of 1973, the Court determined that “the State shall not discriminate against any citizen on the ground of religion only”, invoking Arts 15(1) and 16(2).<sup>30</sup> In 1975 the Court declared in the *Indira v. Rajnarain* decision that secularism’s status as a basic feature of the Constitution, in effect, entailed that “The State shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practice, and propagate religion.”<sup>31</sup>

A carry-over from colonial times, Article 295 of the Indian Penal Code states that any malicious attempt to slander or insult the religious beliefs and values of a given class is illegal. Under Article 123 (2) of the *Representation of People’s Act*, any appeal made by a political candidate to induce the belief in a voter that s/he will potentially be made ‘the object of divine displeasure’ (and the use of religious symbols toward this end) is to be deemed corrupt practice and punishable by law.<sup>32</sup>

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<sup>30</sup> See Granville Austin’s chapter 4 on the Kesavanandanda case which enshrined the right of the Court to protect the ‘basic structure’ of the Indian Constitution. Granville Austin, *Working a Democratic Constitution* (New Delhi: Oxford University Press, 2000), pp. 258-277

<sup>31</sup> *Indira v. Rajnarain* 1975 SC para 665

<sup>32</sup> See also *Bommai v. Union of India*, A. 1994 SC 1918 (paras 129, 365(10)): “... secularism not only meant that the State should have no religion of its own and should be neutral as between different religions but that any political Party which sought to capture or share State power should not espouse a particular religion, for, if that party came to power, the religion espoused by it would become the official religion and all other religions would come to acquire a secondary or less favorable position.” See also *the Representatives of People Act, 1951* (sections 123(3)) that a “candidate’s election might be set aside if he appealed to the electorate to vote for the followers of any particular religion. But the existing provisions of the PR Act do not empower the electoral authorities to ban any political party as an association, on the ground of its religious advocacy”.

In addition, Article 25 of the Indian Constitution protects the right to propagate religion, specifically stating in section (i) that the ‘Right to Freedom of Religion’ entails that ‘all persons are equally entitled to freedom of conscious and the right freely to profess, practice and propagate religion.’ However, the Court’s role in determining the anatomy and reach of Article 25 has been highly contested and not always predictable. “In past cases the Court was dealing with what it agreed was a religion or religious community for which it was required to decide whether a practice or other component was ‘secular’, and thus capable of regulations, or ‘religious’, and thus protected by Articles 25 and 26 of the Constitution.”<sup>33</sup> Cases included those dealing with whether or not financial management of properties were religious or secular, whether the Swaminarayan religious sect was independent of Hinduism or not, what ceremonies and practices are ‘essential’ to a religion and which are not,<sup>34</sup> how should priests be appointed, etc. Moreover, financial matters typically have been characterized as ‘secular’, and hence have fallen within the domain of state regulation. In this way the Court has increasingly sought to ensure that temple management and financial affairs fall under secular jurisdiction. For the purposes of brevity, I shall discuss only four influential cases: the *Venkataramana Devaru* case of 1958, the *Saifuddin Saheb* case of 1962, the *Radhakrishnan* case of 1966, and the *Mittal v. Union of India* (Aurobindo) case of 1982.

In 1958 during the *Venkataramana Devaru v. State of Mysore* case<sup>35</sup>, a Hindu temple filed for the ability to restrict access to worship within the inner sanctum of the temple interior. In short, the temple functionaries attempted to have ‘undesirables’ (lower castes and untouchables, much less non-Hindus) banned from the temple interior.

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<sup>33</sup> Robert Minor, “Auroville and the Courts in India: Religion an Secular,” *Religion and Law in Independent India*, p. 365

<sup>34</sup> See *Commissioner, Hindu Religious Endowments, Madras v. Sirur Mutt (1954)* which introduced the idea of religious ‘essentialism’—what is essential to a religion? How might these aspects be determined ‘with reference to the doctrines of that religion itself?’ See *Sirur Mutt* case, p. 349

<sup>35</sup> the *Venkataramana Devaru v. State of Mysore, SCJ Vol CCI 1958* p. 382

The Court noted in its decision that Articles 25 and 26 appear to be in conflict in this case, especially where the ‘right to religious regulation of community’ is juxtaposed against the inequality this might engender in practice, which would be in direct violation of Article 25 (2) (b) if the ‘right to religious regulation of community’ goes against the spirit of religious freedom and purging the Indian landscape of untouchability (see Art. 17, which abolished untouchability).<sup>36</sup> Ultimately, the Court invoked the ‘rule of harmonious construction’ to decide the case, trying to force both Articles 25 and 26 (as well as 17) to exist in a complementary (rather than antagonistic) fashion. It was decided that Article 26 (b), which protected the rights of religious communities to self-regulation, could not supercede Articles 25 (2) (b), which protects freedom of religious worship itself.

In a related case in 1982, *Mittal v. Union of India*, the Court was trying to determine what the substance of a claim for religious authenticity demanded in order to make the movement legally ‘religious’. In this case, the Court was evaluating the ‘religiosity’ of the newly established ‘Auroville (or Aurobindo) society’, asking whether or not the new movement constituted a new and distinct religion, and whether it could claim protection and benefits under Articles 25 and 26.

The Court finally decided that because the Aurobindo society was open to all regardless of former religious background or affiliation, ‘without any distinction of nationality, religion, caste, creed or sex’ as stated in the ‘Rules and Regulations of the Aurobindo Society’, the Society itself could not constitute a ‘religion’ as such. Because of its universal basis of self-definition, and the fact that the Court presumed “one must lose one’s previous religion to join another,” which was not required in the Aurobindo case, it was not in fact a religion. “Under this definition of ‘religion’, then, a religious denomination cannot encompass others in an

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<sup>36</sup> See *S.C.J. Vol. XXI, 1958*, pp. 390-6 of case in Baird, “Religion and Law in India: Adjusting to the Sacred as Secular,” p. 33

inclusivistic manner; it must require the abandonment of other religions for one to join it.”<sup>37</sup> The Court determined that spirituality is by definition bounded by religious membership (which is both spiritual and definitive) and that the ‘secular’ is defined as the regulation and maintenance of these boundaries within the context of Indian law.<sup>38</sup>

The next two cases deal with the right of religious communities to excommunicate members, and highlight the occasionally contradictory manner in which the Courts have dealt with Hindu and non-Hindu communities in matters of community maintenance and excommunication. In response to the imposition of *the Bombay Prevention of Excommunication Act* (1949), the *Saifuddin Saheb v. State of Bombay* case of 1962 challenged the validity of excommunication vis-à-vis Articles 25 and 26. In reaction to the passage of the 1949 Act, the Dawoodi Bhara Community of Shia Muslims sought the legal power of excommunication for the management of community purity and continuity, by removing those considered ‘unsuitable’ when necessary. The Bombay High Court decided that excommunication was not *necessarily* a religious act and was, therefore, secular, which meant it could be regulated by the state, even while it upheld the right of communities to police their membership. The minority leader of the Court Judge Sinha exclaimed that excommunication is not a ‘purely religious’ act, and therefore (1) has civil consequences and (2) can be regulated by the state: “excommunication treated the excommunicated much as a pariah, and since the Constitution abolished untouchability, the Act is valid.” Excommunication was within the realm of secular jurisdiction according to Judge Sinha. However, the majority disagreed with Judge Sinha regarding whether or not the *Bombay Act* was itself valid: even if the practice of excommunication was considered ‘secular’, the

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<sup>37</sup> Minor, p. 367

<sup>38</sup> Aurobindo was not judged to be ‘new and distinctive’ by the courts, either, as its basic philosophy was based on yoga, not religion per se. Meditation alone cannot constitute a new religion, especially when the precedent was already set in *Hiralal Mallick v. State of Bihar* (1977) where the Court declared ‘meditation secular’. In the case, meditation is presented as something that had been scientifically and empirically tested, and declared both ‘trans-religious’ and ‘secular’ by virtue of its ‘testable’ quality. Thus, if it is ‘testable’, it cannot be religious: science and religion, thus, are mutually exclusive.

*Bombay Act* did violate the ‘right’ of communities to regulate themselves in matters of religion. Excommunication was simply a regulatory device to maintain order, discipline, tradition, and solidarity within the religious community in question, which was a social good. Therefore the *Bombay Act* was unconstitutional and excommunication can be treated as an ‘essential’ device of community maintenance and supervision.

Alternatively, when the Courts have dealt with similar objections from the Hindu community, there has been a great deal less willingness to condone the virtues of excommunication as a communitarian policy. For example, in the *Radhakrishnan* case of 1966 the judges described Hinduism’s ‘broad sweep’ and how “there is no scope for excommunicating any notion or principle as heretical and rejecting it as such.”<sup>39</sup>

In the history of these juridical developments the Court has adopted a largely fluid, almost unbounded meaning of Hinduism, making it both more difficult for religious offshoots to differentiate themselves from ‘Hinduism’ per se and, alternatively, for Hindu denominations to control their own ‘essential’ cultural topographies. All of these cases took as a legal supposition religions that were already presumed to exist or exhibit a documentable measure of coherence and authenticity—reified (or determinable) spiritual communities—which would provide the initial template for the development of secular Indian law.

In these cases the distinction between ‘secular’ and ‘religious’ spheres are treated as separate—and separable—by the state, even while these terms remain ambiguous and undefined in the Constitution itself. Thus, distinguishing between the two was left to the Courts. These categories were utilized in the *Aurobindo* case, and in the course of the case these categories were authoritatively delineated by the courts. Indeed, the judiciary has assumed itself to be the final word on matters of ‘religious self-definition.’ Consequently, ‘reification’

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<sup>39</sup> *M. Giasuddin v. A.P. State*, p. 1935 quoted in *Minor*, p. 377

continues to be a practical problem facing the Indian construction of religious communities as they relate to the secular state.<sup>40</sup> In sum, the self-determination of a religious community is not an issue that can be settled on its own terms, but the final recognition of a group as a ‘distinct’ religion is within the jurisdiction of the Courts. Therefore,

“Under the Constitution religion is not equated with freedom of conscience, and the freedom of religion (defined as embracing the propagation, practice and public expression of it) is not an absolute one and is subject to regulation by the state... Courts are called on to determine not only whether a practice of a religion is an essential part of the religion, but also to scrutinize governmental restrictions on the practice and propagation of religion to determine whether the restrictions pass the test of *public order, morality, and health*. If not, they are not to be upheld.”<sup>41</sup>

### ***The Rise and Impact of Anti-Conversion Legislation***

Attempts to control the right to propagate religion and to conversion have been highly contested legal and moral territory throughout India’s existence. Indeed, the suspicion with which Indian politics has dealt with the ‘right’ to conversion has been a prickly issue, peaking at various points, especially the Araya Samaj *shuddhi* movement in the late 1800s<sup>42</sup>, the initial rise of the Hindu Right in the 1920s, the Constituent Assembly debates (in which the move to ban conversions was contested), and on into the present. Notably, in 1923 the Hindu nationalist ideologue Veer Savarkar aroused anti-conversion sentiment by conflating what it is to be Indian with what it means to be Hindu—combining the notion of *pitribhumi* (fatherland) with that of *punyabhumi* (holy land). This definition of Hinduness *as* Indianness allowed Hindu majoritarians to “brand Muslims and Christians as somehow alien, unpatriotic by definition.”<sup>43</sup>

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<sup>40</sup> “Reification is the treatment of an historical process characterized by diversity and change as a single objective entity.” in Baird, “Religion and Law in India: Adjusting to the Sacred as Secular,” p. 30. See also Baird’s *Category Formation and the History of Religions*, Chapter V and Jenkins referenced below.

<sup>41</sup> Ruma Pal, “Religious Minorities and the Law”, *Religion and Personal Law in Secular India*, p. 25.

<sup>42</sup> See John Zavos, *The Emergence of Hindu Nationalism in India* (New Delhi: Oxford University Press, 2000), pp. 39, 42-3

<sup>43</sup> Sumit Sarkar, *Beyond Nationalist Frames: Postmodernism, Hindu Fundamentalism, History* (Bloomington: Indiana University Press, 2002), p. 235

While the British Raj did not actively enact anti-conversion legislation, many Princely States passed laws directed toward curbing conversions (specifically to Christianity) during the latter half of the 1930s and 1940s. Additionally, even as Article 25 was eventually incorporated into the final version of the Constitution, the treatment of conversion as a fundamental right was challenged in Parliament in 1954 and again in 1960.<sup>44</sup>

Anti-conversion legislation has occasionally been enacted by State governments in the name of ‘public order’, ‘peace,’ ‘morality’, and the perceived threat conversion presents to community life and solidarity—essentially the challenge intangible religious communities pose to the secular nationalist order. The goal has been essentially the same in each draft bill: to constrain the ability of communities and individuals to convert ‘from the religion of one’s forefathers,’ often in the name of protecting those making up the ‘weaker’ or more easily ‘influenced’ sectors of society—namely women, children, backward castes and untouchables. As the above analysis indicates, controlling the dimensions and boundaries of religious community identity has been part and parcel to the development of Indian secularism since, if not long before, Independence, a process that has put the substance and depth of ‘freedom of religion’ in question, specifically from the standpoint of conversions and individual spiritual choice.

In the long shadow of the Constituent Assembly Debates exploring the highly controversial nature of Article 25, individual states have increasingly sought to curb the frequency and impact of conversions. Beginning with the *Freedom of Religions Act, Orissa* of 1967, anti-conversion legislation was introduced at the state level for the first time, stating that the “penalty for unlawful conversion of a minor, a woman and a member of a scheduled caste

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<sup>44</sup> See the 1954 *Indian Conversion (Regulation and Registration) Bill* and the 1960 *Backward Communities (Religious Protection) Bill*.

was much more severe than the penalty for the unlawful conversion of an adult.”<sup>45</sup> The punishment for coercively converting any such individual would often double financial and punitive penalties. Flowing from the *Niyogi Commission Report* which questioned the “sincerity of conversions”, in 1968 a second *Freedom of Religions Act* (Madhya Pradesh Dharma Swatantra Adhiniyam) was passed in Madhya Pradesh (MP)<sup>46</sup>, which characterized conversions “as contributing to undermining traditional values and structures and to the denationalization of Indians.”<sup>47</sup>

While the Orissa Act was challenged and charged with not being in the spirit of Article 25 in the Orissa High Court, in the famously controversial *Stanislaus* Supreme Court case in 1977<sup>48</sup>, the Orissa High Court decision was overturned and the Orissa and MP Acts upheld. The Court made a distinction between the ‘right to convert’ and the ‘right to propagate religion,’ stating that while the first is illegal, the latter is protected under the Indian Constitution. Thus, while *not all* attempts at conversion were by definition suspicious, those made under threat of ‘force, fraud or inducement’ *were* considered as such—and what qualified as ‘force’ was left purposefully ambiguous. The Court declared, “what is freedom for one, is freedom for the other, in equal measure, and there can, therefore, be no such thing as a fundamental right to convert any person to one’s own religion”, largely ignoring the legislative validity of Article 25, and failing to distinguish between conversion by force or persuasion.<sup>49</sup>

The Orissa and MP cases were followed by the implementation of anti-conversion legislation in the states of Andhra Pradesh and Tamil Nadu, as well as Arunachal Pradesh in 1978. In the case of Arunachal, the *Freedom of Religions Act* went beyond the scope of the Orissa and

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<sup>45</sup> Ronald Neufeldt, “To convert or not to convert: legal and political dimensions of conversion in independent India,” in *Religion and Law in Independent India*, p. 389. See also Lalit Mohan Suri, ed., *The Current Indian Statutes* (Chandigarh, 1968), p. 5.

<sup>46</sup> Also known as the *Madhya Pradesh Dharma Swatantra Adhiniyam* case.

<sup>47</sup> Neufeldt, p. 390

<sup>48</sup> *Rev Stanislaus v. MP* 1977 AIR SC 909

<sup>49</sup> Ruma Pal, p. 26



MP Acts, targeting conversions specifically from faiths 'indigenous' to India: whereas conversion is defined as 'renouncing an indigenous faith and adopting another faith or religion,' conversions from the 'indigenous faiths' such as Vaishnavism, Buddhism or even Nature Worship should be regulated and constrained. Registration of conversions from an indigenous faith are further required to be filed with the District Deputy commissioner. This Act apparently sought to conflate Indian indigenous religions with a specific breed of Hindu national solidarity. That year in the Lok Sabha a *Freedom of Religions Bill* was introduced at the national level by OP Tyagi (Janata party) and supported by Prime Minister, Morarji Desai. This bill cited the need to protect women, Scheduled Castes, Scheduled Tribes and minors from coerced conversion. In short, this bill largely mirrored the Arunachal Pradesh Act. Luckily, it lacked public support, was challenged by the Minorities Commission on the grounds that it was biased against socio-economically backward communities, and died along with the Janata party government.

Even so, the passage of these anti-conversion laws reflected a wider sense of political concern over conversions, already evident in the passage of laws more indirectly geared toward eliminating the right to propagation and conversion. The passage of the Hindu Law enactments in 1955-6 stipulated increased penalties for conversion away from Hinduism and were designed to keep the lower caste and untouchable communities from leaving the fold.<sup>50</sup> In light of the *Stainislaus* case and the Meenakshipuram mass conversion to Islam in 1981, reports indicate that the Ministry of Home Affairs under the Congress (I) government advocated the passage of anti-conversion legislation at the level of the states "along the lines of the existing Acts in Madhya Pradesh, Orissa and Arunachal Pradesh."<sup>51</sup>

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<sup>50</sup> See the *Hindu Marriage Act of 1955*, the *Hindu Minority and Guardianship Act of 1956* and the *Hindu Adoption and Maintenance Act of 1956*.

<sup>51</sup> Arpita Anant, "Anti-conversion laws", *The Hindu*, December 17, 2002; *The Statesman*, Delhi, November 16, 1982, cited in Anant.

While the target of anti-conversion legislation seemed to be largely Islam after the incident at Meenakshipuram in the 1980s, Christianity has received more attention since the 1990s because of its association with Western-style colonialism and the role active proselytizing plays in the course of *being* a good Christian.<sup>52</sup> It is difficult to disentangle these general elements in the current debate over conversion in India, although examining the manner in which conversion to religions of non-Hindu origins have been treated in law and policy indicate that while concerns remain over the Muslim community as a voting block and as a potentially traitorous pro-Pakistan community, in the politics of conversion—and the debate over spiritual essentialism and authenticity—Christians have been increasingly likely to be targeted by the Hindu Right.<sup>53</sup> As Sumit Sarkar asserts, “Christians appeared at times to have displaced Muslims as the primary target.”<sup>54</sup> There is a rather simple explanation for this shift: according to Sarkar, under BJP rule there arose a need “for surrogate enemies to reconfirm nationalist credentials without seriously disturbing the liberalization agenda. Both Pokharan and anti-Christian campaigns, it might be suggested, fulfilled this need.”<sup>55</sup> In contradistinction to Hindutva’s logic, the percentage of the Christian population in India as a whole is declining, decreasing from 2.6% in 1971 to 2.44% in 1981 to 2.32% in 1991.<sup>56</sup> In other words, the actual demographic threat value Christian conversions pose is less than impressive, indicating that the perception of Christianity and Islam as explicitly ‘foreign-born’ religions is a critical turning point of the debate, given the tendency to convert within the legal categories is far less political. “It is interesting to note that although there are at least as many conversions to Buddhism, the protests

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<sup>52</sup> For an overview of the Constituent Assembly Debates concerning conversion and the Christian tradition of proselytizing, see Sebastian Kim, *In Search of Identity: Debates on Religious Conversion in India* (New Delhi: Oxford University Press, 2003)

<sup>53</sup> See Sumit Sarkar’s chapter ‘Christianity, Hindutva, and the Question of Conversions’, pp.215-244

<sup>54</sup> *ibid.*, p. 215

<sup>55</sup> *ibid.*, p. 241

<sup>56</sup> Ram Puniyani, “Question of Faith: Anti-Conversion Legislation in Tamil Nadu”, [www.sacw.net](http://www.sacw.net), October 9, 2002

on the part of the religious nationalists to such conversions are non-existent, simply because Buddhism is considered, albeit falsely, to be an integral part of Hinduism.”<sup>57</sup>

During the tenure of the BJP, anti-conversion legislation became a focal point for the resolution of the Indian ‘national question’, particularly the purposes of establishing a more resolute and extensive Hindu cultural identity. After the bifurcation of Madhya Pradesh (MP) in 2000, Chhattisgarh passed anti-conversion legislation which mirrored that of MP. Tamil Nadu followed suit in 2002, Gujarat in 2003, Rajasthan in 2006, and Congress-ruled Himachal Pradesh in 2006 (and was signed into law February 2007 by Governor Vishnu Sadashiv Kokje). As of March 2007, the BJP asserted its plan to bring anti-conversion laws to Uttaranchal (the northern state formerly known as Uttarakhand). While a final piece of legislation was being debated by the BJP-ruled Jharkhand in 2006, the bill lost its support after the BJP failed to regain power. Moreover, during the tenure of the BJP governments in MP, Chattisgarh and Gujarat in 2004, the states amended their laws in order to make the punishments for ‘forced conversions’ more severe. Even so, these amendments have not received assent. In other words, while the governors of these states signed the original legislation, the stricter amendments have not been approved. The Himachal Pradesh case is also an interesting outlier, being the first Congress Party-ruled state in recent times to actively pass and enact an anti-conversion law.

As has been the trend with many of other anti-conversion acts, the Gujarat Act mentions the need to protect ‘women and minors’ and other susceptible communities from the vulgarity of forced conversion, specifying doubled penalties for such attempts. While the Rajasthani Bill does not mention the necessity to protect ‘women and minors’, it provides an exemption for reconversions to the ‘religions of one’s forefathers,’ i.e., Hinduism. The Rajasthan Bill reflects the sentiment of court decisions passed in 1969 and 1984, which ensured the right of low caste

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<sup>57</sup> Satish Kolluri, “Minority Existence and the Subject of (Religious) Conversion,” *Cultural Dynamics* 14:1 (March 2002) p. 82

converts from Hinduism to regain their original caste standing through the process of reconversion.<sup>58</sup> Along the same lines, much of the legislation seeks to distinguish between ‘authentic conversions’ and ‘inauthentic conversions’. In the Chattisgarh Act, conversions within the overarching ‘legitimate’ religions (Hinduism, Christianity, Islam and Parsis) are authentic, as to warrant a blind eye to conversions between Catholics and Protestants, Shia and Sunni, Sikh and Jain, etc. In the Rajasthan Act, ‘reconversions’ to the ‘religions of one’s forefathers’—a not so covert pitch for Hindutva, given this could only mean ‘Hinduism’—are assumed to be ‘authentic’ conversions (in fact, the only authentic conversions) and therefore are treated as an exception to the rule in Rajasthan’s bid to control conversions in tribal areas. As such, the *gharvapsi* VHP campaign is premised on the claim that Adivasis—or tribals—are culturally Hindu; as such, they must be led back toward their true Hindu identities, indicating that ‘proselytization’ is a rather common project of the Hindu Right. “Thus the enjoyment of basic civil rights in a nation that follows the principle of secularism as a principle of governance has been insidiously presented to the religious minorities as a matter of ‘choice’: embrace Hindu culture or else lose your Indian identity.”<sup>59</sup>

The definition of ‘force, fraud, inducement’ are left purposefully ambiguous in the bills. For example, in the Himachal Pradesh legislation threats of ‘divine displeasure’ qualify as ‘force,’ where ‘inducement’ is left open-ended enough to include the offer of even the most basic subsistence needs, much less access to ‘religious’ educational facilities. The Act requires that potential conversions be registered with district authorities at least 30 days prior to the planned conversion, the punishments for not doing so being 1000/Rs. There is, however, no need to contact the district authorities in the case of ‘reconversion’ back into the Hindu fold: “no notice

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<sup>58</sup> See *S. Raja Gopal AIR (1969) SC 101* and *Kailash Sonkar (1984) 2 SCC 91*.

<sup>59</sup> Kolluri, p. 84

shall be required if a person reverts back to his own religion”—assuming ‘his own religion’ continues to be essentially Hindu. Like the Gujarat bill, the punishments for converting women, minors, Dalits and tribals are greatly enhanced, specifying up to three years imprisonment (up from two years) and 50,000/Rs (up from 25,000/Rs) in these ‘special’ cases.

While numerous pieces of anti-conversion legislation exist, less than half are enforceable. In many of the above cases either the state governor has not given his/her approval to the bill, or the rules themselves have not been ‘framed.’ Both are required to use the legislation to actively prosecute conversions made by ‘force or allurement’. Pratibha Patil, now President of India and former Governor of Rajasthan, refused to give her assent to the state’s bill. Even as Arunachal Pradesh (1978) and Gujarat (2003) gained their state governors’ approval, the laws have not been framed and so lie idle. Moreover, Tamil Nadu no longer has an enforceable anti-conversion law; the case of its failure highlights the political volatility of electoralism (or fair weather politics) in Tamil Nadu, or even India more generally. In order to seek outside BJP support in Tamil Nadu in 2002, the All India Anna Dravida Munnetra Kazhagam (AIADMK) government passed its first anti-conversion law—a law which was ultimately repealed shortly after the BJP lost in the national elections two years later.

Outside of the challenge anti-conversion legislation represents to the character and reach of Indian secularism within the realm of law and policy, the bills have rarely been used to actively prosecute ‘unlawful conversions’ in the states where they have been enacted. While there is evidence the legislation is being used to intimidate the Christian community, actual prosecutions are extremely rare.<sup>60</sup> With respect to this record of lack luster prosecution, Irfan Engineer writes, “The Orissa and Madhya Pradesh anti-conversion laws have been in existence

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<sup>60</sup> See Walter Fernandes, *The Hindu*, November 10, 2002, cited in Anant.

for more than 30 years, but there have been hardly any successful prosecutions under them.”<sup>61</sup>

This said, the introduction of the legislation has been tied to growing reports of violence against religious minorities and more supervised intimidation by the VHP, BJP and their functionaries.

The judiciary and state machinery have not been necessary accomplices in the shift from ‘Hindu-centrism’ at the level of the law to exposing the utility such symbolic gestures have in practice.

For example, the way in which the Hindu Right has recently sought the ‘reconversions’ of the socio-economically marginalized is both exceptional in its hypocrisy, but also indicative of the advantages the Hindu Right has in framing conversions as a political program. According to the RSS magazine, the *Organiser*, “The TTD (Tirumala Tirupati Devasthanams), which runs the richest temple in the country, will hand out one gram of gold to poor families to keep them from converting to other religions.” TTD chairman Shri B. Karunakar Reddy illuminated the game plan of the TTD very clearly: “The TTD will distribute gold *mangalsutras* and perform on lakh mass marriages every year... The basic idea is to prevent poor Hindus from converting to other religions.”<sup>62</sup>

Perhaps it is only stating the obvious, but if anything satisfies the definition of ‘inducement’ one would think dispensing gold jewelry to poor Hindus would qualify. But then we must keep in mind whether or not it is only illegal to ‘tempt’ an individual or group *toward* conversion, as opposed to whether or not similar tactics of ‘inducement’ are not all well and fine if such incentives are used to prevent conversions more generally. A second and related inquiry should seek to evaluate whether or not such inducements to ‘stay put’ have been treated as legally valid—or at least permitted—for some faiths (specifically those considered ‘indigenous’) and not others.

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<sup>61</sup> Irfan Engineer, “Freedom of Conscience, Conversions and Law”, *Combat Law* 1: 6.1 (March 2003)

<sup>62</sup> “TTD gives on gram gold to prevent conversions,” *The Organiser*, November, 5, 2006, [www.organiser.org](http://www.organiser.org)

Even while many of these trends are utterly disconcerting, there *have* been intermittent signs that the anti-conversion legislation will be challenged at the national level, which experts believe may even have the effect of overturning the *Stanislaus* decision.<sup>63</sup> Given the increasing unwillingness of state governors to sign the original legislation and amended legislation into law, the general lack of momentum in actually framing and enforcing the bills, and the increasing attacks on the legislation from influential members of the legal community (including Attorney General of India Milon Banerji's public chastisement of MP's BJP anti-conversion law in July 2006), it is likely that the saga over anti-conversion legislation will not necessarily be won by advocates of Hindutva. While the legislation is being used to intimidate tribals, Christians, women and non-Caste Hindu communities, the legislation has also proven to be rather toothless regarding its actual enforcement value. These more positive trends do not offset, of course, the fact that the legislation has and will continue to provide cannon fodder to the VHP, RSS and BJP's Hindutva campaign—and that the symbolic value of the legislation appears to be sufficient in some cases to legitimize violence in the public realm, evincing the weaknesses of state capacity to protect those most susceptible to such intimidation.

In sum, the prevalence of anti-conversion laws constitutes a decisive shift in the language of legitimacy regarding the Hindu Right's response to the 'demographic' and anti-nationalist threats of conversion. These anti-conversion laws reflect the pro-Hindutva leanings of many state governments, even while they are arguably redundant in light of the Constitution's Fundamental Rights. Forced or induced conversions are already outlawed; the *Stanislaus* case merely made a distinction between the right to propagate versus the right to convert itself. Moreover, the impact

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<sup>63</sup> This conclusion was drawn at the end of an emergency session of the All India Christian Council in May 2006 which met to specifically deal with anti-conversion legislation and the rise in anti-Christian violence across India. Prominent Supreme Court advocate and scholar Rajeev Dhavan submitted the claim that legally speaking, the Rajasthan Bill presents an excellent opportunity to challenge anti-conversion legislation at the level of the Supreme Court. Additionally, the governor of Rajasthan has also refused to sign the anti-conversion bill, a positive sign that challenges to such legislation will be levied by both local politicians and the legal community in general. See the article "Rajasthan governor refuses to sign anti-conversion bill," *Indiaenews.com*, May 19, 2006

of anti-conversion legislation does not seem as unsettling as it might otherwise when explored in a broader context.

### ***Gender and The Politics of Conversion***

Many of those working on the impact of anti-conversion legislation in India linked the bills to larger questions of gender equality. The recognition that debates over personal law and the Uniform Civil Code (UCC) generally revolve around women's issues (and, more specifically, the patriarchal regulation of family economies) is now commonplace,<sup>64</sup> although there have not been many efforts to draw parallels between the gendered nature of the UCC debate and the manner in which gendered notions of difference have shaped the religious conversion polemic. For example, it is significant that Sebastian Kim does not interrogate the gendered dimension of debates over conversion in his otherwise highly detailed examination of conversion in Indian political history. Along similar lines, a flaw that continues to permeate academic discourses on nationalism and secularism within political science is the occlusion of the gender dimension, or at least the tendency to treat gender as a residual category vis-à-vis the more widely accepted ascriptive characteristics of ethnicity, religion or language.

Overall, most theorists studying the role gender plays in nation-building agree that in the nation "Women are considered to be custodians of cultural identity by virtue of being less assimilated, both culturally and linguistically, into the wider society."<sup>65</sup> Often the same language that is employed to 'feminize', emasculate and alienate the 'other', is simultaneously used to refine the modes of permissible women's discourse in nationalizing projects. Women are at the

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<sup>64</sup> See Srimata Basu, "Shading the Secular", *Cultural Dynamics* 15: 2 (2003) pp. 131-151, Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (New Delhi: Oxford University Press, 1999); and Zoya Hasan, ed., *Forging Identities: Gender, Communities and the State* (New Delhi: Kali for Women, 1994)

<sup>65</sup> Deniz Kandiyoti, "Identity and Its Discontents: Women and the Nation," *Journal of International Studies*, 20:3 (1991), p. 435



same time crusaders in the nationalist effort, the property of community, bastions of spiritual purity, as well as the very means (or vessels) of a community's undoing.<sup>66</sup> As such, the language of modern citizenship in India creates not only political but moral boundaries that stratify society, often serving to maintain traditional hierarchies. While creating space in national movements for the construction of citizenship is important, the purported notions of 'equality' among a nation's individuals when community rights are given priority is an explicit example of myth-making. Gender is not simply an element of the political and moral boundaries that stratify society, but is also used as a discursive tool to estrange, vilify, isolate and control the 'Other', essentializing difference and generally constraining the ability of women to make their own independent political, social and economic choices.

Within some of the anti-conversion legislation female citizens are explicitly rendered 'passive' wards of individual states and are considered especially susceptible to the inducements of conversion. Even in her analysis of legal cases concerning the sincerity of conversions among women in the 1800s, Viswanathan writes, "Legislation that was ostensibly designed to protect converts' inheritance rights often led to an even greater infringement of rights, especially in the case of female converts."<sup>67</sup> This trend is no less true today as many of the anti-conversion bills suggest.

In short, the gendered nature of these laws implicate women as questionably 'rational' members of the Indian citizenry, as if they—being summarily subordinated within the tide of various patriarchal influences—are less likely to have the capacity to decide matters of faith for themselves. By producing the female citizen as socio-economically marginal and dependent within the personal law system, and by treating women as dispossessing the crucial agency and

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<sup>66</sup> For additional discussion, see Nira Yuval-Davis, "Gender and Nation," *Ethnic and Racial Studies*, 16:4 (October 1993), p. 630 and Veena Das, *Critical Events: an anthropological perspective on contemporary India* (New Delhi: Oxford University Press, 1995)

<sup>67</sup> Viswanathan, p. 80

reasoning ability necessary to speak for themselves in matters of faith, state and central institutions of law and government filter the construction of Indian citizenship through patriarchal narratives of community and national belonging, often invoking the language of secularism to buoy these tendencies. In the examination of the relationship between nationalism, secularism, and ‘rights’ to conversion, gender remains a central dimension of such discourses, and yet an under-theorized one. It is not simply that Hindu women can only be with Hindu men, but rather that Hindu women can only be Hindu *by virtue of being with* Hindu men—thus, religious identity of women is tied to that of the family, rather than personal belief. Famously, questions of choice and autonomy arose in the 1986 *Shah Bano* case, inspiring debate over the agency of Muslim women to actively select their religious identities.<sup>68</sup>

Yet a central feature of the conversion debate has focused on *coerced* conversion, such as the documented abduction and conversion of women during Partition. The project of recovering and returning women to their ‘rightful’ nation by the two recently created states of India and Pakistan was a ‘symbolic and significant activity’ for many reasons, especially because “it would seem that the only answer to forcible conversion was—forcible recovery.”<sup>69</sup> Moreover, like the contemporary efforts to recover sacred Hindu sites, it was an attempt to proclaim that it was possible to recover history to an imagined wholeness.”<sup>70</sup> As such, a key theme remains: “[T]he real cause of conversion still continues to be a condition that is built into Hinduism: namely, its ability to turn caste members into outcastes through mere contact with non-Hindus.”<sup>71</sup> Yet while the potential for ‘coerced conversion’ continues to constitute the main scapegoat in this contest, even in the absence of documentable forced conversions the framing of religious freedom as an

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<sup>68</sup> See Zoya Hasan, ed., *Forging Identities* for the boundaries of the Shah Bano and Uniform Civil Code debate and also Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge, UK: Cambridge University Press, 2000), pp. 172-3, 223-5, 239-40.

<sup>69</sup> Ritu Menon and Kamla Bhasin, *Borders and Boundaries: Women in India's Partition* (New Brunswick, NY: Rutgers University Press, 1998), pp. 67-129. See also Ritu Menon, “Do Women Have a Country?” in *From Gender to Nation*, p.51.

<sup>70</sup> Amitava Kumar, *Husband of a Fanatic* (New Delhi: Penguin, India, 2004), p. 231

<sup>71</sup> *ibid.*

attribute of *choice* and *volition* alone remains a critical threat to religious and cultural community stability.

The 1996 *Valsamma Paul* ruling is an interesting case in point, not because it deals with conversion in the sense of shifting from one grand religious tradition to another (such as from Hindu to Muslim), but rather because it illuminates how the case of backward caste entitlements is both an issue of conversion, and an issue of patriarchal and gendered notions of agency and the politics of caste. Mrs. Paul, a forward ‘Syrian Catholic’ woman who married a ‘Latin Catholic’ backward Christian caste, assumed she had taken on her husband’s lower caste status (as a married woman typically adopts her husband’s family’s religious status/name), and applied for a position at Cochin University under reservations for this lower caste. While Christians are not considered Scheduled Castes inasmuch as reservations are concerned, they are sometimes filed under the heading ‘Other Backward Castes’, which provides reservations at the state and central levels. The Court eventually decided that while Mrs. Paul became ‘backward’ caste upon marriage, this identity change was not ‘official’, so she could not take advantage of the reservations awarded to this group via conversion. While this case echoes the double challenge faced by women with respect to caste, it is also the case that in such instances, “Reservation cases go even further away from voluntarism, since evidence of an individual choice to be in a Backward group is grounds to be disqualified from it.”<sup>72</sup> Moreover, this case suggests that a focus on backward caste status as an aspect of an explicitly *Hindu* identity is insufficiently narrow, underlining how the relationship between caste, religion and gender intersect in ways

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<sup>72</sup> Laura Dudley Jenkins, “Personal Law and Reservations: Violation and Revision in Contemporary India,” in Gerald J. Larson, ed., *Religion and Personal Law in Secular India: A Call to Judgment* (New Delhi: Social Science Press, 2001), p. 117

that perpetuate patriarchal norms or a ‘matrix of domination’<sup>73</sup> within Indian law. In other words, issues of conversion are intimately tied to the institution of the personal law system.

Even the more progressive attempts by the Court assume the boundedness of religious identity and appear to accept the social reality that the economies of conversion are not merely gendered, but that women need to be protected ‘from’ conversion. The judiciary has articulated its ‘protectionist’ role in a variety of ways, framing its interventions against the tide of customary chauvinism while simultaneously re-inscribing the role of women as passive wards of the state or, alternatively, religious communities. While many scholars have focused upon tensions implicit in debates over personal law codes (versus a UCC), the Court sought the protection (but not necessarily the empowerment) of women in cases of suspicious conversion, specifically that of their husbands from Hinduism to Islam. In short, the Court has had occasion to take up the cause of wives of whose husbands convert from one religion in order to take advantage of the personal laws afforded in another. Such decisions include the *Sarla Mudgal* case of 1995, in which a number of Hindu women filed suit against their husbands for converting to Islam in order to marry again. Consequently, the Court decided that while the conversions of the husbands held inasmuch as ‘religious belief’ was concerned, such conversions did not hold legally. Thus, the Hindu marriages needed to be officially ended under Hindu law, thereby protecting Hindu women from polygamous marriages that continue to be considered legal under Muslim Personal Law.

This decision was upheld in the *Lily Thomas v. Union of India* decision in 2000. Again, Hindu men who converted to Islam in order to marry another woman were required to dissolve the first marriage by law before marrying a second wife. While the conversion may be valid, the conversion for the legal administration of marriage and divorce was not. This decision has been

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<sup>73</sup> See Patricia Hill Collins, *Black Feminist Thought* (Boston: Unwin Hyman, 1990)

used to protect Hindu women whose husbands convert to Islam and fail to perform the requirements of obtaining a proper divorce and maintenance settlement.<sup>74</sup> Thus while women were the subjects and the targets of state protection, and while the state simultaneously attempted to uphold the freedom of religion as the freedom to change religions (in these cases, of the husbands), these cases indicate an overriding theme in Indian juridical thought—namely that, perhaps more than any group, women as a whole must be protected from the traumas of conversion.

The construction of individual and community identity is at the core of these and other cases, and is key to understanding the critical limits of choice in modern India regarding the reach and substance of ‘freedom of religion’ in matters of State regulation and women’s agency. Furthermore, while caste, race and gender are often considered to be inextricably tied to the body, religion has often been treated as a voluntary characteristic of an individual or group. And yet even if one might voluntarily shift from one religion to another, this does not necessarily mean one frees oneself of being ‘named’ by the State. Thus, the official significance of these categories is key in the construction of the Indian ‘gendered’ citizen, secularism, and Indian national identity as a whole, especially to the extent that women’s agency is constructed as subordinate, susceptible, and even rationally suspect in matters of religious freedom.

### ***Conclusion***

In the debate over the right to conversion the line between convenience and coercion has been heavily politicized, and thereby riddled with legal landmines. Within many of these proceedings the distinction actually becomes meaningless: any case of conversion necessarily

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<sup>74</sup> *Lily Thomas v. Union of India* (2000) 6SCC 224

indicates guilt, although the species of guilt and the punishments elicited in a given case are a matter for individual states and courts. Indian secularism has been twisted in this passion play of Hindu-centrism and nationalist zeal: the orchestration of any ‘right’ to conversion simultaneously calls into existence a proper punishment for potentially ‘false’ or ‘inauthentic’ conversions—especially in cases involving socially disenfranchised citizens who might simply be unaware of the manner in which they are being spiritually manipulated. To the extent that ‘women’ are made the explicit and implicit targets of such regulatory practices, anti-conversion legislation is heavily gendered. The ‘get out of jail free card’ handed out to those ‘reconverting’ to Hinduism or ‘indigenous faiths’ more generally merely adds a nice dose of hypocrisy to the so-called ‘secularist’ moorings of Hinduvta’s cultural agenda.

The ways in which the state enterprise understood of notions of the secular and non-secular, how they were institutionalized, and to what end the rise of the Hindu Right has challenged these interpretations, is thus essential to assessing Indian secularism more generally. The right to conversion as an Indian *legal institution* has sought control the form and content of the ‘sacred’ itself, thereby shaping the substance of Indian national identity as it relates to freedom of religion. Toward this end, I concur with Pratap Bhanu Mehta’s assertion:

“It seems that in India both ‘secular’ and ‘non-secular’ share the fear of unregulated religious exchange, both share the premise that religion cannot be about rational argument, both share the thought that religion impairs the judgment of individuals and hence needs to be regulated to preserve their autonomy, and both have no compunctions given the state powers to regulate religious speech.”<sup>75</sup>

In the attempt to resituate our analysis of Indian secularism with reference to the cases cited above, in the spirit of scholars such as Talal Asad and Saba Mahmood<sup>76</sup> we should be

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<sup>75</sup> Pratap Bhanu Mehta, “Passion and Constraint,” *Seminar Magazine*, 521 (2003), pg. 7

<sup>76</sup> See Saba Mahmood, “Secularism, Hermeneutics, Empire: The Politics of Islamic Reformation,” *Public Culture* 18:2 (2006), pp. 323-247

mindful of the ways in which secularism has developed as a discourse of power. Second, focusing on the regulatory value of secularism is key, as opposed to juxtaposing the idea of the ‘secular’ against religiosity *per se*. Secularism is not the opposite of religiosity, nor a bid to eliminate religious dispositions, but rather aims to situate religious dispositions in such a way that allow for state control over the public sphere. Third, the regulatory nature of the secular project has been alternatively gendered and biased toward certain, more ‘legitimate’ religious identities over others, a trend that needs greater study. Fourth, the normative value of secularism as guaranteeing freedom of religion is not lost in light of this criticism, although the subjects and objects of such ‘freedom’ need to be reframed toward the end of respect for multiple forms of difference, and yet a respect guided by the practical requirements of social order and individual empowerment, and the guarantee of religious choice *as* choice.

There is little about the study and analysis of secular thought that is neutral—either comparatively by country or by issue area domestically. Cases vary dramatically with respect to how visibly or audibly the construction of ‘secularism’ deviates from the more ideal-typical Western model of church-state separation. That the church-state distinction is itself rather flimsy once one peers around the corners of policy and into the courtroom in Western contexts highlights the questionable immutability of ‘secularism’ as static or standardized, especially as the Christian heritage of Enlightenment thought continues to permeate the characterization of secularism as spiritually mute and historically androgynous. On one hand, the tenets of equality, individualism, liberty and autonomy associated with liberal secular thought are part and parcel to the development of a secular overlapping consensus; on the other hand, the abstract quality of these concepts can limit their practical import, especially when applied in non-Western contexts where the historical, epistemic value of the ideas is relatively new, be they presented in terms of

law, policy or lived dispositions. Equally as problematic is the direction in which these abstractions draw us. As many theorists have shown, the goals of liberalism—especially those of individual liberty and equality—may, in fact, be contradictory if taken to extremes, much less often obscure and reward difference (such as those of race, class and gender) toward the end of a ‘liberal equality’ that serves the ends of those already in positions of power.

“What, however, was the best mechanism for redressing a history of humiliation and discrimination? Is it possible to define a stigmatized and socio-economically marginal community as both equal to, yet different from, other political constituencies? That is, is it possible to equalize the status of unequal subjects even while maintaining their historic or cultural distinctiveness? Indeed this is the more global problem of recognition that feminists as well as other minority groups have encountered.”<sup>77</sup>

The right to conversion institutionalized suspicion, and the courts have maintained a similar sense of concern regarding the political significance of conversion as it relates to the freedom of individual conscience. When national unity and stability are crucial goals of the Indian state machinery, and while secularism is articulated as the most efficient strategy the government has to create and ensure these ends, it is understandable that a secularism that ‘unites’ may concurrently be one that divides in certain realms, obfuscating divisions in the name of a unified polis.

Conversion challenges both the stability and constitution of religious identity in a general sense, but also challenges national integrity and the role of secularism at the level of individual states. The Sangh Parivar and conservative Hindutva forces continue to portray conversions (outside of *gharvapsi*, or those converts returning to their so-called ‘original’ faith, i.e., Hinduism) as culturally and spiritually irredentist, and as overt political acts designed to destabilized Hindu cultural values and the fine (and increasingly shifting) electoral balance between religious and caste communities. For many in the Hindu Right, the right to conversion

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<sup>77</sup> Anupama Roy, “Representing Dalit Selfhood”, *Seminar* 558 (2006)



posits an explicit right to anti-national activity—presented, inauspiciously, in the sheep’s clothing of secularism. In light of such agitation by the Right, the character of secularism has come to mean many things in various contexts, its substance and qualities shifting often by issue area, as opposed to moving consistently away from—or toward—a more traditional liberal version of secularism as an overarching theme. The competing discourses of secularism drive claims to equality, rights, difference, sameness, external protections and internal restrictions,<sup>78</sup> and remain saturated by gendered assumptions regarding rationality and social fragmentation. In other words, “The imbrication of gender in a state-sponsored religious nationalism makes room for neither choice nor will, even when an act of restoration is intended to undo the effects of rupture.”<sup>79</sup> It is for this reason that the question of gender represents something significant for the study of nationalism and secularism.

Finally, this very central question bears repeating: where, exactly, does the ‘voluntary’ dimension of religious identity lie in these debates? One even wonders about the extent to which one might choose *not* to be associated with a particular religion in India. A given citizen may consider him/herself to be spiritually ‘agnostic’, but for legal purposes he/she can still be treated as ‘Hindu’, ‘Muslim’, etc. One’s name, family, and community define Indian individualism in matters of ‘religious freedom’, apparently a strange but illustrative tension, one which challenges the very foundations of Indian secular thought as it has been encased in law and policy. It is thus difficult to appraise the relevance of choice and agency when such concepts are set in opposition to State guarantees of public order, morality, and national unity—a problem highlighted by the recent rise in anti-conversion legislation, but certainly not delimited by it. This crisis of agency in matters of religious freedom, as it can be inferred from the above analysis, goes to the very

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<sup>78</sup> See Will Kymlicka, *Multicultural Citizenship: a Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995)

<sup>79</sup> Viswanathan, p. xiii

core of determining what lies at the heart of Indian secular nationalism and will hopefully aid future inquiries designed to locate whether or not the project is immediately salvageable or, rather, whether the mobility of ‘religious agency’ will continue to exist under a cloud of suspicion.

The manner in which Indian secularism was constructed, the way it is conceived of differentially by competing groups, and the way it vacillates by issue area, are indicative of the concept’s flexibility and durability. To charge Indian secularism with failure is to ignore its successes; the Indian state continues to manage the requirements of balancing between multiple agendas in order to shoulder the burden of a perpetually fragmenting populace. The extent to which secular institutions have been complicit in such fragmentation is, of course, a central concern. That it remains easier for scholars to problematize and pigeon-hole, however, should not delimit the terrain of our analysis. For any scholar of modern secularism, India is as much a success as it is an irritant. And, as an evolving discourse, we might do better to construct the debate as a set of ideas, institutions, and issue areas, not all of which will prove consistent or even legible, but which might help us decipher the manner in which an effective secular ‘balance’ has—or has not—been forged.